

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 060001-EI
ORDER NO. PSC-06-0829-CFO-EI
ISSUED: October 6, 2006

ORDER GRANTING PROGRESS ENERGY FLORIDA, INC.'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 07606-06)

On August 22, 2006, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Progress Energy Florida, Inc. (PEF) filed a request for confidential classification of portions of its response to Office of Public Counsel's Eighth Request for Production of Documents (Nos. 42 and 44) (Document No. 07606-06).

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]." 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), Florida Statutes, provides that proprietary confidential business information includes, but is not limited to "[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" (subsection d); and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information" (subsection e).

PEF contends that portions of its response to Requests Nos. 42 and 44 of OPC's Eighth Request for Production of Documents falls within these categories and thus constitutes proprietary confidential business information entitled to protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. PEF states that this information is intended to be and is treated by PEF as private and has not been publicly disclosed.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK.

PEF requests that the following information be granted confidential classification:

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42</p>	<p>Bates No. PEF-FUEL-004354 through PEF-FUEL-004357; Coal confirmation letter from Constellation Energy; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates No. PEF-FUEL-004365 through PEF-FUEL-004367; Coal confirmation letter with Alpha Coal Sales; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

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<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates No. PEF-FUEL-004369; PEF-FUEL-004370 & PEF-FUEL-004372; Coal confirmation letter from COALTRADE; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates Nos. PEF-FUEL-004378 & PEF-FUEL-004379; coal confirmation letter with Keystone Industries; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

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<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates Nos. PEF-FUEL-004392 & PEF-FUEL-004393; coal confirmation letter with COALSALES; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates Nos PEF-FUEL-004396 through PEF-FUEL-004398; coal confirmation letter from Constellation Energy; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

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<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates Nos. PEF-FUEL-004406 & PEF-FUEL-004407; coal confirmation letter from Central Appalachian Mining; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates No. PEF-FUEL-004414 through PEF-FUEL-004416; coal confirmation letter with CAM Mining; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

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<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates Nos. PEF-FUEL-004430 through PEF-FUEL-004433; coal confirmation letter from Constellation Energy; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates Nos. PEF-FUEL-004440 & PEF-FUEL-004441; coal confirmation letter with AMVEST Coal Sales; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

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<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates Nos. PEF-FUEL-004443 & PEF-FUEL-004444; Coal confirmation letter with Arch Coal Sales Company; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
<p>PEF's Response to OPC's Eighth Request for Production, Question No.42.</p>	<p>Bates Nos. PEF-FUEL-004447 & PEF-FUEL-004448; Coal supply confirmation letter with Trinity Coal Marketing; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

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PEF's Response to OPC's Eighth Request for Production, Question No. 42.	Bates Nos. PEF-FUEL-004462 through PEF-FUEL-004464; Coal supply confirmation letter from Constellation Energy; terms of coal supply contract.	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
PEF's Response to OPC's Eighth Request for Production, Question No. 42.	Bates Nos. PEF-FUEL-004472 through PEF-FUEL-004476; Coal supply confirmation letter to Glencore Ltd.; terms of coal supply contract.	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

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<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates Nos. PEF-FUEL-004484 through PEF-FUEL-004513; 2nd Amendment and Agreement for Sale & Purchase of Coal with Consol of Kentucky, Inc. & Consol Sales Co.; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates Nos. PEF-FUEL-004514; Amendment to Intent to Purchase Two Cargos Letter Agreement with Glencore; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

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<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates Nos. PEF-FUEL-004516 through PEF-FUEL-004545; Agreement for Sale and Purchase of Coal with Interocean Coal Sales; terms of coal contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates Nos. PEF-FUEL-004546 through PEF-FUEL-004554; coal confirmation letter to Arch Coal Sales, Inc.; terms of coal contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

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<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates Nos. PEF-FUEL-004555 through PEF-FUEL-004557; Coal Purchase Confirmation with Glencore; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates Nos. PEF-FUEL-004573 & PEF-FUEL-004574; Amendment to the Coal Purchase Confirmation with Glencore; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

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<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates Nos. PEF-FUEL-004575 & PEF-FUEL-004576; Coal Purchase Confirmation Letter with B&W Resources, Inc.; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
<p>PEF's Response to OPC's Eighth Request for Production, Question No. 42.</p>	<p>Bates No. PEF-FUEL-004590 through PEF-FUEL-004592; Coal Purchase Confirmation letter with Glencore; terms of coal supply contract.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

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<p>PEF's Response to OPC's Eighth Request for Production, Question No. 44.</p>	<p>Bates No. PEF-FUEL-004625; Spreadsheet containing summary of all bids for D Coal & A Coal; terms of coal supply contracts.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
<p>PEF's Response to OPC's Eighth Request for Production, Question No. 44.</p>	<p>Bates Nos. PEF-FUEL-004629 through PEF-FUEL-004631; PEF Regulated Fuels Dept. Coal Procurement Plan for February 2006 RFP; confidential coal price comparisons, volume targets, transportation assumptions & company business strategies for purchasing compliance & non-compliance coal.</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

PEF contends that this information contains confidential information regarding contractual data, such as pricing and quantities of fuels, and other contractual terms, the disclosure of which would impair the efforts of PEF or its affiliates to negotiate fuel supply contracts on favorable terms. PEF asserts that this information also relates to the competitive interests of PEF and its fuel suppliers, the disclosure of which would impair their competitive businesses. PEF states that this information is intended to be and is treated by PEF as private and has not been publicly disclosed.

Upon review, it appears that the above-referenced information contained in PEF's response to OPC's Eighth Request for Production of Documents, Nos. 42 and 44, 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. 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," or "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." 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 PEF 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 Matthew M. Carter II, as Prehearing Officer, that Progress Energy Florida, Inc.'s Request for Confidential Classification of Document No. 07606-06 is granted. It is further

ORDERED that the information in Document No. 07606-06 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.

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 6th
day of October, 2006.



MATTHEW M. CARTER II
Commissioner and Prehearing Officer

(S E A L)

LCB/pz

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.