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

DATE: October 7, 2004

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

FROM: Judy G. Harlow, ¹⁰⁷⁴Economic Analyst, Division of Economic Regulation

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

On September 30, 2004, Progress Energy Florida (PEF) filed a Second Request for Confidential Classification for the redacted information contained in Document No. 10538-04. The document consists of PEF's responses to Commission staff's Interrogatories No. 7 and No. 9, and Request for Production of Documents No. 15. PEF asserts that Document No. 10538-04 contains proprietary, confidential business information, as defined in Section 366.093(3), Florida Statutes.

PEF's response to staff's Interrogatory No. 7 contains information regarding the bids PEF received in response to its October 7, 2003 Request for Proposals (RFP). 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 for capacity and energy in the future.

PEF's responses to staff's Interrogatory No. 9 and Request for Production of Documents No. 15 relate to PEF's ongoing negotiations with potential natural gas fuel suppliers. In support of its confidentiality filing, PEF filed an Affidavit from Pamela R. Murphy, Director of the Gas and Oil Trading Section of the Regulated Commercial Operations Department. PEF has treated the details of these negotiations as confidential, as agreed to with the potential suppliers. PEF states that the release of this information would hinder PEF's ability to obtain competitive fuel purchase contracts.

- CMP _____
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- RCA _____
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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.

Attachment

cc: Blanca S. Bayo, Division of the Commission Clerk and
Administrative Services

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: September 30, 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

DOCUMENT NO(s): 10538-04

DESCRIPTION: Progress/Sasso - (Confidential) Responses to staff's 1st set of interrogatories, Nos. 7 and 9; response to staff's 1st request for PODs, No. 15

SOURCE: Progress Energy Florida

DOCKET NO(S): 040817-EI

The above material was received with an second 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: Judy Harlow

Date: 10/2/04

cc: GCL FLL
 CMP CCA
 ECR RCA
 MMS

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 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 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.

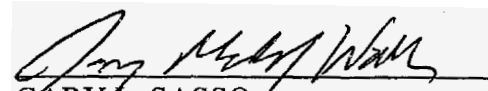
Conclusion

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.

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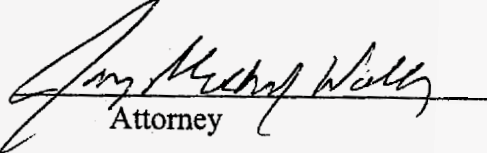

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CERTIFICATE OF SERVICE

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 20 day of September, 2004.


Attorney

Parties of Record and Interested Persons in Docket 040817

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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.