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 Subject: Filing Docket 090079

Attachments: PEF and PEF Employee Intervenors' Response to Motion to Compel, Motion for Protective Order, and Conditional Motion for Stay.pdf



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<<PEF and PEF Employee Intervenors' Response to Motion to Compel, Motion for Protective Order, and Conditional Motion for Stay.pdf>> Docket 090079 In re: Petition for Increase in Rates by Progress Energy Florida, Inc.

1. This filing is made by

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2. This filing is Progress Energy Florida's and PEF Employee Intervenors' Response to Motion to Compel, Motion for Protective Order, and Conditional Motion to Stay.

3. This filing consists of 24 pages.

4. This filing is made on behalf of Progress Energy Florida, Inc.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Increase in Rates
by Progress Energy Florida, Inc.

Docket No. 090079-EI
Submitted for filing: August 10, 2009

**PROGRESS ENERGY FLORIDA'S AND PEF EMPLOYEE INTERVENORS'
RESPONSE TO MOTION TO COMPEL, MOTION FOR PROTECTIVE ORDER, AND
CONDITIONAL MOTION FOR STAY**

Progress Energy Florida, Inc. ("PEF" or "Company"), and PEF Employee Intervenors, Martin Drango, Mark Rigby, Gary Roebuck and James Terry, Jr. ("PEF Employee Intervenors") acting in their individual capacities, pursuant to Rule 28-106.204, F.A.C., file this response in opposition to the Motion to Compel filed by the Staff ("Staff") of the Florida Public Service Commission ("Commission") on August 6, 2009. The Motion to Compel seeks to compel PEF to supplement its response to Staff Interrogatory Nos. 123-126 and 197-198 ("Interrogatories") so as to link previously-provided names and job titles of PEF or affiliate company personnel who earn in excess of \$165,000 per year to the confidential spreadsheets that provide the details of individual compensation.

PEF and PEF Employee Intervenors further file their Motion for Protective Order pursuant to Rule 28-106.206, F.A.C. and Rule 1.280, Florida Rules of Civil Procedure, to protect such supplemental information from discovery.

In the event the Commission enters an order denying the Motion for Protective Order or granting Staff's Motion to Compel, PEF and PEF Employee Intervenors move, pursuant to Rule 25-22.061, F.A.C., that the Commission stay such order pending judicial review, provided that PEF and/or PEF Employee Intervenors timely file for such review.

In support thereof, PEF and PEF Employee Intervenors state:

RESPONSE IN OPPOSITION TO MOTION TO COMPEL

1. The various Interrogatories ultimately request the following information for employees and directors of PEF and Progress Energy, Inc. who earn in excess of \$165,000 per year: name/job title and total compensation broken down into several categories including base salary, overtime, bonuses, stock awards, and option awards.¹

2. PEF in good faith responded to the Interrogatories by providing a non-confidential list of names and a detailed job title for each individual in the requested classes. PEF also provided, subject to a claim of confidentiality, a spreadsheet containing the requested compensation details for each of those individuals. To preserve the privacy interests of its employees, and the business interests of the Company, PEF did not link the names/job titles to specific line items in the compensation spreadsheet. PEF did not object to the Interrogatories because, by submitting each of the items of information requested, PEF believed that its response was complete.

3. The Motion to Compel asserts that by failing to link names and job titles to the details of individual compensation, PEF's responses to the Interrogatories were incomplete. (¶2, 4) It further asserts that because PEF did not file any objections to the Interrogatories, it is incumbent on PEF to now provide the link which Staff believes is necessary to make those responses complete. (¶6)

¹ The specific interrogatories, which apply separately to employees of PEF, employees of Progress Energy, directors of PEF, and directors of Progress Energy who earn over \$200,000 per year or between \$165,000 and \$200,000 per year, are set forth in paragraphs 2 and 4 of the Motion to Compel. PEF also provided information for employees of other affiliates if a portion of their compensation is allocated to PEF.

4. The Motion to Compel should be denied. PEF's responses were complete as filed, since they contain every item of information requested by the Interrogatories.² Compelled disclosure of information identifying employee-specific compensation information is not relevant to the Commission performing its ratemaking responsibilities, and is beyond the authority and jurisdiction of the Commission.

