

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Review of Progress Energy Florida, Inc.'s benchmark for waterborne transportation transactions with Progress Fuels. | DOCKET NO. 031057-EI  
 ORDER NO. PSC-04-0857-CFO-EI  
 ISSUED: September 1, 2004

ORDER GRANTING CONFIDENTIAL CLASSIFICATION OF CERTAIN PORTIONS OF STAFF'S AUDIT REPORT, WORKING PAPERS, AND UTILITY'S RESPONSE TO STAFF AUDIT REPORT IN AUDIT NO. 04-028-2-1, "PROGRESS ENERGY FLORIDA, INC. WATERBORNE TRANSPORTATION AUDIT FOR THE YEAR ENDED DECEMBER 31, 2003"  
 (DOCUMENT NOS. 04159-04, 04160-04, 04472-04, 05848-04)

Progress Energy Florida, Inc. (Progress Energy) requests confidential classification of certain portions of staff's audit report, working papers, and Progress Energy's response to the audit report in Audit No. 04-028-2-1 (Progress Energy Waterborne Transportation Audit for the Year Ended December 31, 2003). Progress Energy makes this request pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. The information for which Progress Energy seeks confidential treatment is filed with the Commission as Document Nos. 04159-04, 04160-04, 04472-04, and 05848-04.

Progress Energy's Request for Confidential Classification was filed on May 21, 2004, 38 days after filing of its Notice of Intent to Request Confidential Classification. Rule 25-22.006(3)(a), Florida Administrative Code, requires a request for confidential classification be filed within 21 days of the filing of a notice of intent to request confidential classification absent good cause shown. Progress Energy states that the late filing of its request was the result of office transition and relocation of key personnel involved in coordinating the review and designation of confidential information which led to an inadvertent oversight in monitoring the deadline for requesting confidential classification. Progress Energy states that the late filing should be excused. Having considered Progress Energy's explanation, I find that Progress Energy showed good cause for its untimely filing of its request for confidential classification, and thus does not constitute a waiver of confidentiality of the subject information. Progress Energy, however, is cautioned to consider such job responsibilities in future office transitions.

Progress Energy requests that the following information be granted confidential classification:

Utility Page Number	Staff Work Paper Number	Page(s)	Line(s)	Type of Information Classified Confidential
1	1 (Report)	5	6 Marked Fields	Transportation allowance

DOCUMENT NUMBER-DATE

09567 SEP-1 8

FPSC-COMMISSION CLERK

Utility Page Number	Staff Work Paper Number	Page(s)	Line(s)	Type of Information Classified Confidential
2	1 (Report)	6	2 Marked Fields	Coal costs or prices
3	2A	1	Cols. Jan-June	Detailed financial data of affiliate coal supplier
4	2A	2	Cols. Jan-June	Detailed financial data of affiliate coal supplier
5	2A	3	Cols. Jan-June	Detailed financial data of affiliate coal supplier
6	2A	4	Cols. Jan-June	Detailed financial data of affiliate coal supplier
7	2A	5	Cols. Jan-June	Detailed financial data of affiliate coal supplier
8	2B	1	Cols. Jul-Dec	Detailed financial data of affiliate coal supplier
9	2B	2	Cols. Jul-Dec	Detailed financial data of affiliate coal supplier
10	2B	3	Cols. Jul-Dec	Detailed financial data of affiliate coal supplier
11	2B	4	Cols. Jul-Dec	Detailed financial data of affiliate coal supplier
12	2B	5	Cols. Jul-Dec	Detailed financial data of affiliate coal supplier
13	10-3A/2	1	28 Marked Fields	Waterborne transportation costs and prices
14	10-3A/3	1	Cols. Jul-Dec	Detailed financial data of affiliate coal supplier
15	10-3A/3	2	Cols. Jul-Dec	Detailed financial data of affiliate coal supplier
16	10-3A/3	3	Cols. Jul-Dec	Detailed financial data of affiliate coal supplier
17	10-3A/3	4	Cols. Jul-Dec	Detailed financial data of affiliate coal supplier
18	10-3A/3	5	Cols. Jul-Dec	Detailed financial data of affiliate coal supplier
19	10-3A/3	6	Cols. Jan-June	Detailed financial data of affiliate coal supplier
20	10-3A/3	7	Cols. Jan-June	Detailed financial data of affiliate coal supplier

