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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Nuclear Power Plant Cost Recovery Clause

Docket No. 110009-EL Submitted: August 4<sup>th</sup>, 2011

COMMISSION CLERK

**PROGRESS ENERGY FLORIDA, INC.'S CORRECTED THIRD REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING PORTIONS OF THE TESTIMONIES, EXHIBITS & NFRS FILED AS PART OF THE COMPANY'S MAY 2, 2011 PETITION FOR APPROVAL OF COSTS TO BE RECOVERED**

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 Corrected Request for Confidential Classification Regarding Portions of the Testimonies and Exhibits and Nuclear Filing Requirements ("NFRs") filed as part of the Company's May 2, 2011 Filing (the "Request"). Specifically, this correction is being filed to provide the correct electronic excel confidential version of TGF-2. The non confidential version of TGF-2 and all of the other documents (electronic and hard copy) as filed on May 2, 2011 were correct.

PEF is seeking confidential classification of the following materials filed with the Florida Public Service Commission ("FPSC" or the "Commission"): (1) portions of the testimony and the exhibits, the NFRs, of Thomas G. Foster; (2) portions of the testimony of Sue Hardison; (3) portions of the testimony and the exhibits of John Elnitsky; and (4) portions of the testimony and exhibits of Jon Franke filed in this docket.

An unredacted version of the documents discussed above is being filed under seal with

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the Commission as Appendix A on a confidential basis to keep the competitive business information in those documents confidential.

In further support of this Request, PEF states as follows:

- claim of confidentiality
- notice of intent
- request for confidentiality
- filed by OPC

CLERK NOTE: CD'S contain redacted information 05502-11

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FPSC-COMMISSION CLERK

For DN 05501-11, which is in locked storage. You must be authorized to view this DN.-CLK

### **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.

### **Testimony and Exhibits**

As listed above, portions of the testimony and exhibits of Thomas G. Foster, John Elnitsky, and Jon Franke as well as portions of the testimony of Sue Hardison contain confidential, proprietary business information regarding contractual terms and numbers and the purchase of equipment, materials, and services necessary for the construction and operation of the Levy Nuclear Power Project ("LNP") and the Crystal River Unit 3 ("CR3") Extended Power Uprate ("EPU") Project ("CR3 Uprate" and collectively with LNP the "Nuclear Projects").

More specifically, portions of the testimony of Thomas G. Foster and attached Exhibit Nos. TGF-1, TGF-2, TGF 3, TGF-4, and TGF-5 – the LNP and CR3 NFRs – contain confidential and sensitive contractual information and numbers regarding the Company's Nuclear Projects, the disclosure of which would impair PEF's competitive business interests and ability to negotiate favorable contracts, as well as violate contractual nondisclosure provisions. See Affidavit of Sue Hardison, ¶ 4; Affidavit of Jon Franke, ¶ 4.

The testimony of Sue Hardison contains confidential contractual numbers and terms under the Company's Engineering, Procurement, and Construction Agreement ("EPC Agreement") with Westinghouse, Shaw, Stone & Webster (the "Consortium") as well as cost numbers and information relating to on-going negotiations with the Consortium and its vendors and preliminary decisions regarding disposition of items of Long Lead Equipment ("LLE") for the LNP. See Affidavit of Hardison, ¶ 4.

The testimony of John Elnitsky and Exhibit Nos. JE- 3 and JE-8 also contain confidential cost numbers and competitively sensitive business information relating to on-going negotiations with the Consortium and its vendors and preliminary decisions regarding disposition of LLE items for the LNP. See Affidavit of Hardison, ¶ 4.

The testimony of Jon Franke and Exhibit Nos. JF-2 and JF-3 contain confidential cost numbers regarding the CR3 Uprate project and contractual settlement terms the disclosure of which would harm PEF's competitive business interests. See Affidavit of Franke, ¶¶ 4-5.

Certain of these documents described above contain contractual quantities and pricing arrangements and payments made between PEF and third parties that would adversely impact PEF's competitive business interests if disclosed to the public. See Affidavit of Hardison, ¶ 5; Affidavit of Franke, ¶ 5. PEF must be able to assure third parties that enter contractual agreements with the Company that sensitive business information, such as the

pricing, payment, and quantity terms of their contracts, will be kept confidential. See Affidavit of Hardison, ¶ 5; Affidavit of Franke, ¶ 5. 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 Hardison, ¶¶ 5-6; Affidavit of Franke, ¶¶ 5-6.

Additionally, the testimony of Sue Hardison and testimony and Exhibits JE-4 and JE-8 of John Elnitsky, as explained above as well as in Sue Hardison's supporting affidavit, contains competitively sensitive business information regarding the purchase of LLE and other items necessary for the construction and operation of the LNP, and includes a discussion of negotiations on purchase order disposition and payment terms for LLE. Affidavit of Hardison, ¶¶ 4-6. Specifically, the information at issue relates to competitively negotiated contractual data, including sensitive pricing information and other contractual details, and ongoing negotiations of contractual change order terms, the disclosure of which would impair the efforts of the Company to negotiate such contracts and change orders on favorable terms. See § 366.093(3)(d), Fla. Stat.; Affidavit of Hardison, ¶¶ 5-6. 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 and it would impair PEF in on-going negotiations. See Affidavit of Hardison, ¶¶ 5-6. 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.; Affidavit of Franke, ¶¶ 5-6.

Further, the Company has established and follows strict procedures to maintain the confidentiality of the terms of all 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 Franke, ¶ 7; Affidavit of Hardison, ¶ 7.

