

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Power Plant Cost
Recovery Clause

Docket No. 100009-EI
Submitted for Filing: April 30, 2010

**PROGRESS ENERGY FLORIDA'S FIFTH REQUEST FOR
CONFIDENTIAL CLASSIFICATION REGARDING THE
TESTIMONY OF JEFFREY LYASH (& EXHIBITS), JOHN ELNITSKY
(& EXHIBITS), THOMAS G. FOSTER (& EXHIBITS/NFRS), SUE HARDISON,
KENNETH KARP, AND DR. PATRICIA D. GALLOWAY**

Progress Energy Florida, Inc. ("PEF" or the "Company"), pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(3), Florida Administrative Code, files this Request for Confidential Classification of portions of the testimony, and exhibits thereto, of Jeffrey Lyash, John Elnitsky and Thomas G. Foster (including the Nuclear Filing Requirement or "NFRs"), as well as portions of the testimony of Sue Hardison, Kenneth Karp and Dr. Patricia D. Galloway (collectively discussed herein as "the Testimony"). The Testimony at issue contains confidential and sensitive contractual information regarding the Company's nuclear projects, the disclosure of which would impair PEF's competitive business interest and ability to negotiate favorable contracts, and violate the contracts' nondisclosure provisions, and further includes other confidential and proprietary business information that would harm the Company's competitive business interests if made publicly available.

The unredacted documents discussed above are being filed under seal with the Commission as Appendix A on a confidential basis to keep the competitive business information

COM _____
APA _____ in those documents confidential.

ECR 5+5 CDs
GCI 1+2 CDs In support of this request, PEF states as follows:

RAD _____
SSC _____
ADM _____
OPC _____
CLK 1 _____

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION OF PUBLIC UTILITIES

The Confidentiality of the Documents at Issue

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, subsection 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.

As discussed in further detail below and in the supporting affidavits of Sue Hardison, John Elnitsky, and Jon Franke, portions of the Testimony contain confidential contractual information regarding the purchase of equipment, materials, and services necessary for the construction and operation of the Levy Nuclear Project (“LNP”) and the Crystal River Unit 3 (“CR3”) Power Uprate Project (“CR3 Uprate”, and collectively with the LNP the “Nuclear Projects”). Certain portions of the Testimony also contain details regarding PEF’s predicted costs of the Nuclear Projects, much of which are driven by confidential contracts with various vendors. This information meets the definition of proprietary and confidential business

information pursuant to section 366.093(3)(d) & (e), Florida Statutes. See Affidavit of Hardison at ¶ 4; Affidavit of Elnitsky at ¶ 4; Affidavit of Franke at ¶ 4.

Testimony & Exhibits of John Elnitsky

Certain portions of Mr. Elnitsky's testimony, and exhibits thereto, contain details regarding PEF's assumptions, predictions and strategies regarding the amendments to the Engineering, Procurement and Construction ("EPC") agreement between PEF and Westinghouse and Shaw, Stone, & Webster (the "Consortium"), including discussions regarding the Company's evaluation of different options for the LNP. These discussions include confidential EPC agreement information, including specific contractual terms and agreements that are subject to the confidentiality provisions of the EPC agreement itself. Furthermore, these discussions provide insight into the Company's strategy regarding the contract amendment negotiations and the LNP going forward. Release of this information would not only violate the terms of the EPC agreement, but it would harm PEF's competitive business interests by giving the Company's competitors and contract partners insight into PEF's contractual payments, contract negotiation strategies and its assumptions regarding the LNP. This information meets the definition of proprietary and confidential business information pursuant to section 366.093(3)(d) & (e), Florida Statutes. See Affidavit of Elnitsky at ¶¶ 4-6.

Testimony & Exhibits of Jeff Lyash

Certain portions of Mr. Lyash's testimony, and exhibits thereto, contain details regarding PEF's analysis and evaluations of the different options for how the Company would proceed with the LNP. These discussions include confidential EPC agreement information, including specific contractual terms and agreements, which are subject to the confidentiality provisions of the EPC agreement itself. Furthermore, these discussions provide insight into the Company's

strategy regarding the contract amendment negotiations and the LNP going forward. Release of this information would not only violate the terms of the EPC agreement, but it would harm PEF's competitive business interests by giving the Company's competitors and contract partners insight into PEF's contractual payments, contract negotiation strategies and its assumptions regarding the LNP. This information meets the definition of proprietary and confidential business information pursuant to section 366.093(3)(d) & (e), Florida Statutes. See Affidavit of Elnitsky at ¶¶ 4-6.

Testimony of Sue Hardison

Certain portions of Ms. Hardison's testimony contains confidential contractual information regarding the purchase of equipment, materials, and services necessary for the construction and operation of the LNP and information relating to LNP costs. Affidavit of Hardison at ¶¶ 4-5. Specifically, the information at issue relates to competitively negotiated contractual data, including sensitive pricing information and other contractual details, the disclosure of which would impair the efforts of the Company to negotiate such contracts on favorable terms. See § 366.093(3)(d) & (e), Fla. Stat.; Affidavit of Hardison at ¶¶ 4-5.