Utility Page Number	Staff Work Paper Number	Page(s)	Line(s)	Type of Information Classified Confidential
21	10-3A/3	8	Cols. Jan-June	Detailed financial data of affiliate coal supplier
22	10-3A/3	9	Cols. Jan-June	Detailed financial data of affiliate coal supplier
23	10-3A/3	10	Cols. Jan-June	Detailed financial data of affiliate coal supplier
24	10-6	1	2 Marked Fields	Coal costs and prices
25	10-6	2	1 Marked Field	Coal costs and prices
26	10-6	3	2 Marked Fields	Coal costs and prices as well as contractual adjustments terms and specifications
27	10-6/1	1	6 Marked Fields	Coal costs and prices
28	10-6/3	1	2 Marked Fields	Coal costs and prices
29	10-6/3	2	2 Marked Fields	Coal costs and prices
30	10-6/3	3	1 Marked Field	Coal costs and prices
31	10-6/4	1	1 Marked Field	Coal costs and prices
32	10-6/4	2	2 Marked Fields	Coal costs and prices as well as contractual adjustments terms and specifications
33	10-6/4-1	1	2 Marked Fields	Coal costs and prices as well as contractual adjustments terms and specifications
34	10-7	2	5 Marked Fields	Coal and waterborne costs and prices
35	10-7/1	1	7 Marked Fields	Coal and waterborne transportation costs and prices
36	10-7/1-1	1	3 Marked Fields	Contractual adjustments, terms and specifications
37	10-7/1-1	2	8 Marked Fields	Contractual adjustments, terms and specifications
38	10-7/2	1	19 Marked Fields	Contractual adjustments, terms and specifications
39	10-7/2	2	11 Marked Fields	Waterborne transportation costs and prices
40	10-7/3	1	3 Marked Fields	Waterborne transportation costs and prices

Utility Page Number	Staff Work Paper Number	Page(s)	Line(s)	Type of Information Classified Confidential
41	10-7/4	1	4 Marked Fields	Waterborne transportation costs and prices
42	10-8/1-1	1	Cols - Crystal River 1&2: Dollars, Cost Per Ton;  Cols - Crystal River 4&5: Dollars, Cost Per Ton;  Cols - Total Regulated: Dollars, Cost Per Ton	Detailed financial data of affiliate coal supplier
43	10-8/1-2	1	15 Marked Fields	Waterborne transportation costs and prices
44	10-8/1-2	2	31 Marked Fields	Waterborne transportation costs and prices
45	10-9/1	1	2 Marked Fields	Waterborne transportation costs and prices
46	10-9/1-1	1	6 Marked Fields	Waterborne transportation costs and prices
47	10-9/1-1	3	10 Marked Fields	Waterborne transportation costs and prices
48	10-9/1-1	4	10 Marked Fields	Waterborne transportation costs and prices
49	10-9/1-1	5	14 Marked Fields	Waterborne transportation costs and prices
50	10-11	1	2 Marked Fields	Waterborne transportation costs and prices as well as detailed financial data of affiliate coal supplier
51	10-11/1	1	6 Marked Fields	Waterborne transportation costs and prices as well as detailed financial data of affiliate coal supplier

Utility Page Number	Staff Work Paper Number	Page(s)	Line(s)	Type of Information Classified Confidential
52	10-12	2	Cols. Jul-Dec	Detailed financial data of affiliate coal supplier
53	10-12	3	Cols. Jul-Dec	Detailed financial data of affiliate coal supplier
54	10-12/1	1	1 Marked Field	Detailed financial data of affiliate coal supplier
55	10-12/1	2	10 Marked Fields	Detailed financial data of affiliate coal supplier
56	10-12/1	3	1 Marked Field	Detailed financial data of affiliate coal supplier
57	10-12/3	1	4 Marked Columns	Detailed financial data of affiliate coal supplier
58	10-12/3	2	4 Marked Columns	Detailed financial data of affiliate coal supplier
59	10-12/6	1	19 Marked Fields	Coal costs and prices
60	42	1	7 Marked Fields	Waterborne transportation costs and prices
61	42	2	17 Marked Fields	Waterborne transportation costs and prices
62	42	3	11 Marked Fields	Contractual adjustments, terms and specifications
63	42	4	5 Marked Fields	Waterborne transportation costs and prices
64	42	5	6 Marked Fields	Waterborne transportation costs and prices
65	42-1	1	69 marked Fields	Contractual adjustments, terms and specifications
66	42-2	1	5 Marked Fields	Contractual adjustments, terms and specifications
67	42-2	2	38 Marked Fields	Contractual adjustments, terms and specifications
68	42-2	3	56 Marked Fields	Contractual adjustments, terms and specifications
69	42-2	4	8 Marked Fields	Contractual adjustments, terms and specifications
70	42-3	1	21 Marked Fields	Waterborne transportation costs and prices

