



DANIEL HERNANDEZ
PARTNER
Shutts & Bowen LLP
4301 W. Boy Scout Boulevard
Suite 300
Tampa, Florida 33607
DIRECT (813) 227-8114
FAX (813) 227-8214
EMAIL DHernandez@shutts.com

FILED 3/6/2020
DOCUMENT NO. 01306-2020
FPSC - COMMISSION CLERK

March 6, 2020

VIA ELECTRONIC FILING

Mr. Adam Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

In re: Petition by Duke Energy Florida, LLC to Approve Transaction with Accelerated Decommissioning Partners, LLC for Accelerated Decommissioning Services at the CR3 Facility, etc.
Docket No. 20190140-EI

Dear Mr. Teitzman:

Please find enclosed for electronic filing on behalf of Duke Energy Florida, LLC (“DEF”), DEF’s Fifth Request for Confidential Classification filed in connection with the information contained DEF’s responses to interrogatory numbers 58.A, 58.C, and 58.D of Staff’s Seventh Set of Interrogatories (Nos. 57-63). This filing includes the following:

- DEF’s Fifth Request for Confidential Classification;
- Slipsheet for confidential Exhibit A;
- Redacted Exhibit B (two copies);
- Exhibit C (justification matrix); and
- Exhibit D (affidavit of Terry Hobbs).

DEF’s confidential Exhibit A that accompanies the above-referenced filing has been submitted under separate cover.

Thank you for your assistance in this matter. Please feel free to call me at (813) 227-8114 should you have any questions concerning this filing.

Respectfully,

Shutts & Bowen LLP

Daniel Hernandez

Enclosure (as noted)

TPADOCS 22978507 1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Duke Energy Florida, LLC to Approve Transaction with Accelerated Decommissioning Partners, LLC for Accelerated Decommissioning Services at the CR3 Facility, Transfer of Title to Spent Fuel, and Assumption of Operations of the CR3 Facility Pursuant to the NRC License, and Request for Waiver From Future Application of Rule 25-6.04365, F.A.C. for Nuclear Decommissioning Study

DOCKET NO.: 20190140-EI

Submitted for Filing: March 6, 2020

**DUKE ENERGY FLORIDA, LLC'S FIFTH
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Duke Energy Florida, LLC, (“DEF” or “Company”), pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), submits this Fifth Request for Confidential Classification (the “Request”) for certain information provided in DEF’s responses to interrogatory numbers 58.A, 58.C, and 58.D of Staff’s Seventh Set of Interrogatories (Nos. 57-63), served on February 6, 2020. In support of this Request, DEF states:

1. Portions of the information contained within DEF’s responses to interrogatory numbers 58.A, 58.C, and 58.D of Staff’s Seventh Set of Interrogatories (Nos. 57-63) are “proprietary confidential business information” under Section 366.093(3), Florida Statutes.

2. The following exhibits are included with this Request:

(a) Sealed **Exhibit A** is a package containing an unredacted copy of the portions of DEF’s responses to interrogatory numbers 58.A, 58.C, and 58.D of Staff’s Seventh Set of Interrogatories (Nos. 57-63), for which DEF seeks confidential treatment. **Exhibit A** is being submitted separately in a sealed envelope labeled “CONFIDENTIAL.” In the unredacted copy, the information asserted to be confidential is highlighted in yellow.

(b) **Composite Exhibit B** is two copies of the redacted information contained within DEF's responses to interrogatory numbers 58.A, 58.C, and 58.D of Staff's Seventh Set of Interrogatories (Nos. 57-63), for which the Company requests confidential classification. The specific information for which confidential treatment is requested has been blocked out by opaque marker or other means.

(c) **Exhibit C** is a table which identifies, by the page and specific portions of the information contained within DEF's responses to interrogatory numbers 58.A, 58.C, and 58.D of Staff's Seventh Set of Interrogatories (Nos. 57-63), the information for which DEF seeks confidential classification and the specific statutory bases for seeking confidential treatment.

(d) **Exhibit D** is an affidavit attesting to the confidential nature of the information identified in this Request.

