

claim of confidentiality
notice of intent
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION 11 AUG 31 PM 2:31

COMMISSION
CLERK

In re: Nuclear Power Plant Cost Recovery Clause Docket No. 110009-EI
Submitted for Filing: August 31, 2011

**PROGRESS ENERGY FLORIDA, INC.'S NINETEENTH REQUEST FOR
CONFIDENTIAL CLASSIFICATION REGARDING
PORTIONS OF THE AUGUST 3, 2011 DEPOSITION TRANSCRIPT
AND EXHIBITS OF JOHN ELNITSKY**

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 regarding portions of the deposition transcript and exhibits of John Elnitsky taken on August 3, 2011. The deposition transcript and exhibits contain confidential and proprietary contractual information, the disclosure of which would impair PEF's competitive business interests, as well as other information the disclosure of which would harm the Company's competitive business interests. The information in the transcript and exhibits meet the definition of proprietary confidential business information per section 366.093(3), Florida Statutes. The unredacted transcript and exhibits are being filed under seal with the Commission on a confidential basis to keep the competitive business information in the transcript and exhibits 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]." § 366.093(1), Fla. Stat. Proprietary confidential business

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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 customers 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.

Portions of the aforementioned transcript and exhibits (collectively the “responsive information”) should be afforded confidential classification for the reasons set forth in the Affidavit of John Elnitsky filed in support of PEF’s Request for Confidential Classification, and for the following reasons.

The deposition transcript and certain exhibits thereto of Mr. Elnitsky contain sensitive proprietary and confidential information, including pricing and cost information, related to and derived from contractual agreements necessary to complete the Levy Nuclear Project (“LNP”) including the Engineering, Procurement and Construction Agreement (“EPC Agreement”). The EPC Agreement includes confidentiality and non-disclosure provisions that forbid the public disclosure of this information. 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. Affidavit of Elnitsky, ¶ 4. Public release of this information would harm the Company's ability to contract for necessary goods and services by signaling to the parties with whom PEF attempts to contract that the Company will not be able to maintain the confidentiality of the parties' contractual agreements. See id. at ¶ 5.

The deposition transcript of Mr. Elnitsky contains sensitive proprietary and confidential information related to the ongoing negotiations with potential joint-owners of the LNP. The Company is maintaining the confidentiality of the details of these negotiations, including the identity of the potential joint-owners. Public release of the identities and other details of the negotiations could harm the Company's competitive negotiating position, and possibly lead to the end of negotiations all together. See id.

The transcript and the exhibits to the deposition contain strategic planning information provided to senior management which is competitive-sensitively business information. The transcript discussions and document portions in question contain confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the Company.

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 id. 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. at ¶¶ 5-6.

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,

(3) 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 August 3, 2011 deposition transcript and exhibits of John Elnitsky be classified as confidential for the reasons set forth above.

Respectfully submitted this 31st day of August, 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 31st day of August, 2011.



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