Utility Page Number	Staff Work Paper Number	Page(s)	Line(s)	Type of Information Classified Confidential
71	42-4	1	11 Marked Fields	Coal costs and prices
72	42-4	2	14 Marked Fields	Coal and waterborne transportation costs and prices was well as contractual adjustments, terms and specifications
73	42-4/1	1	2 Marked Fields	Coal costs and prices as well as contractual adjustments, terms and specifications
74	42-5	1	7 Marked Fields	Coal costs and prices
75	42-5	2	10 Marked Fields	Coal and waterborne transportation costs and prices was well as contractual adjustments, terms and specifications
76	42-5	3	12 Marked Fields	Coal costs and prices as well as contractual adjustments, terms and specifications
77	44-2	1	7 Marked Columns	Coal and waterborne transportation costs and prices
78	44-3/1	1	15 Marked Fields	Waterborne transportation costs and prices
79	44-3/1	2	18 Marked Fields	Waterborne transportation costs and prices
80	44-3/1	3	16 Marked Fields	Waterborne transportation costs and prices
81	44-3/1	4	12 Marked Fields	Waterborne transportation costs and prices
82	44-3/1	5	12 Marked Fields	Waterborne transportation costs and prices
83	45	1	17 Marked Fields	Waterborne transportation costs and prices
84	45-1	1	18 Marked Fields	Coal costs and prices
85	45-1/1	1	10 Marked Fields	Coal costs and prices

Utility Page Number	Staff Work Paper Number	Page(s)	Line(s)	Type of Information Classified Confidential
86	45-2	1	39 Marked Fields	Waterborne transportation costs and prices
87	45-3	1	4 Marked Fields	Coal costs and prices
88	45-4	1	3 Marked Fields	Coal and waterborne transportation costs and prices
89	45-5	1	1 Marked Field	Waterborne transportation costs and prices
90	45-6	1	1 Marked Field	Waterborne transportation costs and prices
91	45-7	1	27 Marked Fields	Coal costs and prices
92	46	1	46 Marked Fields	Coal and waterborne transportation costs and prices
93	46-1	1	138 Marked Fields	Waterborne transportation costs and prices
94	46-1	2	31 Marked Fields	Waterborne transportation costs and prices
95	46-2	1	157 Marked Fields	Coal costs and prices
96	46-2	2	141 Marked Fields	Coal costs and prices
97	46-3	1	2 Marked Columns	Coal costs and prices
98	46-3	2	2 Marked Columns	Coal costs and prices
99	46-4	1	8 Marked Fields	Waterborne transportation costs and prices
100	46-4	2	2 Marked Columns	Waterborne transportation costs and prices
101	46-4	3	4 Marked Fields	Waterborne transportation costs and prices
102	46-5	1	27 Marked Fields	Waterborne transportation costs and prices
103	46-6	1	83 Marked Fields	Waterborne transportation costs and prices

Utility Page Number	Staff Work Paper Number	Page(s)	Line(s)	Type of Information Classified Confidential
104	46-6/1	1	81 Marked Fields	Contractual adjustments, terms and specifications
105	46-7	1	121 Marked Fields	Coal costs and prices as well as contractual adjustments, terms and specifications
106	46-7	2	20 Marked Fields	Coal costs and prices
107	46-7	3	37 Marked Fields	Coal costs and prices as well as contractual adjustments, terms and specifications
108	46-8	1	17 Marked Fields	Coal Costs and prices
109	47	1	4 Marked Fields	Transportation allowance
Response No. 1	N/A	1	8 Marked Fields	Contractual rate and total costs for coal contracts
Response No. 2	N/A	1	2 Marked Fields	Commodity prices for coal contracts
Attachment A	N/A	1	6 Marked fields	Contractual rate and total costs for coal contracts

