

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-05-1082-PCO-EI
ISSUED: November 2, 2005

ORDER GRANTING MOTION FOR TEMPORARY PROTECTIVE ORDER

On October 21, 2005, 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). No party filed a response to PEF's motion.

PEF states that its response to Request Nos. 14 and 15 in OPC's Sixth Request for Production of Documents contains proprietary confidential business information. PEF asserts that the responses include bids and other contractual data pertaining to certain coal purchases. PEF states that the responses contain pricing information for coal purchases by PEF's affiliate, Progress Fuels Corporation (PFC), pricing information from bids received from potential coal suppliers, and documents relating to evaluation of the bids. According to PEF, disclosure of this information would provide coal suppliers with knowledge of prices that PFC has paid and prices other suppliers have offered. PEF contends that this knowledge would give suppliers significant competitive advantage in future negotiations because they would no longer need to make their best offers to ensure the competitiveness of their rates. PEF asserts that disclosure of this information would impair the efforts of the company or its affiliates to contract for goods or services on favorable terms. In addition, PEF contends that disclosure of this information would adversely impact its competitive business interests. 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.

Rule 25-22.006 (6)(c), Florida Administrative Code states:

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.

Upon consideration, PEF's Motion for Temporary Protective Order of its response to Request Nos. 14 and 15 in OPC's Sixth Request for Production of Documents is granted. I find that PEF has demonstrated that the material requested by OPC appears to be proprietary

DOCUMENT NUMBER-DATE

10623 NOV-2 05


FPSC-COMMISSION CLERK

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-05-0281-PCO-EI, issued March 15, 2005, 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 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
2nd day of November, 2005.


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

ORDER NO. PSC-05-1082-PCO-EI

DOCKET NO. 050001-EI

PAGE 3

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.