5. The Motion for Protective Order, below, shows that PEF is entitled to protection from providing the requested link on the grounds that the level of detail requested by Staff is not relevant to the Commission's rate determination in this case and constitutes a trade secret or other confidential commercial information which should be protected from discovery. Further, the information implicates the privacy rights of PEF's individual employees, including the PEF Employee Intervenors, under Article I, Section 23 of the Florida Constitution. The impact on such privacy rights is a factor that must be weighed by the Commission in resolving the underlying discovery dispute.

6. The Motion to Compel also states that PEF's responses do not include employee-by-employee information for "Amount of Total Compensation Included in Adjusted Jurisdictional Other O&M Expenses." [¶2(b), 4(b)] The motion indicates Staff's willingness to accept certain specified worksheets in lieu of the originally requested information. PEF is working to prepare worksheets that provide the alternative information in a form acceptable to Staff and this portion of the Motion to Compel is therefore moot.

² PEF's lack of an earlier objection to the Interrogatories therefore is not a basis to require a supplemental response that links the names/job titles to specific compensation information, absent Staff demonstrating that such a response is required by a correct application of the discovery rules.

WHEREFORE, the Motion to Compel should be denied for the reasons set forth above and described in more detail in the Motion for Protective Order, which is incorporated by reference in this response to the Motion to Compel.

MOTION FOR PROTECTIVE ORDER

7. Pursuant to Rule 28-106.206, F.A.C., discovery in administrative proceedings is conducted through the means and in the manner provided in Rules 1.280 through 1.390, Florida Rules of Civil Procedure. Unless limited by an order of the tribunal, a party may obtain discovery regarding any matter, not privileged, that is *relevant* to the subject matter of the pending action.³

8. The pending action is PEF's application for a rate increase. The Commission's responsibility in this case is to "determine and fix fair, just and reasonable rates" that may be charged by PEF. *Section 366.06(1), Fla. Stat.* The Motion to Compel fails to demonstrate that employee-specific compensation information is relevant to the Commission's discharge of that responsibility. The Motion to Compel simply makes a general assertion that the information is required as part of Staff's analysis in the docket, saying:

The Commission reviews all expenses for reasonableness. Compensation is a major component of PEF's operating expenses which may be recoverable from ratepayers and therefore is a significant component of base rates. (§5)

³ Rule 1.280(b) provides in part (emphasis added):

(b) Scope of Discovery. -- *Unless otherwise limited by order of the court in accordance with these rules*, the scope of discovery is as follows:

(1) *In General.* -- Parties may obtain discovery regarding any matter, *not privileged*, that is *relevant* to the subject matter of the pending action. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

9. PEF agrees that overall compensation information is relevant to the rate proceeding. However, as set forth in the Affidavit of Javier J. Portuondo, attached hereto as Exhibit A, the relevant compensation information has already been provided in PEF's existing responses to the Interrogatories, in pre-filed testimony and exhibits, and in responses to discovery by the Office of Public Counsel ("OPC"). The Interrogatory responses provide: names and job titles of each PEF or Progress Energy, Inc. employee earning \$165,000 or more and a spreadsheet which discloses (on a confidential basis) the detailed make-up of that compensation for individual employees, the total compensation paid to such employees as a group, and the portion of the total compensation allocated to PEF. The pre-filed testimony of PEF witness Masceo S. DesChamps describes PEF's compensation philosophy and the reasonableness of its approach to compensation, which targets its compensation levels to be at the 50th percentile of its peer utilities. PEF's responses to numerous discovery requests by OPC include information on: payroll by cost center, total payroll and fringe benefits, bonuses and incentive compensation, budgeted salary increases, increases in overtime, and other compensation matters. The reasonableness of compensation paid by PEF is also subject to analysis using the Commission's benchmark test, which compares growth in PEF's O&M expenses (including compensation) to the compound rate of customer growth and inflation since its last rate proceeding. PEF submits that the information already provided is more than sufficient to enable the Commission to discharge its regulatory responsibility to set fair, just and reasonable rates. It is the type of information considered in prior rate proceedings under Chapter 366 and the type of information required to review PEF's compensation expenses for reasonableness.⁴

