

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Progress Energy Florida )
To increase base rates to recover the full ) Docket No.: 070290-EI
Revenue requirements of the Hines Unit 2 )
and Unit 4 power plants pursuant to )
Commission Order No. PSC-05-0945-S-EI ) Submitted for Filing: August 27, 2007

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PROGRESS ENERGY FLORIDA'S REQUEST
FOR CONFIDENTIAL CLASSIFICATION

Progress Energy Florida ("PEF" or the "Company"), pursuant Section 366.093, Fla.
Stats., and Rule 25-22.006, F.A.C., requests confidential classification to portions of PEF's
responses to OPC's First Request for Production of Documents (Nos. 1-6), specifically bid
proposals received in response to PEF's RFP issued November 17, 2003, contracts, and the cost
estimates related to the transmission needs for Hines 4, which contains competitive confidential
business information of both PEF and third-party vendors. In support of this Request, PEF
states:

1. PEF has provided bid proposals, contracts, and cost estimates containing
information that is "proprietary business information" under Section 366.093(3), Florida

CMP Statutes.

COM 2. The following exhibits are included with this request:

CTR
ECR 1 (a) Sealed Composite Exhibit A is a package containing unredacted copies of

GCL 1 all the documents for which PEF seeks confidential treatment. Composite Exhibit A is being

OPC submitted separately in a sealed package labeled "CONFIDENTIAL." In the unredacted version,

RCA
SCR the information asserted to be confidential is highlighted by yellow marker.

SGA

SEC

OTH 1 comp records

(b) Composite Exhibit B is a package containing two copies of redacted versions of the documents 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 page and line the information for which PEF seeks confidential classification and the specific statutory bases for seeking confidential treatment.

3. 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. Stats. 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. Stats. Specifically, “information... 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. Stats. 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. As indicated in Exhibit C, and explained more fully below, the documents which PEF requests confidential classification is “proprietary confidential business information” within the meaning of Section 366.093(3), F.S.

### **Response to OPC Requests 2 and 3**

4. Portions of the documents provided in response to OPC's Request Numbers 2 and 3 contain detailed descriptions of the proposals PEF received in response to the Company's RFP issued November 17, 2003, as well as copies of the actual proposals, the disclosure of which would impair the efforts of the Company to negotiate contracts on favorable terms. See § 366.093(3)(d), F.S.; Affidavit of Gary Furman at ¶ 4. In order to obtain such proposals, PEF must be able to assure potential bidders that the terms of their bids will be kept confidential. Id. If such assurances are not provided, and potential bidders know that the terms of their bids are subject to public disclosure, they might withhold sensitive information necessary for the utility to fully understand and accurately assess the costs and benefits of their proposals. Id. Or, persons or companies who otherwise would have submitted bids in response to the utility's RFP might decide not to do so if there is no assurance that their proposals would be protected from disclosure. See § 366.093(3)(d), F.S.; Affidavit of Gary Furman at ¶ 4. Furthermore, the information at issue relates to the competitive interests of PEF and the bidding entities, the disclosure of which would impair their competitive business interests. § 366.093(3)(e); Affidavit of Gary Furman at ¶ 4. 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.

### **Response to OPC Request 4**

5. Portions of the documents provided in response to OPC's Request Number 4 contain confidential contracts and information regarding confidential contract details, the disclosure of which would impair the efforts of the Company to negotiate contracts on favorable terms. See § 366.093(3)(d), F.S.; Affidavit of Gary Furman at ¶ 5. PEF negotiates with potential

third party vendors to obtain competitive contracts for design and construction services that provide economic value to PEF and its ratepayers. Id. In order to obtain such contracts, however, PEF must be able to assure these companies that sensitive business information will be kept confidential. Id. PEF has kept confidential and has not publicly disclosed any of its confidential contract terms, including pricing. Id. Absent such measures, these design and construction companies would run the risk that sensitive business information that they provided in their contracts with PEF would be made available to the public and, as a result, end up in possession of potential competitors. Id. Faced with that risk, persons or companies who otherwise would contract with PEF might decide not to do so if PEF did not keep those terms of their contracts confidential. Id.

6. Additionally, the disclosure of confidential information in PEF's design and construction contracts could adversely impact PEF's competitive business interests. Affidavit of Gary Furman at ¶ 6. If such information was disclosed to PEF's competitors, PEF's efforts to obtain competitive design and construction options that provide economic value to both PEF and its ratepayers would be compromised. Id. 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. In addition, the Commission issued Order No. PSC-07-0674-CFO-EI on August 21, 2007 in this docket granting confidential status to certain design and construction contracts (Exhibits KM-1 and KM-2 to the direct testimony of Kevin Murray). Some of the confidential information at issue in the documents responsive to Request Number 4 is related to the contracts attached as Exhibits KM-1 and KM-2.

### Response to OPC Request 5

7. Portions of the documents responsive to Request Number 5 contain information and business analysis packages regarding PEF's confidential and proprietary internal strategies and analysis studies of PEF's programs and contracts. PEF is requesting confidential classification of its responses because public disclosure of the documents and information in question would impair PEF's competitive business. Affidavit of Gary Furman at ¶ 7. Specifically, if PEF's suppliers or competitors were made aware of PEF's internal strategies and analysis studies, they may adjust their behavior in the market place with respect to activity such as pricing and the acquisition and provision of goods, materials, and services. Id.

8. The information identified as Exhibit A is intended to be and is treated as confidential by the Company. Affidavit of Gary Furman at ¶ 8. The information has not been disclosed to the public, and the Company has treated and continues to treat the as confidential. Id. Upon receipt of the bid proposals and contracts at issue, and with 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. Id. At no time since receiving or generating the bid proposals, contracts, and business analysis packages in question has the Company publicly disclosed that information. Id. The Company has treated and continues to treat the information and contracts at issue as confidential. Id.

9. PEF 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 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, PEF respectfully requests that portions of the responses to OPC's First Request for Production of Documents (Nos. 1-6) be classified as confidential for the reasons set forth above.

Respectfully submitted this 27<sup>th</sup> day of August, 2007.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S.

Mail this 27<sup>th</sup> day of August, 2007 to all parties of record as indicated below.



DIANNE M. TRIPLETT

<p>Ms. Martha Brown, Esq. Office of General Counsel Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850</p> <p>Joseph A. McGlothlin, Esq. Office of Public Counsel c/o The Florida Legislature 111 West Madison Street, #812 Tallahassee, FL 32399</p>	<p>Mr. Paul Lewis, Jr. Progress Energy Florida 106 E. College Ave., Suite 800 Tallahassee, FL 32301</p>
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State of Florida



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**Public Service Commission**

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**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** 8/27/07

**TO:** Triplet / Progress

**FROM:** Ruth Nettles, Division of the Commission Clerk & Administrative Services

**RE:** **Acknowledgment of Receipt of Confidential Filing**

This will acknowledge receipt of a **CONFIDENTIAL DOCUMENT** filed in Docket No. 070290 or (if filed in an undocketed matter) concerning portions of PEF's responses to OPC's 1st Req for CBid proposals and PODS NOS 1-161 filed on behalf of Progress. The document will be maintained in locked storage.

Any questions regarding this matter should be directed to Marguerite Lockard at (850) 413-6770.

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