

090009

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Power Plant Cost
Recovery Clause

Docket No. 080009-EI
Submitted for Filing: August 27, 2008

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**PROGRESS ENERGY FLORIDA'S REQUEST FOR CONFIDENTIAL
CLASSIFICATION REGARDING EXHIBITS VF-1 AND JAS-02**

Progress Energy Florida ("PEF" or the "Company"), pursuant to Section 366.093, Fla. Stats., and Rule 25-22.006(3), F.A.C., requests confidential classification of portions of the final audit report, *Progress Energy Florida's Project Management Internal Controls for Nuclear Plant Uprate and Construction Projects*, filed with the Public Service Commission ("PSC") as Staff's Exhibit VF-1. This report contains confidential internal audit information, confidential contractual information, and the length of the refueling outage, the disclosure of which would impair PEF's competitive business and violate PEF's third party confidentiality agreements. PEF previously requested confidential classification of this material in a confidentiality request filed July 29, 2008. PEF is also requesting confidential classification of portions of the final audit report, *Progress Energy Florida, Inc. Nuclear Cost Recovery Clause Levy County Units 1 & 2 Pre-Construction Cost*, filed with the PSC as Staff's Exhibit JAS-2. This report contains confidential land acquisition costs, the disclosure of which would violate PEF's third party confidentiality agreements. PEF previously filed a request for confidential classification for this material on August 7, 2008. The unredacted documents discussed above are being filed under

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seal with the Commission on a confidential basis to keep the competitive business information in those documents confidential.

The Confidentiality of the Documents at Issue

Section 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... 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. Additionally, subsection 366.093(3)(e) defines “information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information,” as proprietary confidential business information. Subsection 366.093(3)(b) further defines “internal auditing controls and reports of internal audits” as proprietary confidential business information.

Length of Refueling Outage

Portions of the final audit report marked as Exhibit VF-1 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. This document contains information regarding the length of the refueling outage for the CR3 Uprate project, that would adversely impact PEF’s competitive business interests if disclosed to the public. See Affidavit of Daniel L. Roderick at ¶ 8.

Specifically, the specific number of days during which CR3 will be offline for the refueling outage is highly confidential to the Company. (Id. at ¶ 9) During that time period, the Company may need to enter into power purchase arrangements to account for the lost megawatts on PEF's system. (Id.) If such suppliers of power were to be aware of the specific number of days that CR3 was to be offline, this could change the terms (such as price and quantity) of the power they are willing to offer to PEF during this refueling outage. (Id.) This would be detrimental to PEF and its ratepayers.

Upon receipt of this confidential information, strict procedures are established and followed to maintain the confidentiality of the 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. (Affidavit of Daniel L. Roderick at ¶ 12). 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.

Contractor Selection and Management

In addition, Exhibit VF-1 contains confidential contractual information regarding the purchase of equipment and services necessary to complete the CR3 Uprate and Levy nuclear projects. Certain of these documents contain contractual quantities and pricing arrangements between PEF and providers of various 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 ¶ 4. PEF must be able to assure these vendors that sensitive business information, such as the pricing and quantity terms of their contracts, will be kept confidential. Id. Indeed, most of the contracts at issue contain confidentiality provisions 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, such as quantity and pricing of goods and services, 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 ¶ 5. 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 CR3 Uprate and Levy nuclear projects could be undermined. Id.

Upon receipt of this confidential information, strict procedures are established and followed to maintain the confidentiality of the 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. (Affidavit of Daniel L. Roderick at ¶ 12). 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.

Auditing and Quality Assurance

Portions of the Exhibit VF-1 either are internal audit reports and procedures that resulted from the Company's audits of the CR3 Uprate Project, the Levy nuclear project, PEF's contractors, or uprate projects at other Progress nuclear plants, or the report contains information obtained from such audits. (Affidavit of Daniel L. Roderick at ¶ 6). PEF is requesting confidential classification of these reports, procedures, and information because public disclosure of the documents and information in question would compromise PEF's ability to effectively audit the Company's major projects. Id. ¶ 7. If the Company were to know that its internal

auditing controls and processes were subject to public disclosure, it may not be as thorough while conducting such audits. Id. In addition, such information and documents are specifically defined by Section 366.093(3)(b) as proprietary confidential business information that is entitled to confidential status. Id.

Upon receipt of this confidential information, strict procedures are established and followed to maintain the confidentiality of the 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. (Affidavit of Daniel L. Roderick at ¶ 12). 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.

Land Acquisition Costs

Portions of Exhibit JAS-2 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. Specifically, portions of these documents contain information regarding land acquisition costs that would adversely impact PEF's competitive business interests if disclosed to the public. See Affidavit of Daniel L. Roderick at ¶ 10.

PEF is requesting confidential classification of this information because public disclosure of the information in question would violate confidentiality agreements between PEF and its land sellers and would impair PEF's ability to contract for real estate on competitive and favorable terms.

The documents requested contain the land acquisition costs for the Levy Nuclear sites. Both sites were purchased pursuant to contracts that contain confidentiality provisions. PEF negotiates with potential landowners to obtain competitive contracts for real property that

provide economic value to PEF and its ratepayers. In order to obtain such contracts, however, PEF must be able to assure these landowners that sensitive business information, such as the quantity and pricing terms of their contracts, will be kept confidential. PEF has kept confidential and has not publicly disclosed the proprietary contract terms and provisions at issue here. Absent such measures, PEF would run the risk that sensitive business information regarding what it is willing to pay for real property would be made available to the public and, as a result, other potential sellers of real property could change their position in their negotiations with PEF for the future purchase of other real property. Without PEF's measures to maintain the confidentiality of sensitive terms in these real property purchase contracts, the Company's efforts to obtain competitive land contracts would be undermined. In addition, by the terms of these contracts, all parties, including PEF, have agreed to protect proprietary and confidential information, which is defined to include the price, from public disclosure.

Upon receipt of this confidential information, strict procedures are established and followed to maintain the confidentiality of the 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. (Affidavit of Daniel L. Roderick at ¶ 12). 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., 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;**

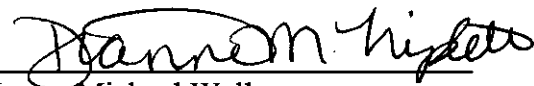
(2). Two copies of the documents with the information for which PEF intends to request confidential classification redacted by section, page, or lines where appropriate as Appendix B; and

(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 redacted portions of Staff's Exhibit VF-1, be classified as confidential for the reasons set forth above.


Respectfully submitted this day of August 29, 2008.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic and U.S. Mail this 27th day of August, 2008.


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ACKNOWLEDGEMENT

DATE: August 28, 2008

TO: Dianne M. Triplett, Esquire/Carlton Fields, P.A.

FROM: Marguerite H. McLean, Office of Commission Clerk

RE: Acknowledgement of Receipt of Confidential Filing

This will acknowledge receipt of a CONFIDENTIAL DOCUMENT filed in Docket Number 080009-EI (DN 07777-08) or, if filed in an undocketed matter, concerning portions of final audit report, [staff] Exhs VF-1 and JAS-2, and filed on behalf of Progress Energy Florida. The document will be maintained in locked storage.

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