

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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IN RE: NUCLEAR POWER PLANT COST
RECOVERY CLAUSE

Docket No. 090009-EM
Submitted for Filing August 28, 2009

**PROGRESS ENERGY FLORIDA'S NINETEENTH REQUEST FOR CONFIDENTIAL
CLASSIFICATION REGARDING THE REBUTTAL TESTIMONY AND EXHIBITS
THERE TO OF GARRY MILLER AND JEFF LYASH AND THE REBUTTAL
TESTIMONY OF GARY DOUGHTY**

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 Garry Miller's Rebuttal Testimony and Exhibits thereto, portions of Jeff Lyash's Rebuttal testimony and Exhibits thereto, and portions of Gary Doughty's Rebuttal Testimony (collectively the "Rebuttal"). The above referenced testimony and exhibits contain confidential competitive business information and documents related to the Levy Nuclear Project ("LNP"), including confidential information related to the LNP EPC contract, the release of which would harm PEF's competitive business, and in certain instances violate contractual confidentiality agreements. PEF considers this information proprietary and confidential, does not share it with the public, and has at all times maintained its confidentiality. Furthermore, these documents and information, or information and documents of a similar nature, have been produced in response to various discovery requests throughout the discovery process and are subject to pending confidentiality requests. At all times during this proceeding the Company has

taken the appropriate steps to maintain its confidentiality. For these reasons, PEF is requesting that the Commission afford these documents confidential classification.

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With respect to the confidential information contained in the Deposition, PEF filed its Sixteenth Notice of Intent to Request Confidential Classification on August 10th, 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:

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 Rebuttal, as explained below and in the supporting affidavit of Garry Miller, contains confidential competitive business information regarding the LNP, including extended and specific discussions involving information related to the EPC contract. The disclosure of this information would not only harm PEF’s competitive business interests by giving third specific

knowledge of contractual provisions that PEF and Consortium have agreed to, thereby allowing third parties to change their positions in future discussions with PEF or the Consortium, or to otherwise adjust their behavior in the market, but would also violate the confidentiality provisions of the EPC contract. The Rebuttal also contains information and discussions related to PEF's analysis of the risks facing the LNP, information that the Company considers proprietary and confidential. Also included in this information are extensive discussions regarding the Company's decision to enter into the EPC when it did, including the Company's reasons for doing so and the benefits that it obtained by doing so. Disclosure of these discussions would not only reveal confidential competitive business information related to the Company's strategies regarding the LNP, but would also violate the confidentiality provisions of the EPC contract. All information pertaining to the EPC contract is governed by the agreed upon confidentiality provision contained therein, including pricing provisions and schedules, as well as information related to the negotiation of the contract. See Affidavit of Miller, ¶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 contact 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 a CD of the Rebuttal 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 portions of Garry Miller's Rebuttal Testimony and Exhibits thereto, portions of Jeff Lyash's Rebuttal testimony and Exhibits thereto, and portions of Gary Doughty's Rebuttal Testimony, 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 August, 2009.



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Public Service Commission

ACKNOWLEDGEMENT

DATE: August 28, 2009

TO: Matthew R. Bernier, 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 portions of Garry Miller, Jeff Lyash, and Gary Doughtry's Rebuttal Testimonies and Exhibits, 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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