

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Progress Energy Florida, Inc.

DOCKET NO. 090079-EI

In re: Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc.

DOCKET NO. 090144-EI

In re: Petition for expedited approval of the deferral of pension expenses, authorization to charge storm hardening expenses to the storm damage reserve, and variance from or waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C., by Progress Energy Florida, Inc.

DOCKET NO. 090145-EI

ORDER NO. PSC-09-0639-CFO-EI

ISSUED: September 18, 2009

ORDER DENYING REQUEST FOR CONFIDENTIAL CLASSIFICATION OF THE SUPPLEMENTAL INFORMATION PROVIDED PURSUANT TO THE COMMISSION'S ORDER ON STAFF'S MOTION TO COMPEL (DOCUMENT NO. 09214-09)

BY THE COMMISSION:

On September 3, 2009, pursuant to Section 366.093, Florida Statutes (F.S.) and Rule 25-22.006(3), Florida Administrative Code (F.A.C.), Progress Energy Florida, Inc. (PEF or Company), filed a request for confidential classification of the supplemental information provided to staff pursuant to the Commission's Order on Staff's Motion to Compel responses to Staff's Tenth and Eighteenth Sets of Interrogatories (Nos. 123-26, 197-98),<sup>1</sup> hereinafter "Supplemental Information." The Supplemental Information contained in these interrogatory responses relates to the compensation information, including base salaries, bonuses, and other compensation paid to all PEF employees whose total compensation exceeds \$165,000 respectively.

Request for Confidential Classification

Section 366.093(1), F.S., provides that "any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall

<sup>1</sup> See Order No. PSC-09-0613-PCO-EI, issued September 8, 2009, in Docket No. 090079-EI, In re: Petition for increase in rates by Progress Energy Florida, Inc., Order Granting Motion for Order Compelling Responses to Interrogatories, et al. PEF's request for confidential classification of the previously provided compensation information contained in its interrogatory responses was denied by Order No. PSC-09-0612-CFO-EI, issued September 8, 2009, in the same docket, Order Denying Requests for Confidential Classification (Document Nos. 07388-09, 07595-09, and portions of 04092-09). In the Order granting staff's motion to compel, PEF was directed to provide full and complete responses to these interrogatories, but was not required to provide the names of the employees.

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be kept confidential and shall be exempt from Section 119.07(1) [F.S.],” which is Florida’s Public Records Act.”

Under Section 366.093(3), F.S., such proprietary confidential business information includes but is not limited to six specific categories of information. The two specific categories pertinent to the analysis of PEF’s claim of confidentiality are:

- (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.
- (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

PEF contends that protection provided under Section 366.093(3), F.S. is not limited to information that falls into one of the six categories enumerated in paragraphs (a) to (f). Instead, protection is available to any information that satisfies the general definition of proprietary confidential business information.

PEF claims confidentiality only to the extent the Supplemental Information discloses the specific compensation paid to specific employees. PEF asserts confidentiality for the Supplemental Information under both the general language of subsection (3) of Section 366.093, F.S., and particularly under paragraph (e) of this subsection. While compensation information may not qualify for protection under subsection (3)(f) related to employee personnel information, PEF contends that such information is not ineligible for protection under other provisions contained within this subsection. PEF asserts that the disclosure of this proprietary confidential business information could harm both the Company and the ratepayers.

PEF contends there are three ways public disclosure would adversely impact the Company’s business operations and increase the rates paid by PEF’s ratepayers. First, it could lead to other utilities hiring away key, experienced employees. Second, it could provide new employees a competitive advantage in negotiating compensation packages, leading to higher compensation paid to employees. Third, if current employees have access to this information, it could potentially make it difficult to retain key employees, and adversely affect employee morale and productivity.

PEF asserts that the Commission orders denying confidential classification to compensation information are incorrect, and should be rejected in favor of Commission orders which granted confidential classification. PEF further asserts that Section 366.093(3)(f), F.S., as worded, allows the requesting utility to prove that the disclosure of compensation information would be harmful to its competitive business interests under Section 366.093(3)(e) or otherwise harms its ratepayers or business operations under the general language of Section 366.093(3), F.S. PEF asserts that it has proved it would be harmed by the disclosure of the Supplemental Information.

Analysis and Ruling

Subsection 366.093(3), F.S., defines proprietary confidential business information as “is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.” Section 366.093(3)(a)-(f), F.S., further provides that proprietary confidential business information includes, but is not limited to, six specific types of information. Subsection 366.093(3)(f) plainly states that proprietary confidential business information includes “[e]mployee personnel information unrelated to compensation, duties, qualifications, or responsibilities.” (emphasis added). Thus, under the statute, employee personnel information that is related to compensation, duties, qualifications, or responsibilities is expressly excluded from the definition of proprietary confidential business information.

As the Supplemental Information submitted by PEF pursuant to Order No. PSC-09-0613-PCO-EI, pertains to employee compensation, it does not satisfy the definition of proprietary confidential business information and is therefore not exempt from disclosure. Similarly, there is nothing in the language of this statute that allows PEF, upon a showing of harm to its competitive business interests, to request confidential classification of employee compensation information which is specifically exempted from the definition of proprietary confidential business information. Even if paragraph (3)(e) provided an exception to paragraph (3)(f) of Section 366.093, F.S., I am not persuaded by PEF's assertion that such disclosure would harm PEF's competitive business interests.

For these reasons and the reasons adopted by the Commission in Order No. PSC-09-0612-CFO-EI, as well as my concurring opinion within the above referenced Order, PEF's Request for Confidential Classification of the Supplemental Information provided pursuant to the Commission's Order on Staff's Motion to Compel is hereby denied. Pursuant to Rule 25-22.006(9), Florida Administrative Code, Commission Document No. 09214-09 shall be kept confidential until the time for filing a notice of appeal has expired, and, upon request, through completion of judicial review. Upon the expiration of the time for filing a notice of appeal, if no notice is filed, the document will no longer be afforded confidential treatment.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that Progress Energy Florida, Inc.'s Request for Confidential Classification of the Supplemental Information provided pursuant to the Commission's Order on Staff's Motion to Compel is hereby denied for the reasons adopted by the Commission in Order No. PSC-09-0612-PCO-EI, issued September 8, 2009, as well as my concurring opinion. It is further

ORDERED that Commission Document No. 09214-09 shall be kept confidential until the time for filing a notice of appeal has expired, and, upon request, through completion of judicial

review; upon the expiration of the time for filing a notice of appeal, if no notice is filed, the document shall no longer be afforded confidential treatment.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 18th day of September, 2009.



NATHAN A. SKOP  
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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.