

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: NUCLEAR POWER PLANT COST
RECOVERY CLAUSE

Docket No. 090009-EI
Submitted for Filing July 28, 2009

**PROGRESS ENERGY FLORIDA'S THIRTEENTH REQUEST FOR CONFIDENTIAL
CLASSIFICATION REGARDING THE RESPONSE TO OPC'S SIXTH SET OF
INTERROGATORIES (NOS. 64-72) AND SEVENTH REQUEST FOR
PRODUCTION OF DOCUMENTS (NOS. 87-99)**

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 responses to the Office of Public Counsel's ("OPC" or "Citizens") Sixth Set of Interrogatories (Nos. 64-72), specifically numbers 65 and 70(a), and the responses to Citizens' Seventh Request for Production of Documents (Nos. 87-99), specifically numbers 89, 92, 94 and 96. 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 Ninth Notice of Intent to Request Confidential Classification on July 7th, 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.

- COM _____
- ECR 5
- GCL 1
- OPC _____
- RCP _____
- SEC _____
- SGA _____
- ADM _____
- CLK 1

15423322.1

DOCUMENT NUMBER-DATE

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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 Citizens’ interrogatories and request for production (“request”), 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, the responses provided in response to interrogatory number 65 and request numbers 89 and 92 include information regarding the contractual agreements necessary for the success of the Levy Nuclear Project (“LNP”), including information concerning the EPC contract, and factors considered by PEF in executing that contract. 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 pricing arrangements and other factors and considerations that influence PEF's decision to enter into such arrangements, they may offer PEF less competitive contractual terms in future contractual negotiations or be in position to negotiate contracts less favorable to the Company and its customers. 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. Accordingly, these documents should be afforded confidential treatment pursuant to section 366.093(3)(d), Florida Statutes.

Also included in the responses to OPC's interrogatories, specifically number 70(a), is a document titled the Levy Nuclear Power Plant Risk Register, which details the Company's projected risks involved in the Levy Nuclear Project ("LNP"), along with the risk level assigned to each risk and the Company's strategy to avoid or minimize these risks. Disclosure of these strategies would harm PEF and its customers by giving competitors and other parties (such as suppliers of goods and services) valuable insight into the Company's strategic planning, allowing them to take advantage of this knowledge, thereby harming PEF's competitive business interests. Affidavit of Miller, ¶5. The responsive documents to Citizens' request number 94 includes information regarding the planning of the LNP, including possible transportation routes in and out of the project, and other conceptual design summaries. Release of this information would also impair the Company's competitive interest by providing valuable insight into the Company's strategic planning, allowing other parties to take advantage of this knowledge,

thereby harming PEF's competitive business interests. Id. Accordingly, these documents should be afforded confidential treatment pursuant to section 366.093(3)(e), Florida Statutes.

Finally, the responsive documents to OPC's request number 96 contains confidential information regarding the Crystal River Unit 3 Extended Power Uprate ("CR3 Uprate") provided to PEF by a third party under a confidentiality agreement. These documents are confidential and their release would harm the Company's competitive business interests and violate the contractual confidentiality provision under which they were provided to the Company. See Affidavit of Jon Franke, ¶4. Therefore, 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; Affidavit of Franke, ¶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 from public disclosure. See Affidavit of Miller, ¶6; Affidavit of Franke, ¶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 Affidavit of Miller, ¶6; Affidavit of Franke, ¶5. 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. See Affidavit of Miller, ¶6; Affidavit of Franke, ¶5.

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 including the confidential documents as 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 highlighted portions of the responses to the Office of Public Counsel's ("OPC" or "Citizens") Sixth Set of Interrogatories (Nos. 64-

72), specifically numbers 65 and 70(a), and the responses to Citizens' Seventh Request for Production of Documents (Nos. 87-99), specifically numbers 89, 92, 94 and 96, be classified as confidential for the reasons set forth above.

Respectfully submitted,

R. ALEXANDER GLENN
General Counsel
JOHN BURNETT
Associate General Counsel
PROGRESS ENERGY SERVICE
COMPANY, LLC
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (727) 820-5587
Facsimile: (727) 820-5519


JAMES MICHAEL WALLS
Florida Bar No. 0706242
DIANNE M. TRIPLET
Florida Bar No. 0872431
MATTHEW R. BERNIER
Florida Bar No. 0059886
CARLTON FIELDS, P.A.
Post Office Box 3239
Tampa, FL 33601-3239
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

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 28th day of July, 2009.


