BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.	DOCKET NO. 040001-EI ORDER NO. PSC-04-0059-CFO-EI ISSUED: January 21, 2004

ORDER GRANTING CONFIDENTIAL CLASSIFICATION TO PORTIONS OF PROGRESS ENERGY FLORIDA INC.'S 423 FORMS FOR OCTOBER, 2003 (DOCUMENT NO. 00045-04)

Pursuant to Rule 25-22.006, Florida Administrative Code, and Section 366.093, Florida Statutes, Progress Energy Florida, Inc. (Progress) requests confidential classification of portions of its Form 423 Fuel Reports for October, 2003. The information is filed with the Commission as Document No. 00045-03.

Progress asserts that the information for which confidential classification is sought relates to sensitive pricing and contractual information for the purchase of fuel and transportation services. Progress maintains that the disclosure of this information to suppliers of such services "would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. Progress asserts, therefore, that this information is proprietary, confidential business information and as such, is entitled to protection from disclosure under Sections 366.093(1), and (3)(d), Florida Statutes. Progress affirms that this information has not been publicly disclosed.

Progress requests that this information be granted confidential classification for 24 months from the date of the issuance of this Order. Progress asserts that this time period is necessary to protect Progress and its ratepayers against the adverse effects on future negotiations that would result from disclosure of the information to potential fuel and transportation suppliers.

INFORMATION FOR WHICH CONFIDENTIAL CLASSIFICATION IS SOUGHT

Progress requests that the information contained in the following table be granted confidential classification:

TABLE 1: FORM 423-1A

LINE(S)	COLUMN(S)
4-10, 13-14, 16-19	H-O, Q

Progress asserts that the information under Column H, "Invoice Price," identifies the basic component of the contract pricing mechanism. According to Progress, disclosure of the invoice price, particularly if in conjunction with information under other columns discussed below, would enable suppliers to determine the pricing mechanisms of their competitors. Progress asserts that the reasonably likely result would be greater price convergence in future bidding. Disclosure, according to Progress, would also result in a reduced ability on the part of a major purchaser such as Progress to bargain for price concessions. Progress explains that suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect.

Progress also maintains that disclosure of the "Invoice Amount," Column I, when divided by the "Volume" figure in Column G, would disclose the "Invoice Price" found in Column H. Progress asserts that disclosure of "Discount," Column J, with other information in Columns K, L, M, or N, could also disclose the "Invoice Price" shown in Column H by mathematical deduction. Progress also asserts that disclosure of discounts resulting from bargaining concessions would impair the ability of Progress to obtain such concessions in the future. Progress maintains that Column N is particularly sensitive because it is usually the same as, or only slightly different from, the "Invoice Price" in Column H.

Progress asserts that disclosure of "Transportation to Terminal Charges," Column O, in conjunction with the information under Column Q, would also disclose the "Effective Purchase Price" in Column N by subtracting it from the "Delivered Price" available in Column R.

Progress requests confidential classification for portions of its Form 423-2 as illustrated in the table below:

TABLE 2: FORM 423-2

PLANT NAME	LINE(S)	COLUMN(S)
TRANSF. FACILITY IMT	1-4	G, H
CRYSTAL RIVER 1 & 2	1-5	G, H
CRYSTAL RIVER 4 & 5	1-11	G, H

Progress affirms that the "Effective Purchase Price" is also found on Form 423-2A, Column L, and on Form 423-2B, in Column G. Progress maintains that in nearly every case, it is the same as the F.O.B. mine price found under Column F on Form 423-2A, which is the current contract price of coal purchased from each supplier by Electric Fuels Corporation (EFC) for delivery to Progress. Progress asserts that disclosure of the information in Column G would also enable suppliers to determine the prices of their competitors, which would likely result in greater price convergence in future bidding. Disclosure, according to Progress, would also result in a reduced ability on the part of a major purchaser such as EFC to bargain for price concessions on behalf of Progress. Progress asserts that suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect. In addition, Progress contends, disclosure of the effective purchase price would disclose the total transportation cost reflected in Column H by subtracting Column G from the F.O.B. plant price in Column I.

Progress contends that the information in Column H is entitled to confidential classification because disclosure of the total transportation cost, when subtracted from the F.O.B. plant price in Column I, would also disclose the effective purchase price in Column G.

Progress asserts that the information contained in its Form 423-2A as illustrated in the table below is entitled to confidential classification:

TABLE 3: FORM 423-2A

PLANT NAME	LINE(S)	COLUMN(S)
TRANSF. FACILITY IMT	1-4	F, H, I, J, K, L
CRYSTAL RIVER 1 & 2	1-5	F, H, I, J, K, L
CRYSTAL RIVER 4 & 5	1-11	F, H, I, J, K, L

Progress asserts that the "F.O.B. Mine Price" in Column F is the current contract price of coal purchased from each supplier by EFC for delivery to Progress. Progress maintains that disclosure of this information would enable suppliers to determine the prices of their competitors, which would likely result in greater price convergence in future bidding. Progress asserts that disclosure would also likely result in a reduced ability on the part of a major purchaser such as EFC to bargain for price concessions on behalf of Progress. Progress claims that this is because suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect.

Progress asserts that Columns H-L are all mathematical derivatives of Column F whereby a competitor could take the information in these columns and by using other publicly available information, deduce the F.O.B. mine price for coal.

