

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Nuclear Power Plant Cost Recovery Clause

Docket No. 110009-EI Submitted for Filing: June 23, 2011

COMMISSION CLERK

PROGRESS ENERGY FLORIDA, INC.'S NINTH REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING PORTIONS OF ITS RESPONSES TO CITIZENS' FOURTH SET OF INTERROGATORIES (NOS. 33-60) AND FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 20-26)

Progress Energy Florida, Inc. ("PEF" or the "Company"), pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(3), Florida Administrative Code, files this Request for Confidential Classification regarding portions of its responses to the Office of Public Counsel's ("Citizens") Fourth Set of Interrogatories (Nos. 33-60), specifically number 36, documents produced in response to number 55, and Citizens' Fourth Request for Production of Documents (Nos. 20-26), specifically numbers 21 and 23 (the "Request"). These responses contain confidential contractual information, including information received from third-party vendors pursuant to contractual confidentiality and non-disclosure provisions, the disclosure of which would impair PEF's competitive business interests, as well as other information the disclosure of which would harm the Company's competitive business interests, including presentations provided to the Senior Management Committee ("SMC") to help inform and guide the Company's upper-level decision-makers. These responses meet the definition of proprietary confidential business information per section 366.093(3), Florida Statutes. The unredacted documents and responses are being filed under seal with the Commission on a confidential basis to keep the competitive business information in those documents and responses confidential.

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claim of confidentiality
notice of intent
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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 customers 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.

Portions of the aforementioned responses and responsive documents (collectively the “responsive information”) should be afforded confidential classification for the reasons set forth in the Affidavit of John Elnitsky, filed in support of PEF’s Ninth Request for Confidential Classification, and for the following reasons.

The responses contain sensitive information the Company received from third-party vendors pursuant to confidentiality and non-disclosure agreements. PEF considers this information to confidential and proprietary and continues to take steps to protect against its public disclosure, including limiting the personnel who have access to this information.

Affidavit of Elnitsky ¶¶ 4-6. The information is used to provide the basis for the Company's planning decisions and without such information the Company would be handicapped in its ability to plan for the Company's future. Public release of this information would harm the Company's ability to contract for the purchase and use of such information by signaling to the vendors that provide this information that the Company will not be able to maintain its confidentiality. See id. at ¶ 4. Accordingly, this information should be afforded confidential treatment by the Commission. See § 366.093(3)(d), Fla. Stat.

Additionally, the responsive information includes presentations and other materials provided to the Company's SMC to assist with upper-level decision making. This information contains confidential and proprietary information including risk analyses, potential alternatives for the Company's future, and confidential contractual provisions. The public release of this sensitive information would put the Company at a competitive disadvantage when competing, or attempting to contract, with other parties, and would provide other parties with valuable insight into the Company's upper-level decision making. See Affidavit of Elnitsky, ¶ 5. The Company treats this information as confidential and does not allow its publication to the public. Moreover, this information meets the definition of proprietary confidential business information under section 366.093(3)(d) and (e), Florida Statutes.

Also, the responsive information includes presentations provided to potential joint-owners of the Levy Nuclear Project ("LNP"). At this time, contractual negotiations are ongoing with potential joint owners; the details of those negotiations, including the identities of the potential joint owners, are being maintained in strict confidence. Public release of this information could lead the parties PEF is negotiating with to end those negotiations. This would put the Company at a competitive disadvantage when competing, or attempting to

contract, with these other parties, or any other potential joint owners. Affidavit of Elnitsky, ¶ 6. The Company treats this information as confidential and does not allow its publication to the public. Moreover, this information meets the definition of proprietary confidential business information under section 366.093(3)(d), Florida Statutes.

Further, the Company has established and follows strict procedures to maintain the confidentiality of the terms of all of the confidential documents and information at issue, including restricting access to those persons who need the information and documents to assist the Company. See Affidavit of Elnitsky, ¶ 7.

At no time has the Company publicly disclosed the confidential information or documents at issue; PEF has treated and continues to treat the information and documents at issue as confidential. See id.

PEF requests this information be granted confidential treatment by the Commission.

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, F.A.C., and therefore 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 which PEF intends to request 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 Commission;**


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

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

WHEREFORE, PEF respectfully requests that the redacted portions of its responses to Citizens' Fourth Set of Interrogatories (Nos. 33-60), specifically number 36, documents produced in response to number 55, and Citizens' Fourth Request for Production of Documents (Nos. 20-26), specifically numbers 21 and 23, be classified as confidential for the reasons set forth above.

Respectfully submitted this 23rd day of June, 2011.

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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 23rd day of June, 2011.



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