



JAMES A. MCGEE  
ASSOCIATE GENERAL COUNSEL  
PROGRESS ENERGY SERVICE COMPANY, LLC

May 20, 2004

VIA OVERNIGHT DELIVERY

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

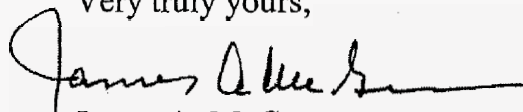
Re: Docket No. 031057-EI; Response to Waterborne Transportation  
Audit; **Request for Confidential Classification.**

Dear Ms. Bayó:

Enclosed for filing in the subject docket on behalf of Progress Energy Florida, Inc., is an original and seven copies of its Request for Confidential Classification. The document containing the highlighted information for which confidential classification is sought was included in a separate sealed envelope with Progress Energy's previously filed Notice of Intent to Request Confidential Classification and has been designated document DN 04472-04. **This document should be held as Confidential Information in accordance with Rule 25-22.006, F.A.C.** A public version of the document, with the confidential information redacted, was attached to each filed copy of the Notice of Intent.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. A 3½ inch diskette containing the above-referenced Request in Word format is also enclosed. Thank you for your assistance in this matter.

Very truly yours,

  
James A. McGee

JAM/scc  
Enclosures

cc: Parties of record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Review of Progress Energy  
Florida's benchmark for Waterborne  
Transportation Transactions with  
Progress Fuels.

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Docket No. 031057-EI

Submitted for filing:  
May 21, 2004

**REQUEST FOR CONFIDENTIAL**

Progress Energy Florida, Inc. (Progress Energy or the Company), pursuant to pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., hereby requests confidential classification of the highlighted information on its response to the Staff audit report of Progress Energy's 2003 waterborne transportation costs (the Response) contained in the sealed envelope enclosed with the Company's Notice of Intent to Request Confidential Classification, which has been designated confidential document DN 04472-04. A copy of a public version of the Response, with the confidential information redacted, was attached to each filed copy of the Notice. In support hereof, Progress Energy states as follows.

1. Subsection 366.093(1), F.S., provides that any records "found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1) [requiring disclosure under the Public Records Act]." Proprietary confidential business information includes, but is not limited to, "[i]nformation concerning . . . 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" (paragraph 366.093(3)(d)). The designated

portions of the Confidential Workpapers fall within this statutory category and, thus, constitute propriety confidential business information entitled to protection under Section 366.093 and Rule 25-22.006.

2. The Response consists of three pages: A one-page response to Audit Disclosure No. 1 regarding waterborne transportation costs, along with Attachment A, a one-page table supporting the response to Disclosure No. 1 (Response No. 1); and a one-page response to Audit Disclosure No. 2 regarding the commodity prices of certain coal purchases (Response No. 2).

3 The highlighted information in Response No. 1, including Attachment A, identifies and describes the contractual rate and total costs paid by the Company's coal and transportation supplier, Progress Fuels Corporation (PFC), under each contract for waterborne coal transportation in 2003, by component and in aggregate.<sup>1</sup> Disclosure of this information would provide PFC's existing and potential suppliers of waterborne transportation services with a competitive advantage in bidding or negotiating for PFC's future waterborne transportation services. By the same token, disclosure of PFC's waterborne transportation prices and costs would provide its supplier of rail transportation services detailed knowledge of the alternative transportation mode against which this supplier must compete, thus giving it a significant competitive advantage in

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<sup>1</sup> Response No. 1 also includes in two places the highlighted figure of \$1.74 per ton as PFC's non-contractual waterborne transportation costs for 2003. Progress Energy withdraws and waives its claim of confidentiality for this figure.

upcoming contract renewal negotiations with PFC. In addition, disclosure of this extensive information about PFC's waterborne transportation prices and costs, coupled with publicly available delivered prices and costs contained in the Company's monthly Form 423 filings, would allow knowledgeable participants in the coal supply business to determine or closely approximate PFC's commodity prices by simple subtraction. Once given this competitive advantage, these waterborne and rail transportation suppliers and coal suppliers would no longer need to offer their lowest price and, instead, would be able to tailor their offers to simply undercut PFC's existing prices. As a result, PFC and Progress Energy would incur higher fuel costs than if PFC's transportation and coal suppliers were not forearmed with this sensitive and competitively damaging information. Because these higher fuel costs would ultimately be borne by customers of Progress Energy through the fuel charge on their electric bills, disclosure of this waterborne transportation information would be contrary to, and in disregard of, the best interests of the Company's customers.

