

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Petition for determination of need for Levy Units 1 and 2 nuclear power plants, by Progress Energy Florida, Inc.

Docket No. 080148 COMMISSION CLERK

Submitted for Filing: May 22, 2008

PROGRESS ENERGY FLORIDA'S FIFTH REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING STAFF'S FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS AND FIFTH SET OF INTERROGATORIES

Progress Energy Florida ("PEF" or the "Company"), pursuant to Section 366.093, Fla. Stats., and Rule 25-22.006, F.A.C., files this Request for Confidential Classification for PEF's responses to Staff's Fourth Request for Production of Documents, Request 21, and Staff's Fifth Set of Interrogatories, Numbers 75, 87, 91, 99, and 101. Specifically, these responses contain sensitive, confidential land acquisition costs, contractual terms for nuclear goods and services, and confidential information regarding discussions with potential joint owners, that if disclosed would impact PEF's ability to contract on favorable terms in the future. Accordingly, PEF hereby submits the following.

Basis for Confidential Classification

Subsection 366.093(1), Florida Statutes, provides that "any records received by the

CMP _____
COM _____ Commission which are shown and found by the Commission to be proprietary confidential
COT _____
RCA _____ business information shall be kept confidential and shall be exempt from [the Public Records
COT _____ Act]." § 366.093(1), Fla. Stats. Proprietary confidential business information means
OFC _____ information that is (i) intended to be and is treated as private confidential information by the
RCA _____ Company, (ii) because disclosure of the information would cause harm, (iii) either to the
SCR _____ Company's ratepayers or the Company's business operation, and (iv) the information has not
SEA _____
SEC _____ been voluntarily disclosed to the public. § 366.093(3), Fla. Stats. Specifically, subsection

OTH conf records 366.093(3)(e) defines "information relating to competitive interests, the disclosure of which

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would impair the competitive business of the provider of the information,” as proprietary confidential business information. In addition, Section 366.093(3)(d) includes “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” as proprietary confidential business information.

Staff’s Fourth Request for Production No. 21

PEF’s response to Staff’s Fourth Request for Production, number 21, should be afforded confidential treatment for the reasons set forth in the Affidavit of Daniel L. Roderick filed in support of PEF’s Request for Confidential Classification and for the following reasons. Portions of the documents responsive to this request contain information regarding land acquisition costs and the Company’s site selection analysis, that would adversely impact PEF’s competitive business interests if disclosed to the public. See Affidavit of Daniel L. Roderick at ¶ 5. Specifically, these documents reflect the Company’s confidential analysis of various sites for new power generation within Florida. Id. The sites which were considered by the Company for the Levy Nuclear project, but not chosen, may be candidate sites for future generation opportunities for PEF. Id. In that case, it would be compromise PEF’s competitive business interests if potential real estate owners were to know how PEF analyzed site selection and estimated land acquisition costs. Id.

Upon receipt of this confidential information, and with its own confidential information, strict procedures are established and followed to maintain the confidentiality of the documents and information provided, including restricting access to those persons who need the information to assist the Company, and restricting the number of, and access to the information. Id. at ¶ 8. At no time since receiving the information in question has the Company publicly disclosed that

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

Staff's Fifth Interrogatories No. 75

PEF's response to Staff's Fifth Set of Interrogatories, number 75, should be afforded confidential treatment for the reasons set forth in the Affidavit of Dale Oliver filed in support of PEF's Request for Confidential Classification and for the following reasons. The attachment to this interrogatory reflects the Company's confidential cost projections regarding planned transmission projects, that would adversely impact PEF's competitive business interests if disclosed to the public. See Affidavit of Dale Oliver at ¶ 5. For example, if third party real property owners were to know the planned locations of new transmission line corridors, they may raise the asking price of their property, thus making it more expensive for PEF to purchase necessary easements and property for those transmission corridors. Id. Likewise, if third party contractors with whom PEF contracts to construct the transmission lines were to know PEF's specific transmission needs, they could increase the price of those goods and services. Id.

Upon receipt of this confidential information, and with its own confidential information, strict procedures are established and followed to maintain the confidentiality of the documents and information provided, including restricting access to those persons who need the information to assist the Company, and restricting the number of, and access to the information. Id. at ¶ 6. At no time since receiving the information in question has the Company publicly disclosed that information. Id. The Company has treated and continues to treat the information at issue as confidential. Id.

Staff's Fifth Interrogatories Nos. 87, 91, and 99

Portions of PEF's responses to Interrogatories 87, 91, and 99 should be afforded confidential treatment for the reasons set forth in the Affidavit of Daniel L. Roderick filed in

support of PEF's Request for Confidential Classification and for the following reasons. These responses contain information regarding contractual arrangements between PEF and providers of nuclear equipment and services that would adversely impact PEF's competitive business interests if disclosed to the public. See Affidavit of Daniel L. Roderick at ¶ 7. PEF must be able to assure these vendors that sensitive business information, such as the terms of their contracts, will be kept confidential. Id. Indeed, the contract at issue contains a confidentiality provision that prohibit the disclosure of the terms of the contract to third parties. Id.

