

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Progress Energy Florida, Inc. for approval of an Accounting Order to record a depreciation expense credit.

DOCKET NO. 100136-EI  
Submitted for filing: April 9,

COMMISSION  
CLERK

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**PROGRESS ENERGY FLORIDA'S REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING NON-PUBLIC INCOME STATEMENTS PRODUCED IN RESPONSE TO STAFF'S FIRST DATA REQUEST NO. 17**

Progress Energy Florida, Inc. ("PEF" or the "Company"), pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(3), Florida Administrative Code, hereby requests confidential classification for documents produced in response to Staff's First Data Request No. 17. The documents responsive to this request are the Company's Actual Income Statements for January and February 2010 (the "Non-Public Income Statements"), which contain highly proprietary and confidential financial and business information that if publicly disclosed at this time would violate Security Exchange Commission ("SEC") Regulation FD, which states how material, non-public information is required to be distributed, and as such must be held confidential. Accordingly, the Non-Public Income Statements should be granted confidential treatment by the Commission. In support, PEF hereby submits the following:

**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

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or the Company's business operation, and (iv) the information has not been voluntarily disclosed to the public. § 366.093(3), Fla. Stat. Section 366.093(3)(e) defines "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information," as proprietary confidential business information. In addition, subsection (d) further defines it as "[i]nformation 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." Also, it is important to note that protection under Section 366.093(3) is not limited to information that falls into one of the six categories enumerated in paragraphs (a) to (f). Protection is available to any information that meets the general definition in that section. The Non-Public Income Statements are confidential under Section 366.093(3)(e) and (d) and also under the general definition of proprietary confidential business information contained in the section.

### **The Information**

The Non-Public Income Statements should be afforded confidential treatment for the reasons set forth in the Affidavit of Will A. Garrett filed in support of PEF's Request for Confidential Classification and for the following reasons: Pursuant to SEC regulations these Non-Public Income Statements contain non-public and confidential data and as such must be handled accordingly. Id. at ¶ 4. The distribution must be limited to maintain the required confidentiality of financial information prior to public release in order to ensure compliance with the SEC's Regulation FD. Id. In this regard, to the extent that this information is made available to Commission staff and interveners, the parties receiving this information are assuming responsibility for ensuring the confidential nature of the information. Id. PEF must be able to assure its investors and the SEC that not yet released financial information about the Company

will not be disclosed prematurely. Id. Anyone in possession of this information becomes an insider of the Company, and disclosure of this information would violate SEC regulations. Id.

As mentioned, the Company undertakes extensive procedures to protect these Non-Public Income Statement prior to release including a non-disclosure disclaimer on the documents. Id. at ¶ 5. The Company has also established and followed strict procedures to maintain the confidentiality of the Non-Public Income Statements prior to public disclosure, including restricting access to only those persons who need the information to assist the Company. Id. at ¶ 5. At no time has the Company publicly disclosed the information. Id. at ¶ 6. The Company has treated and continues to treat the information at issue as confidential and will do so until it is appropriately publicly disclosed in accordance with SEC regulations. Id.

### Conclusion

The Non-Public Income Statements contain competitive, confidential financial and business information that fits the statutory definition of proprietary, confidential business information under Section 366.093 and Rule 25-22.006, F.A.C. The SEC also requires that this information be kept confidential. The confidential exhibit for which PEF is requesting confidential classification has been provided for viewing by Staff's counsel as indicated on Attachment "A." **This information should be accorded confidential treatment pending a decision on PEF's request by the Florida Public Service Commission.**

Additionally, Attachment "B" includes redacted copies of the confidential exhibit with the information that PEF is requesting confidential classification for redacted by section, page, or lines.

Attachment "C" hereto contains a justification matrix supporting PEF's request for confidential classification of the information contained in Attachment "A."

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 9<sup>th</sup> day of April, 2010.

  
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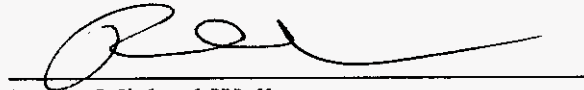
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WHEREFORE, PEF respectfully requests that the Non-Public Income Statements produced in response to Staff's First Data Request No. 17 be classified as confidential for the reasons set forth above.

Respectfully submitted,



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## ACKNOWLEDGEMENT

DATE: April 9, 2010

TO: Blaise N. Huhta, Esquire - Carlton Fields, P.A.

FROM: Marguerite H. Mclean, Office of Commission Clerk

RE: Acknowledgement of Receipt of Confidential Filing

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This will acknowledge receipt of a **CONFIDENTIAL DOCUMENT** filed in Docket Number 100136-E1 or, if filed in an undocketed matter, concerning response to staff's first data request No. 17 regarding company's actual income statements for 1/10 and 2/10 ("non-public income statements"), and filed on behalf of Progress Energy Florida, Inc. The document will be maintained in locked storage.

If you have any questions regarding this document, please contact Kim Peña, Records Management Assistant, at (850) 413-6393.

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