The highlighted information contained in Response No. 1 provides the same or substantially similar competitively sensitive information as that contained (a) in Progress Energy's Form 423 monthly filings in the ongoing Fuel and Purchased Power Cost Recovery proceedings, which are consistently accorded confidential classification by the Commission, (b) in document DN 12104-02 for which confidential classification was granted by Order No. PSC-03-0036-CFO-

EI, issued January 6, 2003 in Docket No. 030001-EI, (c) in document DN 04144-03 for which confidential classification was granted by Order No. PSC-03-1298-CFO-EI, issued November 13, 2003 in Docket No. 030001-EI, and (d) in document DN 10626-03 for which confidential classification is pending pursuant to Progress Energy's request filed November 19, 2003 in Docket No. 030001-EI.

4. The highlighted information in Response No. 2 is contained in a quotation from the Staff audit report that not only identifies the specific commodity prices in two of PFC's coal supply contracts, but establishes that the price of all other PFC coal supply contracts are within the range of these two prices. Disclosure of this coal commodity price information would give existing and potential coal suppliers a major competitive advantage in bidding for PFC's future coal purchases, much the same as the advantage described above that coal and transportation suppliers would gain from disclosure of PFC's waterborne transportation contractual costs. Specifically, knowledge of this information about PFC's commodity prices would allow these coal suppliers to avoid bidding their lowest price and, instead, simply undercut PFC's existing price. As a result, PFC and Progress Energy would incur higher fuel costs, and the Company's customers would pay higher fuel charges on their electric bills, than if PFC's coal suppliers were not given the unwarranted and harmful advantage that this competitively sensitive information would provide. As is the case PFC's waterborne transportation information, disclosure of these coal commodity prices would disregard the interests of the Company's customers.

The highlighted information contained in Response No. 2 provides the same or substantially similar competitively sensitive information as that contained (a) in Progress Energy's Form 423 monthly filings in the ongoing Fuel and Purchased Power Cost Recovery proceedings, which are consistently accorded confidential classification by the Commission, (b) in document DN 11296-02 for which confidential classification was granted by Order No. PSC-03-0035-CFO-EI, issued January 6, 2003 in Docket No. 030001-EI, (c) in document DN 04788-03 for which confidential classification was granted by Order No. PSC-03-1184-CFO-EI, issued October 21, 2003 in Docket No. 030001-EI, (d) in document DN 10626-03 for which confidential classification is pending pursuant to Progress Energy's request filed November 19, 2003 in Docket No. 030001-EI, and (e) in document DN 11182-03 for which confidential classification is pending pursuant to Progress Energy's request filed November 26, 2003 in Docket No. 030001-EI.

5. The designated information for which confidential classification is sought by this Request is intended to be and is treated by the Company as private and has not been publicly disclosed.

6. Progress Energy requests an 18-month confidentiality period, consistent with Rule 25-22.006 (9)(a), F.A.C. In addition, Progress Energy asks that the version of the Responses containing the highlighted information be returned to the Company when the Commission no longer needs the information to conduct its business, in accordance with Rule 25-22.006 (9)(b), F.A.C.

