

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 040001-EI
ORDER NO. PSC-04-1059-CFO-EI
ISSUED: October 28, 2004

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 09899-04)

On September 9, 2004, 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 portions of the September 9, 2004, testimony and exhibits of Samuel S. Waters (Document No. 09899-04). On October 18, 2004, PEF amended its request.

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 “[t]rade secrets” (subsection a); “[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 Mr. Water’s testimony and exhibits fall within these categories and thus constitute 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 page 4, line 23; page 5, lines 1, 2, 19, and 20 of Mr. Waters’ direct testimony; pages 12, 13, 22, 39, 40, 47-49, 51, 55, and 65 of Exhibit SSW-1; pages 4-6, 10, 11 of Exhibit SSW-2; certain information under “NPV Costs, 2004” in Exhibit SSW-3; and certain information under “NPV Costs, 2004” in Exhibit SSW-4. PEF contends that with respect to the Shady Hills Agreement (page 4, line 23, and page 5, lines 1-2, of the testimony; pages 22, 47-49, 51, and 65 of Exhibit SSW-1; and under “NPV Costs, 2004” in Exhibit SSW-3), the information identifies contractual prices or pricing terms and provisions used to determine payments made pursuant to the Agreement. According to PEF, disclosure of this information would provide its existing and potential wholesale power suppliers with a

DOCUMENT NUMBER-DATE

11650 OCT 28 3

FPSC-COMMISSION CI FRK

significant competitive advantage in bidding or negotiating for PEF's future power purchases. PEF asserts that because of this competitive advantage, these suppliers would be able to avoid offering their lowest price and instead simply undercut PEF's existing price. PEF further asserts that the company and its customers would incur higher purchased power costs than if the company's suppliers were not forearmed with this competitively sensitive and valuable information.

PEF contends that portions of pages 12, 13, 39, 40, and 55 of Exhibit SSW-1 identify sensitive contractual terms and specifications negotiated by PEF for the power to be purchased pursuant to the Shady Hills Agreement, in addition to pricing information. According to PEF, disclosure of this information would place the company at a competitive disadvantage in future negotiations with potential suppliers of purchased power who would use the most advantageous of these terms and specifications as a beginning point, or floor, of their bargaining position and the least advantageous terms and specifications as their ceiling. PEF argues that existing and potential power suppliers would be less willing or unwilling to offer PEF special or unique concessions on contractual terms and specifications if they were aware that such concessions may be disclosed to other potential purchasers. PEF states that these situations would impair its efforts to contract for goods and services on favorable terms, to the detriment of its customers in the form of higher purchased power costs.

PEF contends that with respect to the Southern Letter of Intent (LOI) (page 5, lines 19-20 of the testimony; pages 4-6, 10, and 11 in Exhibit SSW-2; and certain information under "NPV Costs, 2004" in Exhibit SSW-4), the information identifies contractual prices or pricing terms and provisions used to determine payments made pursuant to the LOI. According to PEF, disclosure of this information would provide PEF's existing and potential wholesale power suppliers with a significant competitive advantage in bidding or negotiating for PEF's future power purchases. PEF asserts that because of this competitive advantage, these suppliers would be able to avoid offering their lowest price and instead simply undercut PEF's existing price. PEF further asserts that the company and its customers would incur higher purchased power costs than if the company's suppliers were not forearmed with this competitively sensitive and valuable information.

Upon review, it appears that the above-referenced information contained in the testimony and exhibits of Mr. Waters 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.

ORDER NO. PSC-04-1059-CFO-EI
DOCKET NO. 040001-EI
PAGE 3

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.

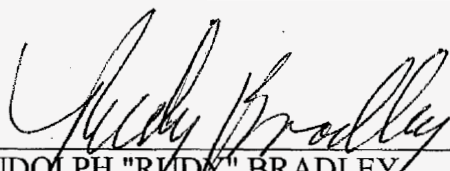
Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Progress Energy Florida, Inc.'s Request for Confidential Classification of Document No. 09899-04 is granted. It is further

ORDERED that the information in Document No. 09899-04 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.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 28th day of October, 2004.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)

JAR

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.