

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 July 14, 2009

PROGRESS ENERGY FLORIDA'S EIGHTH REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING THE RESPONSE TO OPC'S THIRD SET OF INTERROGATORIES (NOS. 28-49) AND DOCUMENTS PRODUCED IN RESPONSE TO OPC'S FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 65-74)

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 OPC's Third Set of Interrogatories (Nos. 28-49), specifically request number 31, and certain documents produced in response to OPC's Fourth Request for Production of Documents (Nos. 65-74), specifically numbers 67 and 73. 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 OPC's discovery requests, PEF filed its Sixth Notice of Intent to Request Confidential Classification on June 23, 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

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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 OPC’s interrogatory number 31, as explained below and in the supporting affidavit of Garry Miller, contains confidential competitive business information, including 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 information regarding the Levy Nuclear Project and the contractual agreements necessary to guarantee its success. 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 the reasoning behind PEF’s decisions regarding those contracts, 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. Accordingly, these documents should be afforded confidential treatment pursuant to section 366.093(3)(d), Florida Statutes.

The responsive documents to OPC's Fourth Request for Production of Documents, specifically numbers 67 and 73, as explained below and in the affidavit of Garry Miller, contain confidential competitive business information, the disclosure of which would impair PEF's efforts to contract for goods and services on favorable terms and provide PEF's competitors for goods and services with an unfair advantage in securing such items. Specifically, these responsive documents contain information related to PEF's internal processes for determining all nuclear-related costs, as well as the costs themselves, and an evaluation of the business risks involved in obtaining a Combined Operating License (COL) and the Company's strategy to mitigate and avoid such risks. 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 this information PEF would be at a competitive disadvantage in all future contractual negotiations and would be open to being undercut by its competitors when attempting to bargain for goods and services. Furthermore, disclosing this proprietary business information is tantamount to requiring PEF to subsidize its competitors by providing them this valuable information free of charge. See Affidavit of Miller, ¶ 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, ¶ 6. 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 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; 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 a CD of the confidential Attachment 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 Attachment B; and,

(3) A justification matrix supporting PEF's Request for Confidential Classification of the highlighted information contained in confidential Attachment A, as Attachment C.

WHEREFORE, PEF respectfully requests that the redacted portions of the Company's response to OPC's Third Set of Interrogatories (Nos. 28-49), specifically number 31, and documents produced in response to OPC's Fourth Request for Production of Documents (Nos. 65-74), specifically numbers 67 and 73, be classified as confidential for the reasons set forth above.

Respectfully submitted,

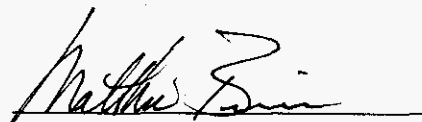
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CERTIFICATE OF SERVICE

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 14th day of July, 2009.


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Public Service Commission

ACKNOWLEDGEMENT

DATE: July 14, 2009

TO: Matthew R. Bernier

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 OPC's 3rd set of interrogatories (No. 31) and certain documents produced in response to OPC's 4th request for production of documents (Nos. 67 and 73), 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 Kimberley M. Peña, Records Management Assistant, at (850) 413-6770.

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