⁴ For example, in Order No. PSC-92-1197-FOF-EI in Docket No. 910890-EI and Order No. 11628 in Docket No. 820100-EU, the Commission reviewed compensation included for ratemaking purposes by

The Motion to Compel does not identify any issue in this case regarding the specific compensation paid to any specific employee. In this situation, employee-specific compensation information is simply not relevant to the subject matter of the case. The fact that the Commission has successfully set rates in numerous cases over the past decades without the need for such employee-specific information is further evidence that this level of detail is not relevant to the setting of utility rates.⁵

10. Even if the Commission were to determine that the supplemental information sought by the Motion to Compel has some marginal relevance to the current proceeding, PEF is nevertheless entitled to protection for such information under Rule 1.280(c), F.R.C.P. The introductory language in Rule 1.280(b) provides that discovery can be limited by order of the court. This includes a protective order under Rule 1.280(c), which provides in part:

(c) Protective Orders. -- Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following:

(1) that the discovery not be had; . . .

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; . . .

(7) that a *trade secret* or *other confidential . . . commercial information* not be disclosed or be disclosed only in a designated way; and . . .

PEF, and its predecessor Florida Power Corporation, and made adjustments for ratemaking purposes without the need for employee-specific compensation information.

⁵ Indeed, the Office of Public Counsel, who represents the consumers of this State, is scheduled to file testimony in this case by the close of business today, August 10, 2009. The filing of this testimony (which is expected to be extensive) and the previous filing of comparable testimony in Florida Power & Light's current rate proceeding (Docket No. 080677-EI), demonstrates that OPC was able to review and prepare its case without the need for employee-specific compensation information.

(Emphasis added)

11. Subsection (c)(7) of this rule authorizes the Commission to enter a protective order that protects “a trade secret or other confidential...commercial information” by ordering that it not be disclosed or be disclosed only in a designated way. Trade secret is defined in Section 812.081, Florida Statutes, to mean any “compilation of information,” specifically including “commercial information,” that provides a business advantage to its owner and which the owner takes steps to prevent from becoming available except to those who require access to it. As set forth in the Affidavits of Masceo S. DesChamps, attached to PEF’s Fifth and Sixth Requests for Confidential Classification in this docket, and attached hereto as Exhibits B and C, the compilation of detailed employee-specific compensation information which Staff seeks to compel is information that a provides a business advantage to PEF and which PEF protects from public disclosure. PEF therefore requests that the Commission enter a protective order that the information not be produced in any way other than the current list of names/job titles and the separate (confidential) spreadsheet of detailed compensation information.

12. Article I, Section 23 of the Florida Constitution establishes a right of privacy:

Right of privacy.-- Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

*In considering whether the level of employee-specific detail sought by Staff is relevant, the Commission is required to weigh the privacy rights of the individual employees against the need for the discovery and employees are entitled to intervene to assert those rights. *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So.2d 936 (Fla. 2002). In a case involving the privacy rights of blood donors, the Florida Supreme Court stated that “there can be no doubt that the*

Florida amendment [Article I, Section 23] was intended to protect the right to determine whether or not sensitive information about oneself will be disclosed to others.” *Rasmussen v. South Florida Blood Service*, 500 So.2d 533, 536 (Fla. 1987). In considering the interplay between privacy interests and discovery, and ultimately protecting the names and addresses of volunteer of blood donors from disclosure through discovery, the Court said:

The discovery rules also confer broad discretion on the trial court to limit or prohibit discovery in order to “protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Under this authority, a court may act to protect the privacy of the affected person.

In deciding whether a protective order is appropriate in a particular case, the court must balance the competing interests that would be served by granting discovery or denying it.