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 Affidavit of Franke, ¶ 7; Affidavit of Hardison, ¶ 7. 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 that 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 Request 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 Commission;**

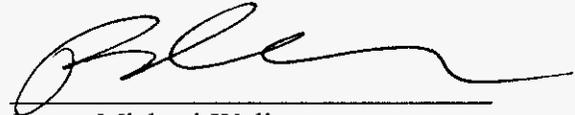
(2) Two copies of the documents with the information for which PEF intends to request confidential classification redacted by section, pages, or lines where appropriate as Appendix B; and,

A justification matrix of the confidential information contained in Appendix A supporting PEF's Request, as Appendix C.

WHEREFORE, PEF respectfully requests that the redacted portions of the testimony and exhibits (the NFRs) of Thomas G. Foster; the redacted portions of the testimony of Sue Hardison; the redacted portions of the testimony and exhibits of John Elnitsky; and

the redacted portions of the testimony and exhibits of Jon Franke be classified as confidential for the reasons set forth above.

Respectfully submitted this <sup>4<sup>th</sup></sup> day of August, 2011.

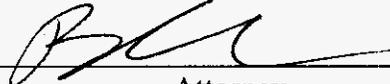


R. Alexander Glenn  
General Counsel  
John Burnett  
Associate General Counsel  
Dianne M. Triplett  
Associate General Counsel  
PROGRESS ENERGY SERVICE  
COMPANY, LLC  
Post Office Box 14042  
St. Petersburg, FL 33733-4042  
Telephone: (727) 820-5587  
Facsimile: (727) 820-5519

James Michael Walls  
Florida Bar No. 0706242  
Blaise N. Huhta  
Florida Bar No. 0027942  
Matthew R. Bernier  
Florida Bar No. 0059886  
CARLTON FIELDS, P.A.  
Post Office Box 3239  
Tampa, FL 33601-3239  
Telephone: (813) 223-7000  
Facsimile: (813) 229-4133

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 4<sup>th</sup> day of August, 2011.

  
\_\_\_\_\_  
Attorney

Anna Norris  
Keino Young  
Staff Attorney  
Florida Public Service Commission  
2540 Shumard Oak Blvd  
Tallahassee 32399  
Phone: (850) 413-6218  
Facsimile: (850) 413-6184  
Email: [anorris@psc.state.fl.us](mailto:anorris@psc.state.fl.us)  
[kyoung@psc.fl.state.us](mailto:kyoung@psc.fl.state.us)

Charles Rehwinkel  
Associate Counsel  
Erik Saylor  
Associate Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street  
Room 812  
Tallahassee, FL 32399-1400  
Phone: (850) 488-9330  
Email: [rehwinkel.charles@leg.state.fl.us](mailto:rehwinkel.charles@leg.state.fl.us)  
[Saylor.erik@leg.state.fl.us](mailto:Saylor.erik@leg.state.fl.us)

Vicki G. Kaufman  
Jon C. Moyle, Jr.  
Keefe Law Firm  
118 North Gadsden Street  
Tallahassee, FL 32301  
Phone: (850) 681-3828  
Fax: (850) 681-8788  
Email: [vkaufman@kagmlaw.com](mailto:vkaufman@kagmlaw.com)  
[jmoyle@kagmlaw.com](mailto:jmoyle@kagmlaw.com)

Bryan S. Anderson  
Jessica Cano  
Florida Power & Light  
700 Universe Boulevard  
Juno Beach, FL 33408-0420  
Phone: (561) 691-7101  
Facsimile: (561) 691-7135  
Email: [bryan.anderson@fpl.com](mailto:bryan.anderson@fpl.com)  
[Jessica.cano@fpl.com](mailto:Jessica.cano@fpl.com)

Mr. Paul Lewis, Jr.  
Progress Energy Florida, Inc.  
106 East College Avenue, Ste. 800  
Tallahassee, FL 32301-7740  
Phone: (850) 222-8738  
Facsimile: (850) 222-9768  
Email: [paul.lewisjr@pgnmail.com](mailto:paul.lewisjr@pgnmail.com)

James W. Brew  
F. Alvin Taylor  
Brickfield Burchette Ritts & Stone, PC  
1025 Thomas Jefferson St NW  
8th FL West Tower  
Washington, DC 20007-5201  
Phone: (202) 342-0800  
Fax: (202) 342-0807  
Email: [jbrew@bbrslaw.com](mailto:jbrew@bbrslaw.com)  
[ataylor@bbrslaw.com](mailto:ataylor@bbrslaw.com)

Matthew J. Feil  
Gunster Yoakley & Stewart, P.A.  
215 South Monroe Street, Ste. 601  
Tallahassee, FL 32301  
Phone: (850) 521-1708  
Email: [mfeil@gunster.com](mailto:mfeil@gunster.com)

Karen S. White  
Staff Attorney  
AFLSA/JACL-ULFSC  
139 Barnes Drive, Ste. 1  
Tyndall AFB, FL 32403-5319  
Phone: (850) 283-6217  
Email: [Karen.white@tyndall.af.mil](mailto:Karen.white@tyndall.af.mil)

Randy B. Miller  
White Springs Agricultural Chemicals, Inc.  
PO Box 300  
White Springs, FL 32096  
Email: [RMiller@pscphosphate.com](mailto:RMiller@pscphosphate.com)

Gary A. Davis  
James S. Whitlock  
Gary A. Davis & Associates  
61 North Andrews Avenue  
P.O. Box 649  
Hot Springs, NC 28743  
Email: [gadavis@enviroattorney.com](mailto:gadavis@enviroattorney.com)  
[jwhitlock@environattorney.com](mailto:jwhitlock@environattorney.com)