

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

COMMISSION CLERK

IN RE: NUCLEAR POWER PLANT COST RECOVERY CLAUSE

Docket No. 110009-EI Submitted for Filing: Sept. 8, 2011

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

PROGRESS ENERGY FLORIDA, INC.'S TWENTY-FIRST REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING ITS POST-HEARING STATEMENT

For DN 00477-11, which is in locked storage. You must be authorized to view this DN.-CLK

Progress Energy Florida, Inc. ("PEF" or the "Company"), pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(3), Florida Administrative Code, requests confidential classification of portions of its Post-Hearing Statement of Issues and Positions and Arguments in Support of its Petition to Recover Costs ("Post-Hearing Statement").

The Post-Hearing Statement contains information that fits the definition of proprietary confidential business information pursuant to Section 366.093(3), and therefore the specified portions of the Post-Hearing Statement should be afforded confidential treatment by the Commission. PEF hereby submits the following in support of its confidentiality request:

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

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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, 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.

The Post-Hearing Statement, as explained below and in the supporting affidavit of John Elnitsky, contains sensitive and confidential numbers related to the Levy Nuclear Project ("LNP"), including information related to the Company's capital costs and the Company's Engineering, Procurement and Construction ("EPC") agreement. Portions of this information also include contractual cost information, the disclosure of which would harm PEF's competitive business interests, and is subject to contractual confidentiality agreements. Therefore, disclosure of this information would not only harm PEF and its ratepayers, but also constitute a breach of these agreements. Disclosure of this information would provide PEF's competitors, as well as vendors, contractors and other parties with whom PEF may wish or need to contract, with information regarding the contractual terms to which PEF is willing to agree. This knowledge could result in third parties changing their contract offers or requirements to the detriment of the Company and its ratepayers. See Affidavit of Elnitsky, ¶ 4.

Additionally, the Post-Hearing Statement contains information regarding the Company's capital costs, estimates and projections for the LNP. 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. See id. at ¶¶ 5-6. The disclosure of this information would have a harmful impact on PEF's competitive interests. See id. Therefore, this information should be granted confidential classification pursuant to section 366.093(3)(d) and (e), Florida Statutes.

PEF has kept confidential and has not publicly disclosed the confidential information and amounts at issue here. See id. at ¶ 7. Absent such measures, PEF would run the risk that sensitive business information regarding the LNP would be made to available to the public and, as a result, other parties could change their position in future negotiations with PEF. Without PEF's measures to maintain the confidentiality of sensitive information described herein, the Company's efforts to obtain competitive contracts and to obtain competitively priced goods and services would be undermined. See id. at ¶¶ 5-6.

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. See id. at ¶ 7. 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. Id. Furthermore, the information at issue (in one form or another) has previously been produced by the Company in response to various requests during the discovery process in this docket, and at

all times the Company has taken the appropriate steps to maintain the confidentiality of this information. Id.

CONCLUSION

The competitive, confidential information and numbers 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:

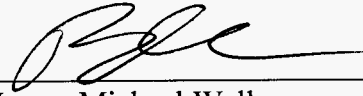
(1) A separate, sealed envelope containing a CD including the confidential documents as Attachment A to PEF's Request for Confidential Classification for which PEF has requested confidential classification with the appropriate section, pages, or lines containing the confidential information highlighted. **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 documents with the information for which PEF has requested confidential classification redacted by section, page or lines, where appropriate, as Attachment B; and,

(3) A justification matrix supporting PEF's Request for Confidential Classification of the highlighted information contained in confidential Attachment A, as Attachment C.

WHEREFORE, PEF respectfully requests that the highlighted portions of its Post-Hearing Statement be classified as confidential for the reasons set forth above.

Respectfully submitted,



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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 8th day of September, 2011.



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

REDACTED

In re: Nuclear Power Plant Cost Recovery
Clause

Docket No. 110009-EI

**Twenty-First Request for Confidential
Classification
Exhibit B**

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PEF's 2010 Project Management, Contracting, Accounting and Cost Oversight Controls for the LNP are Prudent.

