

ORIGINAL

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD: 40
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M- COMMISSION CLERK

DATE: September 20, 2004

TO: Marlene Stern, Attorney, General Counsel

FROM: Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver) *F w JMet*

RE: Docket 040007-EI, Recommendation concerning Progress Energy Florida, Inc., (PEF) request for confidential classification concerning a portion of the staff working papers prepared during "Progress Energy Florida, Inc., Environmental Cost Recovery Clause Audit for the Year Ended December 31, 2003", Audit Control No. 04-044-2-2, Documents Numbered 08247-04 and 08598-04

On July 17, 2004, when copies of certain portions of staff's working papers obtained or prepared during the "Progress Energy Florida Inc. Environmental Cost Recovery Clause Audit for the Year Ended December 31, 2003", were delivered to PEF at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with the provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On July 29, 2004, staff filed documents 08247-04 consisting of those specified portions of the staff working papers.

On August 6, 2004, PEF filed a request pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006(3)(A)(2.) AND (4.), FAC, that selected portions of the working papers prepared by the staff during the audit receive confidential classification. The utility's request included redacted copies for public inspection (document 08597-04) and highlighted copies (document 08598-04).

Documents 08247-04 and 08598-04 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of PEF's request for confidential classification.

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH Lockord

Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific items of a statutory provision. Subsection 366.093(3)(d), F.S., provides the following exemption.

DOCUMENT NUMBER - DATE
10155 SEP 21 04

Subsection 366.093, F.S., provides; “Proprietary confidential business information means information, regardless of form or characteristics, which 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. Proprietary confidential business information includes but is not limited to:

....

(d) 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”

According to Section 366.093, F.S., and Rule 25-22.006, FAC, the utility has the burden of demonstrating that materials qualify for confidential classification. According to Rule 25-22.006, FAC, the utility must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility, the provider of the information or the ratepayer harm.

Staff Analysis of the Request

Reading the PEF filing reveals the sensitive material consists of:

Contractual data, such as rates, total costs related to commodities purchased from, and services rendered by, outside firms.

Subsection 366.093(d), F. S., provides that the Commission may grant a confidential classification to sensitive contractual information to include bidding information if release of that information will impair the ability of the utility or its affiliates to contract on favorable terms.

PEF identifies the material associated with sensitive contractual information as reported within staff working papers entitled: “Invoices from Viasys Utility Services”, “Invoices from Pike Electric & Viasys Utility Services”, “Qore Inc. Contract”, “Invoice(s) from Pike Electric”, “Contract with Southern Waste Services”, “Contract with Viasys”, “Contract with Pike Electric”, and “Contract with Osmose.” PEF pleads that release of this contractual data, “either alone or in conjunction with non confidential information on other work papers (such as vendor timesheets or quantities purchased) would give potential vendors sensitive information which would place the company at a competitive disadvantage when negotiating with such vendors in the future....”

After reading the material identified by PEF, we agree that release of this material would reasonably be expected to impair the ability of PEF or its affiliates to contract favorably for goods and services. We therefore recommend that the material be granted a confidential classification on the basis that the material meets the exemption provided by Subsection 366.093(3)(d), Florida Statutes.

Information Held as Confidential

To qualify as proprietary confidential business information the material must also be held as private and not be released to the public. PEF asserts that this information “is considered confidential and is maintained as such.”

Duration of the Confidential Classification Period

PEF requests that this material be returned to the utility once the information is no longer needed for the Commission to conduct its business. However, we note the Commission staff’s working papers for this type of audit are retained on file by the Commission for 25 years.

According to the provisions of Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Without cause shown for a longer period, we recommend that the period of confidential classification be set as 18 months. As deemed necessary, the utility may request an extension of the confidential classification before the period tolls.

Staff Recommendation

Based upon reading the filing, and for the reasons presented above, we recommend the utility’s request be granted and that the identified material be granted a confidential classification for 18 months.

