

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

RECEIVED FPSC  
09 AUG 18 AM 9:20

IN RE: NUCLEAR POWER PLANT COST  
RECOVERY CLAUSE

COMMISSION  
Docket No. 090009-EI  
Submitted for Filing August 17, 2009

**PROGRESS ENERGY FLORIDA'S SEVENTEENTH REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING PEF'S RESPONSE TO STAFF'S FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 22-30)**

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 a certain document produced in response to the Florida Public Service Commission's Staff's ("Staff") Fourth Request for Production of Documents (Nos. 22-30), specifically number 28. A certain document produced in response to this request contains *confidential competitive business information related to the Levy Nuclear Project ("LNP")*, the release of which would harm PEF's competitive business. PEF considers this information proprietary and confidential, does not share it with the public, and has at all times maintained its confidentiality. 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 response to Staff's Fourth Request for Production of Documents, PEF filed its Fourteenth Notice of Intent to Request Confidential Classification on July 27th, 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 1  
OPC \_\_\_\_\_  
RCP \_\_\_\_\_  
SSC \_\_\_\_\_  
SGA \_\_\_\_\_  
ADM \_\_\_\_\_  
CLK 1

15546969.1

DOCUMENT NUMBER-DATE  
08560 AUG 18 09  
FPSC-COMMISSION CLERK

## 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 document to Staff’s request number 28, as explained below and in the supporting affidavit of Garry Miller, contains confidential competitive business information regarding the LNP, including the Company’s strategies as discussed subsequent to receipt of the Nuclear Regulatory Commission’s (“NRC”) letter dated January 23, 2009. The release of the Company’s adjustments to the LNP schedule would harm the Company’s competitive business interests by giving third parties that may also be in the market for necessary goods and services the ability to change their behavior and thereby alter the market (both prices and availability) for those goods and services. See Affidavit of Miller, ¶4. Additionally, the document in question

contains the original EPC contract timeline, and details on the Company's possible revisions thereto. All information pertaining to the EPC contract is governed by the agreed upon confidentiality provision contained therein. See id. at ¶4. Additionally, PEF has provided information related to the EPC contract in response to several discovery requests in this proceeding, and at all times the Company has taken the necessary steps to maintain the confidentiality of this information. Id. at ¶5. Accordingly, PEF's response to Staff's request number 28 should be afforded confidential treatment 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 Miller, ¶5. Absent such measures, PEF would run the risk that sensitive business information regarding the LNP and the EPC contract would be made to available to the public and, as a result, other parties could change their position in future negotiations with PEF, or otherwise alter their behavior in the market for necessary goods and services vital to the success of the project. 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 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. See 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 the document at issue 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;**

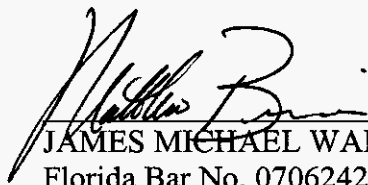
(2) Two copies of the documents with the information for which PEF has requested confidential classification redacted by section, page or lines, where appropriate, as Attachment B; and,

(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 document at issue, produced in response to Staff's Fourth Request for Production of Documents (Nos. 22-30), specifically number 28, 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


  
\_\_\_\_\_  
JAMES MICHAEL WALLS  
Florida Bar No. 0706242  
DIANNE M. TRIPLETT  
Florida Bar No. 0872431  
MATTHEW R. BERNIER

COMPANY, LLC  
Post Office Box 14042  
St. Petersburg, FL 33733-4042  
(727) 820-5587 / FAX (727) 820-5519

Florida Bar No. 0059886  
CARLTON FIELDS, P.A.  
Post Office Box 3239  
Tampa, FL 33601-3239  
(813) 223-7000 / FAX (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 17<sup>th</sup> day of August, 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](mailto:paul.lewisjr@pgnmail.com)

JOHN W. MCWHIRTER  
McWhirter Law Firm  
Post Office Box 3350  
Tampa, FL 33601-3350  
(813) 224-0866 / FAX: (813) 221-1854  
Email: [jmcwhirter@mac-law.com](mailto:jmcwhirter@mac-law.com)

CHARLES REHWINKEL  
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](mailto:rehwinkel.charles@leg.state.fl.us)

BRYAN S. ANDERSON  
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](mailto:bryan.anderson@fpl.com)  
[Jessica.cano@fpl.com](mailto:Jessica.cano@fpl.com)

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](mailto:kyoung@psc.state.fl.us)  
[lbennett@psc.state.fl.us](mailto:lbennett@psc.state.fl.us)  
[Jbrubake@psc.state.fl.us](mailto:Jbrubake@psc.state.fl.us)  
[awilliams@psc.state.fl.us](mailto:awilliams@psc.state.fl.us)

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](mailto:jbrew@bbrslaw.com)  
[ataylor@bbrslaw.com](mailto:ataylor@bbrslaw.com)

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](mailto:vkaufman@kagmlaw.com)  
[jmoyle@kgmlaw.com](mailto: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](mailto:gadavis@enviroattorney.com)  
[jswhitlock@enviroattorney.com](mailto:jswhitlock@enviroattorney.com)

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

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](mailto:Ljacobs50@comcast.net)

RANDY B. MILLER  
White Springs Agricultural Chemicals, Inc.  
P.O. Box 300  
White Springs, FL 32096  
Email: [RMiller@pcsphosphate.com](mailto: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](mailto:shayla.mcneill@tyndall.af.mil)

EDGAR M. ROACH, JR.  
McGuire Woods  
2600 Two Hanover Square  
P.O. Box 27507 (27611)  
Raleigh, NC 27601  
(919) 755-6690 / Fax: (919) 755-6593

COMMISSIONERS:  
MATTHEW M. CARTER II, CHAIRMAN  
LISA POLAK EDGAR  
KATRINA J. MCMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

STATE OF FLORIDA



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

# Public Service Commission

## ACKNOWLEDGEMENT

DATE: August 18, 2009

TO: James Michael Walls, Matthew 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 documents produced in response to staff's 4<sup>th</sup> Request for PODs, Nos. 22-30, specifically, No. 28, 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  
08561 AUG 18 09  
FPSC - COMMISSION CLERK

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-0850  
An Affirmative Action/Equal Opportunity Employer

PSC Website: <http://www.floridapsc.com>

Internet E-mail: [contact@psc.state.fl.us](mailto:contact@psc.state.fl.us)