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STATE OF FLORIDA

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DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES
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NOV 14 AM 10:23
COMMISSION CLERK

Public Service Commission

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

DATE: October 31, 2005

TO: _____ OFFICE OF THE GENERAL COUNSEL
_____ DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT
XX DIVISION OF ECONOMIC REGULATION
_____ DIVISION OF REGULATORY COMPLIANCE
& CONSUMER ASSISTANCE

FROM: DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC 1
- OTH Lockard

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCUMENT NO(s): 10493-05

DESCRIPTION: Progress (Dailey) - (CONFIDENTIAL) Certain highlighted information contained in transcript of deposition of Albert W. Pitcher taken by OPC on 10/21/05, as well as associated Exhibits 1-12; and supplemental response to OPC's 5th request for PODs (No. 13). [See DN 10457-05]

SOURCE: Progress Energy Florida, Inc.

DOCKET NO(S): 050001-EI

The above material was received with a filing of a request for confidential classification and motion for protective order. Please prepare a recommendation for the attorney assigned to the case by completing the section below and forwarding a copy of this memorandum, together with a brief memorandum supporting your recommendation, to the attorney. Copies of your recommendation should also be provided to the Division of the Commission Clerk and Administrative Services, Bureau of Records and Hearing Services, and to the Office of General Counsel.

DOCUMENT NUMBER-DAT

10919 NOV 14 08

FPSC-COMMISSION CLERK

Please read each of the following and check if applicable.

- The document(s) is (are), in fact, what the utility asserts it (them) to be.
- The utility has provided enough details to perform a reasoned analysis of its request.
- The material has been received incident to an inquiry.
- The material is confidential business information because it includes:
 - (a) Trade secrets;
 - (b) Internal auditing controls and reports of internal auditors;
 - (c) Security measures, systems, or procedures;
 - (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company to contract for services on favorable terms;
 - (e) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities;
 - (f) Tax returns or tax-related information;
 - (g) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information.
- The material appears to be confidential in nature and harm to the company or its ratepayers will result from public disclosure.
- The material appears not to be confidential in nature.
- The material is a periodic or recurring filing and each filing contains confidential information.

Response prepared by: Bernard Windham

Date: 11-06-05

cc: GCL FLL
 CMP CCA
 ECR RCA
 MMS

Hopping Green & Sams

Attorneys and Counselors

Writer's Direct Dial No.
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October 31, 2005

BY HAND DELIVERY

Blanca Bayó
Director Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 050001-EI
Request for Confidential Classification and Motion for Protective Order
CONFIDENTIAL MATERIALS ENCLOSED

Dear Ms. Bayó:

Enclosed for filing on behalf of Progress Energy Florida, Inc., (PEF) are the following:

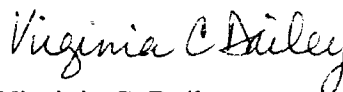
(1) The original and seven copies of PEF's Request for Confidential Classification and Motion for Protective Order, including Exhibit A, which identifies by page and line the information for which PEF seeks confidential treatment. (A diskette containing the Request in Word format is also included);

(2) A CONFIDENTIAL package containing Exhibit B, which includes one copy of the documents on which the confidential material has been highlighted; and

(3) A package containing Exhibit C, which includes two redacted copies of the confidential documents.

Please stamp and return the enclosed extra copy of this filing. If you have any question regarding this filing, please contact the undersigned.

Very truly yours,



Virginia C. Dailey

VCD/dg
Enclosures
cc: certificate of service

DOCUMENT NUMBER-DATE

10492 OCT 31 05

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, on behalf of Progress Energy Florida, that PEF's Request for Confidential Classification and Motion for Protective Order in Docket No. 050001-EI has been furnished by hand-delivery (*) or by regular U.S. mail to the following this 31st day of October, 2005.

