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Sent: Wednesday, July 27, 2005 2:56 PM
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Subject: Docket No. 050078 Documents for Filing

Attachments: PEF Notice Taking Deposition Larkin.pdf; PEF 11th Request for Confidential Classification.pdf; PEF Notice of Deposition of P. Porter.pdf



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Attached for filing and e-service on behalf of Progress Energy Florida are:

1. Progress Energy Florida's Eleventh Request for Confidential Classification;
2. Progress Energy Florida's Notice of Taking Deposition Duces Tecum of Philip Porter; and
3. Progress Energy Florida's Notice of Taking Deposition Duces Tecum of Hugh Larkin, Jr., CPA.

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Porter
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Larkin
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 050078-EI
Submitted for filing July 27, 2005

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

Progress Energy Florida ("PEF" or the "Company"), pursuant to Section 366.093, Fla. Stats., and Rule 25-22.006, Florida Administrative Code, files this Eleventh Request for Confidential Classification for confidential portions of PEF's supplemental responses to the Office of Public Counsel's ("OPC") First Request for Production (Nos. 1-75) and its responses to OPC's Sixth Request for Production (Nos. 145-150), as Staff has requested copies of these responses. On July 6, 2005, PEF filed its Ninth Notice of Intent to Request Confidential Classification with respect to this information. PEF therefore files this Eleventh Request for Confidential Classification within the twenty-one day period set out in Rule 25-22.006, Florida Administrative Code. Specifically, portions of the supplemental documents responsive to Request 71 contain benchmarking studies conducted by third-parties which must be kept confidential pursuant to contractual confidentiality provisions. Additionally, portions of the supplemental documents responsive to Request 75 contain sensitive business information that PEF does not make publicly available. With respect to PEF's responses to OPC's Sixth Request for Production, portions of the documents responsive to Requests 146 and 147 contain information concerning PEF's internal audits. Further, portions of the documents responsive to Request 148 contain confidential financial and tax information, the

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disclosure of which would adversely impact PEF's competitive business interests.

Accordingly, PEF hereby submits the following.

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 Act]." §366.093(1), Fla. Stats. Proprietary confidential business information means information that is (i) intended to be and is treated as private confidential information by the Company, (ii) because disclosure of the information would cause harm, (iii) either to the Company's ratepayers or the Company's business operation, and (iv) the information has not been voluntarily disclosed to the public. §366.093(3), Fla. Stats. Specifically, "information relating to competitive interests" is defined as proprietary confidential business information if the disclosure of such information "would impair the competitive business of the provider of the information." §366.093(3)(e), Fla. Stats. Additionally, proprietary confidential business information includes "internal auditing controls and reports of internal auditors. §366.093(3)(b), Fla. Stats. Section 366.093(3)(d) further defines proprietary confidential business information as "information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." §366.093(3)(d), Fla. Stats.

The aforementioned discovery provided to OPC and sought by Staff should be afforded confidential treatment because portions of the responses to these requests for production contain confidential information relating to PEF's competitive interests.

Public disclosure of the information in question would compromise PEF's competitive business interests by disclosing sensitive business information.

OPC's First Request for Production No. 71

Portions of PEF's supplemental responses to OPC's First Request for Production Number 71 should be afforded confidential treatment for the reasons set forth in the Affidavit of Javier Portuondo filed in support of PEF's Eleventh Request for Confidential Classification and for the following reasons. Portions of the responses to this Request contain benchmarking studies conducted by third-parties which must be kept confidential pursuant to contractual confidentiality provisions. See Affidavit of Javier Portuondo at 5. Public disclosure of the documents in question would violate the confidentiality provisions contained in those contracts and may impair PEF's efforts to contract favorably in future negotiations. Id. PEF may not be able to contract for such benchmarking studies if the companies providing this service are not assured that all the information provided in connection with the studies is kept confidential. Id.