Testimony of Kenneth Karp

Certain portions of Mr. Karp's testimony contains confidential contractual information regarding the purchase of equipment, materials, and services necessary for the construction and operation of the LNP and information relating to LNP transmission costs. Affidavit of Hardison at ¶¶ 4-5. Some of these numbers could be utilized to back in to other confidential costs numbers. Specifically, the information at issue relates to competitively negotiated contractual data, including sensitive pricing information and other contractual details, the disclosure of

which would impair the efforts of the Company to negotiate such contracts on favorable terms. See § 366.093(3)(d) & (e), Fla. Stat.; Affidavit of Hardison at ¶¶ 4-5.

Testimony of Dr. Patricia D. Galloway

Certain portions of the testimony of Dr. Galloway provide information relating to the EPC agreement, including references to specific contractual provisions. As noted above, the EPC agreement contains a contractual confidentiality provision that prohibits the public dissemination of this information and therefore publication of this testimony would violate the terms of this agreement, and in turn, compromise the ability of the Company to enter into similar contracts in the future. See Affidavit of Hardison at ¶¶ 4-6; Affidavit of Elnitsky at ¶¶ 4-7. Additionally, Dr. Galloway discusses details regarding the negotiation of the amendment to EPC agreement and its terms and the Company's strategies regarding the same. The dissemination of this information would harm PEF's competitive business interests in future negotiations concerning the LNP. Accordingly, this information meets the definition of proprietary and confidential business information pursuant to section 366.093(3)(d) & (e), Florida Statutes. See id.

Testimony & Exhibits of Thomas G. Foster

Portions of the testimony and exhibits (the NFRs) of Mr. Foster contain detailed breakdowns of the costs of the LNP. Public dissemination of these costs would have an adverse effect on the Company's competitive interests, as it would inform third-parties with whom PEF must contract how much PEF has budgeted for certain good and/or services, thus allowing those companies to artificially inflate their proposals to the detriment of the Company and its customers. Additionally, these costs are fueled by contracts already in place that are subject to confidentiality provisions. Moreover, the NFRs contain information on vendor contracts for both

the LNP and CR3, which are confidential contractual terms. Accordingly, this information meets the definition of proprietary and confidential business information pursuant to section 366.093(3)(d) & (e), Florida Statutes. See Affidavit of Hardison at ¶¶ 4-5; Affidavit of Franke at ¶¶ 4-5.

PEF must be able to assure third parties that enter contractual agreements with the Company that sensitive business information, such as the pricing, duration, payment and quantity terms of their contracts, will be kept confidential. See Affidavit of Elnitsky at ¶ 7; Affidavit of Hardison at ¶ 6. Indeed, some of the contracts at issue contain confidentiality provisions that prohibit the disclosure of the terms of the contract to third parties. Affidavit of Elnitsky at ¶¶ 6-7; Affidavit of Hardison at ¶ 6; Affidavit of Franke at ¶¶ 4-5.

If third parties were made aware of confidential contractual terms that PEF has with other parties, they may offer PEF less competitive contractual terms in future contractual negotiations. See Affidavit of Hardison at ¶ 6; Affidavit of Elnitsky at ¶ 7; Affidavit of Franke at ¶¶ 4-5. Absent the Company's measures to maintain the confidentiality of sensitive terms in contracts between PEF and vendors, the Company's efforts to obtain competitively priced supply and service contracts could be undermined. Id.

Strict procedures are established and followed to maintain the confidentiality of the terms of the confidential documents and information at issue, including restricting access to those persons who need the information and documents to assist the Company. See Affidavit of Elnitsky at ¶8; Affidavit of Hardison at ¶ 7; Affidavit of Franke at ¶ 6. At no time has the Company publicly disclosed the confidential information or documents at issue; PEF has treated and continues to treat the information and documents at issue as confidential. See id. PEF requests this information be granted confidential treatment by the Commission.

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, F.A.C., and therefore this information should be afforded confidential classification. In support of this motion, PEF has enclosed the following:

(1) A separate, sealed envelope containing one copy of the confidential Appendix A to PEF's Fifth Request for Confidential Classification for which PEF intends to request 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 intends to request confidential classification redacted by section, page, or lines where appropriate as Appendix B; and,

(3) A justification matrix supporting PEF's request for confidential classification of the highlighted information contained in confidential Appendix A, as Appendix C.

WHEREFORE, PEF respectfully requests that the redacted portions of the testimony, and exhibits thereto, of Jeffrey Lyash, John Elnitsky and Thomas G. Foster (NFRs), as well as portions of the testimony of Sue Hardison, Kenneth Karp and Dr. Patricia D. Galloway, be classified as confidential for the reasons set forth above.

Respectfully submitted this 30th day of April, 2010.

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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 30th day of April, 2010.



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State of Florida



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: 04/28/2010
TO: Blaise N. Huhta, Carlton Fields Law Firm, P.O. Box 3239, Tampa, Florida 33601-3239
FROM: Kim Peña, Office of Commission Clerk
RE: Acknowledgement of Confidential Filing in Docket Number 100009-EI

This will acknowledge receipt of a CONFIDENTIAL DOCUMENT filed in the above-referenced docket.

Document Number 03542-10 has been assigned to this filing, which 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.