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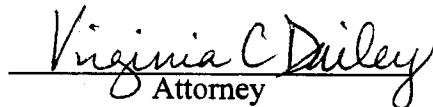
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Attorney

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor. | Docket No. 050001-EI

| Dated: October 31, 2005

**PROGRESS ENERGY FLORIDA'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION
AND MOTION FOR PROTECTIVE ORDER**

PROGRESS ENERGY FLORIDA, INC. ("PEF" or the "Company"), pursuant to Section 366.093, Florida Statutes ("F.S."), and Commission Rule 25-22.006, Florida Administrative Code ("F.A.C."), hereby requests confidential classification and a protective order to prevent disclosure of certain highlighted confidential information contained in the transcript of the deposition of Albert W. Pitcher taken by the Office of Public Counsel ("OPC") on October 21, 2005, as well as associated Exhibits to the deposition, and a supplemental response to OPC's Fifth Request for Production of Documents (No. 13). This request is also intended to serve as a request for a protective order, within the contemplation of Rule 25-22.006(6)(b), F.A.C., such that it will protect the Confidential Information from public disclosure while in the possession of the Office of Public Counsel. In support of its request, Progress Energy states as follows.

1. A list of the confidential information in question appears in Exhibit A (referred to as "Confidential Information"). Exhibit A includes a justification for designating the Confidential Information proprietary confidential business information under the above-referenced statute and rule. A single yellow highlighted copy of the Confidential Information is contained in the sealed envelope enclosed herewith, and labeled Exhibit B. A public version of the deposition transcript and exhibits, and the supplemental response to OPC's Fifth Request for Production of

PROGRESS ENERGY FLORIDA'S
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DOCKET NO. 050001-EI
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Documents (No. 13), with the confidential information redacted, is attached hereto and labeled Exhibit C.

2. The deposition of Mr. Pitcher taken by OPC concerns coal purchases made in 2004 and 2005. The highlighted portions of the deposition and exhibits contain information regarding the prices paid by Progress for coal and/or coal transportation, prices contained in bids presented to Progress for coal and/or coal transportation, pricing information from market publications to which PFC subscribes, information on PEF's confidential 423 Form Fuel Reports, and information that can be used in conjunction with other publicly available data to derive confidential coal and/or coal transportation pricing. Similarly, the supplemental response to OPC's Fifth Request for Production of Documents (No. 13) contains information concerning sensitive coal prices and other pricing terms. PEF is willing to provide the requested information to OPC, so long as the confidential information is protected from the harm that would result from public disclosure.

2. Much of the Confidential Information includes pricing information for coal purchases by PEF's affiliate, Progress Fuels Corporation (PFC), and pricing information contained in bids received from potential coal suppliers. Disclosure of this information would provide coal suppliers with knowledge of prices that PFC has paid and prices other suppliers have offered. This knowledge would give suppliers significant competitive advantage in future negotiations because they would no longer need to make their best offers to ensure the competitiveness of their rates. Instead, suppliers could simply offer the highest rates that would allow them to maintain a marginally competitive position. As such, disclosure of this information would impair the efforts of the Company or its affiliates to contract for goods or

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services on favorable terms. *See* § 366.093(3)(d), F.S. Furthermore, the information relates to the competitive interests of Progress Energy and its affiliates, the disclosure of which would impair their competitive businesses. *Id.* § 366.093(3)(e). Accordingly, such information constitutes "proprietary confidential business information" which is exempt from disclosure under the Public Records Act pursuant to Section 366.093(1), F.S. Much of this information is already subject to protection under Commission orders, *see, e.g.*, Order No. PSC-05-0879-CEO-EI (Aug. 31, 2005) (granting confidential classification to PEF's Waterborne Transportation Service Contracts), or pending requests for confidential classification.

3. The highlighted Confidential Information also includes copies of two of PEF's confidential 423 Forms and questions about information on those Forms. Disclosure of these Forms and the related information regarding sensitive pricing and contractual information for the purchase of coal and transportation services would impair PEF's efforts to contract for goods or services on favorable terms. § 366.093(3)(d), F.S. Further, PEF's confidential 423 Forms are already subject to protection under Commission orders granting confidential classification to the Forms. *See* Order Nos. PSC-05-0418-CFO-EI and PSC-05-0446-CFO-EI.

