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COMMISSION CLERK

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

**DATE:** October 17, 2008

**TO:** Office of General Counsel (Bennett, Brubaker) *f w*

**FROM:** Division of Regulatory Compliance (Freeman, Vandiver)

**RE:** Docket No. 080009-EI, Progress Energy Florida, Inc.'s (Progress Energy Florida's or the Utility's) Request for Confidential Classification of Portions of the Staff Audit Report and Working Papers Prepared During the Progress Energy Florida, Inc. Nuclear Cost Recovery Audit as of December 31, 2007, Control No. 08-087-2-1, Documents Numbered 06453-08, 06454-08 and 06955-08

On July 17, 2008, when copies of certain portions of staff's audit report and working papers prepared during the "Progress Energy Florida, Inc. Nuclear Cost Recovery Audit as of December 31, 2007", were delivered to Progress Energy Florida at the audit exit conference, the Utility requested that these materials be temporarily exempted from public access in accordance with the provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On July 24, 2008, staff filed Documents Numbered 06453-08 and 06454-08 consisting of those specified portions of the staff audit working papers.

On August 7, 2008, Progress Energy Florida, Inc., filed a request pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, FAC, that portions of the audit report and working papers prepared by the staff receive a confidential classification. The Utility's request includes redacted copies for public inspection (Document No. 06956-08) and highlighted copies (Document No. 06955-08).

Documents numbered 06453-08, 06454-08 and 06955-08 are currently held by the Office of the Commission Clerk as confidential pending resolution of the Utility's request for a confidential classification.

Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific items of a statutory provision. Subsections 366.093(3)(d) and (e), F.S., provide the following exemptions.

- COM \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_
- RCP \_\_\_\_\_
- SSC \_\_\_\_\_
- SGA \_\_\_\_\_
- ADM \_\_\_\_\_
- CLK W. Clear

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Subsection 366.093, F.S., provides; *“Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person’s or company’s business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes but is not limited to:*

....

*(d) 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.*

*(e) Information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider of the information....”*

According to Section 366.093, F.S., and Rule 25-22.006, FAC, the utility has the burden of demonstrating that materials qualify for confidential classification. According to Rule 25-22.006, FAC, the utility must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility, the provider of the information or the ratepayer harm.

### **Staff Analysis of the Request**

Reading the Progress Energy Florida, Inc. filing reveals the sensitive material consists of:

Sensitive Contractual Information and Cost Information pertaining to Real Estate Transactions

By way of an affidavit, Mr. Daniel R. Roderick, Vice President of Nuclear Projects and Construction for Progress Energy Florida Inc.’s Nuclear Plant, identifies sensitive contractual and cost information within the audit report and working papers titled: “Audit Report Disclosure No. 1 – Land and Land Rights”, “Document Request and Response”, “Response to Request”, “Closing Statements”, and “Page From Land Sales Contract.”

Mr. Roderick points out that the land sales contracts being reviewed by the staff are covered by confidentiality agreements between Progress Energy Florida and the parties selling the land. The Utility seeks to keep confidential sensitive proprietary portions of these land sales contracts disclosing quantities, pricing, and other proprietary contract terms and provisions. Further, the Utility explains release of this information would impair the Utility’s ability to contract for real estate on competitive and favorable terms and asserts release of this material would impair the competitive business of the provider of the information.

**Staff Analysis of the Request (continued)**

Subsection 366.093(3)(d), F. S., provides that the Commission may grant a confidential classification to sensitive contractual information to include bidding information if release of that information will impair the ability of the utility or its affiliates to contract on favorable terms. Subsection 366.093(3)(e), F. S., provides that the Commission may grant a confidential classification to sensitive information concerning competitive business interests if release of that information will harm the provider of that information.

Section 201.02, F.S., provides that a documentary stamp tax will be collected by each Florida County when lands and other real estate is granted, assigned, transferred or otherwise conveyed to another. This documentary stamp tax is charged based upon the amount of consideration paid or to be paid for the real estate. You may purchase more documentary stamps than necessary for a given transaction, but you may not purchase fewer documentary stamps than is required. Thus, the total consideration paid for a piece of property may be reasonably ascertained from public records held by the Florida County where the land is located.

Here, the utility is not requesting a confidential classification for the total price paid for land or for the amount of acreage purchased. Rather, the utility is asking for a confidential classification for certain contractual provisions which reveal the process used by the Utility and the seller to arrive at a fair price for the land. Release of this type of information reveals contractual and competitive business strategies release of which could impair the contracting ability of the Utility or which could impair the competitive business of the provider of the information. This type of information is eligible for a confidential classification pursuant to the provisions of Subsections 366.093(3)(d) and (e), Florida Statutes. Therefore, staff recommends that these land sales contractual provisions be granted a confidential classification.

