

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: NUCLEAR POWER PLANT COST
RECOVERY CLAUSE

Docket No. 09-009-0000
Submitted for Filing June 25, 2009

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**PROGRESS ENERGY FLORIDA'S SIXTH REQUEST FOR CONFIDENTIAL
CLASSIFICATION REGARDING THE DOCUMENTS PRODUCED IN RESPONSE TO
STAFF'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 12-21) AND
PROGRESS ENERGY FLORIDA'S SUPPLEMENTAL RESPONSE TO OPC'S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS (1-52)**

Progress Energy Florida, Inc. ("PEF" or the "Company"), pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(3), Florida Administrative Code, requests confidential classification of the documents produced in response to Staff's Third Request for Production of Documents (Nos. 12-21), specifically request number 12, and the documents produced in PEF's supplemental response to OPC's First Request for Production of Documents (Nos. 1-52), specifically request number 47. Portions of the documents and information contained in these responses contain proprietary and confidential business information which the Company does not disclose to the public, including contractual data the disclosure of which would impair PEF's ability to contract for necessary goods and services and in many cases would violate contractual confidentiality clauses, internal audit reports and controls, and other information the disclosure of which would harm the Company's competitive business interests.

With respect to the confidential information and documents at issue, PEF filed its Fifth and Sixth Notices of Intent to Request Confidential Classification on June 4, 2009. Pursuant to Rule 25-22.006(3), Florida Administrative Code, this request is timely. PEF hereby submits the following in support of its confidentiality request.

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OPC _____
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BASIS FOR CONFIDENTIAL CLASSIFICATION

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. Stat. 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. Stat. Specifically, “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” is defined as proprietary confidential business information. § 366.093(3)(d), Fla. Stat. Additionally, section 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.

The responsive documents to Staff’s request number 12 contain information concerning contractual data, the disclosure of which would impair PEF’s efforts to contract for goods and services on favorable terms. Specifically, these documents contain an external review of certain of PEF’s contractual agreements, provided to PEF by a third party pursuant to a contractually agreed upon confidentiality provision, the release of which would adversely impact PEF’s competitive business interests if disclosed to the public. If other parties were made aware of confidential contractual terms and arrangements that PEF has with other parties, including but not limited to the duration of contracts, the quantity and pricing terms, they may offer PEF less

competitive contractual terms in future contractual negotiations. See Affidavit of Garry Miller, ¶ 4. Furthermore, the disclosure of these confidential contractual terms would be a violation of contractual confidentiality provisions entered by PEF and the other contractual parties. See id. at ¶ 5. Accordingly, these documents should be afforded confidential treatment pursuant to section 366.093(3)(d), Florida Statutes.

PEF's supplemental response to OPC's request number 47 contain proprietary and confidential business information which the Company does not disclose to the public, including contractual data the disclosure of which would impair PEF's ability to contract for necessary goods and services and in many cases would violate contractual confidentiality clauses, internal audit reports and controls, and other information the disclosure of which would harm the Company's competitive business interests.

As an example, these documents contain Project Assurance reports and reports to the Senior Management Committee, the disclosure of which would impair the Company's ability to effectively audit and oversee its major projects, by eliminating the confidentiality required for complete cooperation with auditors. See Affidavit of Raymond Phillips, ¶ 4. Also included in these responsive documents are extremely sensitive Business Analysis Packages, the disclosure of which would undermine PEF's competitive interests by providing competitors and parties with whom PEF would wish to contract PEF's budgeting assumptions, information regarding project risk analyses, and other assumptions vital to project viability. See Affidavit of Jon Franke, ¶ 4; Affidavit of Miller, ¶ 4. Disclosure of this information would have a detrimental effect on PEF, its ratepayers, and its stakeholders. Finally, the responsive documents contain information regarding contractual undertakings that are not only of a sensitive business nature, but are also the subject of confidentiality provisions, and therefore the disclosure of which would

harm PEF's competitive business interests, as well as constitute a breach of the aforementioned confidentiality provisions. See Affidavit of Miller, ¶ 4; § 366.093(3)(d), Fla. Stat.