4. In addition, the highlighted Confidential Information includes information regarding prices from market publications to which PFC subscribes. The disclosure of pricing information from such market publications would provide coal suppliers with knowledge of the market indicators used by PFC to evaluate pricing. This knowledge would give suppliers competitive advantage in future negotiations because they would no longer need to make their best offers to ensure the competitiveness of their rates. Instead, suppliers could simply offer the highest rates that would allow them to maintain a marginally competitive position. Further, the Commission

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has previously granted confidential classification for similar information. *See, e.g.*, Order No. PSC-05-0701-CFO-EI (Jun. 28, 2005). Accordingly, such information constitutes "proprietary confidential business information" which is exempt from disclosure under the Public Records Act pursuant to Section 366.093(1), F.S.

5. The confidential information for which PEF seeks protection by this motion for protective order is intended to be and is treated by the Company as private and has not been publicly disclosed.

WHEREFORE, Progress Energy Florida respectfully requests that the highlighted Confidential Information be accorded confidential classification for the reasons set forth above and requests a protective order to protect the Confidential Information from public disclosure while in the possession of the Office of Public Counsel.

RESPECTFULLY SUBMITTED this 31st day of October, 2005.

HOPPING GREEN & SAMS, P.A.

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Gary W. Perko
Carolyn S. Raeppe
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Attorneys for Progress Energy Florida, Inc.

PROGRESS ENERGY FLORIDA'S
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EXHIBIT A

PROGRESS ENERGY FLORIDA
 JUSTIFICATION FOR CONFIDENTIAL TREATMENT OF INFORMATION
 DEPOSITION OF ALBERT W. PITCHER (OCTOBER 21, 2005)
 AND ASSOCIATED EXHIBITS

Document	Page	Line	Column	Description of Information	Statutory Justification
Deposition	50	1, 9, 12		contains information regarding the prices paid by Progress for coal under particular contracts	§ 366.093(3)(d), (e), F.S.
	51	7		contains information regarding the price paid by Progress for coal under a particular contract	
	53	23		contains information regarding the price paid by Progress for coal under a particular contract	
	54	21		contains information regarding the price paid by Progress for coal under a particular contract	
	57	8, 11		contains information regarding the price paid by Progress for coal under a particular contract	
	58	7, 8, 10, 15, 18, 21		contains information regarding the prices paid by Progress for coal under particular contracts	
	59	13, 25		contains information regarding the prices paid by Progress for coal under particular contracts	
	65	5, 13		contains information regarding transportation prices paid by Progress associated with coal purchases	
	77	20		contains information regarding market prices for coal in April 2004	
	78	2, 4, 9, 10, 14, 16, 19, 22		contains information regarding market prices for coal and prices paid by Progress for coal under particular contracts	
79	3		contains information regarding market prices for coal after April 2004		
Deposition Exhibit 1	2	1-4		includes prices and other contractual data for coal purchases – copy of PEF's Responses to Citizens' Second Set of Interrogatories – request for confidential classification for this	§ 366.093(3)(d), (e), and § 366.093(4), F.S.
	3	1-4			
	4	1-21			
	5	1-3			
	6	1-8			

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EXHIBIT A, PAGE 2

				information was filed on October 4, 2005 and granted on October 19, 2005 by Order No. PSC-05-1012-PCO-EI.	
Late-Filed Deposition Exhibit 3, titled "List of Responses to 4/04 Solicitation"	1	1-14	O-R	contains information regarding bid pricing and other contractual terms received by Progress for coal purchases	§ 366.093(3)(d), (e), F.S.
		15	O		
	2	1-23	E, G, I, K, M-O, W, Y, Z, AA, BB		
		24	Y		
Late-Filed Deposition Exhibit 4, titled "List of Coal Purchases from 4/04 Solicitation"	1	1-8	E, F, W, Y	contains information regarding bid pricing and other contractual terms received by Progress for coal purchases	§ 366.093(3)(d), (e), F.S.
		9	E, G, I, V		
Deposition Exhibit 5, titled "Progress Energy Ballpark Transport Costs for Coal Transport"	1	1-4		contains information regarding transport costs by barge and by rail associated with coal purchases	§366.093(3)(d), (e), Florida Statutes
Deposition Exhibit 6, titled "Progress Energy Coal Contracts"	1	1-17	E	contains information derived from coal supply contracts, including the sources of coal and the terms of the contracts	§366.093(3)(d), (e), Florida Statutes
Deposition Exhibit 7, titled "FPSC Form 423" for January 2005	3	1-9	g, h	contains information regarding contractual terms of coal purchases – request for confidential classification for this information was filed on April 8, 2005 [PSC document nos. 03465-05, 03466-05, and 03467-05] and granted on April 19, 2005 by Order No. PSC-05-0418-CFO-EI.	§366.093(3)(d), (e), and §366.093(4), Florida Statutes
	4	1-9	f, h, j, k, l		
	5	1-9	g, i, j, p		
	6	1-12	j, k		
	7	1-6	g, h		
	8	1-6	f, h, j, k, l		
	9	1-6	g, i, j, p		
	10	1-10	j, k		
	11	1	g, h		
	12	1	f, h, j, k, l		
	13	1	g, l, p		
	15	1-8	g, h		
	16	1-8	f, h, j, k, l		
	17	1-8	g, k, l, p		
18	1-8	j, k			
Late-filed Deposition Exhibit 8, titled	1	1-13	E	contains information regarding bid pricing and other contractual terms received by Progress for coal	§366.093(3)(d), (e), Florida Statutes
		10, 11,	A		
		13			

