

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: NUCLEAR POWER PLANT COST RECOVERY CLAUSE

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

COMMISSION CLERK

PROGRESS ENERGY FLORIDA'S AMENDED TWENTY-FIFTH REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING THE DEPOSITIONS OF MESSRS. LYASH, ELNITSKY AND FRANKE

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 confidential portions of the Depositions of: Jeff Lyash, given in this docket on August 12, 2010; Jon Franke, given in this docket on August 10, 2010; and John Elnitsky, given in this docket on August 13, 2010 (the "Depositions"). The Depositions contain proprietary confidential business information related to the costs of the Crystal River 3 Uprate Project ("CR3 Uprate"), including the License Amendment Request ("LAR"), and the Levy Nuclear Project ("LNP"), including costs related to the LNP Engineering, Procurement & Construction ("EPC") agreement and amendments. These costs are incurred, in whole or in part, pursuant to PEF's contracts with third parties. These contracts contain confidentiality provisions forbidding the release of contractual terms, including pricing provisions. The disclosure of this information would harm PEF's competitive business interests by impeding the Company's ability to obtain such contracts, and would further violate the aforementioned confidentiality

agreements. Furthermore, the Depositions contain other proprietary confidential business information, including information related to the Company's internal assessments of risks and ongoing negotiations. This information meets the definition of proprietary confidential business information pursuant to section 366.093(3)(d) & (e), Florida Statutes. Additionally, substantially

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CLAIM OF CONFIDENTIALITY
NOTICE OF INTENT
X REQUEST FOR CONFIDENTIALITY
FILED BY OPC

FOR DN 07362-10, WHICH IS IN LOCKED STORAGE. YOU MUST BE AUTHORIZED TO VIEW THIS DN. - CLK

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similar information has been provided during discovery in this docket, and at all times PEF has taken the appropriate steps to maintain the confidentiality of this information.

The Company filed its Ninth Notice of Intent to request confidential classification of these documents and responsive information on August 20, 2010. The Company thereafter filed its Twenty-Fifth Request for Confidential Classification pertaining to this information on August 25, 2010. Therefore, pursuant to Rule 25-22.006(3)(a)1, this request is timely. PEF files this Amended Request revising certain confidential designations of the original request. PEF submits the following in support of its confidentiality request:

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 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.

The Depositions, as explained below and in the supporting affidavits of Jeff Lyash, John Elnitsky, and Jon Franke (see DNs 07026-10, 07027-10, and 07028-10, respectively, filed with the original request and hereby incorporated by reference), contain confidential competitive business information related to the LNP, including confidential information related to the LNP EPC agreement and amendments, as well as confidential information related to the costs of the CR3 Uprate project, including the LAR. See Affidavit of Lyash, ¶ 4; Affidavit of Elnitsky; ¶ 4; Affidavit of Franke, ¶ 4. These project costs are incurred by the Company pursuant to its contractual agreements with third-parties, and as such these costs are subject to those contracts' confidentiality provisions. The publication of this information would not only violate those provisions, but would put PEF at a competitive disadvantage when attempting to negotiate future contracts and in present negotiations. See Affidavit of Lyash, ¶ 4; Affidavit of Elnitsky; ¶ 4; Affidavit of Franke, ¶ 4. Furthermore, if PEF's competitors or other parties with whom the Company may wish to contract with in the future were made aware of the contractual terms that the Company has agreed to in the past, they may alter their behavior in the marketplace for such goods or services, or simply alter their contractual demands, to PEF's detriment. PEF must be able to assure the vendors with which it contracts that the terms of such agreements will remain confidential, or risk being able to enter such contracts on beneficial terms, if at all. See Affidavit of Lyash, ¶ 4; Affidavit of Elnitsky; ¶ 4; Affidavit of Franke, ¶ 4.

PEF has kept confidential and has not publicly disclosed the confidential information and amounts at issue here. See Affidavit of Lyash, ¶ 5; Affidavit of Elnitsky; ¶¶ 4-5; Affidavit of Franke, ¶ 5. Absent such measures, the Company's efforts to obtain competitive contracts and to obtain competitively priced goods and services would be undermined. See Affidavit of Lyash, ¶ 5; Affidavit of Elnitsky; ¶¶ 4-5; Affidavit of Franke, ¶ 5. Furthermore, this and other similar

information has been produced in response to various discovery requests throughout the discovery process, and at all times the Company has taken the appropriate steps to maintain its confidentiality. See Affidavit of Lyash, ¶ 5; Affidavit of Elnitsky; ¶¶ 4-5; Affidavit of Franke, ¶ 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 Affidavit of Lyash, ¶ 5; Affidavit of Elnitsky; ¶¶ 4-5; Affidavit of Franke, ¶ 5. At no time since receiving the information in question has the Company publicly disclosed that information; the Company has treated and continues to treat the information at issue as confidential. See Affidavit of Lyash, ¶ 5; Affidavit of Elnitsky; ¶¶ 4-5; Affidavit of Franke, ¶ 5.

CONCLUSION

The competitive, confidential information and numbers 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 a CD including the confidential documents as Attachment A to PEF's Amended 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 Attachment B; and,

(3) An amended justification matrix supporting PEF's Amended Request for Confidential Classification of the highlighted information contained in confidential Attachment A, as Attachment C.

WHEREFORE, PEF respectfully requests that the highlighted, confidential portions of the Depositions of: Jeff Lyash, given in this docket on August 12, 2010; Jon Franke, given in this docket on August 10, 2010; and John Elnitsky, given in this docket on August 13, 2010, 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 1st day of September, 2010.



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Re: Acknowledgement of Confidential Filing in Docket No. 100009-EI

This will acknowledge receipt by the Florida Public Service Commission, Office of Commission Clerk, of a CONFIDENTIAL DOCUMENT filed on September 1, 2010, in the above-referenced docket.

Document Number 07362-10 has been assigned to this filing, which 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.