Progress Energy seeks confidential classification for material that contains or constitutes internal audit reports and associated documents within the meaning of Section 366.093(3)(b), Florida Statutes. Progress Energy states that the audit report and working papers contain information revealing contractual prices or costs per ton for waterborne transportation; information revealing contractual prices or costs per ton for coal; and contractual terms and adjustments concerning coal or waterborne transportation services. Progress Energy asserts that if this information were public, suppliers would have a significant advantage and would no longer have to offer their best price for goods and services. According to Progress Energy, any resulting higher costs would have to be passed on to the ratepayer. Progress Energy states that the audit report and working papers also contain financial data concerning income from Progress Fuels Corporation (PFC), the release of which would impair the ability of this affiliate to contract for goods and services. PFC, an affiliate, sells fuel to Progress Energy. Progress Energy asserts that disclosure of PFC's detailed monthly and annual 2003 income statement information concerning the costs and prices set for fuels used by the utility's Crystal River plant site would harm the contracting ability of PFC and eventually increase costs to the ratepayer. According to Progress Energy, this information is not otherwise publicly available. Progress Energy asserts that disclosure of this information along with other publicly available information would provide suppliers with a contractual advantage when selling fuel or transportation services to the utility's



fuel-purchasing affiliate PFC. Progress Energy further asserts that this information would also provide contracting advantages to its competitors. Progress Energy states that such an advantage would result in higher fuel costs to the affiliate which eventually would be passed on to the utility and ultimately to the ratepayer. Progress Energy states that the audit report and working papers also contain market price proxies or weighting factors used to calculate the proxy. Progress Energy asserts that disclosure of the 2003 waterborne transportation allowance, also termed "transportation market proxy for 2003," coupled with publicly available delivered prices of waterborne coal, would enable existing and potential coal suppliers to readily determine the commodity price of the coal purchased by PFC in 2003. Progress Energy further asserts that release of the price of coal paid by its affiliate would allow suppliers a significant competitive advantage in bidding for PFC's future coal purchases. According to Progress Energy, suppliers could then avoid bidding their lowest price and instead simply undercut the existing known price.

Progress Energy asserts that its response to the staff audit report describes the contractual rate and total costs paid by PFC under each contract for coal waterborne transportation in 2003 in component part and in aggregate. According to Progress Energy, disclosure of this information would provide existing and potential suppliers of waterborne transportation, rail transportation and knowledgeable coal suppliers with a competitive advantage in providing bids or negotiating for future goods and services. Progress Energy asserts knowledge of these detailed waterborne transportation costs would provide the rail transportation supplier with the information needed to gain competitive advantages in order to provide rail service to transport coal. Progress Energy states that because the delivered prices of coal are public and armed with the reported transportation costs, knowledgeable coal suppliers could determine the price of coal paid, thus gaining a competitive advantage in future bids and negotiations for coal. Progress Energy states that its response to the staff audit report contains specific commodity prices in two coal supply contracts, including a description that all other coal supply contracts fall between the ranges of these two prices. Progress Energy asserts that knowledge of this coal supply information would allow coal suppliers to avoid bidding their lowest price and allow them instead to merely beat the existing price, thus providing a competitive advantage to the existing and potential coal suppliers.

Progress Energy asserts that, pursuant to Section 366.093, Florida Statutes, such information is entitled to confidential classification and is exempt from the mandatory disclosure provisions of the public records law. Progress Energy asserts that the sensitive contractual and competitive information, if disclosed, 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 Energy asserts that this sensitive coal, coal transportation, contractual and financial information contained within staff's audit report, staff's working papers and in its response to the waterborne transportation audit is intended to be and is treated by the company as private, and the information has not been publicly disclosed.

CONCLUSION

Upon review, it appears that the information discussed above is proprietary confidential business information and should be granted confidential treatment to avoid harm to the company and its ratepayers. Based on the foregoing, Progress Energy's request for confidential treatment of Document Nos. 04159-04, 04160-04, 04472-04, and 05848-04 is granted.

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 Progress Energy or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

It is therefore

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that the information described in Progress Energy's request for confidential treatment of certain portions of staff's audit report, working papers, and response to Audit No. 04-028-2-1, Document Nos. 04159-04, 04160-04, 04472-04, and 05848-04, is granted confidential classification. It is further

ORDERED that the information described within the body of this Order shall be granted confidential treatment for 18 months from the date of this Order. It is further

ORDERED that this Order will be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 1st day of September, 2004



CHARLES M. DAVIDSON  
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.