3. As indicated in **Exhibit C**, the information for which DEF requests confidential classification is "proprietary confidential business information" within the meaning of Section 366.093(3), F.S. Specifically, the information contained within DEF's responses to interrogatory numbers 58.A, 58.C, and 58.D of Staff's Seventh Set of Interrogatories (Nos. 57-63), relates to commercially sensitive confidential information concerning contractual business information and obligations under a contract between DEF; ADP CR3, LLC; and ADP SF1, LLC for decommissioning activities related to the accelerated decommissioning of the DEF Crystal River Unit 3 Nuclear Plant (the "CR3 Facility"), the disclosure of which would not only impair the Company's competitive business advantages, but would also violate contractual requirements to maintain the confidentiality of such information under the subject contract. DEF is obligated to maintain the confidentiality of this information under the subject contract, and therefore it qualifies for confidential classification. *See* §§ 366.093(3)(d) and (e), F.S.; Affidavit of Terry

Hobbs at ¶¶ 5 and 6. If DEF cannot assure contracting parties that it can maintain the confidentiality of contractual terms, those parties and other similarly situated parties may forego entering contracts with DEF, which would impair the ability of the Company to negotiate contracts on favorable terms. *See* § 366.093(3)(d), F.S.; Affidavit of Terry Hobbs at ¶ 6. Accordingly, such information constitutes “proprietary confidential business information,” which is exempt from disclosure under the Public Records Act pursuant to Section 366.093(1), F.S.

4. The information identified as **Exhibit A** is intended to be and is treated as confidential by the Company. *See* Affidavit of Terry Hobbs at ¶¶ 7 and 8. The information has not been disclosed to the public and the Company has treated and continues to treat the information at issue in this Request as confidential. *Id.*

5. DEF requests that the information identified in **Exhibit A** be classified as “proprietary confidential business information” within the meaning of Section 366.093(3), F.S., that the information remain confidential for a period of at least eighteen (18) months as provided in Section 366.093(4) F.S., and that the information be returned as soon as it is no longer necessary for the Commission to conduct its business.

WHEREFORE, for the foregoing reasons, DEF respectfully requests that this Fifth Request for Confidential Classification be granted.

DATED this 6th day of March, 2020.

Respectfully submitted,



DANIEL HERNANDEZ

Florida Bar No. 176834

NICOLE ZAWORSKA

Florida Bar No. 1003564

Shutts & Bowen LLP

4301 W. Boy Scout Blvd., Suite 300

Tampa, Florida 33607

P: 813- 229-8900

F: 813-229-8901

Email: dhernandez@shutts.com

nzaworska@shutts.com

DEF-CR3@shutts.com

DIANNE M. TRIPLETT

Deputy General Counsel

Duke Energy Florida, LLC

299 First Avenue North

St. Petersburg, FL 33701

T: 727-820-4692

F: 727-820-5041

Email: Dianne.Triplett@duke-energy.com

FLRegulatoryLegal@duke-energy.com

MATTHEW R. BERNIER

Associate General Counsel

Duke Energy Florida, LLC

106 East College Avenue, Suite 800

Tallahassee, Florida 32301

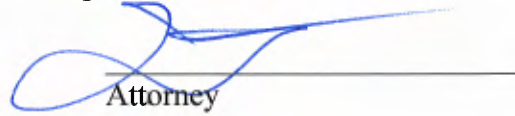
T: 850-521-1428

F: 727-820-5519

Email: Matthew.Bernier@duke-energy.com

Duke Energy Florida, LLC
Docket No.: 20190140-EI
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail this 6th day of March, 2020, to all parties of record as indicated below.



