

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for Hines 4 power plant in Polk County by Progress Energy Florida, Inc. | DOCKET NO. 040817-EI
ORDER NO. PSC-05-0229-CFO-EI
ISSUED: February 28, 2005

ORDER GRANTING CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 11125-04)

On October 12, 2004, Progress filed its Third Request for Confidential Classification in this docket, seeking confidential treatment for specified portions of its responses to Commission Staff's First Set of Interrogatories, No. 17, and First Request for Production of Documents, Nos. 16 and 17 (collectively, Document No. 10984-04). Along with this pleading, Progress filed its Third Notice of Intent to Request Confidential Classification of these same documents. Progress' Third Request for Confidential Classification was granted in Order No. PSC-04-1061-CFO-EI, issued October 28, 2004.

On October 15, 2004, Progress filed a Supplement to its Third Notice of Intent to Request Confidential Classification along with additional documents responsive to Commission Staff's First Request for Production of Documents, Nos. 16 and 17, portions of which Progress believes should be treated as confidential (Document No. 11125-04). Attached to the Supplement to Third Notice of Intent is a table titled "Supplemental Attachment A" that identifies the specific confidential information contained in the additional documents as well as Progress' justification for maintaining confidential treatment of that specific information. This table is attached hereto as Attachment A and is incorporated herein by reference. In this table, Progress states that all of the information identified as confidential concerns Progress' negotiations with potential fuel suppliers, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms. The table indicates that the information thus qualifies for confidential classification under Section 366.093(3)(d), Florida Statutes.

Although not styled as a "Request for Confidential Classification," Progress' Supplement to Third Notice of Intent to Request Confidential Classification appears to be intended as a request for confidential classification, as evidenced by the line-by-line justification table attached to the pleading. Together with Progress' Third Request for Confidential Classification, which addresses the confidential nature of documents responsive to the same discovery requests, the Supplement to Third Notice of Intent provides the information required in a request 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

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Act].” Section 366.093(3), Florida Statutes, defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company’s ratepayers or business operations, and has not been voluntarily disclosed to the public. Section 366.093(3)(d), Florida Statutes, provides that proprietary confidential business information includes “[i]nformation 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.”

Upon review, it appears that the information contained in the additional documents provided by Progress in response to Commission Staff’s First Request for Production of Documents, Nos. 16 and 17, as identified in Attachment A to this Order, satisfies the criteria set forth in Section 366.093(3), Florida Statutes, for classification as proprietary confidential business information and, thus, shall be treated as confidential. Specifically, the information constitutes “[i]nformation 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” as set forth in Section 366.093(3)(d), Florida Statutes. Thus, this information is granted confidential classification.

Pursuant to Section 366.093(4), Florida Statutes, the information for which confidential classification is granted herein shall remain protected from disclosure for a period of 18 months from the date of issuance of this order. At the conclusion of the 18 month period, the confidential information will no longer be exempt from Section 119.07(1), Florida Statutes, unless Progress or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is


ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that confidential classification is granted for those portions of Document No. 11125-04 specified in Attachment A to this Order, which is incorporated herein by reference. It is further

ORDERED that the information in Document No. 11125-04 for which confidential classification has been granted shall remain protected from disclosure for a period of 18 months from the date of issuance of this order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

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By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this
28th day of February, 2005.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

SUPPLEMENTAL ATTACHMENT A

DOCUMENTS	PAGE/LINE	JUSTIFICATION
<p>PEF's Response to Staff's First Request for Production of Documents, Request No. 16 and 17.</p>	<p>PEF-00758-00792: All information on pages;</p> <p>PEF-00794-00829: All information on pages;</p> <p>PEF-00830: Fourth word in first sentence of first paragraph;</p> <p>PEF-00831: Fourth-sixth words in first sentence, tenth word in second sentence, all words after "diversity" in fourth bullet, all words after "any" in fifth bullet;</p> <p>PEF-00832-00867: All information on pages;</p> <p>PEF-0868: All names, dates, and dollar figures in second and third paragraphs;</p> <p>PEF-00869-00901: All information on pages;</p> <p>PEF-00902: All information in third-seventh bullet points on page;</p> <p>PEF-00904-00955: All information on pages;</p> <p>PEF-000956: Subject line;</p> <p>PEF-001010: Header, footer, subject line, and last three words in first sentence;</p> <p>PEF-001011-001052: All information on pages;</p>	<p>§ 366.093(3)(d) PEF's responses contain confidential documents regarding and detailing PEF's negotiations with potential fuel suppliers, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.</p>

