

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-04-1089-PCO-EI  
ISSUED: November 4, 2004

**ORDER GRANTING MOTION FOR TEMPORARY PROTECTIVE ORDER**

On October 18, 2004, Progress Energy Florida, Inc. (PEF) filed a Motion for Temporary Protective Order, pursuant to Rule 25-22.006(6), Florida Administrative Code, covering certain documents sought by OPC regarding two PEF purchase power agreements pending Commission approval. PEF states that it has been authorized by counsel for OPC to represent that OPC does not object to the motion.

Under Rule 28-106.211, Florida Administrative Code, I have broad authority to “issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case . . . .” Based on this authority, I make the ruling set forth below.

PEF argues that OPC has requested that it be allowed the opportunity to informally review documents regarding a Tolling Agreement between PEF and Shady Hills Power Company, LLC, and a Unit Power Sales Agreement between PEF and Southern Company Services, Inc., both of which are pending approval by the Commission in this docket. PEF contends that the documents contain highly sensitive confidential information. PEF states that it is willing to provide the requested documents to OPC, so long as the sensitive information is protected from the harm that would result from public disclosure.

Rule 25-22.006, Florida Administrative Code, in pertinent part, states:

(6)(c) When a utility or other person agrees to allow Public Counsel to inspect or take possession of utility information for the purpose of determining what information is to be used in a proceeding before the Commission, the utility may request a temporary protective order exempting the information from section 119.07(1), F.S. If the information is to be used in a proceeding before the Commission, then the utility must file a specific request for a protective order under paragraph (a) above. If the information is not to be used in a proceeding before the Commission, then Public Counsel shall return the information to the utility in accordance with the record retention requirements of the Department of State.

Having reviewed the pleadings and considered the arguments, I find that PEF’s Motion for Temporary Protective Order shall be granted. I find that PEF has demonstrated that the material requested by OPC appears to be proprietary confidential business information relating to two PEF purchase power agreements pending Commission approval. Accordingly, this

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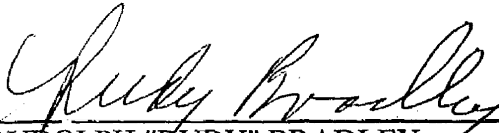
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information will be protected from disclosure pursuant to Rule 25-22.006(6), Florida Administrative Code.

Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that the Motion for Temporary Protective Order filed by Progress Energy Florida, Inc. is granted.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 4th day of November, 2004.

  
RUDOLPH "RUDY" BRADLEY  
Commissioner and Prehearing Officer

(SEAL)

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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,

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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.