Id. at 535 (internal citations omitted)

13. Since *Rasmussen*, courts have held that personal financial information is within the scope of the constitutional right of privacy, and that when confronted with a discovery dispute concerning disclosure of such information, a court should weigh the privacy rights of the affected individuals in ruling on the relevancy of the requested materials. For example, in *Woodward v. Berkery*, 714 So. 2d 1027 (Fla. 4th DCA 1997) the court quashed an order compelling discovery of singer Tom Jones’ detailed personal financial information when relevant higher level information had already been provided. In doing so, the court stated “[a]lthough there is no catalogue in our constitutional provision as to those matters encompassed by the term *privacy*, it seems apparent to us that personal finances are among those private matters kept secret by most people.” *Id.* at 1035. In PEF’s case, its employees have a right to expect that their detailed compensation information will remain private. Thus, in considering whether it is relevant to this proceeding to require PEF to associate specific employee names

with detailed compensation information, the Commission must weigh the privacy rights of those individuals. *Spry v. Professional Employer Plans*, 985 So. 2d 1187, 1188 (Fla. 1st DCA 2008) (disclosure of personal financial information via discovery may cause irreparable harm to a person forced to disclose it in a case in which the information is not relevant); *cf. Publix Supermarkets, Inc. v. Johnson*, 959 So. 2d 1274, 1276 (Fla. 4th DCA 2007) (when a party seeks private or confidential information, courts must require the party seeking the information to make a showing of necessity which outweighs the countervailing interest in maintaining the confidentiality of such information).

14. Protecting the confidentiality of employee-specific compensation is not a theoretical issue. On information and belief, a reporter for the South Florida Sun-Sentinel has already made a public records request for compensation information provided by Florida Power & Light Company under a request for confidential classification. Media exposure of this type of private information would not only violate the privacy rights of PEF's employees, including PEF Employee Intervenors, it would also adversely affect PEF's business interests as described in PEF's Fifth and Sixth Requests for Confidential Classification.

15. Importantly, the second sentence of Article I, Section 23 regarding the interplay of the right of privacy and the public's right of access to public records,⁶ is not involved in this discovery dispute. The standard to prevent or restrict discovery of irrelevant, trade secret or other confidential information under Rule 1.280(c) is separate and distinct from the standard for determining whether such information is exempt from public disclosure under Section 366.093, Florida Statutes, once it has become a public record. If PEF or PEF Employee Intervenors

⁶ "This section shall not be construed to limit the public's right of access to public records and meetings as provided by law."

justify the entry of a protective order, then the information is never produced, never enters the Commission's possession, and never becomes a public record to which the public may have a right of access. The Commission should exercise its authority under the discovery rules to prevent information that is not required for the full discharge of its regulatory responsibilities from becoming a public record in the first instance. This is particularly true where the information implicates the constitutionally protected privacy interests of third parties – in this case PEF's employees.

WHEREFORE, PEF and PEF Employee Intervenors move the Commission to enter an order protecting PEF from associating employee names/titles with their detailed compensation information on the grounds that such information (a) is not relevant to this proceeding, (b) would unnecessarily invade the privacy rights of PEF's employees, including PEF Employee Intervenors, and (c) constitutes trade secret or other confidential commercial information that should be protected from disclosure.

CONDITIONAL MOTION FOR STAY PENDING JUDICIAL REVIEW


16. In the event the Commission denies the Motion for Protective Order, or grants the Motion to Compel, PEF and PEF Employee Intervenors move pursuant to Rule 25-22.061, F.A.C., that the Commission stay its order pending judicial review, provided that PEF and/or PEF Employee Intervenors timely file for such review. Unless a stay is granted, PEF could be required to produce a link between the names/titles of its employees and the detailed compensation information prior to obtaining judicial review of the discovery order. This would constitute irreparable harm under Rule 25-22.061(2)(b) because, once produced, the information would become a public record – a status that could not be undone even if the appellate court ultimately agreed that production should not have been compelled.

WHEREFORE, PEF and PEF Employee Intervenors conditionally move for a stay pending judicial review as set forth above.

RESPECTFULLY SUBMITTED this 10th day of August, 2009.

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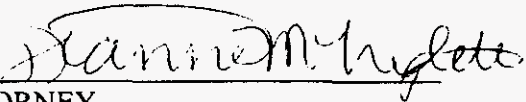
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic and U.S. Mail to the following counsel of record as indicated below on this 10th day of August, 2009.


