

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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COMMISSION CLERK

IN RE: NUCLEAR POWER PLANT COST RECOVERY CLAUSE

Docket No. 110009-EI Submitted for Filing: July 1, 2011

PROGRESS ENERGY FLORIDA, INC.'S ELEVENTH REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING PORTIONS OF THE REVIEW OF PROGRESS ENERGY FLORIDA, INC.'S PROJECT MANAGEMENT INTERNAL CONTROLS FOR NUCLEAR PLANT UPRATE AND CONSTRUCTION PROJECTS AUDIT WORK PAPERS

Progress Energy Florida, Inc. ("PEF" or the "Company"), pursuant to Sections 366.093, Florida Statutes, and Rule 25-22.006(3), Florida Administrative Code, requests confidential classification of portions of the final work papers of the Florida Public Service Commission Staff ("Staff") Auditors, the Review of Progress Energy Florida, Inc.'s Project Management Internal Controls for Nuclear Plant Uprate and Construction Project Audit Work Papers (the "Work Papers"). The Work Papers contains confidential contractual information, the disclosure of which would impair PEF's competitive business interests and violate PEF's confidentiality agreements with third parties, information gleaned from internal audit controls and reports, and other financial information the disclosure of which would impair the Company's competitive business interests. Accordingly these portions of the Work Papers meet the definition of proprietary confidential business information per section 366.093(3), Florida Statutes. An unredacted copy of the Work Papers is being filed under seal with the Commission on a confidential basis to keep the competitive business information in those documents confidential.

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## **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].” 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, that statute defines “[i]nternal auditing controls and reports of internal auditors,” and “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. §§ 366.093(3)(b) & (e), Fla. Stat.

Portions of the Work Papers should be afforded confidential classification for the reasons set forth in the Affidavits of Jon Franke and John Elnitsky filed in support of PEF’s Request, and for the following reasons.

Specifically, related to the sections of the Work Papers covering the Levy Nuclear Project (“LNP”), portions of the Work Papers contain confidential contractual data, including pricing agreements and other confidential contractual financial terms, the release of which

would impair PEF's competitive business interests, and would further be a violation of the PEF's confidentiality agreements. See Affidavit of Elnitsky, ¶ 4.

The Work Papers contains information related to work authorization contractual amendments and other contractual data that is subject to confidentiality agreements between PEF and the other contracting parties. PEF negotiates each of its contracts to obtain the most competitive terms available to benefit PEF and its ratepayers. In order to successfully obtain such contracts, however, PEF must be able to assure the other parties to the contracts that the sensitive business information contained therein, such as quantity and pricing terms, will remain confidential. The public disclosure of this information would allow other parties to discover how the Company analyzes risk options, scheduling, and cost, and would impair PEF's ability to contract for such goods and services on competitive and favorable terms. See Affidavit of Elnitsky, ¶¶ 4-7.

Portions of the Work Papers reflect the Company's internal strategies for evaluating projects and meeting deadlines. If such information was disclosed to PEF's competitors and/or other potential suppliers, PEF's efforts to obtain competitive nuclear equipment and service options that provide economic value to both the Company and its customers could be compromised by the Company's competitors and/or suppliers changing their offers, consumption, or purchasing behavior within the relevant markets. PEF has kept confidential and has not publicly disclosed the proprietary terms and provisions at issue here. Absent such measures, PEF would run the risk that sensitive business information regarding what it is willing to pay for certain goods and services, as well as what the Company is willing to accept as payment for certain goods and/or services, would be made to available to the public and, as a result, other potential suppliers, vendors, and/or purchasers of such services could change

their position in future negotiations with PEF. Without PEF's measures to maintain the confidentiality of sensitive terms in these contracts, the Company's efforts to obtain competitive contracts would be undermined. In addition, by the terms of these contracts, all parties, including PEF, have agreed to protect the proprietary and confidential information, defined to include pricing arrangements, from public disclosure. See Elnitsky Affidavit, ¶¶ 4-7.

The Work Papers also includes information gleaned from the Company's internal audit procedures and reports, the release of which would harm PEF's ability to conduct internal audits. Public disclosure of the documents and information in question would compromise PEF's ability to effectively audit the Company's major projects. If the Company were to know that its auditing controls and processes were subject to public disclosure, it would compromise the level of cooperation needed with auditors to efficiently conduct audits. See Elnitsky Affidavit ¶ 8.

With respect to the Crystal River Unit 3 ("CR3") Extended Power Uprate ("EPU") project ("CR3 Uprate") sections of the Work Papers specifically contain confidential contractual information and numbers, the disclosure of which would impair PEF's competitive business interests and violate PEF's confidentiality agreements with third parties and vendors; information gleaned from internal audit controls and reports; contract and change order financial information; and other information the disclosure of which would impair the Company's competitive business interests. See Franke Affidavit ¶¶ 3-4.

The Company is requesting confidential classification of this information because the Work Papers contains proprietary and confidential information that would impair PEF's competitive business interests if publicly disclosed, as well as information concerning

contractual data, the disclosure of which would impair the Company's ability to contract on favorable terms and, in many cases, the information constitutes trade secrets of the Company and its contract partners. See Franke Affidavit ¶¶ 3-4. In many instances, the disclosure of this information would violate contractual confidentiality provisions or is the result of recent negotiations with PEF vendors or ongoing contracts with vendors. Portions of these documents reflect the Company's internal strategies for evaluating projects. The information contains sensitive information concerning the CR3 Uprate project. Information regarding the CR3 Uprate includes highly confidential and proprietary competitive business information and numbers, the release of which would place PEF's competitors at a relative competitive advantage, thereby harming the Company's and its customer's interests. See Franke Affidavit ¶¶ 3-4; 6.

Furthermore, portions of the information in the Work Papers were taken from internal audit reports which are highly confidential. If the Company were to know that its auditing controls and processes and were subject to public disclosure, it would likely compromise the level of cooperation needed to efficiently conduct audits. See Franke Affidavit ¶ 5. In addition, such information and documents are specifically defined by Sections 366.093(3)(b) as confidential information that is entitled to confidential status.

PEF considers this information to confidential and proprietary and continues to take steps to protect against its public disclosure, including limiting the personnel who have access to this information. If such information was disclosed to PEF's competitors and/or other potential suppliers, PEF's efforts to obtain competitive nuclear equipment and service options that provide economic value to both the Company and its customers could be compromised by the Company's competitors and/or suppliers changing their offers, consumption, or

purchasing behavior within the relevant markets. If other third parties were made aware of confidential contractual terms that PEF has with other parties, they may offer less competitive contractual terms in future contractual negotiations. Without the Company's measures to maintain the confidentiality of sensitive terms in contracts with these nuclear contractors, the Company's efforts to obtain competitive contracts could be undermined to the detriment of PEF and its ratepayers. Franke Affidavit ¶¶ at 4; 6.

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 Affidavits of Franke, ¶ 7; Elnitsky, ¶ 8.

### 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 Request, PEF has enclosed the following:

(1) A separate, sealed envelope containing one copy of the confidential Appendix 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 document with the information for which PEF has requested 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 Work Papers be classified as confidential for the reasons set forth above.

Respectfully submitted this 1st day of July, 2011.

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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 1st day of July, 2011.

  
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