

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

RECEIVED FPSC
09 MAY 22 PM 2:57
COMMISSION
CLERK

IN RE: NUCLEAR POWER PLANT COST
RECOVERY CLAUSE

Docket No. 090009-EI
Submitted for Filing May 22, 2009

PROGRESS ENERGY FLORIDA'S THIRD REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING THE DIRECT TESTIMONY OF GARRY MILLER, PORTIONS OF EXHIBITS TO THE DIRECT TESTIMONY OF THOMAS FOSTER, PORTIONS OF THE DOCUMENTS PRODUCED IN RESPONSE TO OPC'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-52), OPC'S FIRST SET OF INTERROGATORIES (NOS. 1-19), AND STAFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 2-11)

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 direct testimony of Garry Miller, portions of the exhibits to the direct testimony of Thomas Foster, portions of the documents produced in response to OPC's First Request for Production of Documents (Nos. 1-52), portions of the responses to OPC's First Set of Interrogatories (Nos. 1-19), and portions of the documents produced in response to Staff's Second Request for Production of Documents (Nos. 2-11). Specifically, such responses contain confidential information regarding contracts between PEF and outside vendors, forecasting data and projected budgets and business plans, and other sensitive business information, such as internal audits, the disclosure of which would compromise PEF's competitive business interests. Accordingly, PEF hereby submits the following.

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

COLL
ECF
GCL
OPC
BCI
SSC
SGA
ADM
CLK

DOCUMENT NUMBER-DATE
05147 MAY 22 09
FPSC-COMMISSION CLERK

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.

Portions of the Direct Testimony of Garry Miller

Portions of the direct testimony of Garry Miller should be afforded confidential classification for the reasons set forth in the Affidavit of Garry Miller filed in support of this Request for Confidential Classification, and for the following reasons. Portions of Mr. Miller’s testimony contain proprietary confidential business information, the disclosure of which would harm the Company’s competitive business interests. See Affidavit of Garry Miller, ¶ 3.

Specifically, a portion of Mr. Miller’s testimony relates to negotiations PEF is undertaking with various third parties in an attempt to reach a joint-ownership agreement for the Levy Nuclear Project (“LNP”). Disclosure of this information could have a negative impact on these negotiations. PEF has treated, and continues to treat, this information as confidential and proprietary, and has not released this information to the public. Absent such measures, PEF’s

ability to negotiate competitive and beneficial contracts would be severely impaired. See id. at ¶¶ 3, 5.

Portions of the Exhibits to the Direct Testimony of Thomas Foster

Portions of the exhibits to the direct testimony of Thomas Foster (the “exhibits”) should be afforded confidential classification for the reasons set forth in the Affidavits of Garry Miller, Gary Furman, and Jon Franke filed in support of this Request for Confidential Classification, and for the following reasons. Portions of the exhibits contain confidential contractual information, the disclosure of which would harm the Company’s competitive business interests, and would violate contractual confidentiality provisions. See Affidavit of Miller, ¶ 3; Affidavit of Furman, ¶ 3; Affidavit of Franke, ¶ 3.

Specifically, portions of the exhibits at issue contain confidential contractual information including, but not limited to, the time frame that certain contracts will be in effect, as well as the pricing arrangements between PEF and third parties. PEF negotiates each of its contracts to obtain the most competitive terms available to benefit PEF and its ratepayers. In order to successfully obtain such contracts, however, PEF must be able to assure the other parties to the contracts that the sensitive business information contained therein, such as quantity and pricing terms, will remain confidential. PEF has kept confidential and has not publicly disclosed the proprietary contract terms and provisions at issue here. 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

terms in these contracts, the Company's efforts to obtain competitive contracts would be undermined. In addition, by the terms of these contracts, all parties, including PEF, have agreed to protect the proprietary and confidential information, defined to include pricing arrangements, from public disclosure. See Affidavit of Miller, ¶ 5; Affidavit of Franke, ¶ 4; Affidavit of Furman, ¶ 4.

Internal Auditing Controls and Reports

Portions of the documents produced in response to OPC's First Request for Production of Documents (Nos. 1-52), specifically request numbers 1, 16, 21, 25, 27, 28, 31 and 47, and Staff's Second Request for Production of Documents (Nos. 2-11), specifically request number 9, should be afforded confidential treatment for the reasons set forth in the affidavit of Raymond Phillips filed in support of PEF's Third Request for Confidential Classification and for the following reasons.