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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Increase in Rates by
Progress Energy Florida, Inc.

Docket No. 090079-EI

**AFFIDAVIT OF JAVIER J. PORTUONDO IN SUPPORT OF
PROGRESS ENERGY FLORIDA'S
RESPONSE TO MOTION TO COMPEL AND MOTION FOR PROTECTIVE ORDER**

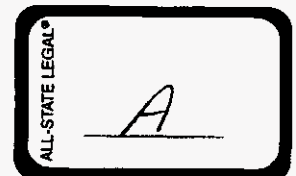
STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Javier J. Portuondo, who being first duly sworn, deposes and says:

1. My name is Javier J. Portuondo. I am over the age of 18 years. I have personal knowledge of the matters stated in this affidavit.

2. I am currently employed by Progress Energy Service Company, LLC as Director of Regulatory Planning. In that capacity I have responsibility for regulatory planning, cost recovery and pricing functions for both Progress Energy Florida, Inc. ("PEF") and Progress Energy Carolinas, Inc. ("PEC"). These responsibilities include: cost of service analysis; regulatory financial reports; rate and tariff development and administration; analysis of state, federal and local regulations and their impact on PEC and PEF; planning, coordination and execution of general rate case proceedings as necessary; and consultant to business units of both utilities on proper rate making and regulatory compliance. I have been employed by Progress or its predecessor or affiliates since 1985. Since that date, I have participated in most every rate case filed in Florida by Progress Energy Florida ("PEF") or its predecessor, Florida Power Corporation ("FPC"). I am also generally familiar with the rate cases filed prior to that date by



PEF and the other investor-owned electric utilities in Florida, and am familiar with the rate cases filed since 1985 by the other investor-owned electric utilities in Florida.

3. In its current rate case (Docket No. 090079-EE), PEF has provided a variety of information regarding the compensation of the employees of PEF and its affiliates whose compensation is allocated to PEF for ratemaking purposes. The information has been provided through responses to interrogatories and requests for production of documents propounded by the staff of the Florida Public Service Commission ("Commission") and the Office of Public Counsel, and through the pre-filed direct testimony of witness Masceo S. DesChamps. This information includes:

(a) the names and job titles of employees of PEF and its affiliates whose total compensation is \$165,000 or more per year;

(b) a confidential spreadsheet showing the detailed make-up of that compensation for individual employees, the total compensation paid to such employees of PEF and of each affiliate, and the portion of the total compensation allocated to PEF;

(c) pre-filed testimony providing a description of PEF's compensation philosophy and the reasonableness of its approach to compensation, which targets PEF's compensation levels to be at the 50th percentile of its peer utilities;

(d) responses to discovery by OPC that provide information on payroll by cost center, total payroll and fringe benefits, bonuses and incentive compensation, budgeted salary increases, increases in overtime, and other compensation matters.

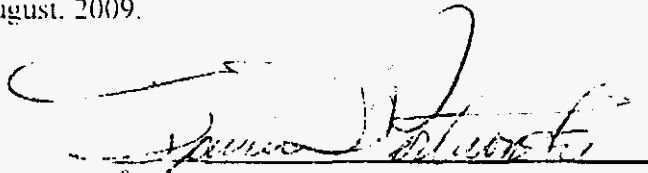
4. The reasonableness of the overall compensation included in PEF's rate request is also subject to analysis using the Commission's benchmark test, which compares growth in PEF's O&M expenses, including compensation, to the compound rate of customer growth and inflation since its last rate proceeding.

5. PEF and its predecessor, FPC, have never been required by the Commission to provide employee-specific compensation information in any prior Commission proceeding, including prior proceedings in which the Commission established fair, just and reasonable rates for PEF or FPC. For example, in Order No. PSC-92-1197-FOF-EI in Docket No. 910890-EI and Order No. 11628 in Docket No. 820100-EU, the Commission reviewed compensation included for ratemaking purposes by PEF and FPC and made adjustments without the need for employee-specific compensation information. To the best of my knowledge, the same is true of the other investor-owned electric utilities regulated by the Commission.

