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In re: Petition for determination of need for Levy Units 1 and 2 nuclear power plants, by Progress Energy Florida, Inc.

Docket No. 080148-EI

COMMISSION CLERK

Submitted for Filing: May 28, 2008

**PROGRESS ENERGY FLORIDA'S SEVENTH REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING STAFF'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS**

Progress Energy Florida ("PEF" or the "Company"), pursuant to Sections 90.506, 366.093, Fla. Stats., and Rule 25-22.006, F.A.C., files this Request for Confidential Classification for PEF's responses to Staff's Third Request for Production of Documents (Nos. 16-18), Request 18. Specifically, these responses contain sensitive, confidential contractual terms for nuclear goods and services, that if disclosed would impact PEF's ability to contract on favorable terms in the future and which would violate confidentiality provisions PEF has with third parties. In fact, these responses contain information which the third parties consider to be trade secrets. Accordingly, PEF hereby submits the following.

**Basis for Confidential Classification**

Subsection 366.093(1), Florida Statutes, provides that "any records received by the

*[CLK Note: Confidential DNS not filed as of this date.]*  
*RM/glean*

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.

Under Section 366.093(3), Fla. Stats, information that is commercially sensitive to entities other than public utilities is recognized as proprietary confidential business information.

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This includes “trade secrets” (Section 366.093(3)(a)) and “information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information (Section 366.093(3)(e)). In addition, Section 366.093(3)(d) includes “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” as proprietary confidential business information.

### **Staff’s Third Request for Production No. 18**

PEF’s response to Staff’s Third Request for Production, number 18 should be afforded confidential treatment for the reasons set forth in the Affidavits of Daniel L. Roderick, Edward J. Hebner and Randolph D. Galm filed in support of PEF’s Request for Confidential Classification and for the following reasons. Part of this response contains information regarding a contractual arrangement between PEF and a provider of nuclear equipment and services that would adversely impact PEF’s competitive business interests if disclosed to the public. See Affidavit of Daniel L. Roderick at ¶ 5. PEF must be able to assure this vendor that sensitive business information, such as the terms of its contract, will be kept confidential. Id. Indeed, the contract at issue contains a confidentiality provision that prohibit the disclosure of the terms of the contract to third parties, and the third party with whom PEF has contracted considers this information to be a trade secret. Id.; Affidavits of Edward J. Hebner and Randolph D. Galm. PEF’s nuclear vendors have also testified that the information sought relates to their competitive interests and disclosure of that proprietary confidential business information would impair their competitive business interests. Affidavits of Edward J. Hebner and Randolph D. Galm.

Specifically, the response to Staff request for production number 18 are the Price Book and the transmittal letter of the Price Book provided by Stone & Webster and Westinghouse to Progress. The Price Book contains far more than prices; it includes construction processes, components, quantities, schedules, project timing, critical milestones, sequence of events,

logistics, project plans, patterns, compilations, programs, devices, methods, techniques, products, systems, processes and designs which both Stone & Webster and Westinghouse consider to be trade secrets. See § 366.093(3)(a), Fla. Stats; Affidavits of Hebner and Galm. In addition, the information in the Price Book and its transmittal letter is also commercially sensitive information relating to Stone & Webster's and Westinghouse's competitive interests, the disclosure of which could impair its competitive business, both in their dealing with progress and with other utilities in which it is in active negotiation. See § 366.093(3)(e), Fla. Stats; Affidavits of Hebner and Galm. The information at issue also relates to competitively negotiated contractual data and other contractual terms, the disclosure of which would impair the efforts of the Company to negotiate these contracts on favorable terms. See § 366.093(3)(d), Fla. Stats; Affidavit of Roderick at ¶ 5. If other 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. Id. Without PEF's measures to maintain the confidentiality of sensitive terms in contracts between PEF and this nuclear contractor, the Company's efforts to obtain competitive contracts for the Levy Nuclear Project could be undermined. Id.

Both Stone & Webster and Westinghouse undertake extensive procedures to protect this trade secret and competitive interest information. Affidavits of Hebner and Galm. Upon receipt of this confidential information, and with its own confidential information, strict procedures are established and followed to maintain the confidentiality 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. (Affidavit of Roderick at ¶ 6). At no time since receiving the information in question has the Company publicly disclosed that information. Id. The Company has treated and continues to treat the information at issue as confidential. Id.

### Conclusion

The competitive, confidential information at issue in this request fits the statutory definition of proprietary confidential business information under Section 366.093 and Rule 25-22.006, F.A.C. A slip sheet referencing the confidential documents for which PEF intends to request confidential classification, which PEF made available for review in Tallahassee, and which Staff reviewed, is enclosed herewith as Attachment "A." **This information should be accorded confidential treatment pending a decision on PEF's request by the Florida Public Service Commission.**

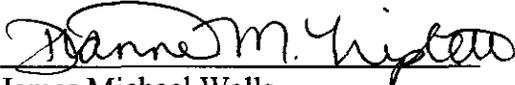
Additionally, Attachment B indicates that redacted copies of the confidential exhibit with the information that PEF intends to request confidential classification redacted by section page, or lines, has not been included since it would consist entirely of blank pages.

Attachment "C" hereto contains a justification matrix supporting PEF's request for confidential classification of the highlighted information contained in Attachment A.