Attorney

<p>Suzanne Brownless Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us</p>	<p>J. R. Kelly / Charles J. Rehwinkel Office of Public Counsel c/o The Florida Legislature 111 West Madison Street, Room 812 Tallahassee, FL 32399 kelly.jr@leg.state.fl.us rehwinkel.charles@leg.state.fl.us</p>
<p>Jon C. Moyle, Jr. Karen A. Putnal Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com kputnal@moylelaw.com</p>	

Exhibit A

“CONFIDENTIAL”

(submitted under separate cover)

Exhibit B

REDACTED

(two copies)

REDACTED

58. Please refer to DEF's response to Staff's 5th Set of Interrogatories, No. 51. DEF states in its response that contingency funds are included in the fixed-price contract value.
- A. What is the level of the contingency funds included in the fixed-price contract value, and how was it assessed?
 - B. Refer also to Section 3, Page 4 of "Updated Site-Specific Decommissioning Cost Estimate for the Crystal River Unit 3 Nuclear Generating Plant" (Commission Document No. 05915-2018) filed on September 10, 2018. How does the range of contingency values for the various major activity-related problems (e.g. decontamination, segmentation, etc.) used in DEF's prior decommissioning study, as shown on Page 4, compare to the contingency funds included in the development of DEF's fixed-price contract value identified in Part A above?
 - C. If specific contingency values are not available to DEF under the contracting model in this proceeding, what assurance does DEF have that the full range of cost contingencies are represented in the fixed-price contract value?
 - D. Does the inclusion of contingency funds included in the fixed-price contract value address different types of cost risk to ratepayers than the risks addressed by the performance bonds, provisional trust funding, and parent company guarantees specified in the DSA? Please explain the different types of ratepayer cost risks addressed in each instance.

RESPONSE to 58.A:

The fixed-price contract includes performance uncertainties (contingencies) ranging [REDACTED] depending on the individual activity. These individual activity contingencies are based on the experiences of NorthStar, ORANO, and other ADP subcontractors and their recent performance of such similar activities. Activities with fixed-price agreements in place with contractors pose less risk of cost growth for the project, which in turn have been assigned a smaller contingency budget as compared to activities with forecasted costs or basic estimates.

Greater contract performance certainty is achieved through multiple layers of performance assurances under the contract, including, fixed-pricing; transfer of risk to ADP; ADP parent company guarantees; subcontractor performance bonds; environmental insurance policy; the [REDACTED]; provisional trust funding; and, as discussed above, a range of contingencies for individual activities performed.

RESPONSE to 58.B:

The TLG cost estimate includes individual activity contingencies ranging from 10% to 75% depending on the degree of difficulty judged to be appropriate. These individual activity contingencies are based on a set of generally accepted estimating principles, which take into consideration that any of several vendors, with varying degrees of experience and performance results, could be assumed to perform the activities.

REDACTED

The fixed-price contract contingencies are based on the experiences of NorthStar, ORANO, and other ADP subcontractors who have recently performed similar activities, thus providing a more realistic expectation for performance and a more precise contingency value.

RESPONSE to 58.C:

Greater certainty of contract performance is achieved through multiple layers of performance assurances under the contract, including, fixed-pricing; transfer of risk to ADP; ADP parent company guarantees; subcontractor performance bonds; environmental insurance policy; the [REDACTED]; provisional trust funding; and individual activity contingencies.

RESPONSE to 58.D:

There are no different or additional cost risks to the ratepayers. Greater certainty of contract performance is achieved through multiple layers of performance assurances under the contract, including, fixed-pricing; transfer of risk to ADP; ADP parent company guarantees; subcontractor performance bonds; environmental insurance policy; the [REDACTED]; provisional trust funding; and individual activity contingencies.

REDACTED

58. Please refer to DEF's response to Staff's 5th Set of Interrogatories, No. 51. DEF states in its response that contingency funds are included in the fixed-price contract value.
- A. What is the level of the contingency funds included in the fixed-price contract value, and how was it assessed?
 - B. Refer also to Section 3, Page 4 of "Updated Site-Specific Decommissioning Cost Estimate for the Crystal River Unit 3 Nuclear Generating Plant" (Commission Document No. 05915-2018) filed on September 10, 2018. How does the range of contingency values for the various major activity-related problems (e.g. decontamination, segmentation, etc.) used in DEF's prior decommissioning study, as shown on Page 4, compare to the contingency funds included in the development of DEF's fixed-price contract value identified in Part A above?
 - C. If specific contingency values are not available to DEF under the contracting model in this proceeding, what assurance does DEF have that the full range of cost contingencies are represented in the fixed-price contract value?
 - D. Does the inclusion of contingency funds included in the fixed-price contract value address different types of cost risk to ratepayers than the risks addressed by the performance bonds, provisional trust funding, and parent company guarantees specified in the DSA? Please explain the different types of ratepayer cost risks addressed in each instance.