OPC's First Request for Production No. 75

Portions of PEF's responses to OPC's First Request for Production Number 75 should be afforded confidential treatment for the reasons set forth in the Affidavit of Javier Portuondo filed in support of PEF's Eleventh Request for Confidential Classification and for the following reasons. Portions of the supplemental documents responsive to Request 75 contain Progress Energy's projected and estimated figures for short and long term debt, off balance sheet obligations, preferred stock, and common equity, along with other sensitive business information that PEF does not make publicly available. See affidavit of Javier Portuondo at 6. If PEF's suppliers or competitors were made aware of the projected and estimated figures for short and long term debt, off

balance sheets, preferred stock, or common equity, they may adjust their behavior in the market place with respect to activity such as pricing and the acquisition and provision of goods, materials, or services. Id. Specifically, if PEF's suppliers and providers were made aware of the sensitive information at issue, they may decrease supply of certain goods and services, and/or increase the cost and prices of such goods and services. Id. Additionally, PEF's competitors may adjust their consumption behavior in the market, thereby potentially making goods and services less available and more expensive to PEF. Id.

OPC's Sixth Request for Production Nos. 146 and 147

Portions of PEF's responses to OPC's Sixth Request for Production Numbers 146 and 147 should be afforded confidential treatment for the reasons set forth in the Affidavit of Javier Portuondo filed in support of PEF's Eleventh Request for Confidential Classification and for the following reasons. Portions of the responses to these Requests contain information concerning internal auditing by PEF. See affidavit of Javier Portuondo at 7. Such information is protected from public disclosure by Section 366.093(3)(b), Fla. Stat. Id.

OPC's Sixth Request for Production No. 148

Portions of PEF's responses to OPC's Sixth Request for Production Number 148 should be afforded confidential treatment for the reasons set forth in the Affidavit of Javier Portuondo filed in support of PEF's Eleventh Request for Confidential Classification and for the following reasons. Portions of the responses to this Request contain confidential tax documents. See affidavit of Javier Portuondo at 8. Public disclosure of such documents may adversely impact PEF's competitive business interests

because the information therein contains detailed financial information related to costs and expenses that the Company incurs as well as details regarding the company's revenue. Id. Specifically, if PEF's suppliers and providers were made aware of the tax information at issue, they may decrease supply of certain goods and services, and/or increase the cost and prices of such goods and services. Id. Additionally, PEF's competitors may adjust their consumption behavior in the market, thereby potentially making goods and services less available and more expensive to PEF. Id.

Strict procedures are established and followed to maintain the confidentiality of the terms of the confidential documents and information at issue, including restricting access to those persons who need the information and documents to assist the Company. See affidavit of Javier Portuondo at 9. At no time has the Company publicly disclosed the confidential information or documents at issue. Id. The Company has treated and continues to treat the information and documents at issue as confidential. Id.

Conclusion

Certain portions of the responses to the requests for production provided to the Office of Public Counsel and sought by Staff fit the statutory definition of proprietary confidential business information under Section 366.093 and Rule 25-22.006, Florida Administrative Code, and that information should be afforded confidential classification. In support of this motion, PEF has enclosed the following:

(1). A separate, sealed envelope containing one copy of the confidential Appendix A to PEF's Request for Confidential Classification for which PEF intends to request confidential classification with the appropriate section, pages, or lines containing the confidential information highlighted. **This information should be accorded**

confidential treatment pending a decision on PEF's request by the Florida Public Service Commission;

(2). Two copies of the confidential responses with the information for which PEF intends to request confidential classification redacted by section, page, or lines where appropriate as Appendix B; and

(3). A justification matrix supporting PEF's request for confidential classification of the highlighted information contained in confidential Appendix A, as Appendix C.

WHEREFORE, PEF respectfully requests that the supplemental responses to OPC's First Request for Production of Documents (Nos. 1-75), Requests 71 and 75, and the responses to OPC's Sixth Request for Production, Requests 146, 147, and 148, described specifically in Attachment C, be classified as confidential for the reasons set forth above.

Respectfully submitted this 27th day of July, 2005.

R. ALEXANDER GLENN
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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 27th day of July, 2005 to all counsel of record as indicated below.