WHEREFORE, PEF respectfully requests that the responses to Staff's Third Request for Production of Documents (Nos. 16-18), Request 18, described specifically in Attachment C, be classified as confidential for the reasons set forth above.

Respectfully submitted this 28<sup>th</sup> day of May, 2008.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic and U.S. Mail this 27<sup>th</sup> day of May, 2008 to all parties of record as indicated below.

  
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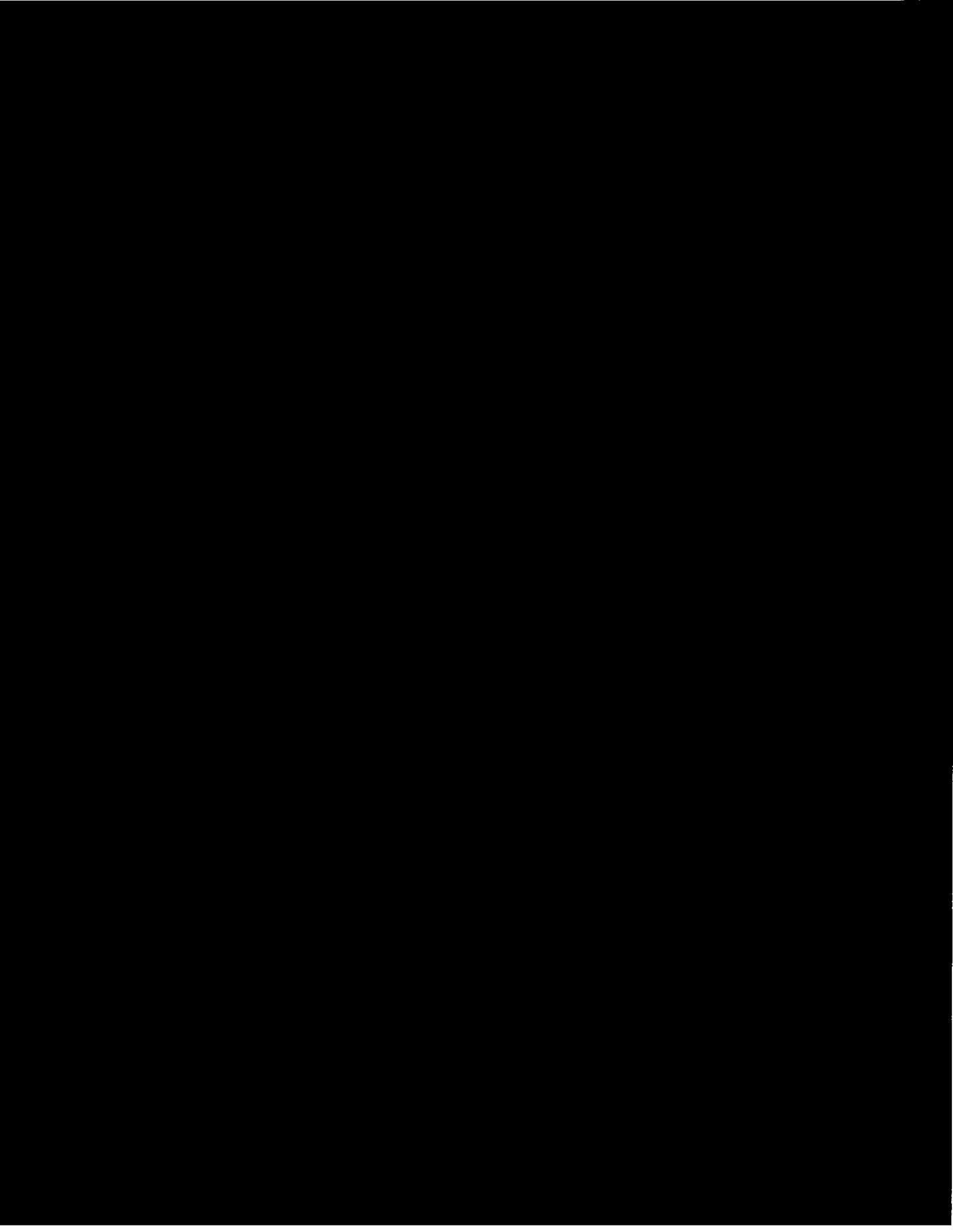
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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In re: Petition for determination of  
Need for Levy Units 1 and 2 Nuclear  
Power Plants

Docket No. 080148

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**PROGRESS ENERGY FLORIDA'S SEVENTH REQUEST FOR  
CONFIDENTIAL CLASSIFICATION**

**EXHIBIT B**

**ALL INFORMATION ON ALL  
CONFIDENTIAL DOCUMENTS IS  
CONFIDENTIAL AND THEREFORE  
REDACTED**

**ATTACHMENT C**

**PROGRESS ENERGY FLORIDA**

**In re: Petition for Determination of Need for  
Levy Units 1 and 2 Nuclear Power Plants - Docket 080148  
Seventh Request for Confidential Classification Justification Matrix**

<b>DOCUMENT/RESPONSES</b>	<b>PAGE/LINE</b>	<b>JUSTIFICATION</b>
PEF Response to Staff Third Request for Production No. 18	All information on all pages	<p>§366.093(3)(a), F.S. The document in question contains proprietary information relating to trade secrets, the disclosure of which would impair the competitive business of the provider/owner of the information.</p> <p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF'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 relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>