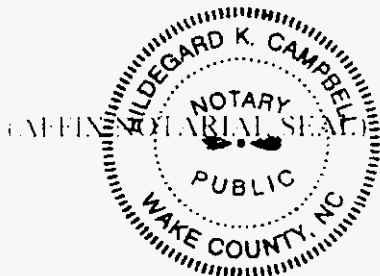
6. Information relating specific compensation information to specific employees identified by name or by job title is not necessary for the Commission to fulfill its statutory obligation to fix fair, just and reasonable rates. The information identified in Paragraphs 3 and 4 is sufficient for the Commission to review PEF's compensation expenses for reasonableness.

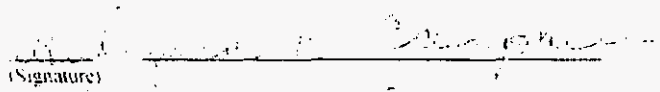
FURTHER AFFIANT SAYETH NOT.

Dated this 10 day of August, 2009.


(Signature)
Javier J. Portuondo

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this 10 day of August, 2009 by Javier J. Portuondo. He is personally known to me, or has produced his _____ driver's license, or his _____ as identification.




(Signature)

(Printed Name)
NOTARY PUBLIC, STATE OF NC

(Commission Expiration Date)

(Serial Number, If Any)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by
Progress Energy Florida, Inc.

Docket No. 090079-EI

**AFFIDAVIT OF MASCEO S. DESCHAMPS IN SUPPORT OF
PROGRESS ENERGY FLORIDA'S
FIFTH REQUEST FOR CONFIDENTIAL CLASSIFICATION**

STATE OF NORTH CAROLINA

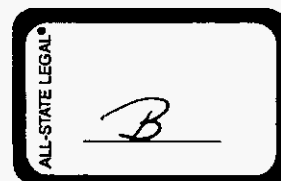
COUNTY OF WAKE

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Masceo S. DesChamps, who being first duly sworn, on oath deposes and says that:

1. My name is Masceo S. DesChamps. I am over the age of 18 years old and I have been authorized by Progress Energy Florida (hereinafter "PEF" or the "Company") to give this affidavit in the above-styled proceeding on PEF's behalf and in support of PEF's Fifth Request for Confidential Classification ("the Request"). The facts attested to in my affidavit are based upon my personal knowledge.

2. I am the Director of Compensation and Benefits for Progress Energy Service Company, LLC. As the Director of Compensation and Benefits, I am responsible, among other things, for providing leadership in the planning, evaluation, design, implementation, and communication of all compensation and benefits plans for employees and retirees; and administer the executive and Board member plans. I direct the design and on-going evaluation of base, annual and long-term incentive compensation plans, merit and other salary increases, management of job evaluations, and benefits and salary surveys.

3. In its Request, PEF is seeking confidential classification for certain information contained in its responses to Staff's Tenth Set of Interrogatories. An unredacted version of the



information at issue is contained in confidential Appendix A to PEF's Request and the confidential portions thereof are outlined in PEF's Justification Matrix attached to the Request as Appendix C. PEF is requesting confidential classification of portions of these interrogatory responses because they contain proprietary confidential business information, the disclosure of which would compromise PEF's competitive business interests.

4. In response to Staff's Tenth Interrogatories, PEF has provided certain confidential and proprietary information ("Information"), such as the detailed compensation amounts, including salary, bonuses, and incentive compensation, that the Company pays to its executives, managers, and employees earning over \$200,000 per year. The Information is controlled by the Company, is treated by the Company as private, and has not been publicly disclosed, with the exception of the compensation disclosed in the Company's Proxy.

5. The Information is confidential and proprietary in that it could harm PEF's competitive business interests if disclosed to the public, or to other utilities or businesses with which PEF competes for qualified employees. I am not aware of any such competing companies that publicly disclose this type of compensation information. Public disclosure of the Information could provide firms both inside and outside Florida with which PEF is constantly competing for qualified employees a competitive advantage in acquiring and retaining such employees. This could lead to increased employee hiring and training costs resulting from increased employee turnover, or a need to increase compensation to prevent such turnover. This overall increase in hiring costs, training costs, compensation would adversely impact PEF's business operations, could adversely impact rates paid by PEF's ratepayers.