7. Progress Energy asks that this request be considered on its merits despite its filing out of time. The office transition and relocation of certain key personnel involved in coordinating the review and designation of confidential information in the audit workpapers, some of which was also included in the Company's Response to the audit, led to an inadvertent oversight in monitoring the filing deadline for requesting confidential classification of the Response.<sup>2</sup> Upon discovery of this oversight, the Company immediately completed the process of reviewing and designating the confidential information in the audit workpapers and in the Response, and the preparation of this request. To the best of Progress Energy's knowledge and belief, the Response has been maintained by the Commission consistent with the safekeeping afforded confidential information during the lapse in filing this request. Progress Energy believes and represents that no party or interested person has been or will be prejudiced by this filing lapse, and that, to the contrary, the interest of the Company's customers has been and will continue to be served by maintaining the confidentiality of the information subject to this request. As described above regarding the merits of granting confidential classification, the only consequence that can possibly result from the disclosure of this information would be an increase in the cost of purchasing and delivering coal to the Crystal River plant site, which the

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<sup>2</sup> These circumstances also led to an oversight of the filing deadline for requesting confidential classification of the workpapers from the Staff waterborne transportation audit. That request for confidential classification is being filed in conjunction with this request.



Company's customers would ultimately bear through higher fuel charges on their electric bills.

Any such a detrimental consequence to Progress Energy's customers can be avoided under the principle of "excusable neglect". Where excusable neglect exists, the law favors allowing a party to have its controversy decided on the merits. *Lloyd's Underwriter's at London v. Ruby, Inc.*, 801 So.2d 138, 139 (Fla. 4th DCA 2001). The courts have explained that "[w]here inaction results from clerical or secretarial error, reasonable misunderstanding, a system gone awry or any other of the foibles to which human nature is heir, then upon timely application accompanied by a reasonable and credible explanation the matter should be permitted on the merits." (quoting *Shurgard Storage Centers, Inc. v. Parker*, 755 So.2d 695, 696 (Fla. 4th DCA 1999) and *Gateway Am. Bank of Fla. v. Lucky Jet Corp.*, 720 So.2d 1141, 1142 (Fla. 4th DCA 1998)). See also, *Florida West Coast Railroad v. Maxwell*, 601 So.2d 298 (Fla. 1st DCA 1992) (relying on the quotation above). The principle of "excusable neglect" originated in connection with default judgments in civil cases, but the courts have recognized its applicability in the administrative context. See *Hamilton County Bd. of County Comm'rs v. Department of Env'tl. Regulation*, 587 So.2d 1378 (Fla. 1st DCA 1991) (Department erred in striking untimely exceptions to recommended order without considering party's claim that late filing was due to excusable neglect). In fact, this Commission has applied the principle in

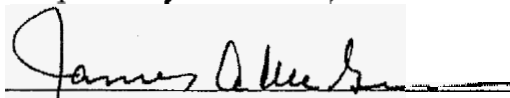


connection with a late-filed confidentiality request. Order No. PSC-96-0407-CFO-WS (Late-filed confidentiality request due to "inadvertent clerical error" did not constitute waiver of confidentiality). See also, Order No. 96-0569-FOF-TL (Late filing of regulatory assessment fee due to "unusually heavy workload" and personnel absences constituted excusable neglect).

Progress Energy respectfully suggests that its late filing of this request should be considered the result of excusable neglect in its own right, and that taking into consideration the interests the Company's customers lends further support to such a finding.

WHEREFORE, Progress Energy requests that the highlighted information in the Response to Staff's waterborne transportation audit enclosed with the Company's Notice of Intent, DN 04472-04 request be accorded confidential classification for the reasons set forth above.

Respectfully submitted,



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Attorney for  
PROGRESS ENERGY FLORIDA, INC.

**PROGRESS ENERGY FLORIDA**  
**DOCKET NO. 031057-EI**

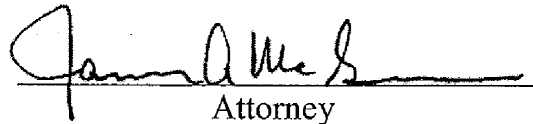
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Request for Confidential Classification on behalf of Progress Energy Florida has been furnished to the following individuals by regular U.S. Mail the 20th day of May, 2004.

Wm. Cochran Keating, IV, Esquire  
Office of the General Counsel  
Economic Regulation Section  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
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Office of the Public Counsel  
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111 West Madison St., Room 812  
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