Specifically, these responsive documents contain internal assessments made by PEF regarding, *inter alia*, the Company's major projects. Public disclosure of the documents and information in question would compromise PEF's ability to effectively audit the Company's major projects. If the Company were to know that its internal auditing controls and process were subject to public disclosure, it would compromise the level of cooperation needed with auditors to efficiently conduct audits. Such information is protected from disclosure by section 366.093(3)(b), Florida Statutes. See Affidavit of Phillips, ¶ 4.

Information Concerning Bids or Other Contractual Data

Portions of the documents produced in response to OPC's First Request for Production of Documents (Nos. 1-52), specifically request numbers 6, 12, 13, 14, 15, 20, 24, 33, 36, 37, 38, 39, 43 and 47, information included in the responses to OPC's First Set of Interrogatories (Nos. 1-

19), specifically numbers 2, 3, 4, 5 and 6, and documents produced in response to Staff's Second Request for Production of Documents (Nos. 2-11), specifically request numbers 6, 7 and 8, should be afforded confidential treatment for the reasons set forth in the affidavits of Garry Miller, Gary Furman, and Jon Franke, filed in support of PEF's Third Request for Confidential Classification and for the following reasons.

These responsive documents 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 information regarding competitive contractual provisions between PEF and third parties, as well as information related to bids to supply goods and services, that 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 Miller, ¶ 5; Affidavit of Furman, ¶ 4; and Affidavit of Franke, ¶ 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 Affidavit of Miller, ¶ 5; Affidavit of Furman, ¶ 4; and Affidavit of Franke, ¶ 4. Accordingly, these documents should be afforded confidential treatment pursuant to section 366.093(3)(d), Florida Statutes.

**Information Relating to Competitive Interests, the Disclosure of Which
Would Impair the Competitive Business of PEF**

Portions of the documents produced in response to OPC's First Request for Production of Documents (Nos. 1-52), specifically request numbers 4, 5, 6, 7, 12, 14, 28, 29, 31, 36, 39, 47 and 51, information provided in response to OPC's First Set of Interrogatories (Nos. 1-19),

specifically number 4, and documents produced in response to Staff's Second Request for Production of Documents (Nos. 2-11), specifically request numbers 5, 8 and 9, should be afforded confidential classification for the reasons set forth in the affidavits of Jon Franke and Garry Miller filed in support of PEF's Third Request for Confidential Classification and for the following reasons.

More specifically, portions of the documents produced in response to these requests contain confidential information relating PEF's competitive business interests, such as information pertaining to the management review of the Crystal River 3 ("CR3") Extended Power Uprate ("EPU"), including price estimates, project timelines and market predictions. The public disclosure of this type of information and other business plans, strategies and/or analyses could lead potential suppliers of necessary goods and services to alter their behavior in the market place with respect to activities such as the pricing of said goods and services. Additionally, PEF's competitors for necessary goods and services may adjust their level of activity or consumption in the relevant markets, thereby driving prices up and/or availability down. See Affidavit of Franke, ¶ 4; Affidavit of Miller, ¶ 5.

PEF has kept confidential and has not publicly disclosed the confidential information and documents at issue here. 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. Further, the disclosure of the competitive business interests, internal audit controls and reports at issue in this request would severely impair the ability of PEF to continue to operate a fiscally viable entity and to

attract investor capital, ultimately harming PEF's stakeholders and ratepayers. 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 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, ¶ 4; Affidavit of Miller, ¶ 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, e.g., Affidavit of Furman, ¶ 5; Affidavit of Franke, ¶ 5; Affidavit of Miller, ¶ 6. At no time since receiving the information in question has the Company publicly disclosed that information. See, e.g., Affidavit of Furman, ¶ 5; Affidavit of Franke, ¶ 5; Affidavit of Miller, ¶ 6. The Company has treated and continues to treat the information at issue as confidential. See, e.g., Affidavit of Furman, ¶ 5; Affidavit of Franke, ¶ 5; Affidavit of Miller, ¶ 6.

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

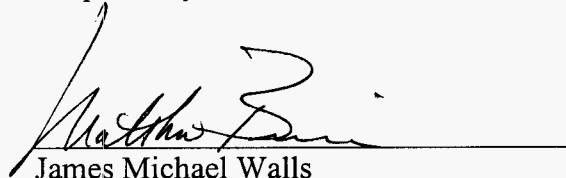
highlighted. **This information should be accorded confidential treatment pending a decision on PEF's request by the Florida Public Service Commission;**

(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 Direct Testimony of Garry Miller, the Exhibits to the Direct Testimony of Thomas Foster, the Company's responses to OPC's First Request for Production (Nos. 1-52), First Set of Interrogatories (Nos. 1-19), and Staff's Second Request for Production of Documents (Nos. 2-11) be classified as confidential for the reasons set forth above.