Specifically, the information at issue relates to competitively negotiated contractual data and other contractual terms, the disclosure of which would impair the efforts of the Company to negotiate these contracts on favorable terms. See § 366.093(3)(d), Fla. Stats.; Affidavit of Roderick at ¶ 7. If other third parties were made aware of confidential contractual terms that PEF has with other parties, they may offer PEF less competitive contractual terms in future contractual negotiations. Id. Without PEF's measures to maintain the confidentiality of sensitive terms in contracts between PEF and these nuclear contractors, the Company's efforts to obtain competitive contracts for the Levy Nuclear Project could be undermined. Id.

Upon receipt of this confidential information, and with its own confidential information, strict procedures are established and followed to maintain the confidentiality of the documents and information provided, including restricting access to those persons who need the information to assist the Company, and restricting the number of, and access to the information. (Id. at ¶ 8). At no time since receiving the information in question has the Company publicly disclosed that information. Id. The Company has treated and continues to treat the information at issue as confidential. Id.

Staff's Fifth Interrogatories No. 101

PEF's response to Staff's Second Interrogatory number 101, should be afforded

confidential treatment for the reasons set forth in the Affidavit of Jeff Lyash filed in support of PEF's Request for Confidential Classification and for the following reasons. Specifically, this response contains information regarding confidential draft agreements and correspondence with potential joint owners regarding negotiations for joint ownership in PEF's proposed nuclear units. Disclosure of this information would impair PEF's competitive business interests by inhibiting the Company's on-going negotiations with the potential joint owners. See Affidavit of Jeff Lyash at ¶ 5. For example, if third parties had knowledge of the status of these on-going negotiations, the potential joint owners with whom PEF is negotiating may not be as willing to share essential information with PEF. Id. This reduces PEF's leverage in negotiating with these potential joint owners and could affect the outcome of the negotiations to PEF's detriment. Id.

Disclosure of this information would also violate the terms of the confidentiality agreements PEF has entered into with each of the potential joint owners. See Affidavit of Jeff Lyash at ¶ 6. Specifically, the confidentiality agreements require PEF and the joint owners to maintain as confidential not only the terms of the agreement, but also all communication between PEF and the joint owners regarding the negotiations. Id. Therefore, this highly sensitive, confidential information must not be made publicly available.

Upon receipt of this confidential information, and with its own confidential information, strict procedures are established and followed to maintain the confidentiality of the documents and information provided, including restricting access to those persons who need the information to assist the Company, and restricting the number of, and access to the information. (Id. at ¶ 7). At no time since receiving the information in question has the Company publicly disclosed that information. Id. The Company has treated and continues to treat the information at issue as confidential. Id.

Conclusion

The competitive, confidential information at issue in this request fits the statutory definition of proprietary confidential business information under Section 366.093 and Rule 25-22.006, F.A.C. Separate sealed envelopes containing one copy of the confidential exhibits for which PEF intends to request confidential classification with the appropriate section, pages, or lines containing the confidential information highlighted is enclosed herewith as Attachment "A." **This information should be accorded confidential treatment pending a decision on PEF's request by the Florida Public Service Commission.**


Additionally, two copies of the confidential exhibits with the information that PEF intends to request confidential classification redacted by section page, or lines, are also included herewith as Attachment "B."

Attachment "C" 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 the responses to Staff's Third Request for Production of Documents (Nos. 16-18), Request 18, and White Springs' Second Set of Interrogatories, Number 15, described specifically in Attachment C, be classified as confidential for the reasons set forth above.

Respectfully submitted this 22nd day of May, 2008.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic and U.S. Mail this 22nd day of May, 2008 to all parties of record as indicated below.


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ACKNOWLEDGEMENT

DATE: May 22, 2008

TO: Dianne Tripple, Michael Walls/Carlton Fields

FROM: Ruth Nettles, Office of Commission Clerk

RE: Acknowledgement of Receipt of Confidential Filing

This will acknowledge receipt of a **CONFIDENTIAL DOCUMENT** filed in Docket Number 080148 or, if filed in an undocketed matter, concerning responses to staff's 4th Request for POD's, Request No. 21 and staff's 5th set of Interrogatories, Nos. 75, 87, 91, 99, and 101, and filed on behalf of Progress Energy. The document will be maintained in locked storage.

If you have any questions regarding this document, please contact Marguerite Lockard, Deputy Clerk, at (850) 413-6770.

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