6. Public disclosure of the Information could give prospective employees an advantage in negotiating compensation packages, leading to increases in the overall amount of compensation paid to employees. This overall increase would adversely impact PEF's business operations, could adversely impact rates paid by PEF's ratepayers.

7. In addition, disclosure of the Information among PEF's current employees could be detrimental employee morale and to PEF's ability to retain key employees and maintain the efficient incentive pay system that the Company currently uses. If PEF's employees were to know what other employees in similar positions earn as their compensation, there would be an enormous impact to employee morale and productivity. To illustrate, assume there are two employees working in the same position. Both employees perform well in their jobs, but employee A is a better performer relative to employee B. Under PEF's compensation structure, employee A should earn more than employee B. If, however, employee B knew how much employee A earned, employee B may challenge why there is a discrepancy in pay as compared to employee A. This may lead to employee B demanding more compensation or leaving the Company to earn more money at a competitor. The Company would be forced to either accept the loss of employee B, which would result in higher costs due to recruiting and training of a replacement employee, or PEF would have to increase employee B's compensation. If the Company chose to increase employee B's compensation, then employee A, who is the better performer, would have less incentive to continue their productive performance because they know that they will likely be paid the same as other employees irrespective of their performance. Thus, the disclosure of this detailed compensation information within the Company would have a detrimental effect on PEF's current employees, resulting in increased employee turnover, increased recruitment and training costs, increased labor costs, and lower employee morale and productivity.

8. For all the reasons identified in paragraphs 5 to 7, disclosure of the Information could adversely affect the Company's business operations, its competitive business interests, and, ultimately, its ratepayers.

9. PEF has established and follows strict procedures to maintain the confidentiality of the Information. Such procedures include, but are not limited to, restricting access to the

Information to only those persons who require it to assist the Company. PEF has treated and continues to treat the Information contained in the schedules as confidential

10. This concludes my affidavit.

Dated this 21ST day of July, 2009

Masceo S. DesChamps

(Signature)

Masceo S. Deschamps

Director, Compensation and Benefits, Progress Energy Service Company, LLC

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this 21st day of July, 2009 by Masceo S. DesChamps. He is personally known to me, or has produced his _____ driver's license, or his _____ as identification.

Brianna Martin

(Signature)

Brianna Martin

(Printed Name)

(AFFIX NOTARIAL SEAL)

NOTARY PUBLIC, STATE OF NC

11/12/2012

(Commission Expiration Date)

(Serial Number, If Any)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by
Progress Energy Florida, Inc.

Docket No. 090079-EI

**AFFIDAVIT OF MASCEO S. DESCHAMPS IN SUPPORT OF
PROGRESS ENERGY FLORIDA'S
SIXTH REQUEST FOR CONFIDENTIAL CLASSIFICATION**

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Masceo S. DesChamps, who being first duly sworn, on oath deposes and says that:

1. My name is Masceo S. DesChamps. I am over the age of 18 years old and I have been authorized by Progress Energy Florida (hereinafter "PEF" or the "Company") to give this affidavit in the above-styled proceeding on PEF's behalf and in support of PEF's Sixth Request for Confidential Classification ("the Request"). The facts attested to in my affidavit are based upon my personal knowledge.

2. I am the Director of Compensation and Benefits for Progress Energy Service Company, LLC. As the Director of Compensation and Benefits, I am responsible, among other things, for providing leadership in the planning, evaluation, design, implementation, and communication of all compensation and benefits plans for employees and retirees; and administer the executive and Board member plans. I direct the design and on-going evaluation of base, annual and long-term incentive compensation plans, merit and other salary increases, management of job evaluations, and benefits and salary surveys.

3. In its Request, PEF is seeking confidential classification for certain information contained in its responses to Staff's Eighteenth Set of Interrogatories. An unredacted version of



the information at issue is contained in confidential Appendix A to PEF's Request and the confidential portions thereof are outlined in PEF's Justification Matrix attached to the Request as Appendix C. PEF is requesting confidential classification of portions of these interrogatory responses because they contain proprietary confidential business information, the disclosure of which would compromise PEF's competitive business interests.