RESPONSE to 58.A:

The fixed-price contract includes performance uncertainties (contingencies) ranging [REDACTED] depending on the individual activity. These individual activity contingencies are based on the experiences of NorthStar, ORANO, and other ADP subcontractors and their recent performance of such similar activities. Activities with fixed-price agreements in place with contractors pose less risk of cost growth for the project, which in turn have been assigned a smaller contingency budget as compared to activities with forecasted costs or basic estimates.

Greater contract performance certainty is achieved through multiple layers of performance assurances under the contract, including, fixed-pricing; transfer of risk to ADP; ADP parent company guarantees; subcontractor performance bonds; environmental insurance policy; the [REDACTED]; provisional trust funding; and, as discussed above, a range of contingencies for individual activities performed.

RESPONSE to 58.B:

The TLG cost estimate includes individual activity contingencies ranging from 10% to 75% depending on the degree of difficulty judged to be appropriate. These individual activity contingencies are based on a set of generally accepted estimating principles, which take into consideration that any of several vendors, with varying degrees of experience and performance results, could be assumed to perform the activities.

REDACTED

The fixed-price contract contingencies are based on the experiences of NorthStar, ORANO, and other ADP subcontractors who have recently performed similar activities, thus providing a more realistic expectation for performance and a more precise contingency value.

RESPONSE to 58.C:

Greater certainty of contract performance is achieved through multiple layers of performance assurances under the contract, including, fixed-pricing; transfer of risk to ADP; ADP parent company guarantees; subcontractor performance bonds; environmental insurance policy; the [REDACTED]; provisional trust funding; and individual activity contingencies.

RESPONSE to 58.D:

There are no different or additional cost risks to the ratepayers. Greater certainty of contract performance is achieved through multiple layers of performance assurances under the contract, including, fixed-pricing; transfer of risk to ADP; ADP parent company guarantees; subcontractor performance bonds; environmental insurance policy; the [REDACTED]; provisional trust funding; and individual activity contingencies.

Exhibit C
DUKE ENERGY FLORIDA, LLC
Confidentiality Justification Matrix

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
<p>DEF's Response to Staff's Seventh Set of Interrogatories (Nos. 57-63); specifically, Interrogatory number 58.A.</p>	<p>Response to Interrogatory No. 58.A:</p> <p>All information after "uncertainties (contingencies) ranging" and before "depending on the individual activity" in the first sentence of the first paragraph under "<u>Response to 58.A</u>" on page 3.</p> <p>All information after "environmental insurance policy; the" and before "provisional trust funding" in the second paragraph under "<u>Response to 58.A</u>" on page 3.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information, the disclosure of which would impair DEF's competitive interests, the disclosure would impair the competitive business.</p>
<p>DEF's Response to Staff's Seventh Set of Interrogatories (Nos. 57-63); specifically, Interrogatory number 58.C.</p>	<p>Response to Interrogatory No. 58.C:</p> <p>All information after "environmental insurance policy; the" and before "provisional trust funding" in the response under "<u>Response to 58.C</u>" on page 4.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information, the disclosure of which would impair DEF's competitive interests, the disclosure would impair the competitive business.</p>
<p>DEF's Response to Staff's Seventh Set of Interrogatories (Nos. 57-63); specifically, Interrogatory number 58.D.</p>	<p>Response to Interrogatory No. 58.D:</p> <p>All information after "environmental insurance</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair DEF's</p>

	<p>policy; the” and before “provisional trust funding” in the second sentence under “<u>Response to 58.D</u>” on page 4.</p>	<p>efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information, the disclosure of which would impair DEF’s competitive interests, the disclosure would impair the competitive business.</p>
--	--	--

