

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 100009-EI
ORDER NO. PSC-10-0069-CFO-EI
ISSUED: January 29, 2010

ORDER GRANTING PROGRESS ENERGY FLORIDA INC.'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING
AUDIT REPORT NO. 08-248-2-1 (DOCUMENT NOS. 05934-09 AND 06699-09)

On June 15, 2009, the Staff of the Florida Public Service Commission (staff) filed Binder 2 of 2 of Audit Working Papers, developed in connection with the "Progress Energy Florida, Inc. Nuclear Cost Recovery Clause Audit – Levy County Units 1 & 2 – as of December 31, 2008" (Audit Control No. 08-248-2-3; Document No. 05934-09). These audit working papers contain 8 pages detailing contractual arrangements regarding the Levy project, and are referred to as the "NuStart Memo."

On July 1, 2009, Progress Energy Florida, Inc. ("PEF") filed a Notice of Intent to request confidential classification of certain information provided to the staff in response to staff's Second Set of Interrogatories (Nos. 13-33), specifically Interrogatory No. 28 and documents attached thereto (Document No. 06611-09).

On July 2, 2009, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006(3), Florida Administrative Code (F.A.C.), PEF filed a Request for Confidential Classification of Documents 05934-09 and 06611-09; the confidential portion of this request (Appendix A) was assigned Document No. 06699-09. Subsequent to PEF's request, staff returned confidential Document No. 06611-09 and those portions of Document No. 06699-09 which related to Interrogatory No. 28; Document No. 05934-09 and the audit working papers/NuStart Memo portion of Document No. 06699-09 have been retained by staff. This request was filed in Docket No. 090009-EI.

Section 366.093(1), F.S., 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 Section 119.07(1) [the Public Records Act]." Section 366.093(3), F.S., 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. Paragraphs (3)(d) and (e) of Section 366.093, F.S., provide 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" and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

DOCUMENT NUMBER-DATE

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PEF contends that portions of the Binder 2 of the audit working papers, specifically the entirety of the NuStart Memo (8 pages), fall within these categories and, thus, constitute proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006(3), F.A.C. PEF states that this information is intended to be and is treated by PEF as private; has not been publicly disclosed; and that PEF has established strict procedures to maintain the confidentiality of the information, including restricting access to necessary personnel only.

PEF contends that the information in the 8 page NuStart Memo contains information concerning contractual data, specifically contractual cancellation fees regarding various contractual undertakings. PEF further contends that each of these contractual undertakings is subject to agreed upon confidentiality provisions. PEF avers that the release of this information would adversely impact PEF's competitive business interests if disclosed to the public, since if other parties were made aware of confidential contractual terms and arrangements, including pricing and cancellation provisions, those other parties may offer PEF less competitive contractual terms in future contractual negotiations.

PEF further alleges that the disclosure of the confidential contractual terms contained in the NuStart Memo would be a violation of contractual confidentiality provisions entered into by PEF and the counterparties. PEF maintains that public disclosure of the information would make available to the public sensitive business information regarding what PEF is willing to pay for certain goods and services, as well as what PEF is willing to accept as payment. PEF concludes that if this information were made available to the public, other potential suppliers, vendors and/or purchasers of such services could change their position in future negotiations, with the result that PEF's efforts to obtain competitive contracts and competitively priced goods and services would be undermined.

Ruling

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. 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." Moreover, none of the documentation discussed herein contains any information relating to compensation of PEF executives. Thus, the information identified in Document No. 05934-09 and the audit working papers portion of Document No. 06699-09, specifically the entirety of the 8 page NuStart Memo, shall be granted confidential classification.

Pursuant to Section 366.093(4), F.S., 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), F.S., 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 Nathan A. Skop, as Prehearing Officer, that Progress Energy Florida, Inc.'s Request for Confidential Classification of information contained within Document Nos. 05934-09 and 06699-09, specifically the 8 pages of the NuStart Memo in their entirety, is granted. It is further

ORDERED that the information in Document Nos. 05934-09 and 06699-09 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 Nathan A. Skop, as Prehearing Officer, this 29th day of January, 2010.



NATHAN A. SKOP

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 Office of Commission Clerk, 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.