Respectfully submitted,



James Michael Walls
mwalls@carltonfields.com
Florida Bar No. 0706242
Dianne M. Triplett
dtriplett@carltonfields.com
Florida Bar No. 0872431
Matthew Bernier
mbernier@carltonfields.com
Florida Bar No. 0059886
Carlton Fields
4221 West Boy Scout Blvd.
P.O. Box 3239
Tampa, FL 33607
(813) 223-7000/(813) 229-4133 (fax)

R. Alexander Glenn
alex.glenn@pgnmail.com
John T. Burnett
john.burnett@pgnmail.com
Progress Energy Service Company, LLC
Post Office Box 14042
St. Petersburg, Florida 33733-4042
Telephone: 727-820-5184
Facsimile: 727-820-5249
Attorneys for
PROGRESS ENERGY FLORIDA, INC.

Paul Lewis Jr.
Paul.lewisjr@pgnmail.com
Progress Energy Service Company, LLC
106 E. College Avenue, Suite 800

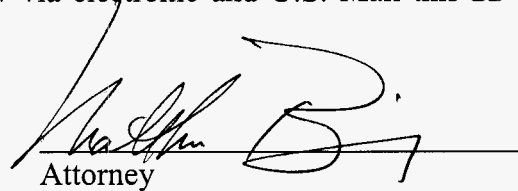
Richard Melson
rick@rmelsonlaw.com

Tallahassee, FL 32301
(850) 222-8738/(850) 222-9768 (fax)

Florida Bar No. 0201243
705 Piedmont Drive
Tallahassee, FL 32312
(850) 894-1351

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 22nd day of May, 2009.



Attorney

Mr. Paul Lewis, Jr.
Progress Energy Florida, Inc.
106 East College Avenue, Ste. 800
Tallahassee, FL 32301-7740
Phone: (850) 222-8738
Facsimile: (850) 222-9768
Email: paul.lewisjr@pgnmail.com

Keino Young
Lisa Bennett
Jennifer Brubaker
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399
Phone: (850) 413-6218
Facsimile: (850) 413-6184
Email: kyoung@psc.state.fl.us
lbennett@psc.state.fl.us
Jbrubake@psc.state.fl.us

Charles Rehwinkle
Associate Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400
Phone: (850) 488-9330
Email: rehwinkle.charles@leg.state.fl.us

Bryan S. Anderson
Jessica Cano
Florida Power & Light
700 Universe Boulevard
Juno Beach, FL 33408-0420
Phone: (561) 691-7101
Facsimile: (561) 691-7135
Email: bryan.anderson@fpl.com
Jessica.cano@fpl.com

John W. McWhirter
McWhirter Law Firm
400 North Tampa Street, Ste. 2450
Tampa, FL 33602
Phone: (813) 224-0866
Facsimile: (813) 221-1854
Email: jmcwhirter@mac-law.com

James W. Brew
Brickfield Burchette Ritts & Stone, PC
1025 Thomas Jefferson St NW
8th FL West Tower
Washington, DC 20007-5201
Phone: (202) 342-0800
Fax: (202) 342-0807
Email: jbrew@bbrslaw.com

Michael B. Twomey
AARP
Post Office Box 5256
Tallahassee, FL 32305
Phone: (850) 421-9530
Email: Miketwomey@talstar.com

Karin S. Torain
PCS Administration (USA), Inc.
Skokie Blvd., Suite 400
Northbrook, IL 60062
Phone: (847) 849-4291
Email: KSTorain@potashcorp.com

STATE OF FLORIDA

COMMISSIONERS:
MATTHEW M. CARTER II, CHAIRMAN
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP



OFFICE OF COMMISSION CLERK
ANN COLE
COMMISSION CLERK
(850) 413-6770

Public Service Commission

ACKNOWLEDGEMENT

DATE: May 22, 2009

TO: James Michael 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 direct testimony of Garry Miller, portion of exhibits to direct testimony of T. Foster; portions of documents produced in response to OPC's 1st Request for PODs, Nos. 1-52; OPC's 1st Set of Interrogatories, Nos. 1-19; and staff's 2nd Request for PODs, Nos. 2-11 (Provided on 3 CDs), and filed on behalf of Progress Energy Florida, Inc.. 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.

DOCUMENT NUMBER - DATE
05148 MAY 22 2009
FPSC-COMMISSION CLERK

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-0850
An Affirmative Action/Equal Opportunity Employer

PSC Website: <http://www.floridapsc.com>

Internet E-mail: contact@psc.state.fl.us