

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of long-term fuel supply and transportation contracts for Hines Unit 4 and additional system supply and transportation, by Progress Energy Florida, Inc.

DOCKET NO. 041414-EI
ORDER NO. PSC-05-0445-PCO-EI
ISSUED: April 26, 2005

ORDER ON MOTIONS FOR TEMPORARY PROTECTIVE ORDER

Progress Energy Florida, Inc. (PEF or company) has filed five Motions for Temporary Protective Order pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code. By these Motions, PEF seeks protection of certain documents and information sought in discovery by the Office of Public Counsel (OPC). PEF states that the confidential information in the documents and responses identified below is sensitive, proprietary business information that has been treated as such by PEF, its parent and affiliates, and is information that PEF keeps confidential. This Order addresses those Motions.

Motion Filed February 28, 2005

This Motion covers certain documents sought by the Office of Public Counsel's (OPC) First Request for Production of Documents (No. 1) to PEF. This Document Request is for information and documents that are responsive to Staff's First Request for Production of Documents and First Set of Interrogatories, and specifically encompasses portions of documents in Bates Stamp page ranges PEF-SR-000001 through PEF-000121 and portions of PEF's responses to Staff's First Set of Interrogatories, numbers 1, 8, 9, 11, 16-27, 30-35, 39, 40, 42, and 44-48. PEF also filed a Request for Confidential Classification regarding this information in conjunction with its original responses to Staff's first set of discovery, which is currently pending before the Commission.

Motion Filed March 14, 2005

This Motion covers certain documents sought by OPC's Second Request for Production of Documents (No. 2) to PEF. This Document Request is for information and documents that are responsive to Staff's Second Request for Production of Documents and Second Set of Interrogatories, and specifically encompasses portions of documents in Bates Stamp pages ranges PEF-SR-000122 through PEF-000204. PEF also filed a Request for Confidential Classification regarding this information in conjunction with its original responses to Staff's second set of discovery, which is currently pending before the Commission.

Motion Filed March 29, 2005

This Motion covers certain documents sought by OPC's Third Request for Production of Documents (No. 3) to PEF. This Document Request is for information and documents that are

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responsive to Staff's Third Set of Interrogatories, and specifically encompasses portions of the response to Staff Interrogatory No. 59. PEF argues that portions of the response to this interrogatory contain confidential information regarding contracts between PEF and fuel suppliers, and that public disclosure of the information would violate confidentiality agreements between PEF and fuel suppliers and would impair PEF's ability to contract for services such as fuel supply on competitive and favorable terms. PEF also filed a Request for Confidential Classification regarding this information in conjunction with its original responses to Staff's third set of discovery, which is currently pending before the Commission.

Motion Filed March 31, 2005

This Motion covers certain documents sought by OPC's Third Request for Production of Documents (No. 4) to PEF. This Document Request is for information and documents that are responsive to Staff's Fourth Set of Interrogatories and Fourth Request for Production of Documents, and specifically encompasses portions of the responses to Staff Interrogatory Nos. 64, 76-77, 79, 84, 87, 95-96, 99-100, 103, 106-107, 115-118, 120, 132, 134, 136-137, 140-141, 144, and 146, and portions of the documents produced in response to Staff Document Request Nos. 12-18, 23-24, 28-37, 39, and 41-42. PEF argues that portions of the responses to these discovery requests contain confidential information regarding contracts and proposals between PEF and fuel suppliers, and that public disclosure of the information would violate confidentiality agreements between PEF and fuel suppliers and would impair PEF's ability to contract for services such as fuel supply on competitive and favorable terms. PEF also filed a Notice of Intent to Request Confidential Classification regarding this information in conjunction with its original responses to Staff's fourth set of discovery, and states that it will file a formal request for confidential classification with the Commission within the time frame set forth in Rule 25-22.006, Florida Administrative Code.

Motion Filed April 15, 2005

This Motion covers certain documents sought by OPC's Fourth Request for Production of Documents (No. 5) to PEF. This Document Request is for information and documents that are responsive to Staff's Fifth Set of Interrogatories, and specifically encompasses portions of the responses to Staff Interrogatory Nos. 149-151, 154, and 162. PEF argues that public disclosure of the information would violate confidentiality agreements between PEF and fuel suppliers and would impair PEF's ability to contract for services such as fuel supply on competitive and favorable terms. PEF also filed a Request for Confidential Classification regarding this information in conjunction with its responses to Staff's fifth set of discovery, which is currently pending before the Commission.

Analysis and Rulings

Section 366.093, Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, direct that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by any party subject to the public records law as confidential and shall be exempt from the public records law, Section 119.07(1), Florida Statutes. Rule 25-

22.006(6), Florida Administrative Code, codifies the Commission's policy of protecting confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to the parties.

Upon review of the pleadings and consideration of the arguments, PEF's Motions for Temporary Protective Order filed February 28, March 14, March 29, March 31, and April 15, 2005, are granted to the extent that they request that the information and documents at issue be treated as confidential and exempt from the public records law. PEF has demonstrated that the material requested by OPC should be treated as proprietary confidential business information. Accordingly, this information will be granted confidential status pursuant to Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code.

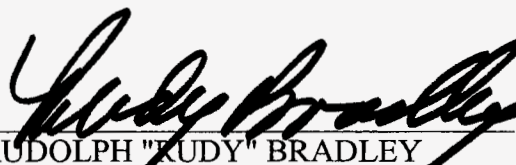
Request for Provision of Notice of Intent

In all five Motions, PEF further requests that in connection with the entry of a Temporary Protective Order, the Commission also require OPC to provide PEF with notice of its intent to use such confidential documents and information in connection with the hearing in this matter. No ruling is necessary on this request. Order No. PSC-05-0128-PCO-EI, issued January 31, 2005, in this docket (Order Establishing Procedure) provides for a seven day notice requirement concerning the use of confidential information at hearing. As such, OPC is already required to provide PEF with seven days notice of its intent to use any confidential information at the hearing.

Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that the Motions for Temporary Protective Order filed February 28, March 14, March 29, March 31, and April 15, 2005, by Progress Energy Florida, Inc. are granted in part, to the extent set forth in this Order.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this
26th day of April, 2005



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, 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.