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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

COMMISSION CLERK

In re: Petition for Determination of Need of Hines Unit 4 Power Plant

DOCKET NO. 040817-EI

Submitted for filing: August 5, 2004

PROGRESS ENERGY FLORIDA'S FIRST 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 of the redacted portion of Appendix J to the Need Study, which contains the detailed description of the proposals PEF received in response to the Company's Request for Proposals issued on October 7, 2003, pursuant to Rule 25-22.082, F.A.C. The unredacted appendix is being filed under seal with the Commission on a confidential basis because the bidders who submitted the proposals in response to the Company's RFP asked the Company to keep the information in the appendix confidential by declaring that the terms of their proposals were confidential.

Introduction

In its RFP, the Company provided for the confidentiality of the bids it received in

CMP response to the RFP (along with any other information provided by the bidders during the course of the Company's evaluation process). Specifically, the RFP provided that:

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The Bidders should mark all confidential and proprietary information contained in its proposals as "Confidential." While PEF will use its best efforts to protect the confidentiality of such information and only release such information to the members of the RFP Project Team, management, agents and contractors, and, as necessary and consistent with applicable laws and regulations, to its affiliates and regulatory commissions, in no event shall PEF be liable to a Bidder for any damages of whatsoever kind resulting from PEF's failure to protect the confidentiality of Bidder's information. By submitting a proposal, the Bidder agrees to allow PEF to use all information provided and the results of the

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evaluation as evidence in any proceeding before the Florida Public Service Commission (FPSC). To the extent PEF wishes to use information that a Bidder considers confidential, PEF will petition the Commission to treat such information as confidential and to limit its dissemination, but PEF makes no assurance of the outcome of any such petition.

(PEF 2007 RFP, page III-1, Appendix H to Need Study, Exhibit __ (SSW-1) to the Testimony of Samuel S. Waters). The Company's RFP was issued on October 7, 2003, and a deadline of December 16, 2003 was established for the submittal of bids in response to the RFP. Four bidders submitted proposals for PEF's consideration. All of the bidders requested confidential treatment for some or all of the terms of their proposals as confidential information, and the Company has not disclosed such information in the bids to the public.

The Confidentiality of the Bids

Subsection 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 concerning bids" 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.

The terms of the bidders' proposals in response to the Company's RFP fit the statutory definition of proprietary confidential business information. Accordingly, the detailed description of the proposals is entitled to protection under Section 366.093 and Rule 25-22.006, F.A.C.

The very purpose of the RFP was to obtain potentially favorable contract terms for supply-side alternatives to the Company's next-planned generating unit -- the Hines 4 combined cycle unit -- to provide the 517 megawatts ("MW") (winter rating) of capacity required to meet PEF's reliability need in the winter of 2007/08. The RFP was issued pursuant to the Commission's "bid rule," which is intended to provide a procedure under which a utility can "solicit and screen, for subsequent contract negotiations, competitive proposals for supply-side alternatives to the utility's next planned generating unit." Rule 25-22.082(2)(c), F.A.C. [emphasis supplied]. Through its RFP, the Company endeavored to attract all proposals that might offer lower-cost, supply-side resources or provide more economic value to PEF and its ratepayers than its next-planned generating unit.

In order to obtain such proposals, however, PEF must be able to assure potential bidders that the terms of their bids will be kept confidential. To this end, PEF included a confidentiality provision in its RFP (as stated above). The purpose behind including that confidentiality provision in the RFP was to provide bidders the assurance that the terms of their bids would be kept confidential and would not be publicly disclosed.

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 engineering, construction, cost, or other information necessary for the utility to fully understand and accurately assess the costs and benefits of their proposals. 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. (Affidavit of Daniel J. Roeder, ¶ 5). In either case, without the assurance of confidentiality for the terms of the bids received in response to an RFP, the utility's "efforts ... to contract for goods or services on favorable terms" will be impaired. § 366.093, Fla. Stats.

For all these reasons, PEF declared its intent in its RFP to keep the terms of the bidders' proposals in response to the RFP confidential. PEF has treated the bids it received as confidential. (Affidavit of Daniel J. Roeder, ¶ 6). Upon receipt of the proposals, strict procedures were established and followed to maintain the confidentiality of the proposals, including restricting access to those persons who needed the information to assist the Company in its evaluation of the proposals and restricting the number of, and access to, copies of them. Id. At no time since receiving the bids has the Company publicly disclosed the terms of the proposals, even to the other bidders. Id. The Company has treated and continues to treat the bidders' proposals as confidential. Id.

Attachment A hereto contains a justification matrix supporting PEF's request for confidential classification of the highlighted information in the confidential Appendix J to the Need Study submitted with PEF's Notice of Intent to Request Confidential Classification filed herewith. The confidential information is identified by appendix number, page, and/or line, where appropriate (for example, in place of certain pages in the confidential appendix which would contain virtually nothing but blank pages if the information the bidders requested PEF to keep confidential was redacted, PEF has included a statement explaining the breadth of the confidential classification).

WHEREFORE, PEF respectfully requests that the confidential appendix to the Need Study be classified as confidential for the reasons set forth above.

Respectfully submitted this 5th day of August, 2004.

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ATTACHMENT A

DOCUMENTS	PAGE/LINE	JUSTIFICATION
Appendix J to Need Study	Pages 1-5 (excluding header and text lines 1-6 on page 1; text lines 10-15 and parts of lines 16 and 21 on page 2; text lines 3-5, parts of lines 7 and 8, lines 16-22, parts of lines 24-25, and lines 28-29 on page 3; textlines 1-5 and lines 11-21 on page 4; and text lines 10-11 and part of line 12 on page 5)	§ 366.093(3)(d) This is detailed information largely quoted directly from Bidders A-D's proposals in response to the Request for Proposal ("RFP") issued by PEF on October 7, 2003, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.