	<p>PEF-001053: Header, numeric list in subject line, all other information on page;</p> <p>PEF-001054-001055: All information on pages;</p> <p>PEF-001103: All information in bullet points on page;</p> <p>PEF-001104-001158: All information on pages;</p> <p>PEF-001159: "From," "cc," and subject lines. All words in first paragraph after word "regarding." All words in second paragraph. Signature block, names in notice provision in footer.</p> <p>PEF-001161-001331: All information on pages;</p> <p>PEF-001332: All information after subject line.</p> <p>PEF-001333-001366: All information on pages;</p> <p>PEF-001367: All words after word "options" in subject lines. Last two words in first sentence;</p> <p>PEF-001368-1373: All information on pages;</p> <p>PEF-001374: All company names in text sentences and file descriptions on page;</p> <p>PEF-001375-001410: All information on pages;</p> <p>PEF-001411: Company</p>	
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	<p>names in second sentence on page;</p> <p>PEF-001412-001446: All information on pages;</p> <p>PEF-001500: "From" line and company names in subject line. All other information on page after word "Peggy;"</p> <p>PEF-001501-001563: All information on pages;</p> <p>PEF-001564: "To," "cc:," and subject line, and name in introduction;</p> <p>PEF-001565-001597: All information on pages;</p> <p>PEF-001598: "From" and "cc:" lines. All information on page after word "revisions;"</p> <p>PEF-001599-0011603: All information on pages;</p> <p>PEF-001064: "From" line. All information on page after word "attached;"</p> <p>PEF-001605-001631: All information on pages;</p> <p>PEF-001632: Subject line and company names in first paragraph and in footer;</p> <p>PEF-001633-001687: All information on pages;</p> <p>PEF-001688: "From" and subject line and all bullet points on page. Company</p>	
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	<p>names in legal notice in footer;</p> <p>PEF-001689-001691: All information on pages;</p> <p>PEF-001692: "From" and "cc:" lines. All words after the word "the" in second sentence. Company names in legal notice in footer;</p> <p>PEF-001693-001780: All information on pages;</p> <p>PEF-001781: "From," "To," and "cc:" lines. All text after word "from" in first sentence;</p> <p>PEF-001782-001783: All information on pages;</p> <p>PEF-001784-001787: All information on pages except for "To" block at top of letter on first page;</p> <p>PEF-001788: "From" and "cc:" lines. All text after word "Rick" on first page;</p> <p>PEF-001789-001866: All information on pages;</p> <p>PEF-001867: "From" line and all numeric bullets on page. Company names in legal notice in footer;</p> <p>PEF-001868-002029: All information on pages;</p> <p>PEF-002030: "From" and "cc:" lines. All text in first full paragraph. Name and address in footer;</p>	
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	<p>PEF-002031-002137: All information on pages;</p> <p>PEF-002138: "From" and "cc:" lines. All text on page after first full sentence;</p> <p>PEF-002139-002257: All information on pages;</p> <p>PEF-002258: "From" line and all text after first full sentence. Company names in legal notice in footer;</p> <p>PEF-002259-002277: All information on pages;</p> <p>PEF-002278-002279: "From," "cc:," and subject lines. Sender information in first e-mail. Company names in text of embedded e-mails;</p> <p>PEF-002280-002282: All information on pages after "To" block at top of letter;</p> <p>PEF-002283-002300: All information on pages;</p> <p>PEF-002302-002305: All information on pages;</p> <p>PEF-002306-002327: All information on pages except for "To" line on first page;</p> <p>PEF-002328-002376: All information on pages except for date, "To" and subject lines on first page;</p> <p>PEF-002377-002381: All information on pages except</p>	
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	<p>for "From," date, and "To" lines on first page;</p> <p>PEF-002382-002401: All information on pages after subject line document number identification;</p> <p>PEF-002403-002420: All information on pages;</p> <p>PEF-002421-2422: "cc:" line. Company names in first paragraph. "To," "From," and "cc:" lines in embedded e-mails. Company names and signature blocks in embedded e-mails;</p> <p>PEF-002423-002455: All information on pages;</p> <p>PEF-002456: "To" and subject lines. All information after first sentence;</p> <p>PEF-002457-002487: All information on pages;</p> <p>PEF-002488-002523: All information after word "revised" in subject line on first page;</p> <p>PEF-002524-002556: All information on pages after subject line on first page;</p> <p>PEF-002557: "To" line, introduction, and company names in first paragraph;</p> <p>PEF-002558-002586: All information on pages.</p>	
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