Exhibit D

AFFIDAVIT OF TERRY HOBBS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Duke Energy Florida, LLC to Approve Transaction with Accelerated Decommissioning Partners, LLC for Accelerated Decommissioning Services at the CR3 Facility, Transfer of Title to Spent Fuel, and Assumption of Operations of the CR3 Facility Pursuant to the NRC License, and Request for Waiver From Future Application of Rule 25-6.04365, F.A.C. for Nuclear Decommissioning Study

DOCKET NO.: 20190140-EI

Submitted for Filing: March 6, 2020

**AFFIDAVIT OF TERRY HOBBS IN SUPPORT OF
DUKE ENERGY FLORIDA, LLC'S FIFTH
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

STATE OF FLORIDA

COUNTY OF CITRUS

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Terry Hobbs, who being first duly sworn, on oath, deposes and says that:

1. My name is Terry Hobbs. I am over the age of eighteen (18) and I have been authorized by Duke Energy Florida, LLC (hereinafter "DEF" or "Company") to give this affidavit in the above-styled proceeding on DEF's behalf and in support of DEF's Fifth Request for Confidential Classification ("DEF's Request"). The facts attested to in my affidavit are based upon my personal knowledge.

2. I am the General Manager for the Decommissioning of the DEF Crystal River Unit 3 Nuclear Plant (the "CR3 Facility").

3. As the General Manager, I am responsible for the overall management, implementation, and coordination of activities to place the CR3 Facility in a long-term dormant condition commonly referred to as a "SAFSTOR" condition. I am also responsible for ensuring

the safe storage of the used nuclear fuel at the CR3 Facility. Additionally, I oversee several managers and I ensure that such managers implement the plant programs, including the ground water monitoring, radiation, control and engineering programs, in an effective and efficient manner.

4. DEF is seeking the confidential classification for certain information provided in DEF's responses to interrogatory numbers 58.A, 58.C, and 58.D of Staff's Seventh Set of Interrogatories (Nos. 57-63), served on February 6, 2020. The confidential information at issue is contained in confidential Exhibit A to DEF's Request and is outlined in DEF's Justification Matrix attached to DEF's Request as Exhibit C. DEF is requesting confidential classification of this information because it contains competitively sensitive confidential information concerning contractual business information and obligations under a contract, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.

5. The confidential information at issue relates to commercially sensitive confidential information concerning contractual business information and obligations under a contract between DEF; ADP CR3, LLC; and ADP SF1, LLC for decommissioning activities related to the accelerated decommissioning of the CR3 Facility. The disclosure of such information would not only impair the Company's competitive business advantages, but would also violate DEF's contractual requirements to maintain the confidentiality of such information under the subject contract. Therefore, the confidential information at issue qualifies for confidential classification.

6. DEF is obligated to maintain the confidentiality of certain contractual terms under the subject contract. If DEF cannot assure contracting parties that it can maintain the confidentiality of contractual terms, those parties and other similarly situated parties may forego

entering contracts with DEF, which would impair the Company to negotiate such contracts on favorable terms.

7. The information identified as Exhibit A is intended to be and is treated as confidential by the Company. With respect to the information at issue in DEF's Request, such information has not been disclosed to the public, and the Company has treated and continues to treat such information as confidential.

8. Upon receipt of its own confidential information, strict procedures are established and followed to maintain the confidentiality of the terms of the documents and information provided, including restricting access to those persons who need the information to assist the Company, and restricting the number of, and access to the information and contracts. 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.

9. This concludes my affidavit.

FURTHER AFFIANT SAYETH NOT.

[Signature Page to Follow]

Dated the 25th day of February, 2020.

Terry Hobbs

Terry Hobbs
Duke Energy Crystal River, Unit 3
Nuclear Plant
15760 W. Power Line St.
Crystal River, FL 34428

The foregoing instrument was sworn to and subscribed before me this 25th day of February, 2020, by Terry Hobbs. He is personally known to me, or has produced his _____ driver's license, _____ or his _____ as identification.

Linda Fay Dye
Signature

Linda Fay Dye
Printed Name

(AFFIX NOTARY SEAL)



NOTARY PUBLIC, STATE OF _____

04/14/2023
Commission Expiration Date