Progress also requests confidential classification for the information contained in its Form 423-2B as illustrated in the table below:

TABLE 4: FORM 423-2B

PLANT NAME	LINE(S)	COLUMN(S)
TRANSF. FACILITY IMT	1-4	G, P
CRYSTAL RIVER 1 & 2	1-5	G, I, J, P
CRYSTAL RIVER 4 & 5	1-11	G, I, J, P

Progress maintains that the information contained in Column G of Form 423-2B is the same as that described above for Form 423-2 (Table 2), and is entitled to confidential classification for the same reasons as given under Form 423-2 (Table 2). Progress asserts

that the information in Column I, "Rail Rate," is a function of EFC's contract rate with the railroad and the distance between each coal supplier and Crystal River. Because these distances are readily available, Progress asserts that disclosure of the rail rate would effectively disclose the contract rate. Progress asserts that this would impair the ability of a high volume user such as EFC to obtain rate concessions because railroads would be reluctant to grant concessions that other rail users would then expect.

Similarly, Progress asserts that Column J, "Other Rail Charges," consists of EFC's railcar ownership cost. Progress maintains that this cost reflects internal trade secret information which is not available to any party with whom EFC contracts. Progress maintains that if this information is disclosed to the railroad, their existing knowledge of EFC's rail rates would allow them to determine EFC's total rail cost and be better able to evaluate EFC's opportunity to economically use other competing transportation alternatives.

Progress maintains that Column P, "Transportation Charges," is the same as the information under Column H of Form 423-2, Table 2. According to Progress, in the case of rail deliveries to the Crystal River Plants, these figures represent EFC's current rail transportation rate. In the case of waterborne deliveries to the Crystal River plants, the figures represent EFC's current Gulf barge transportation rate. In the case of water deliveries to IMT, the figures represent EFC's current river transportation rate. Progress contends that protection of these transportation rates would lead suppliers to bid their best price without an opportunity to calculate a perceived maximum acceptable price.

Progress also requests confidential classification for the information contained in its Form 423-2C as illustrated in the table below:

TABLE 5: FORM 423-2C

PLANT NAME	LINE(S)	COLUMN(S)
TRANSF. FACILITY IMT	1-3	J, K
CRYSTAL RIVER 1 & 2	1-8	J, K
CRYSTAL RIVER 4 & 5	1-6	J, K

Progress maintains that the type of information contained under Column J and Column K relates to the particular column on Form 423-2, 2A, or 2B to which the adjustment applies (identified in Column I). The column justifications above also apply to the adjustments for those columns reported on Form 423-2C. In particular, "Retroactive Price Increases" and "Quality Adjustments" apply to the majority of the adjustments on Form 423-2C.

DECLASSIFICATION

Progress seeks protection from disclosure of the confidential information identified in the tables above for 24 months from the date of the issuance of this Order. Progress asserts that this is the minimum time necessary to ensure that subsequent disclosure will not allow suppliers to determine accurate estimates of the then-current contract price.

Pursuant to Section 366.093(4), Florida Statutes, confidential protection may only be granted for a period of 18 months unless the entity requesting confidential classification shows good cause why the period should be extended. As justification for an extension of the statutory period, Progress asserts that the majority of EFC's contracts contain annual price adjustment provisions. According to Progress, if suppliers were to obtain confidential contract information for a prior reporting month at any time during the same 12-month adjustment period, current pricing information would be disclosed. In addition, Progress maintains that if the previously reported information would be only one adjustment removed from the current price, suppliers knowledgeable in the recent escalation experience of their market could, according to Progress, readily calculate a reasonably precise estimate of the current price.

Progress contends that in order to guard against this competitive disadvantage, confidential information requires protection from disclosure for the initial 12-month period in which it could remain current, and for the following 12-month period in which it can be easily converted into essentially current information.

Progress maintains that an 18-month confidentiality period would effectively waste the protection given in the first six months of the second 12-month pricing period by allowing disclosure of the same vintage information in the last six months of the pricing period. The information disclosed in the six months following the expiration of the 18-month confidentiality period would be equally as detrimental to Progress' interests and to its ratepayers, in terms of revealing the current price, as the information protected from disclosure during the preceding six months. To make the protection meaningful, Progress asserts that it should be extended six months beyond the end of the 18-month confidentiality period permitted by statute. Progress maintains that doing so would mean that the information would be an additional 12 months and one price adjustment further removed from the current price at the time of disclosure.

CONCLUSION

Upon review, the information described above appears to be "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." Section 366.093(3)(d), Florida Statutes. This information reveals invoice prices, transportation charges, and coal prices. The public disclosure of any of this information could reduce Progress' competitiveness in the marketplace. This, in turn, could result in higher prices for transportation and coal.

This information, therefore, is entitled to confidential classification. Pursuant to Section 366.093(4), Florida Statutes, Progress has provided adequate justification for extending the confidentiality period an extra six months. Good cause having been shown, the information described above for which confidential classification is requested shall be granted confidential

classification for a period of 24 months from the date of the issuance of this Order.

Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that the request by Progress Energy Florida, Inc. for confidential classification of portions of Document No. 00045-04 is granted. It is further

ORDERED that the information described within the body of this Order and contained in Document No. 00045-04 shall be granted confidential classification for a period of 24 months from the date of the issuance of this Order. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 21st day of January, 2004.

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.