

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 12, 2009

PROGRESS ENERGY FLORIDA'S SIXTEENTH REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING THE DEPOSITION OF JON FRANKE AND THE DIRECT TESTIMONY AND EXHIBITS OF WILLIAM R. JACOBS, JR., PH.D.

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 Jon Franke (the "Deposition") given in this docket on June 26th, 2009, as well as portions of the Direct Testimony and Exhibits of William R. Jacobs, Jr., Ph.D., given in this docket and filed on July 15th, 2009. Certain portions of the Deposition and Testimony contain proprietary and confidential business information which the Company does not disclose to the public and the disclosure of which would impair PEF's competitive business interests. 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.

With respect to the confidential information contained in the Deposition, PEF filed its Twelfth Notice of Intent to Request Confidential Classification on July 22nd, 2009; with respect to the Testimony and Exhibits of Mr. Jacobs, PEF filed its Thirteenth Notice of Intent to Request Confidential Classification on July 23rd, 2009. Therefore, 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 _____
- OPC _____
- RCP _____
- SSC _____
- SGA _____
- ADM _____
- CLK 1

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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 Deposition, as explained below and in the supporting affidavit of Jon Franke, contains confidential competitive business information regarding the Crystal River Unit 3 (“CR3”) Extended Power Uprate (“EPU”), the disclosure of which would impair PEF’s efforts to contract for goods and services on favorable terms and otherwise damage the Company’s competitive business interests. Specifically, the Deposition includes information regarding the approximate length of the generator outage during which the EPU will occur. During this outage, the Company will be required to purchase the power necessary to serve its customers. If other parties were made aware of the timing and expected length of this outage, they would be in

a position to take advantage of that information to the detriment of the Company and its ratepayers. For example, 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 Franke, ¶4. Accordingly, the Deposition should be afforded confidential treatment pursuant to section 366.093(3)(e), Florida Statutes.

The Testimony and Exhibits, as explained below and in the supporting affidavits of Garry Miller and Jon Franke, contains sensitive and confidential information related to the Levy Nuclear Project (“LNP”), including information related to the EPC, as well as sensitive and confidential information related to the CR3 EPU. This information, in addition to containing sensitive and confidential terms the disclosure of which would harm PEF’s competitive business interests, is also subject to contractual confidentiality agreements. Therefore, disclosure of this information would not only harm PEF and its ratepayers, but also constitute a breach of these agreements. Disclosure of this information would provide PEF’s competitors, as well as vendors, contractors and other parties with whom PEF may wish or need to contract, with information regarding the contractual terms to which PEF is willing to agree. This knowledge could result in third parties changing their contract offers or requirements to the detriment of the Company and its ratepayers. See Affidavit of Miller, ¶4. The Exhibits sponsored by Mr. Jacobs also contain information related to EPU, including projected costs, the timing of the outage during which the EPU will commence, the projected length of the outage, and other confidential information. See Affidavit of Franke, ¶5. The disclosure of this information would have a harmful impact on PEF’s competitive interests. See id. Further, this information has been provided previously during the discovery process, and at all times PEF has taken the appropriate

steps to maintain its confidentiality. See id. Therefore, this information should be granted confidential classification pursuant to section 366.093(3)(d) and (e), Florida Statutes.

PEF has kept confidential and has not publicly disclosed the confidential information and documents at issue here. See Affidavit of Franke, ¶6; Affidavit of Miller, ¶5. Additionally, the information contained in the Deposition and Testimony at issue in this request has been provided to the parties in response to various discovery requests throughout these proceedings, and at all times the Company has taken the appropriate steps to maintain its confidential treatment. See Affidavit of Franke, ¶6; Affidavit of Miller, ¶5. Absent such measures, PEF would run the risk that sensitive business information regarding the CR3 EPU and LNP EPC would be made to available to the public and, as a result, other parties could change their position in future negotiations with PEF. Without PEF's measures to maintain the confidentiality of sensitive information described herein, the Company's efforts to obtain competitive contracts and to obtain competitively priced goods and services would be undermined. See Affidavit of Franke, ¶6; Affidavit of Miller, ¶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 Franke, ¶6; Affidavit of Miller, ¶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 Franke, ¶6; Affidavit of Miller, ¶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:

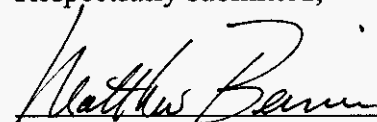
(1) A separate, sealed envelope containing a CD including the confidential documents as Attachment A to PEF's Request for Confidential Classification for which PEF has requested confidential classification with the appropriate section, pages, or lines containing the confidential information highlighted. **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 Jon Franke given in this docket on June 26th, 2009, as well as the highlighted portion of the Testimony and Exhibits of William R. Jacobs, Jr., given in this docket on July 15th, 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 12th day of August, 2009.


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Public Service Commission

ACKNOWLEDGEMENT

DATE: August 12, 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 direct testimony and exhibits of William R. Jacobs, Jr., Ph.D, 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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