

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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09007957 COMMISSION CLERK

IN RE: PETITION FOR INCREASE IN RATES BY PROGRESS ENERGY FLORIDA, INC.

Docket No. 09007957 Submitted for Filing September 3, 2009

PROGRESS ENERGY FLORIDA'S ELEVENTH REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING THE DOCUMENTS PRODUCED IN RESPONSE TO STAFF'S SIXTEENTH REQUEST FOR PRODUCTION OF DOCUMENTS (NO. 100) AND TWENTY-SECOND SET OF INTERROGATORIES (NOS. 267-270)

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 documents produced in response to the Florida Public Service Commission's Staff's ("Staff") Sixteenth Request for Production of Documents (No. 100) and Twenty-Second Set of Interrogatories (Nos. 267-270), specifically number 270. The information being provided in response to these requests contains confidential information relating to the Company's competitive interests, the release of which would harm the Company's competitive business interests. Specifically, the information contained in these responses includes information obtained from the Company's third party vendors pertaining to pricing arrangements. Additionally, the Company has produced similar information in response to earlier requests, and has at all times taken the appropriate steps to maintain its confidentiality. For these reasons, PEF requests that the Commission afford these documents confidential classification.

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With respect to the confidential information at issue, PEF filed its Fifth Notice of Intent to Request Confidential Classification on August 13th, 2009. Therefore, pursuant to Rule 25-

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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 documents in question, as explained below and in the supporting affidavit of Peter Toomey, contain pricing arrangements between PEF and third-party vendors. PEF’s disclosure of this information would impair the Company’s ability to contract for similar services in the future. If vendors did not believe that PEF was able to protect their proprietary information, they would be less likely to contract with PEF for its use, or possibly would only enter into similar agreements at a premium price. Additionally, if potential vendors were aware of what PEF was

willing to pay for such services, they could artificially adjust their pricing. This would have a detrimental impact on the Company, and ultimately its ratepayers. See Affidavit of Toomey, ¶4. Accordingly, these documents should be accorded 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 Toomey, ¶5. Absent such measures, PEF would run the risk that it would be unable to contract for the use of similar proprietary information in the future. 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. Furthermore, PEF has provided similar information in response to previous discovery requests, and has at all times taken the appropriate steps to maintain its confidentiality. 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. 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 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 documents produced in response to Staff's Fifteenth Request for Production of Documents (Nos. 98-99), be classified as confidential for the reasons set forth above.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic and U.S. Mail to the following counsel of record as indicated below on this 3<sup>rd</sup> day of September, 2009.

  
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# Public Service Commission

## ACKNOWLEDGEMENT

DATE: September 3, 2009

TO: 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 090079 or, if filed in an undocketed matter, concerning documents in response to staff's 16<sup>th</sup> Request for PODs (100) and 22<sup>nd</sup> set of Interrogatories (Nos. 267-270) specifically No. 270, 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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