

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 5, 2009

PROGRESS ENERGY FLORIDA'S FIFTEENTH REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING PEF'S SUPPLEMENTAL RESPONSES TO WHITE SPRINGS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-17) AND OPC'S 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 the supplemental response to White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs' ("White Springs") First Request for Production of Documents (Nos. 1-17), specifically request number 5, and PEF's supplemental response to Office of Public Counsel's ("OPC") Seventh Request for Production of Documents (Nos. 87-99), specifically request number 92. These responsive documents contain information regarding contractual negotiations for potential joint ownership of the Levy Nuclear Project, the release of which could harm these negotiations, and thus would harm PEF's competitive interests. These documents also contain sensitive and confidential analyses related to the financing for the Levy Nuclear Project, the disclosure of which would harm PEF's competitive business interests in obtaining financing.

With respect to the confidential information contained in the Depositions, PEF filed its Eleventh Notice of Intent to Request Confidential Classification on July 15th, 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.

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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 documents produced as part of these supplemental productions, as explained below and in the supporting affidavit of Garry Miller, contain 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 document produced in the supplemental response to White Springs includes information regarding the contractual agreements necessary for the success of the Levy Nuclear Project (“LNP”), including information concerning the on-going negotiations for a potential joint owner of the LNP, disclosure of which would adversely impact

PEF's competitive business interests. Furthermore, the document in question contains additional information concerning the Company's planned undertakings for the LNP, as well as "resource contingencies" facing the Company based on alternative joint-ownership percentages. The release of this information would harm the Company's competitive business interests by offering competitors and potential suppliers valuable insight into the PEF's strategies going forward. See Affidavit of Miller, ¶4. Additionally, the documents produced as part of the supplemental response to OPC contain sensitive business information in the form of presentations made to the Board of Directors, covering topics such as the continuing negotiations with potential joint-owners of the LNP, as well as what the Company considers to be "Critical Success Factors" for the LNP. See id. The disclosure of this information would impair the Company's competitive interests going forward. See id. Accordingly, these documents should be afforded confidential treatment pursuant to section 366.093(3)(e), 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 the Company's plans and strategies regarding the LNP would be made to available to the public and, as a result, potential suppliers, vendors, and/or purchasers of services required for successful completion of the LNP could change their position in future negotiations with PEF. Furthermore, PEF's competitors for like products and services would gain valuable information regarding the LNP that could result in PEF being at a competitive disadvantage with respect to commonly sought after goods and materials. 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. See id. Additionally, disclosure of the Company's analysis of

different scenarios regarding the potential joint-ownership of the LNP could adversely affect the Company's ability to negotiate favorable contracts, potentially harming PEF and ultimately its ratepayers. 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. See 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 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 supplemental response to White Springs' First Request for Production of Documents (Nos. 1-17), specifically request number 5, and PEF's supplemental response to OPC's Seventh Request for Production of Documents (Nos. 87-99), specifically request number 92, 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 5th day of August, 2009.

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Public Service Commission

ACKNOWLEDGEMENT

DATE: August 5, 2009

TO: Matthew Bernier, James Michael Walls/Carlton Fields Law Firm

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 supplemental response to White Spring's 1st Request for PODs, Nos. 1-17, specifically Request No. 5; and supplemental response to OPC's 7th Request for PODs, Nos. 87-99, specifically, No. 92, 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
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