

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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IN RE: NUCLEAR POWER PLANT COST
RECOVERY CLAUSE

Docket No. 090009-EI
Submitted for Filing June 5, 2009

PROGRESS ENERGY FLORIDA'S FOURTH REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING THE DOCUMENTS PRODUCED IN RESPONSE TO OPC'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 53-59)

Progress Energy Florida, Inc. ("PEF" or the "Company"), pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(3), Florida Administrative Code, requests confidential classification of the documents produced in response to OPC's Second Request for Production of Documents (Nos. 53-59), specifically request number 59. Such responsive documents contain confidential information regarding PEF's contractual agreements the disclosure of which would compromise PEF's competitive business interests, and further violate contractual confidentiality agreements.

With respect to the confidential information and documents at issue, PEF filed a Notice of Intent to Request Confidential Classification on May 12, 2009. Pursuant to Rule 25-22.006(3), Florida Administrative Code, therefore, this request was due on June 2, 2009. However, due to the large number of documents and information that have been reviewed and produced during the discovery phase of the two concurrently running dockets (Docket No. 090009-EI and Docket No. 090079), many of which contain confidential and proprietary

COM	_____
ECR	<u> 1 </u> information requiring more exacting review and additional filings, this filing deadline was
GCL	<u> 1 </u> inadvertently missed during this review, but the Company always intended and still intends to
OPC	_____
RCP	_____ request confidential classification of the specified confidential information. Further, this request
SSC	_____
SGA	_____ is being filed within a few days of the required 21-day period, and therefore there is no prejudice
ADM	_____
CLK	<u> 1 </u>

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prejudice to any of the other parties due to this error and slight delay in filing the request. PEF has contacted counsel for OPC and Staff and has been authorized to represent that OPC has no objection to our requesting confidential classification of this information. As of the time of this filing, PEF has not received any notification from Staff that it would object to this request. Additionally, the extremely sensitive nature of the information contained in these dockets warrants confidential classification. The information at issue in these documents is the same type of information that has been requested by PEF in prior confidentiality requests in this docket, and no party has objected to the confidential nature of those prior documents. Accordingly, PEF has complied with Rule 25-22.006(3)(a) and shown good cause to avoid the waiver of confidentiality. PEF hereby submits the following in support of its confidentiality request.

BASIS FOR CONFIDENTIAL CLASSIFICATION

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. Stat. 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. Stat. Specifically, “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” is defined as proprietary confidential business information. § 366.093(3)(d), Fla. Stat. Additionally, section 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.

These responsive documents contain information concerning contractual data, the disclosure of which would impair PEF’s efforts to contract for goods and services on favorable terms. Specifically, these documents contain information regarding competitive contractual provisions between PEF and third parties, as well as information related to bids to supply goods and services, that would adversely impact PEF’s competitive business interests if disclosed to the public. If other parties were made aware of confidential contractual terms and arrangements that PEF has with other parties, including but not limited to the duration of contracts, the quantity and pricing terms, they may offer PEF less competitive contractual terms in future contractual negotiations. See Affidavit of Miller, ¶ 4. Furthermore, the disclosure of these confidential contractual terms would be a violation of contractual confidentiality provisions entered by PEF and the other contractual parties. See id. at ¶ 5. Accordingly, these documents should be afforded confidential treatment pursuant to section 366.093(3)(d), Florida Statutes.

PEF has kept confidential and has not publicly disclosed the confidential information and documents at issue here. Absent such measures, PEF would run the risk that sensitive business information regarding what it is willing to pay for certain goods and services, as well as what the Company is willing to accept as payment for certain goods and/or services, would be made to available to the public and, as a result, other potential suppliers, vendors, and/or purchasers of such services could change their position in future negotiations with PEF. Without PEF’s measures to maintain the confidentiality of sensitive information in these documents, the Company’s efforts to obtain competitive contracts and to obtain competitively priced goods and

services would be undermined. In addition, by the terms of the contracts governing the information produced in response to these requests, all parties, including PEF, have agreed to protect the proprietary and confidential information, defined to include pricing arrangements, from public disclosure. See id. at ¶ 4, 5.

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. See id. at ¶ 5. At no time since receiving the information in question has the Company publicly disclosed that information. See 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, Florida Statutes, 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 has requested 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 has requested 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 the Company's response to OPC's Second Request for Production (Nos. 53-59), specifically request number 59, be classified as confidential for the reasons set forth above.

Respectfully submitted,



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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 5th day of June, 2009.


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Public Service Commission

ACKNOWLEDGEMENT

DATE: June 5, 2009

TO: James Michael Walls, Carlton Fields Law Firm

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 090009 or, if filed in an undocketed matter, concerning documents produced in response to OPC's 2nd Request for PODs, Nos. 53-59, 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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