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DATE: July 28, 2009

TO: Office of General Counsel (Young, Williams)

FROM: Division of Regulatory Compliance (Freeman, Mailhot)

RE:

Docket No. 090009-El, Progress Energy Florida, Inc.'s ("Progress Energy Florida's" or the "Utility's") Request for Confidential Classification of Portions of the Staff Working Papers Prepared During the "Progress Energy Florida, Inc. Nuclear Cost Recovery Clause Audit - Levy County Units 1 & 2 - as of December 31, 2008", Control No. 08-248-2-1, Documents Numbered 05934-09 and 06699-09

On June 11, 2009, when copies of certain portions of staff's working papers prepared during the "Progress Energy Florida, Inc. Nuclear Cost Recovery Clause Audit - Levy County Units 1 & 2 - as of December 31, 2008", 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 June 15, 2009, staff filed Document Numbered 05934-09 consisting of those specified portions of the staff audit working papers.

On July 2, 2009, Progress Energy Florida, Inc., filed a request pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006(3), FAC, that portions of the audit working papers prepared by the staff receive a confidential classification. The Utility's request includes redacted copies for public inspection (Attachment, Document No. 06698-09) and highlighted copies (Portion of Document No. 06699-09).

Documents numbered 05934-09 and 06699-09 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

Kym Pena

Subsection 366.093(3), 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 and competitive business information including pricing and other contractual terms.

By way of an affidavit, Mr. Gerry Miller, General Manager, Nuclear Plant Development at Progress Energy Carolina, identifies sensitive contractual and competitive business information within the staff’s working papers titled: “NuStart Memo.”

Mr. Miller and the Utility point out release of this sensitive information would reveal to third parties information regarding contractual terms with which Progress Energy Florida is willing to agree, thereby giving third parties a competitive advantage over the Utility. Mr. Miller points out release of the information could make it more expensive for the Utility to contract for necessary goods and services.

Mr. Miller and the Utility also point out that the sensitive information at issue here is subject to confidentiality agreements between Progress Energy Florida and the other contracting parties.

Staff Analysis of the Request (continued)

Through Commission Order No. 93-1311-FOF-TL, issued on September 9, 1993, in dockets numbered 920269-TL, 910163-TL, 910727-TL and 900960-TL, the Commission found that nondisclosure agreements while indicating that sensitive information may be present, the non disclosure agreements are not self-actuating. The Commission found that that *“Nondisclosure agreements merely provide a safe harbor for disclosure on a limited basis. Just because materials are acquired subject to non disclosure agreements does not automatically guarantee that they shall be found to be confidential: the information must also be of a type that would cause harm to the ratepayers or its owner’s business operations if disclosed.”*

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 if release of that information will harm the competitive business of the provider of that information.

We have read the information identified by the Utility and Mr. Miller and agree that the release of the material would reasonably be expected to impair the efforts of the Utility and its affiliates to contract for goods and services as well as to impair the competitive business of the provider of the information. Thus, because the information meets the exemptions described by Subsections 366.093(3)(d) and (e), F.S., we recommend that the Commission grant a confidential classification to the identified material.

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 Mr. Miller assert that this information has not been released the public and the information is treated and continues 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 Subsection 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.

Progress Energy Florida, Inc
Request for Confidential Classification
July 28, 2009

A detailed recommendation follows:

Detailed Recommendation

Working Paper Number	Title	Page	Lines	Recommendation	Type of Material
Document Numbered 05934-09 and portions of Document 06699-09					
WP 46-1	NuStart Memo	1-8	All	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: 06699-09 (Part) Progress Energy 2008 Levy 1&2 Nuclear raf.doc.

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