ATTORNEY

MR. PAUL LEWIS, JR.
Progress Energy Florida, Inc.
106 East College Avenue, Ste. 800
Tallahassee, FL 32301-7740
(850) 222-8738 / FAX: (850) 222-9768
Email: paul.lewisjr@pgnmail.com

JOHN W. MCWHIRTER
McWhirter Law Firm
400 North Tampa Street, Ste. 2450
Tampa, FL 33602
(813) 224-0866 / FAX: (813) 221-1854
Email: jmcwhirter@mac-law.com

CHARLES REHWINKEL

BRYAN S. ANDERSON

Associate Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330
Email: rehwinkel.charles@leg.state.fl.us

KEINO YOUNG
LISA BENNETT
JENNIFER BRUBAKER
ANNA WILLIAMS
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee 32399
(850) 413-6218 / FAX: (850) 413-6184
Email: kyoung@psc.state.fl.us
lbennett@psc.state.fl.us
jbrubake@psc.state.fl.us
awilliams@psc.state.fl.us

VICKI GORDON KAUFMAN
JON C. MOYLE, JR.
118 North Gadsden Street
Tallahassee, FL 32301
(850) 681-3828 / FAX: (850) 681-8788
Email: vkaufman@kagmlaw.com
jmoyle@kgmlaw.com

HONORABLE CHARLES S. DEAN
Senate Majority Whip
411 Tomkins Street
Inverness, FL 34450
Phone: (352) 860-5175

GARY A. DAVIS
JAMES S. WHITLOCK
Gary A. Davis & Associates
P.O. Box 649
Hot Springs, NC 28743
(828) 622-0044
Email: gadavis@enviroattorney.com
jswhitlock@enviroattorney.com

HONORABLE MIKE FASANO
8217 Massachusetts Avenue
New Port Richey, FL 34653
(727) 485-5885 / FAX: (727) 841-4453

JESSICA CANO
Florida Power & Light
700 Universe Boulevard
Juno Beach, FL 33408-0420
(561) 691-7101 / FAX: (561) 691-7135
Email: bryan.anderson@fpl.com
Jessica.cano@fpl.com

JAMES W. BREW
F. ALVIN TAYLOR
Brickfield Burchette Ritts & Stone, PC
1025 Thomas Jefferson St NW
8th FL West Tower
Washington, DC 20007-5201
(202) 342-0800 / FAX: (202) 342-0807
Email: jbrew@bbrslaw.com
ataylor@bbrslaw.com

E. LEON JACOBS, JR.
Southern Alliance for Clean Energy, Inc.
c/o Williams Law Firm
1720 S. Gadsden Street MS 14, Ste. 20
Tallahassee, FL 32301
(850) 222-1246 / FAX: (850) 599-9079
Email: Ljacobs50@comcast.net

RANDY B. MILLER
White Springs Agricultural Chemicals, Inc.
P.O. Box 300
White Springs, FL 32096
Email: RMiller@pcsphosphate.com

CAPTAIN SHAYLA L. MCNEILL
AFLOA/JACL-ULT
AFCESA
139 Barnes Drive, Suite 1
Tyndall Air Force Base, FL 32403
(850) 283-6663 / FAX: (850) 283-6219
Email: shayla.mcneill@tyndall.af.mil

STATE OF FLORIDA

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OFFICE OF COMMISSION CLERK
ANN COLE
COMMISSION CLERK
(850) 413-6770

Public Service Commission

ACKNOWLEDGEMENT

DATE: July 29, 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 OPC's 6th set of Interrogatories (Nos. 64-72), specifically Nos. 65 and 70; and response to Citizens' 7th Request for PODs, Nos. 87-99, specifically Nos. 8-, 92 and 94, provided on CD, 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.

DOCUMENT NUMBER-DATE
07722 JUL 28 09
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CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-0850
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PSC Website: <http://www.floridapsc.com>

Internet E-mail: contact@psc.state.fl.us