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Public Service Commission
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COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: August 26, 2004

TO: William C. Keating, Senior Attorney, Office of the General Counsel

FROM: James E. McRoy, Utility Systems/Communications Engineer, Division of Economic Regulation

RE: Docket No. 040817-EI, Petition for Determination of Need for Electrical Power Plant in Polk County by Progress Energy.

On August 5, 2004, Progress Energy Florida (PEF) filed a Request for Confidential Classification for information contained in Document No. 08522-04. The document in question are responses to PEF's Request for Proposals (RFP) issued on October 7, 2003, pursuant to Rule 25-22.082, F.A.C.

PEF asserts that Document No. 08522-04 contains proprietary, confidential business information, as defined in Section 366.093(3), Florida Statutes. Bidders responding to PEF's RFP consider their proposals to be confidential and competitively sensitive. PEF assured these bidders that their responses would be treated as confidential. PEF asserts that disclosure of this information will impair its ability to engage in meaningful solicitations in the future. In support of its Confidentiality filing PEF filed an Affidavit from Daniel J. Roeder, Project Leader in the System Resource Planning Section of the System Planning & Operations Department.


Staff concurs with PEF's request to grant confidential status to Document No. 08522-04. However, in accord with Section 366.093 (4) , Florida Statutes, staff recommends that the document remain confidential for a period of eighteen months from the date of the request. Prior to the end of the eighteen month time period, it is anticipated that either PEF can renew its request for confidential status or the affected document can be returned.

- CMP _____
- COM _____
- CTR _____ Attachment
- ECR _____ ~~cc: Blanca S. Bayo, Division of the Commission Clerk and~~
- GCL _____ Administrative Services
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH Marquesita

DOCUMENT NUMBER - DATE

09414 AUG 27 08

FPSC-COMMISSION CLERK

COMMISSIONERS: BRAULIO L. BAEZ, CHAIRMAN J. TERRY DEASON LILA A. JABER RUDOLPH "RUDY" BRADLEY CHARLES M. DAVIDSON	STATE OF FLORIDA 	DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES BLANCA S. BAYÓ DIRECTOR (850) 413-6770 (CLERK) (850) 413-6330 (ADMIN)
Public Service Commission		

M-E-M-O-R-A-N-D-U-M

DATE: August 6, 2004

TO: _____ **OFFICE OF THE GENERAL COUNSEL**
 _____ **DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT**
XX _____ **DIVISION OF ECONOMIC REGULATION**
 _____ **DIVISION OF REGULATORY COMPLIANCE**
 _____ **AND CONSUMER ASSISTANCE**

FROM: **DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES**

RE: **CONFIDENTIALITY OF CERTAIN INFORMATION**

DIVISION OF
 ECONOMIC REGULATION
 4 AUG - 9 AM 10: 26
 MAILING SERVICE
 COLLECTION

DOCUMENT NO(s): 08522-04

DESCRIPTION: Progress/Sasso - (Confidential) Appendix J to Need Study.

SOURCE: Progress Energy Florida

DOCKET NO(S): 040817-EI

The above material was received with an first request for confidential classification. Please prepare a recommendation for the attorney assigned to the case by completing the section below and forwarding a copy of this memorandum, together with a brief memorandum supporting your recommendation, to the attorney. Copies of your recommendation should also be provided to the Division of the Commission Clerk and Administrative Services, Bureau of Records and Hearing Services, and to the Office of General Counsel.

Please read each of the following and check if applicable.

- The document(s) is (are), in fact, what the utility asserts it (them) to be.
- The utility has provided enough details to perform a reasoned analysis of its request.
- The material has been received incident to an inquiry.**
- The material is confidential business information because it includes:
- (a) Trade secrets;
 - (b) Internal auditing controls and reports of internal auditors;
 - (c) Security measures, systems, or procedures;
 - (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company to contract for services on favorable terms;
 - (e) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities;
 - (f) Tax returns or tax-related information;
 - (g) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information.
- The material appears to be confidential in nature and harm to the company or its ratepayers will result from public disclosure.
- The material appears not to be confidential in nature.
- The material is a periodic or recurring filing and each filing contains confidential information.

Response prepared by: _____

James McRoy

Date: _____

8/24/04

cc: GCL FLL
 CMP CCA
 ECR RCA
 MMS

PSC/CCA 15 (Rev 05/04)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 040817-ET
Submitted for filing: August 5, 2004

**PROGRESS ENERGY FLORIDA'S FIRST 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 of the redacted portion of Appendix J to the Need Study, which contains the detailed description of the proposals PEF received in response to the Company's Request for Proposals issued on October 7, 2003, pursuant to Rule 25-22.082, F.A.C. The unredacted appendix is being filed under seal with the Commission on a confidential basis because the bidders who submitted the proposals in response to the Company's RFP asked the Company to keep the information in the appendix confidential by declaring that the terms of their proposals were confidential.

Introduction

In its 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). The Company's RFP was issued on October 7, 2003, and a deadline of December 16, 2003 was established for the submittal of bids in response to the RFP. 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 as confidential information, and the Company has not disclosed such information in the bids to the public.

The Confidentiality of the Bids

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 concerning bids" the "disclosure of which would impair the efforts of 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.

The terms of the bidders' proposals in response to the Company's RFP fit the statutory definition of proprietary confidential business information. Accordingly, the detailed description of the proposals is entitled to protection under Section 366.093 and Rule 25-22.006, F.A.C.

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 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.

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. 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, the utility's "efforts ... to contract for goods or services on favorable terms" will be impaired. § 366.093, Fla. Stats.

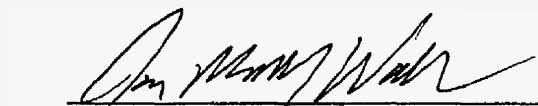
For all these reasons, PEF declared its intent in its RFP to keep the terms of the bidders' proposals in response to the RFP confidential. PEF has treated the bids it received as confidential. (Affidavit of Daniel J. Roeder, ¶ 6). Upon receipt of the proposals, strict procedures were established and 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.

Attachment A hereto contains a justification matrix supporting PEF's request for confidential classification of the highlighted information in the confidential Appendix J to the Need Study submitted with PEF's Notice of Intent to Request Confidential Classification filed herewith. The confidential information is identified by appendix number, page, and/or line, where appropriate (for example, in place of certain pages in the confidential appendix which would contain virtually nothing but blank pages if the information the bidders requested PEF to keep confidential was redacted, PEF has included a statement explaining the breadth of the confidential classification).

WHEREFORE, PEF respectfully requests that the confidential appendix to the Need Study be classified as confidential for the reasons set forth above.

Respectfully submitted this 5th day of August, 2004.

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ATTACHMENT A

DOCUMENTS	PAGE/LINE	JUSTIFICATION
Appendix J to Need Study	Pages 1-5 (excluding header and text lines 1-6 on page 1; text lines 10-15 and parts of lines 16 and 21 on page 2; text lines 3-5, parts of lines 7 and 8, lines 16-22, parts of lines 24-25, and lines 28-29 on page 3; textlines 1-5 and lines 11-21 on page 4; and text lines 10-11 and part of line 12 on page 5)	§ 366.093(3)(d) This is detailed information largely quoted 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.