PEF has kept confidential and has not publicly disclosed the confidential information and documents at issue here. See Affidavit of Franke, at ¶ 5; Affidavit of Miller, at ¶ 5; Affidavit of Phillips, at ¶ 5. Absent such measures, PEF would run the risk that sensitive business information regarding what it is willing to pay for certain goods and services, as well as what the Company is willing to accept as payment for certain goods and/or services, would be made to available to the public and, as a result, other potential suppliers, vendors, and/or purchasers of such services could change their position in future negotiations with PEF. Without PEF's measures to maintain the confidentiality of sensitive information in these documents, the Company's efforts to obtain competitive contracts and to obtain competitively priced goods and services would be undermined. In addition, by the terms of the contracts governing the information produced in response to these requests, all parties, including PEF, have agreed to protect the proprietary and confidential information, defined to include pricing arrangements, from public disclosure. See Affidavit of Franke, at ¶ 5; Affidavit of Miller, at ¶ 5.

Upon receipt of this confidential information, strict procedures are established and followed to maintain the confidentiality of the information provided, including restricting access to those persons who need the information to assist the Company. See Affidavit of Franke, at ¶ 5; Affidavit of Miller, at ¶ 5; Affidavit of Phillips, at ¶ 5. At no time since receiving the information in question has the Company publicly disclosed that information. See Affidavit of Franke, at ¶ 5; Affidavit of Miller, at ¶ 5; Affidavit of Phillips, at ¶ 5. The Company has treated and continues to treat the information at issue as confidential. See Affidavit of Franke, at ¶ 5; Affidavit of Miller, at ¶ 5; Affidavit of Phillips, at ¶ 5.

CONCLUSION

The competitive, confidential information at issue in this request fits the statutory definition of proprietary confidential business information under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, and that information should be afforded confidential classification. In support of this motion, PEF has enclosed the following:

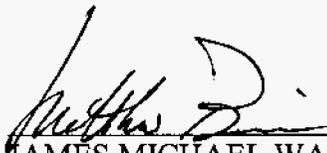
(1) A separate, sealed envelope containing one copy of the confidential Appendix A to PEF's Request for Confidential Classification for which PEF has requested confidential classification with the appropriate section, pages, or lines containing the confidential information highlighted. **This information should be accorded confidential treatment pending a decision on PEF's request by the Florida Public Service Commission;**

(2) Two copies of the documents with the information for which PEF has requested confidential classification redacted by section, page or lines, where appropriate, as Appendix B; and,

(3) A justification matrix supporting PEF's Request for Confidential Classification of the highlighted information contained in confidential Appendix A, as Appendix C.

WHEREFORE, PEF respectfully requests that the redacted portions of the Company's response to Staff's Third Request for Production (Nos. 12-21), specifically request number 12, and its supplemental response to OPC's First Request for Production (Nos. 1-52), specifically number 47, be classified as confidential for the reasons set forth above.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic and U.S. Mail this 25th day of June, 2009.



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Public Service Commission

ACKNOWLEDGEMENT

DATE: June 26, 2009

TO: James Micael Walls, Carlton Fields

FROM: Ruth Nettles, Office of Commission Clerk

RE: **Acknowledgement of Receipt of Confidential Filing**

This will acknowledge receipt of a **CONFIDENTIAL DOCUMENT** filed in Docket Number 090009 or, if filed in an undocketed matter, concerning documents produced in response to staff's 3rd request for POD's, Nos. 12-21, specifically No. 12; and supplemental response to OPC's 1st Request for PODs, Nos. 1-52, specifically, No. 47 (3CDs), and filed on behalf of Progress. The document will be maintained in locked storage.

If you have any questions regarding this document, please contact Marguerite Lockard, Deputy Clerk, at (850) 413-6770.

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