

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.	DOCKET NO. 050001-EI ORDER NO. PSC-05-1186-CFO-EI ISSUED: December 2, 2005
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ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION (DOCUMENT NO. 10709-05)

On November 3, 2005, 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 coal contracts between PEF and its affiliate, Progress Fuels Corporation (PFC), and contracts between PFC and other providers of coal (Document No. 10709-05).

Request for Confidential Classification

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 the contracts fall 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.

PEF requests confidential classification for the information listed below:

DOCUMENT NUMBER-DATE

11375 DEC-2 05

FPSC-COMMISSION OF ENERGY

DOCUMENT	PAGE NO(S).	LINE NO(S).	STATUTORY JUSTIFICATION
Agreement for the Sale and Purchase of Coal Between Progress Fuels Corporation and Progress Fuels Corporation on its own behalf and as agent for Diamond May Coal Company; Kanawha River Terminals, Inc.; Kentucky May Company, Inc.; and Powell Mountain Coal Company, Inc. of January 1, 2005	4	1	§ 366.093(3)(d), Fla. Stat.
	Appendix B, pg. 1	1	
Letter Agreement Dated December 19, 2003 Addressed to Mr. Joseph B. Jefferson	Letter, pg. 1	1-2	§ 366.093(3)(d), Fla. Stat.
Letter from Al Pitcher (Progress Fuels) to John Parker (Massey Coal Sales Company) dated September 8, 2003; with attachment: "First Amendment to the Coal Sales Agreement between Electric Fuels Corporation and Massey Coal Sales Company, Inc. Dated October 30, 2001	1	1-2	§ 366.093(3)(d), Fla. Stat.
	2	1-4	
Coal Supply Agreement between Guasare Coal International, NV, and Progress Fuels Corporation of August 7, 2003	5	1-6	§ 366.093(3)(d), Fla. Stat.
Letter from Al Pitcher (Progress Fuels) to Clark Wisman (Central Coal Company) of January 27, 2004; with attachment no. 1: "Terms and Conditions made a part of Letter Agreement Dated January 27, 2004"; with attachment no. 2: Letter from Al Pitcher to Clark Wisman dated March 22, 2004, regarding Amendment to Letter Agreement Dated January 27, 2004	Letter, pg. 1	1-4	§ 366.093(3)(d), Fla. Stat.
	Attachment No. 2, pg. 1	1-2	
Letter from Al Pitcher (Progress Fuels) to Clark Wisman (Central Coal Company) dated January 16, 2004; with attachment: "Terms and Conditions made a part of	Letter, pg. 1	1-3	§ 366.093(3)(d), Fla. Stat.

Letter Agreement dated January 16, 2004"			
Letter from Al Pitcher (Progress Fuels) to John Parker (Massey Coal Sales Company, Inc.) dated April 7, 2005, with untitled Attachment 1	1	1-3	§ 366.093(3)(d), Fla. Stat.
	3 (Attachment 1)	1-8	
Letter from Al Pitcher (Progress Fuels) to Tom Scholl (Keystone Coal Company) of February 4, 2004; with attachment: "Terms and Conditions made a part of Letter Agreement dated February 4, 2004"	Letter, pg. 1	1-2	§ 366.093(3)(d), Fla. Stat.
Letter from Al Pitcher (Progress Fuels) to Mike Gatens (Keystone Coal Company) of April 28, 2005; with attachment: "Terms and Conditions made a part of Letter Agreement Dated April 28, 2005"	Letter, pg. 1	1-2	§ 366.093(3)(d), Fla. Stat.
Letter from Al Pitcher (Progress Fuels) to Steven E. Weber (Emerald International Corporation) of May 3, 2005; with attachment: "Terms and Conditions made a part of Letter Agreement dated May 3, 2005"	Letter, pg. 1	1-2	§ 366.093(3)(d), Fla. Stat.
Letter from Al Pitcher (Progress Fuels) to Steven E. Weber (Emerald International Corporation) of May 12, 2005	1	1-2	§ 366.093(3)(d), Fla. Stat.
Letter from Al Pitcher (Progress Fuels) to Steven E. Weber (Emerald International Corporation) of May 19, 2005	1	1-2	§ 366.093(3)(d), Fla. Stat.
Letter from Al Pitcher (Progress Fuels) to Steven E. Weber (Emerald International Corporation) of January 7, 2005; with attachment: "Terms and Conditions of Letter Agreement Dated January 7, 2005"	Letter, pg. 1	1	§ 366.093(3)(d), Fla. Stat.
Letter from Al Pitcher (Progress Fuels) to Joseph B. Jefferson (Progress Fuels	1	1-2	§ 366.093(3)(d), Fla. Stat.

Corporation) of February 3, 2005			
Letter from Al Pitcher (Progress Fuels) to Brett Phipps (Progress Fuels Corporation) of February 14, 2005	1	1	§ 366.093(3)(d), Fla. Stat.
Email from Dave Williams to Amy Futrell of August 4, 2005, including email from Dayton Eisel to Al Pitcher of August 3, 2005 regarding "Coal Shipping Location Change Request"	1	1-2	§ 366.093(3)(d), Fla. Stat.
	2	1	
Letter from Al Pitcher (Progress Fuels) to Joseph B. Jefferson (Progress Fuels Corporation) of December 19, 2003; with attachment: "Terms and Conditions made a part of Letter Agreement Dated December 19, 2003"	Letter, pg. 1	1-3	§ 366.093(3)(d), Fla. Stat.
Letter from Al Pitcher (Progress Fuels) to Joseph B. Jefferson (Progress Fuels Corporation) of September 22, 2003; with attachment: "Terms and Conditions made a part of Letter Agreement Dated September 22, 2003"	Letter, pg. 1	1-3	§ 366.093(3)(d), Fla. Stat.

PEF contends that this information identifies the prices paid for coal and coal transportation services under coal supply contracts in 2004 and 2005. PEF asserts that disclosure of these prices could provide potential coal suppliers or coal transportation service providers with direct knowledge of the prices or transportation rates against which they must compete. PEF states that this knowledge could give the potential suppliers a significant competitive advantage in future contract renewal negotiations because the suppliers would no longer need to make their best offers to ensure the competitiveness of their rates against the unknown rates of alternative suppliers available to PFC.

Upon review, it appears that the above-referenced information 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" and "[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.

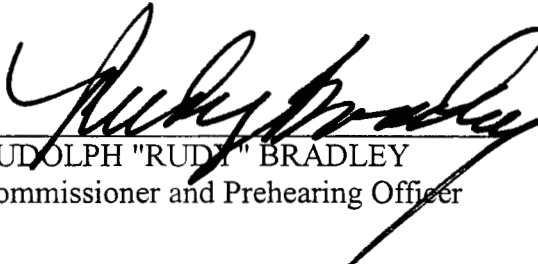
Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Progress Energy Florida, Inc.'s Request for Confidential Classification of Document No. 10709-05 is granted. It is further

ORDERED that the information in Document No. 10709-05 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. It is further

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this
2nd day of December, 2005.


RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

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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 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.