

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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IN RE: NUCLEAR POWER PLANT COST
RECOVERY CLAUSE

Docket No. 090009-EPN
Submitted for Filing June 18, 2009

PROGRESS ENERGY FLORIDA'S FIFTH REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING THE DOCUMENTS PRODUCED IN RESPONSE TO OPC'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 60-64)

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 Third Request for Production of Documents (Nos. 60-64), specifically request numbers 60 and 61. Portions of the documents and information contained in these responses contain proprietary and confidential business information which the Company does not disclose to the public, including contractual data the disclosure of which would impair PEF's ability to contract for necessary goods and services and in many cases would violate contractual confidentiality clauses, and other information the disclosure of which would harm the Company's competitive business interests.

With respect to the confidential information and documents at issue, PEF filed a Notice of Intent to Request Confidential Classification on May 28, 2009. Pursuant to Rule 25-22.006(3), Florida Administrative Code, this request is timely. 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

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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.

The responsive documents to OPC’s request number 60 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 monthly status reports and correspondences regarding such contractual provisions, 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 Garry 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.

The responsive documents to OPC's request number 61 contain information regarding the Levy Nuclear Project's ("LNP") schedule shift, including steps PEF is taking to minimize the costs of same. Included in these documents is information regarding the anticipated shifts in cash flows and project costs, as well as other sensitive proprietary and confidential information that PEF does not share with the public. The disclosure of this information would put PEF at a competitive disadvantage in the future with regards to LNP, by giving other market participants information that could be used to drive up prices relevant to the LNP, or to otherwise affect the markets for necessary goods and services. See Affidavit of Miller, ¶ 4. Accordingly, this information should be afforded confidential treatment pursuant to section 366.093(3)(e), 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 Third Request for Production (Nos. 60-64), specifically request numbers 60 and 61, be classified as confidential for the reasons set forth above.

Respectfully submitted,



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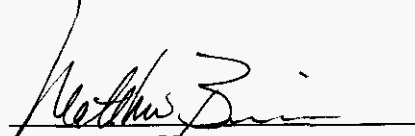
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CERTIFICATE OF SERVICE

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 18th day of June, 2009.


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ACKNOWLEDGEMENT

DATE: June 18, 2009

TO: James 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 090009 or, if filed in an undocketed matter, concerning documents produced in response to OPC's 3rd Request for PODs, Nos. 60-64, , 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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