

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 August 4, 2009

PROGRESS ENERGY FLORIDA'S FOURTEENTH REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING THE DEPOSITION OF GARRY MILLER AND THE DOCUMENTS PRODUCED IN PEF'S SUPPLEMENTAL RESPONSE TO WHITE SPRINGS' SECOND REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 18-19)

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 Deposition of Garry Miller (the "Deposition") given in this docket on July 2nd, 2009, as well as certain documents produced in PEF's Supplemental response to White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate - White Springs' ("White Springs") Second Request for Production of Documents (Nos. 18-19). Certain portions of the Deposition 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. Furthermore, this information has been provided (in one form or another) to the various parties to this docket throughout the course of discovery, and at all times PEF has taken the appropriate steps to maintain its confidentiality. The responsive documents to White Springs' Second Request for Production of Documents contain information

provided to PEF pursuant to contractual confidentiality provisions, and therefore the release of such information would harm PEF's competitive interests and violate the contractual provisions under which it was provided to PEF.

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With respect to the confidential information contained in the Depositions, PEF filed its Tenth Notice of Intent to Request Confidential Classification on July 14th, 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 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 Deposition, as explained below and in the supporting affidavit of Garry Miller, contains confidential competitive business information regarding the Levy Nuclear Project (“LNP”), 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 Deposition include information regarding the contractual agreements necessary for the success of the Levy Nuclear Project ("LNP"), including information concerning the EPC contract, as well as information concerning a litany of other topics related to the LNP, the disclosure of which would adversely impact PEF's competitive business interests. 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. The Deposition also contains sensitive business information, the disclosure of which would impair the Company's competitive interests going forward, including information related to on-going negotiations with potential joint-owners of the LNP. See id. Finally, the Deposition contains information taken directly from the Company's internal auditing reports. See Affidavit of Phillips, ¶4. Release of this information would have a negative effect on the efficacy of PEF's auditing procedures by impacting the level of cooperation given to the auditors. See id. Accordingly, the Deposition should be afforded confidential treatment pursuant to section 366.093(3)(b),(d), and (e), Florida Statutes.

Additionally, the responsive documents to White Springs' Second Request for Production of Documents contain information provided to PEF pursuant to contractual confidentiality provisions, and therefore the release of such information would harm PEF's competitive interests and violate the contractual provisions under which it was provided to PEF. See Affidavit of

Miller, ¶5. Disclosure of such information would not only violate the confidentiality agreements pursuant to which it was provided to the Company, but also have a harmful impact on the Company's ability to procure such information upon favorable terms in the future, thereby negatively impacting the Company and its ratepayers. See id.

PEF has kept confidential and has not publicly disclosed the confidential information and documents at issue here. See Affidavit of Miller, ¶6; Affidavit of Phillips, ¶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.

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 Phillips, ¶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 Phillips, ¶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 Deposition of Garry Miller (the "Deposition") given in this docket on July 2nd, 2009, as well as certain documents produced in PEF's Supplemental Response to White Springs' Second Request for Production of Documents (Nos. 18-19), 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 4th day of August, 2009.



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Public Service Commission

ACKNOWLEDGEMENT

DATE: August 5, 2009

TO: James Michael Walls, Matthew R. Bernier/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 portions of deposition of Garry Miller, as well as certain documents produced in supplemental response WhiteSprings 2nd Request for PODs, Nos. 18-19, 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.

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