

BEFORE THE PUBLIC SERVICE COMMISSION

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

DOCKET NO. 050001-EI  
ORDER NO. PSC-05-1076-CFO-EI  
ISSUED: November 2, 2005

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION  
(DOCUMENT NO. 08584-05)

On September 9, 2005, 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 prepared direct testimony of PEF witness Samuel S. Waters and Exhibit SSW-1 (purchase power agreement between PEF and Central Power & Lime, Inc. (CPL)), filed September 9, 2005. (Document No. 08584-05).

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 “[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 the prepared direct testimony of PEF witness Samuel S. Waters and Exhibit SSW-1 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 contends that the information contained on Page 4 (lines 18-20), Page 5 (lines 8-10, 13, 15, 17, and 18), and Page 6 (lines 10-13) of Mr. Waters’ direct testimony, and Page 4 (line 1), Page 12 (lines 12-22), Page 35 (Exhibit B), and Page 36 (Exhibit C) of Exhibit SSW-1 identifies contractual prices or pricing terms and provisions used to determine payments made pursuant to the CPL Agreement. PEF asserts that disclosure of this information would provide PEF’s existing and potential wholesale power suppliers with a significant competitive advantage in bidding or negotiating for the company’s future power purchases. PEF states that potential suppliers would be able to avoid offering their lowest price and instead simply undercut the company’s existing price. PEF asserts that as a result, PEF and ultimately its customers could

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incur higher purchased power costs than if the company's suppliers were not forearmed with this competitively sensitive information.

PEF contends that the information contained on Pages 1-3, 4 (lines 2-7), 5, 9 (lines 7-39), 10-11, 12 (lines 1-11, 24-40), 13-15, 17, 19-20, 23-24, 28-29, 34 (Exhibit A), 37-38 (Exhibit D), and 40-41 (Exhibit F) of Exhibit SSW-1 identifies sensitive contractual terms and specifications negotiated by PEF for the power to be purchased pursuant to the CPL Agreement. PEF contends that disclosure of this information would be detrimental to PEF and its customers because it 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 the beginning point, or floor, of their bargaining position and the least advantageous terms and specifications as their ceiling, knowing in either case that they had been previously accepted by PEF. PEF further contends that disclosure of this information would be detrimental to PEF and its customers because 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 who would then demand similar concessions. According to PEF, either or both of these situations would impair PEF's 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 the information contained on Page 9 (lines 1-6) and Page 33 (lines 1-6) of Exhibit SSW-1 is competitively sensitive contractual data related to CPL which PEF is contractually obligated to maintain as confidential. PEF states that without assurances that competitively sensitive information of this nature will not be publicly disclosed, potential suppliers might withhold sensitive information necessary to PEF to understand and assess the risks and benefits of their proposals. PEF asserts that without assurances of non-disclosure, potential suppliers might choose not to contract with PEF. PEF contends that its efforts to contract for goods and services on favorable terms would be impaired by disclosure of the information deemed confidential by potential suppliers. PEF further contends that this information relates to competitive interests, the disclosure of which would impair its competitive business.

Upon review, it appears that the above-referenced information contained in the prepared direct testimony of PEF witness Samuel S. Waters and Exhibit SSW-1 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.

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. 08584-05 is granted. It is further

ORDERED that the information in Document No. 08584-05 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  
2nd day of November, 2005.

  
RUDOLPH "RUDY" BRADLEY  
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.