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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

COMMISSION

In Clerk Nuclear Power Plant Cost Recovery Clause

Docket No. 100009-EI Submitted for Filing: April 1, 2010

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PROGRESS ENERGY FLORIDA'S REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING ITS ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

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 concerning the Engineering, Procurement and Construction Agreement and Amendments ("EPC Agreement") with Stone & Webster, Inc. ("Stone & Webster") and Westinghouse Electric Company ("Westinghouse") (collectively known as the "Consortium"). The EPC Agreement, including Amendments, contains sensitive, proprietary and confidential contractual terms for nuclear goods and services that if publicly disclosed would impact both PEF's and the Consortium's ability to contract on favorable terms in the future and which would violate confidentiality provisions of the EPC Agreement. In fact, the EPC Agreement contains information which PEF and the Consortium consider to be trade secrets. Accordingly, the EPC Agreement should be granted confidential treatment by the Commission. In support, PEF hereby submits the following:

BASIS FOR CONFIDENTIAL CLASSIFICATION

COM
APA CD
ECR 5
GCL 1
RAD
SSC
ADM
OPC
CLK 1

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

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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, "trade secrets" as well as "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" are defined as proprietary confidential business information. § 366.093(3)(a) & (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.

#### **Agreement Between Commission Staff and PEF**

The EPC Agreement is not being produced in response to a specific Staff discovery request, but is being provided to Commission Auditors and Staff pursuant to an agreement between Commission Staff and the Company.

The EPC Agreement should be afforded confidential treatment for the reasons set forth in the Affidavits of Sue Hardison, David P. Barry and Randolph D. Galm filed in support of PEF's Request for Confidential Classification and for the following reasons: (1) Disclosure of the terms of the EPC Agreement would adversely impact PEF's competitive business interests if disclosed to the public. See Affidavit of Hardison at ¶ 3. (2) Publication of the scope and terms of this contract could influence other parties with whom PEF must contract to complete the project causing those parties to alter their bids to the detriment of PEF and its ratepayers. Id. at ¶ 4. (3) Parties to the EPC Agreement treat the contract's terms and conditions as highly confidential and go to great lengths to ensure the continued confidentiality thereof. Id.

Moreover, the Security Exchange Commission (“SEC”) has previously granted PEF’s application for confidential classification for the same portions of the EPC Agreement PEF has requested to be held confidential here. (4) PEF must be able to assure third parties that sensitive business information, such as the terms of this contract, as well as details regarding the negotiations for such terms, will be kept confidential. Id. at ¶¶ 4-5. Indeed, the EPC Agreement contains a confidentiality provision that prohibits the disclosure of the terms of the contract to third parties, and in addition, the Consortium with which PEF has contracted considers this information to include trade secrets. Id. at ¶¶ 3,-4; see also Affidavit(s) of David P. Barry and Randolph D. Galm. The Consortium has also produced testimony that disclosure of the proprietary and confidential business information contained in the EPC Agreement would impair their business interests. See Affidavits of Barry at ¶¶ 4-6 and Galm at ¶¶ 4-6.

The EPC Agreement contains not only confidential pricing terms, but also construction processes, components, quantities, schedules, project timing, critical milestones, sequences of events, logistics, project plans, patterns, compilations, programs, devices, methods, techniques, products, systems, processes and designs which the Consortium considers to be trade secrets. See § 366.093(3)(a), Fla. Stat.; Affidavits of Barry at ¶ 5 and Galm at ¶ 5. Disclosure of this information would put the Consortium at a competitive disadvantage with its competitors. Affidavits of Barry at ¶ 6 and Galm ¶ at 6. Furthermore, disclosure of the pricing agreement between PEF and the Consortium would harm the Consortium’s competitive interests, both in dealing with PEF and with other utilities with which it is in active negotiations. Id. The EPC Agreement is a competitively negotiated contractual agreement, the disclosure of which would impair the efforts of the Company, as well as other Florida utilities, to enter similar contracts in the future on favorable terms. See § 366.093(3)(d), Fla. Stat.; see also Affidavit of Hardison. If

other parties were made aware of the confidential contractual terms that PEF has with the Consortium, they may offer PEF less competitive contractual terms in future negotiations. Affidavit of Hardison at ¶¶ 3-5. Further, if other parties that PEF would desire to contract with in the future could not be assured that their trade secrets could be protected, those parties may be unwilling to enter into such agreements with the Company at all. Id. Without PEF's measures to maintain the confidentiality of the sensitive terms in its contracts, the Company's efforts to obtain competitive contracts for the Levy Nuclear Project ("LNP") would be undermined. Id. at ¶¶ 3-4.

The Consortium undertakes extensive procedures to protect this trade secret and competitive interest information. See Affidavits of Barry at ¶¶ 7-9 and Galm at ¶¶ 7-9. Upon receipt of this confidential information, and with its own confidential information, the Company has established and followed strict procedures to maintain the confidentiality of the documents and information provided, including restricting access to only those persons who need the information to assist the Company. Affidavit of Hardison at ¶¶ 5-6. At no time since receiving the information in question has the Company publicly disclosed that information. Id. The Company has treated and continues to treat the information at issue as confidential. Id.

### Conclusion

The EPC Agreement contains competitive, confidential information that fits the statutory definition of proprietary, confidential business information under Section 366.093 and Rule 25-22.006, F.A.C. The confidential exhibit for which PEF intends to request confidential classification has been provided for viewing by Staff's counsel as indicated on Attachment "A." **This information should be accorded confidential treatment pending a decision on PEF's request by the Florida Public Service Commission.**

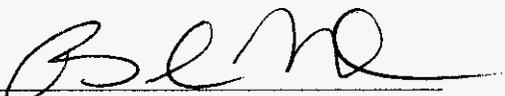
Additionally, Attachment "B" includes redacted copies of the confidential exhibit with the information that PEF intends to request confidential classification redacted by section page, or lines.

Attachment "C" hereto contains a justification matrix supporting PEF's request for confidential classification of the information contained in Attachment "A."

WHEREFORE, PEF respectfully requests that the EPC Agreement 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 1<sup>st</sup> day of April, 2010.

  
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# Public Service Commission

## ACKNOWLEDGEMENT

DATE: April 1, 2010

TO: James Michael Walls, Carlton Fields Law Firm

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 100009 or, if filed in an undocketed matter, concerning EPC Agreement with Stone and Webster Inc, and Westinghouse Electric Company, and filed on behalf of Progress Energy. The document will be maintained in locked storage.

If you have any questions regarding this document, please contact Kim Peña, Records Management Assistant, at (850) 413-6393.

DOCUMENT NUMBER-DATE  
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