

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan, by Progress Energy Florida, Inc.

DOCKET NO. 041272-EI
ORDER NO. PSC-05-0077-PCO-EI
ISSUED: January 21, 2005

ORDER GRANTING MOTION FOR TEMPORARY PROTECTIVE ORDER

On December 6, 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 in discovery by the Office of Public Counsel (OPC). PEF states that it has been authorized by counsel for OPC to represent that OPC does not object to the motion.

PEF states that on December 6, 2004, it served OPC with documents responsive to its First Request for Production of Documents. PEF contends that the documents responsive to Document Request Nos. 4, 5, and 7, contain confidential information relating to PEF's competitive business interests, the disclosure of which would impair the utility's competitive business. PEF states that it treats this information as confidential. PEF asserts that it is seeking protection of the documents as provided in Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code. PEF states that it is seeking protection of the documents by this motion, has recorded the appropriate objections to providing such confidential, proprietary business information, and has provided the documents responsive to OPC's Request marked as confidential subject to this motion, the law, Commission rules, and PEF's objections. PEF contends that by following this procedure it is not waiving its rights to seek further relief as necessary to make certain that this information is not disclosed.

Section 366.093(2), Florida Statutes, directs that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by any party subject to public records law as confidential and exempt from the public records law, Chapter 119.07(1), Florida Statutes. Rule 25-22.006(6), Florida Administrative Code, codifies the Commission's policy protecting confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006, in pertinent part, states:

(6)(a) In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure. The protective order shall specify how the confidential information is to be handled during the

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course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.


In addition, Rule 25-22.006(6)(c), Florida Administrative Code, states that if a party allows OPC to inspect or take possession of utility information, then that "utility may request a temporary protective order exempting the information from section 119.07(1), F.S."

Upon consideration, PEF's Motion for Temporary Protective Order of documents responsive to OPC's First Request for Production of Documents, Nos. 4, 5, and 7, is granted. I find that PEF has demonstrated that the material requested by OPC appears to be proprietary confidential business information. Accordingly, this information will be protected from disclosure pursuant to Rule 25-22.006(6), Florida Administrative Code. As provided in Order No. PSC-04-1151-PCO-EI, issued November 18, 2004, the Order Establishing Procedure for this docket, OPC is required to provide PEF and all other parties seven days notice of its intent to use any confidential information at the hearing.

Based on the foregoing, it is

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that the Motion for Temporary Protective Order filed by Progress Energy Florida, Inc. is granted.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 21st day of January, 2005.



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.