The undisputed evidence demonstrates that PEF's 2010 project management, contracting, accounting and cost oversight controls for the LNP are reasonable and prudent. PEF's witnesses, Mr. Garrett and Ms. Hardison presented undisputed evidence that PEF's project management, contracting, accounting and cost oversight controls for the LNP were reasonable and prudent. (T.1407-1412, 1492-1500, 1518-1519). No one challenged this testimony.⁶ This evidence was further supported by Staff witnesses, Mr. Jeffery Small, and his favorable financial audit of the LNP, and Mr. William Coston and Mr. Kevin Carpenter, and their favorable Staff audit of the LNP project management and controls. (T. 1521-1524 & Exh. No. 171; 1526-1528 & Exh. No. 172). Consequently, the undisputed record evidence demonstrates that PEF's 2010 project management, contracting, accounting and cost oversight controls for the LNP are reasonable and prudent.

ISSUE 25: What system and jurisdictional amounts should the Commission approve as PEF's final 2010 prudently incurred costs and final true-up amounts for the Levy Units 1 & 2 project?

REDACTED

PEF Position:

*Capital Costs (System) [REDACTED]; (Jurisdictional) \$79,917,103
O&M Costs (System) \$2,877,079; (Jurisdictional) \$2,496,726
Carrying Costs \$49,280,391 and Other Adjustments credit of \$5,302.

The over recovery of \$60,743,424 should be included in setting the allowed 2012 NCRC recovery.

The 2010 variance is the sum of over-projection preconstruction costs of \$58,175,233, plus an over-projection of O&M expenses of \$1,190,702 plus an over-projection of carrying costs of \$1,372,188, plus an under-projection of other adjustments costs of negative \$5,302.*

⁶ OPC witness Dr. Jacobs agreed that he expressed no opinion this year regarding the prudence of the Company's LNP project management, contracting, accounting and cost oversight controls because he was not asked to review them. (T. 1994, 2016).

REDACTED

PEF Position:

*Consistent with PEF's response to Staff POD 1 Question 3:

Capital Costs (System) [REDACTED]; (Jurisdictional) \$72,747,008
O&M Costs (System) \$1,557,765; (Jurisdictional) \$1,414,573
Carrying Costs \$48,372,525.

The Commission should also approve an estimated 2011 LNP project true-up under-recovery amount of \$5,775,217 to be included in setting the allowed 2012 NCRC recovery.

The 2011 variance is the sum of an under-projection of Preconstruction costs of \$6,190,953, plus an over-projection of O&M expenses of \$2,409,310 plus an under-projection of carrying charges of \$1,993,574.*

ISSUE 28A: Is it reasonable for PEF to incur any projected 2012 costs not necessary for receipt of the combined operating license (COL), and if not, what action, if any, should the Commission take?

PEF Position:

* Yes. As testified to by Mr. Elnitsky, all projected 2012 costs presented by PEF for recovery are necessary for the LNP schedule to remain on track for the planned in-service dates of 2021 and 2022. No intervenor credibly disputed Mr. Elnitsky's testimony that all costs (COL related and non-COL related) are necessary for the project schedule. Under the nuclear cost recovery statute and rule PEF is entitled to recover all reasonably incurred costs. No intervenor has challenged the reasonableness of any LNP 2012 costs as not necessary for the project or unreasonable in amount estimated, therefore, PEF is entitled to recover all of its projected 2012 LNP costs. *

ISSUE 28B: What system and jurisdictional amounts should the Commission approve as reasonably projected 2012 costs for PEF's Levy Units 1 & 2 project?

REDACTED

PEF Position:

*Consistent with PEF's response to Staff POD 1 Question 3:

Capital Costs (System) [REDACTED]; (Jurisdictional) \$39,583,863
O&M Costs (System) \$1,545,388; (Jurisdictional) \$1,405,073
Carrying Charges \$48,466,132.*

**PROGRESS ENERGY FLORIDA DOCKET 110009-EI
 Twenty-First Request for Confidential Classification
 Confidentiality Justification Matrix
 ATTACHMENT C**

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
<p>Progress Energy Florida, Post-Hearing Statement of Issues and Positions and Arguments in Support of its Petition to Recover Costs of the Levy Nuclear Project and Crystal River Unit 3 Uprate Project as Provided in Section 366.93, Florida Statutes, and Rule 25-6.0423, F.A.C.</p>	<p>Page 22, Issue 25, PEF Position, 1st line, fourth word; Page 24, 1st PEF Position, 2nd line, fourth word, Issue 28B, PEF Position, 2nd line, fourth word</p>	<p>§366.093(3)(b), Fla. Stat. The information in question contains confidential information relating to, or derived from, the Company's internal auditing controls and/or reports of the Company's internal auditors</p> <p>§366.093(3)(e), Fla. Stat. The document portions in question contain confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

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06476 SEP -8 =

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