Secondly, the Utility points out these land sales contracts are subject to a confidentiality agreement between the Utility and the land sellers. Such a non disclosure agreement is not self-actuating. For material to be eligible for a confidential classification from the Commission, the material must meet the requirements set out by Subsection 366.093(3), Florida Statutes, and Rule 25-22.006, FAC. That means the material must also be of a type such that its release would cause harm to the ratepayers or its owner's business operations if disclosed. Thus a non disclosure agreement indicates that sensitive material is present, but that agreement does not guarantee the information will be granted a confidential classification because the material must also meet the requirements of the Florida Statutes and the Commission's rule. (Also see prior Commission decision found in Commission Order No. PSC-93-1311-FOF-TL, issued September 9, 1993, in Dockets Numbered 920260-TL, 910163-TL, 910727-TL, and 900960-TL.)

**Bank Account Numbers Returned**

Progress Energy has requested that certain bank account numbers retained by the staff in the audit working papers be granted a confidential classification. It is not necessary for the Commission to retain this type of extremely sensitive information to conduct its business. Staff auditors are instructed not to retain bank account numbers unless it is explicitly necessary to support the audit. We have returned the bank account numbers found within staff's working papers (Document No. 06454-08) to Progress Energy.

**Information Held as Confidential**

To qualify as proprietary confidential business information, the material must be held as private and not be released to the public. The Utility and Utility Vice President Roderick assert that this information has not been released the public and the information and contracts are treated and continue to be treated as private.

**Duration of the Confidential Classification Period**

The Utility did not specify the length of any requested confidential classification. According to the provisions of Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Without cause shown for a longer period, we recommend that the period of confidential classification be set as 18 months. As deemed necessary, the Utility may request a further extension of the confidential classification before the classification period tolls.

**Staff Recommendation**

Based upon reading the filing, and for the reasons presented above, we recommend the Utility's request be granted and that the identified material be granted a confidential classification for 18 months.

A detailed recommendation follows:

**Detailed Recommendation**

Working Paper Number	Title	Page	Lines	Recommendation	Type of Material
Documents Numbered 06453-08 and 06955-08					
Audit Report	Disclosure No. 1 Land and Land Rights	8	1 line	Grant Confidential Classification for 18 months	Sensitive Contractual and Competitive Business Information

Working Paper Number	Title	Page	Lines	Recommendation	Type of Material
Documents Numbered 06454-08 and 06955-08					
1	Annotated Audit Report Disclosure No. 1 Land and Land Rights	8	1 line	Grant Confidential Classification for 18 months	Sensitive Contractual and Competitive Business Information
10-8	Document Request and Response	2	1 line	Grant Confidential Classification for 18 months  <i>Note: Banking information from document No. 06454-08, WP 10-8, page 2, has been returned to the utility.</i>	Sensitive Contractual and Competitive Business Information
10-8	Document Request and Response	4	1 line	Grant Confidential Classification for 18 months  <i>Note: Banking information from Document No. 06454-08, WP 10-8, page 4, has been returned to the utility.</i>	Sensitive Contractual and Competitive Business Information
10-10	Response to Request	2	4 columns	Grant Confidential Classification for 18 months	Sensitive Contractual and Competitive Business Information
10-10	Response to Request	3	2 lines	Grant Confidential Classification for 18 months	Sensitive Contractual and Competitive Business Information
10-10	Response to Request	32	1 line	Grant Confidential Classification for 18 months  <i>Note: Banking information from Document No. 06454-08, WP 10-10, page 32, has been returned to the utility.</i>	Sensitive Contractual and Competitive Business Information

Working Paper Number	Title	Page	Lines	Recommendation	Type of Material
Documents Numbered 06454-08 and 06955-08					
10-10	Response to Request	33	1 line	Grant Confidential Classification for 18 months  <i>Note: Banking information from document No. 06454-08, WP 10-10. page 33, has been returned to the utility.</i>	Sensitive Contractual and Competitive Business Information
19-3	Closing Statements	1	4 lines	Grant Confidential Classification for 18 months	Sensitive Contractual and Competitive Business Information
19-3	Closing Statements	2	4 lines	Grant Confidential Classification for 18 months	Sensitive Contractual and Competitive Business Information
19-3	Closing Statements	4	2 lines	Grant Confidential Classification for 18 months	Sensitive Contractual and Competitive Business Information
19-3	Closing Statements	5	4 lines	Grant Confidential Classification for 18 months	Sensitive Contractual and Competitive Business Information
19-3	Closing Statements	6	5 lines	Grant Confidential Classification for 18 months	Sensitive Contractual and Competitive Business Information
19-3	Closing Statements	11	2 lines	Grant Confidential Classification for 18 months	Sensitive Contractual and Competitive Business Information
19-3	Closing Statements	12	13 lines	Grant Confidential Classification for 18 months	Sensitive Contractual and Competitive Business Information
19-4	Page from Land Sales Contract	1	1 area	Grant Confidential Classification for 18 months	Sensitive Contractual and Competitive Business Information

A temporary copy of this recommendation will be held for a short period at the following address  
I: 06955-08.2007 progress nuclear recovery raf.doc

CC: Division of Regulatory Compliance (Rohrbacher)  
Office of Commission Clerk (Cole, McLean)