A detailed recommendation, as found, follows:

Detailed Recommendation, as found

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
10-2/1	Invoices from Viasys Utility Services	1	1-3	Grant	Sensitive contractual information
10-2/1	Invoices from Viasys Utility Services	3	1-3	Grant	Sensitive contractual information
10-2/1	Invoices from Viasys Utility Services	5	1-5	Grant	Sensitive contractual information
10-2/1	Invoices from Viasys Utility Services	7	1-3	Grant	Sensitive contractual information
10-2/1	Invoices from Viasys Utility Services	9	1-3	Grant	Sensitive contractual information
✓ 10-16/1-1	Invoices from Pike Electric & Viasys Utility Services	1	1-4	Grant	Sensitive contractual information
10-16/1-1	Invoices from Pike Electric & Viasys Utility Services	3	1-5	Grant	Sensitive contractual information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
✓ 10-16/1-1	Invoices from Pike Electric & Viasys Utility Services	6	1-4	Grant	Sensitive contractual information
✓ 10-16/1-1	Invoices from Pike Electric & Viasys Utility Services	9	1-4	Grant	Sensitive contractual information
✓ 10-16/1-1	Invoices from Pike Electric & Viasys Utility Services	12	1-27	Grant	Sensitive contractual information
✓ 10-16/1-1	Invoices from Pike Electric & Viasys Utility Services	13	1-19	Grant	Sensitive contractual information
✓ 10-16/1-1	Invoices from Pike Electric & Viasys Utility Services	15	1-27	Grant	Sensitive contractual information
✓ 10-16/1-1	Invoices from Pike Electric & Viasys Utility Services	16	1-9	Grant	Sensitive contractual information
10-17/1	Invoices from Viasys Utility Services	1	1-5	Grant	Sensitive contractual information
10-17/1	Invoices from Viasys Utility Services	3	1-3	Grant	Sensitive contractual information
10-17/1	Invoices from Viasys Utility Services	4	1-3	Grant	Sensitive contractual information
10-17/1	Invoices from Viasys Utility Services	5	1-3	Grant	Sensitive contractual information
10-17/1	Invoices from Viasys Utility Services	7	1-8	Grant	Sensitive contractual information
10-17/1	Invoices from Viasys Utility Services	8	1-3	Grant	Sensitive contractual information
10-17/1	Invoices from Viasys Utility Services	10	1-5	Grant	Sensitive contractual information
10-17/1	Invoices from Viasys Utility Services	11	1-3	Grant	Sensitive contractual information
10-17/1	Invoices from Viasys Utility Services	13	1-3	Grant	Sensitive contractual information
10-17/1	Invoices from Viasys Utility Services	14	1-3	Grant	Sensitive contractual information
10-17/1	Invoices from Viasys Utility Services	16	1-3	Grant	Sensitive contractual information
✓ 10-19/1-1	Qore Inc. Contract	11	1-2	Grant	Sensitive contractual information
✓ 10-19/1-1	Qore Inc. Contract	29	1-30	Grant	Sensitive contractual information
✓ 10-19/1-1	Qore Inc. Contract	30	1-27	Grant	Sensitive contractual information
✓ 10-19/1-1	Qore Inc. Contract	31	1-3	Grant	Sensitive contractual information
10-20/1	Invoice from Pike Electric	1	1-3	Grant	Sensitive contractual information
10-20/1	Invoice from Pike Electric	2	1-9	Grant	Sensitive contractual information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 08247-04 and 08598-04					
10-25/2	Invoices from Pike Electric	1	1-7	Grant	Sensitive contractual information
10-25/2	Invoices from Pike Electric	4	1-12	Grant	Sensitive contractual information
10-27/1	Contract with Southern Waste Services	2	1-2	Grant	Sensitive contractual information
10-27/1	Contract with Southern Waste Services	3	1	Grant	Sensitive contractual information
10-27/1	Contract with Southern Waste Services	28	1-2	Grant	Sensitive contractual information
10-27/1	Contract with Southern Waste Services	43	1-40	Grant	Sensitive contractual information
10-27/1	Contract with Southern Waste Services	44	1-42	Grant	Sensitive contractual information
10-27/1	Contract with Southern Waste Services	45	1-40	Grant	Sensitive contractual information
10-27/1	Contract with Southern Waste Services	46	1-30	Grant	Sensitive contractual information
10-27/1	Contract with Southern Waste Services	47	1	Grant	Sensitive contractual information
10-27/1	Contract with Southern Waste Services	48	1-15	Grant	Sensitive contractual information
10-27/1	Contract with Southern Waste Services	57	1-2	Grant	Sensitive contractual information
10-27/1	Contract with Southern Waste Services	62	1-3	Grant	Sensitive contractual information
10-27/1	Contract with Southern Waste Services	78	1	Grant	Sensitive contractual information
10-27/1	Contract with Southern Waste Services	80	1-18	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	5	1-8	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	6	1-12	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	7	1-9	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	8	1-20	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	9	1-9	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	10	1-10	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	11	1-12	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	12	1-12	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	13	1-11	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	14	1-6	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	15	1-3	Grant	Sensitive contractual information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 08247-04 and 08598-04					
10-27/2	Contract with Viasys	16	1-12	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	17	1-14	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	18	1-20	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	23	1	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	30	1-5	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	31	1-4	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	33	1-4	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	34	1-6	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	35	1	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	37	1-8	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	38	1-6	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	39	1-15	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	40	1-16	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	41	1-8	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	42	1-6	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	43	1-21	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	44	1-8	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	45	1-11	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	46	1-10	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	47	1-2	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	48	1-12	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	49	1-14	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	50	1-20	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	51	1-4	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	52	1-4	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	53	1	Grant	Sensitive contractual information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 08247-04 and 08598-04					
10-27/2	Contract with Viasys	56	1-2	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	58	1-8	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	59	1-6	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	60	1-15	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	61	1-16	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	62	1-8	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	63	1-9	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	64	1-13	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	65	1-11	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	66	1-10	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	67	1-2	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	68	1-12	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	69	1-14	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	70	1-20	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	71	1-4	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	72	1-4	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	74	1-4	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	75	1-2	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	79	1	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	110	1-2	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	112	1-8	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	113	1-4	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	114	1-17	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	115	1-8	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	116	1-13	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	117	1-5	Grant	Sensitive contractual information