4. In response to Staff's Eighteenth Interrogatories, PEF has provided certain confidential and proprietary information ("Information"), such as the detailed compensation amounts, including salary, bonuses, and incentive compensation, that the Company pays to its executives, managers, and employees earning between \$165,000 and \$200,000 per year. The Information is controlled by the Company, is treated by the Company as private, and has not been publicly disclosed.

5. The Information is confidential and proprietary in that it could harm PEF's competitive business interests if disclosed to the public, or to other utilities or businesses with which PEF competes for qualified employees. I am not aware of any such competing companies that publicly disclose this type of compensation information. Public disclosure of the Information could provide firms both inside and outside Florida with which PEF is constantly competing for qualified employees a competitive advantage in acquiring and retaining such employees. This could lead to increased employee hiring and training costs resulting from increased employee turnover, or a need to increase compensation to prevent such turnover. This overall increase in hiring costs, training costs, compensation would adversely impact PEF's business operations, could adversely impact rates paid by PEF's ratepayers.

6. Public disclosure of the Information could give prospective employees an advantage in negotiating compensation packages, leading to increases in the overall amount of compensation paid to employees. This overall increase would adversely impact PEF's business operations, could adversely impact rates paid by PEF's ratepayers.

7. In addition, disclosure of the Information among PEF's current employees could be detrimental employee morale and to PEF's ability to retain key employees and maintain the efficient incentive pay system that the Company currently uses. If PEF's employees were to know what other employees in similar positions earn as their compensation, there would be an enormous impact to employee morale and productivity. To illustrate, assume there are two employees working in the same position. Both employees perform well in their jobs, but employee A is a better performer relative to employee B. Under PEF's compensation structure, employee A should earn more than employee B. If, however, employee B knew how much employee A earned, employee B may challenge why there is a discrepancy in pay as compared to employee A. This may lead to employee B demanding more compensation or leaving the Company to earn more money at a competitor. The Company would be forced to either accept the loss of employee B, which would result in higher costs due to recruiting and training of a replacement employee, or PEF would have to increase employee B's compensation. If the Company chose to increase employee B's compensation, then employee A, who is the better performer, would have less incentive to continue their productive performance because they know that they will likely be paid the same as other employees irrespective of their performance. Thus, the disclosure of this detailed compensation information within the Company would have a detrimental effect on PEF's current employees, resulting in increased employee turnover, increased recruitment and training costs, increased labor costs, and lower employee morale and productivity.

8. For all the reasons identified in paragraphs 5 to 7, disclosure of the Information could adversely affect the Company's business operations, its competitive business interests, and, ultimately, its ratepayers.

9. PEF has established and follows strict procedures to maintain the confidentiality of the Information. Such procedures include, but are not limited to, restricting access to the

Information to only those persons who require it to assist the Company. PEF has treated and continues to treat the Information contained in the schedules as confidential

10. This concludes my affidavit.

Dated this 24th day of July, 2009

Masceo S. DesChamps

(Signature)

Masceo S. Deschamps

Director, Compensation and Benefits, Progress Energy Service Company, LLC

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this 24th day of July, 2009 by Masceo S. DesChamps. He is personally known to me, or has produced his _____ driver's license, or his _____ as identification.

Brianne Martin

(Signature)

Brianne Martin

(Printed Name)

NOTARY PUBLIC, STATE OF NC

11/12/2012

(Commission Expiration Date)

(Serial Number, If Any)

(AFFIX NOTARIAL SEAL)



AFFIDAVIT

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I hereby certify that on this 24th day of July, 2009, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared MASCEO DESCHAMPS who is personally known to me, and he/she acknowledged before me that he/she provided the answers to interrogatory number(s) 197-198 from STAFF'S EIGHTEENTH SET OF INTERROGATORIES TO PROGRESS ENERGY FLORIDA, INC. in Docket No. 090079-EI, and that the responses are true and correct based on his/her personal knowledge.

In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 24th day of July, 2009.



[Handwritten Signature]
Notary Public
State of North Carolina, at Large

My Commission Expires:
11/12/2012