

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 28, 2009

**PROGRESS ENERGY FLORIDA'S TWELFTH REQUEST FOR CONFIDENTIAL
CLASSIFICATION REGARDING THE DOCUMENTS PROVIDED TO THE PSC'S
AUDITOR FOR PREPARATION OF THE REVIEW OF PROGRESS ENERGY
FLORIDA'S PROJECT MANAGEMENT INTERNAL CONTROLS FOR NUCLEAR
PLANT UPRATE AND CONSTRUCTION PROJECTS DRAFT REPORT**

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 documents produced to the Commission's Auditor for use in preparing the Review of PEF's Project Management Internal Controls for Nuclear Plant Uprate and Construction Projects Draft Report, dated July, 2009. The information contained in these documents (hereinafter the "workpapers") includes proprietary and confidential business information which the Company does not disclose to the public, including contractual data, internal audit reports, and other confidential competitive business information, the disclosure of which would harm the Company's competitive business interests and in many cases would violate contractual confidentiality clauses.

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In support of this Request, PEF states as follows:

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 workpapers at issue, as explained below and in the supporting affidavits of Garry Miller ("Miller"), Gary Furman ("Furman"), Raymond Phillips ("Phillips"), and Jon Franke ("Franke"), contain confidential competitive business information, including contractual data, internal audit reports, and other confidential competitive business information, the disclosure of which would harm the Company's competitive business interests and in many cases would violate contractual confidentiality clauses. Specifically, these workpapers include information regarding the contractual agreements necessary for the success of the Levy Nuclear Project ("LNP") and the Crystal River Unit 3 Uprate Project ("CR3 Uprate"), the disclosure of which would be a violation of contractually agreed to confidentiality provisions. See Miller, ¶4; Furman, ¶4. Violating these agreements would necessarily harm the Company's competitive business interests. See Miller, ¶4; Furman, ¶4. As the report itself states, "A large volume of information was collected and analyzed by staff", including "contract request for proposals," "contractor bids," "bid evaluation analyses," "contracts," "project scope analysis studies by PEF

and consultants,” and “internal audit reports.” The release of this information would adversely impact PEF’s competitive business interests if disclosed to the public. See Miller, ¶4; Furman, ¶4. Phillips, ¶3; Franke ¶4. If other parties were made aware of confidential contractual terms and arrangements that PEF has with other parties, including the pricing arrangements, they may offer PEF less competitive contractual terms in future contractual negotiations. See Miller, ¶ 4; Furman, ¶4; Franke, ¶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 Miller, ¶4; Furman, ¶4; Franke, ¶4. Additionally, these workpapers contain information from the Company’s internal audit reports and controls, the disclosure of which would impair the Company’s ability to effectively audit and oversee its major projects, by eliminating the confidentiality required for complete cooperation with auditors. See Phillips, ¶4. This report also contains information relating to the planned outage of CR3, including the length and timing of the outage. This information, if released to the public would allow other market participants to alter their behavior resulting in increased costs to PEF during the period when PEF will be required to purchase power. See Franke, ¶4. Accordingly, this information 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 at issue here. See Miller, ¶5; Furman, ¶5; Phillips, ¶5; 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. See Miller, ¶4; Furman, ¶4; Franke, ¶4. Without PEF’s measures

to maintain the confidentiality of this sensitive information, the Company's efforts to obtain competitive contracts and to obtain competitively priced goods and services would be undermined. See Miller, ¶5; Furman, ¶5; Phillips, ¶5; 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 Miller, ¶5; Furman, ¶5; Phillips, ¶5; 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 Miller, ¶5; Furman, ¶5; Phillips, ¶5; 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 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 document 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 portions of the documents produced to the Commission's Auditor for use in preparing the Review of PEF's Project Management Internal Controls for Nuclear Plant Uprate and Construction Projects Draft Report, dated July, 2009, 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 28th day of July, 2009.


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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 documents produced to Commission's Auditor for use in preparing the Review of PEF's Project Management Internal Controls for Nuclear Uprates and Construction Project Draft Report, dated July 2009, provided on 6 CDs, 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
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