Attorney

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 050078-EI
Submitted for filing July 27, 2005

**AFFIDAVIT OF JAVIER PORTUONDO IN SUPPORT OF
PROGRESS ENERGY FLORIDA'S
ELEVENTH REQUEST FOR CONFIDENTIAL CLASSIFICATION**

STATE OF FLORIDA

COUNTY OF PINELLAS

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Javier Portuondo, who being first duly sworn, on oath deposes and says that:

1. My name is Javier Portuondo. I am over the age of 18 years old and I have been authorized by Progress Energy Florida (hereinafter "PEF" or the "Company") to give this affidavit in the above-styled proceeding on PEF's behalf and in support of PEF's Eleventh Request for Confidential Classification. The facts attested to in my affidavit are based upon my personal knowledge.

2. I am the Director, Regulatory Services – Florida. This department is responsible for the regulatory accounting and reporting activities of Progress Energy Florida, Inc.

3. As PEF's Director of Regulatory Services, I am familiar with certain of PEF's business plans and analyses, internal audits, and tax information.

4. In its Eleventh Request for Confidential Classification, PEF is seeking confidential classification for portions of its supplemental responses to OPC's First Request for Production (Nos. 1-75) and its responses to OPC's Sixth Request for Production (Nos. 145-150). The information for which PEF seeks confidential classification is more specifically described in Attachment C to PEF's Eleventh Request for Confidential Classification.

5. Portions of PEF's supplemental response to OPC's Request 71 contain benchmarking studies conducted by third-parties which must be kept confidential pursuant to contractual confidentiality provisions. Public disclosure of the documents in question would violate the confidentiality provisions contained in those contracts and may impair PEF's efforts to contract favorably in future negotiations. PEF may not be able to contract for such benchmarking studies if the companies providing this service are not assured that all the information provided in connection with the studies is kept confidential.

6. Portions of PEF's supplemental response to OPC's Request 75 contain Progress Energy's projected and estimated figures for short and long term debt, off balance sheet obligations, preferred stock, and common equity, along with other sensitive business information that PEF does not make publicly available. If PEF's suppliers or competitors were made aware of the projected and estimated figures for short and long term debt, off balance sheets, preferred stock, or common equity, they may adjust their behavior in the market place with respect to activity such as pricing and the acquisition and provision of goods, materials, or services. Specifically, if PEF's suppliers and providers were made aware of the sensitive information at issue, they may decrease supply of certain goods and services, and/or increase the cost and prices of such goods

and services. Additionally, PEF's competitors may adjust their consumption behavior in the market, thereby potentially making goods and services less available and more expensive to PEF.

7. Portions of PEF's responses to OPC's Requests 146 and 147 contain information concerning internal auditing by PEF. Such information is protected from public disclosure by Section 366.093(3)(b), Fla. Stat.

8. Portions of PEF's response to OPC's Request 148 contain confidential tax documents. Public disclosure of such documents may adversely impact PEF's competitive business interests because the information therein contains detailed financial information related to costs and expenses that the Company incurs as well as details regarding the company's revenue. Specifically, if PEF's suppliers and providers were made aware of the tax information at issue, they may decrease supply of certain goods and services, and/or increase the cost and prices of such goods and services. Additionally, PEF's competitors may adjust their consumption behavior in the market, thereby potentially making goods and services less available and more expensive to PEF.

9. Strict procedures are established and followed to maintain the confidentiality of the terms of the confidential documents and information at issue, including restricting access to those persons who need the information and documents to assist the Company. At no time has the Company publicly disclosed the confidential information or documents at issue. The Company has treated and continues to treat the information and documents at issue as confidential.

10. This concludes my affidavit.

Further affiant sayeth not.

Dated this 26th day of July, 2005

Javier Portuondo
(Signature)

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this 26th day of July, 2005 by Javier Portuondo. He is personally known to me, or has produced his driver's license, or his as identification.



(AFFIX NOTARIAL SEAL)

Suzanne H. Miller
(Signature)

SUZANNE H. MILLER
(Printed Name)

NOTARY PUBLIC, STATE OF Florida

3/27/09
(Commission Expiration Date)