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Documents 08247-04 and 08598-04					
10-27/2	Contract with Viasys	118	1-15	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	119	1-8	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	120	1-10	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	121	1-2	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	122	1-12	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	123	1-16	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	124	1-22	Grant	Sensitive contractual information
10-27/2	Contract with Viasys	125	1-4	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	8	1-6	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	9	1-2	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	10	1	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	11	1-6	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	12	1-10	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	13	1-21	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	14	1-3	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	16	1-5	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	17	1-2	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	18	1-3	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	19	1	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	21	1	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	22	1-2	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	24	1-6	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	25	1-11	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	26	1-9	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	27	1	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	30	1-2	Grant	Sensitive contractual information

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Documents 08247-04 and 08598-04					
10-27/3	Contract with Pike Electric	31	1-4	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	33	1-3	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	34	1	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	35	1-2	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	36	1	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	37	1-2	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	38	1-2	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	41	1-2	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	43	1	Grant	Sensitive contractual information
10-27/3	Contract with Pike Electric	44	1	Grant	Sensitive contractual information
10-27/4	Contract with Osmose	5	1	Grant	Sensitive contractual information
10-27/4	Contract with Osmose	6	1-8	Grant	Sensitive contractual information
10-27/4	Contract with Osmose	11	1-2	Grant	Sensitive contractual information
10-27/4	Contract with Osmose	14	1-2	Grant	Sensitive contractual information
10-27/4	Contract with Osmose	15	1-9	Grant	Sensitive contractual information
10-27/4	Contract with Osmose	17	1-2	Grant	Sensitive contractual information
10-27/4	Contract with Osmose	18	1	Grant	Sensitive contractual information
10-27/4	Contract with Osmose	20	1	Grant	Sensitive contractual information
10-27/4	Contract with Osmose	22	1-2	Grant	Sensitive contractual information
10-27/4	Contract with Osmose	26	1	Grant	Sensitive contractual information
10-27/4	Contract with Osmose	27	1-8	Grant	Sensitive contractual information
10-27/4	Contract with Osmose	31	1-2	Grant	Sensitive contractual information
10-27/4	Contract with Osmose	32	1-9	Grant	Sensitive contractual information
10-27/4	Contract with Osmose	38	1	Grant	Sensitive contractual information
10-27/4	Contract with Osmose	65	1-2	Grant	Sensitive contractual information
10-27/4	Contract with Osmose	69	1-10	Grant	Sensitive contractual information

September 20, 2004
Progress Energy Florida, Inc., Request

A temporary copy of this recommendation will be held at I:08598-04.progressraf.doc for a short period.

CC: Division of Regulatory Compliance and Consumer Assistance (Rohrbacher)
Division of Commission Clerk and Administrative Services (Flynn)