

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: NUCLEAR POWER PLANT COST RECOVERY CLAUSE

Docket No. 090009-EI Submitted for Filing July 2, 2009

COMMISSION CLERK

PROGRESS ENERGY FLORIDA'S SEVENTH REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING THE RESPONSE TO STAFF'S SECOND SET OF INTERROGATORIES (NOS. 13-33) AND DOCUMENTS PRODUCED IN RESPONSE TO AUDIT CONTROL NO. 08-248-2-1

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 portions of the response to Staff's Second Set of Interrogatories (Nos. 13-33), specifically request number 28, and documents produced in response to Audit Control No. 08-248-2-1, i.e. the "NuStart Memo." The information contained in these responses contains 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.

With respect to the confidential information contained in the response to Staff's interrogatory number 28, PEF filed its Fifth Notice of Intent to Request Confidential Classification on June 11, 2009. Pursuant to Rule 25-22.006(3), Florida Administrative Code,

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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

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 information to Staff’s interrogatory number 28 contains information concerning contractual data, the disclosure of which would impair PEF’s efforts to contract for goods and services on favorable terms. Specifically, this information includes contractual cancellation fees regarding various contractual undertakings, each of which are subject to contractually agreed upon confidentiality provisions. The release of this information 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 pricing and cancellation provisions, 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 NuStart Memo likewise contains confidential contractual information, the disclosure of which would impair PEF's efforts to contract for goods and services on favorable terms. Specifically, this information includes contractual cancellation fees regarding various contractual undertakings, each of which are subject to contractually agreed upon confidentiality provisions. The release of this information 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 pricing and cancellation provisions, 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. See Affidavit of Miller, ¶ 5. 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.

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. Id. 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, 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 Staff's Second Set of Interrogatories (Nos. 13-33), specifically number 28, as well as the NuStart Memo 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 2<sup>nd</sup> day of July, 2009.

  
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# Public Service Commission

## ACKNOWLEDGEMENT

DATE: July 2, 2009

TO: Matthew Bernier, Carlton Fields

FROM: Kimberley M. Peña, Office of Commission Clerk

RE: Acknowledgement of Receipt of Confidential Filing

This will acknowledge receipt of a CONFIDENTIAL DOCUMENT filed in Docket Number 090009-EI or, if filed in an undocketed matter, concerning portions of response to staff's 2nd set of interrogatories (No. 28) and documents produced in response to Audit Control No. 08-248-2-1, and filed on behalf of Progress Energy Florida, Inc. 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.

DOCUMENT NO.	DATE
<u>06699-09</u>	<u>07/02/2009</u>
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