PROGRESS ENERGY FLORIDA'S
 REQUEST FOR CONFIDENTIAL CLASSIFICATION
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"Spot Bids and related documentation associated with spot purchase from PFC shown on Form 423 for January, 2005"	2	1-10	F	purchases	
		7, 8, 10	A		
		11-19			
	3	1			
	4	1-9	A, B, K		
		3-9	C		
		10-17, 23-38	D		
		23-38	E, J		
		1-9, 18- 22, 23-38	F		
		1-9, 23- 38	G		
		3-9, 10, 12-16, 23-38	H		
		10, 12- 16, 23-38	I		
		1-9, 10, 23-38	L		
		1, 3-5, 8, 9, 10, 23- 38	M		
		4, 5, 8- 10, 23-38	N		
		5	1-26		A, B
			2, 3, 8, 10-14, 16, 18- 22, 25, 26		C
	1-11, 15		F, G		
	1, 3-11		H		
	1-11, 13- 14		K, L		
	3, 4, 9, 13		M, N		
	27				
	6		1-28		A-I
	7	1-20	A-H		
	8	1-28	A-H		
	9	1-20	A-H		
10	1-5				
11	1-3				
13	1				
14	1-4				

PROGRESS ENERGY FLORIDA'S
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	15	1-6			
	16	1-37	A-H		
	17	1-9	A, B		
		1-9, 10-17	C		
		10-17, 24-39	D, E		
		1-9, 18-19, 21-23, 24-39	F		
		1-9, 24-39	G, K, L		
		3-6, 8-10, 12-16, 24-39	H		
		10, 12-16, 24-39	I		
		24-39	J, N		
		3-6, 8, 9, 24-39	M		
		18	1-4, 8-27	A, B	
	2, 3, 10, 11, 14-17, 19-23, 26, 27		C		
	1-11, 15-16		F, G		
	2-10		H		
	1-8, 12-13		K, L		
	1-2, 6-8, 12		M		
	28		N/A		
	19	1-2			
	20	1-3			
	21	1			
	29	1			
	31	1			
	34	1			
	36	1			
	38	1			
Deposition Exhibit 9, titled "FPSC Form 423" for February 2005	5	1	g, h	contains information regarding contractual terms of Progress coal purchases – request for confidential classification for this information was	§366.093(3)(d), (e), and §366.093(4), Florida Statutes
	6	1-11	g, h		
	7	1-5	g, h		
	8	1-7	g, h		

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	9	1	f, h, j, k, l	filed on April 21, 2005 [PSC document nos. 03897-05, 03898-05, and 03899-05] and granted on April 26, 2005 by Order No. PSC-05-0446-CFO-EI.	
	10	1-11	f, h, j, k, l		
	11	1-5	f, h, j, k, l		
	12	1-7	f, h, j, k, l		
	13	1	g, l, p		
	14	1-11	g, k, l, p		
	15	1-5	g, i, j, p		
	16	1-7	g, i, j, p		
	17	1	j, k		
	19	1-2	j, k		
	20	1-4	j, k		
Supplemental Response to OPC's 5th Request for Production of Documents (No. 13)	1	1-18	G		