

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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090079-5
Docket No. 090079-5
Submitted for Filing September 20, 2009

IN RE: PETITION FOR INCREASE IN RATES BY PROGRESS ENERGY FLORIDA, INC.

PROGRESS ENERGY FLORIDA'S FOURTEENTH REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING PEF'S RESPONSE TO STAFF'S TWENTY-FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 159-168)

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 documents produced in PEF's Response to the Florida Public Service Commission's Staff's ("Staff") Twenty-Fourth Requests for Production of Documents (Nos. 159-168). The information being provided in response to this request contains confidential proprietary information relating to the Company's competitive business interests, the release of which would harm the Company's competitive business interests. For this reason, PEF requests that the Commission afford these documents confidential classification.

With respect to the confidential information at issue, PEF filed its Eighth Notice of Intent to Request Confidential Classification on September 14th, 2009.¹ Therefore, pursuant to Rule 25-22.006(3), Florida Administrative Code, this request is timely. PEF hereby 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

¹ PEF's Eighth Notice of Intent also stated that a certain document being produced in response to Staff's Thirty-Second Set of Interrogatories was confidential. This document was inadvertently designated confidential, and therefore PEF withdraws its request for confidential classification as to that document.

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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. Also, “Internal auditing controls and reports of internal auditors” are likewise treated as proprietary confidential business information. § 366.093(3)(b), 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 confidential documents produced in response to Staff’s discovery requests, as explained below and in the supporting affidavit of Peter Toomey, include confidential information regarding the compensation information of certain employees of PEF and Progress Energy Service, Co. Disclosure of this information would impair PEF’s competitive business interests by providing third parties with sensitive compensation information which would allow third parties a competitive advantage when responding negotiating with prospective employees or could allow competitors to offer increased compensation to these or similar employees. The end result of such disclosure would be a loss of valuable employees, or a need to increase compensation. Therefore, public disclosure of this information could adversely affect the Company’s ability to hire and/or retain valuable employees, therefore impacting the Company’s competitive interests and ultimately having

a detrimental impact on PEF's ratepayers. See Affidavit, ¶¶5-6. Accordingly, these documents should be accorded confidential treatment pursuant to section 366.093(3)(e), Florida Statutes.

PEF has kept confidential and has not publicly disclosed the confidential information and documents at issue here. See Affidavit, ¶8. Absent such measures, PEF would run the risk that it would be unable to contract for the use of similar proprietary information in the future. Without PEF's measures to maintain the confidentiality of sensitive information described herein, the Company's efforts to contract with employees on favorable terms would be impaired. See id. at ¶¶5-6. Furthermore, PEF has provided similar information in response to previous discovery requests, and has at all times taken the appropriate steps to maintain its confidentiality. Id. at ¶8.

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. 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 id.

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 a CD including the confidential document for which PEF has requested confidential classification with the appropriate section, pages, or lines containing the confidential information highlighted as Attachment A to PEF's Request for Confidential Classification. **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) A justification matrix supporting PEF's Request for Confidential Classification of the highlighted information contained in confidential Attachment A, as Attachment C.

WHEREFORE, PEF respectfully requests that the highlighted portions of the documents produced in PEF's Response to Staff's Twenty-Fourth Requests for Production of Documents (Nos. 159-168), be classified as confidential for the reasons set forth above.

Respectfully submitted,

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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 21st day of September, 2009.



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Public Service Commission

ACKNOWLEDGEMENT

DATE: September 22, 2009

TO: Matthew Bernier, Progress Energy

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 090079 or, if filed in an undocketed matter, concerning documents produced in response to staff's 24th Requests for PODs, Nos. 159-168, 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 Marguerite Lockard, Deputy Clerk, at (850) 413-6770.

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