

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 110001-EI
ORDER NO. PSC-11-0423-CFO-EI
ISSUED: September 29, 2011

ORDER GRANTING CONFIDENTIAL CLASSIFICATION TO PORTIONS OF
PROGRESS ENERGY FLORIDA INC.'S 423 FORMS FOR JANUARY 2011
(DOCUMENT NO. 01428-11)

On, March 3, 2011, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Progress Energy Florida, Inc. (PEF) filed a request for confidential classification to portions of its FPSC Form 423 Fuel Report for the reporting month of January 2011 (the 423 Report), (Document No. 01428-11). This request was filed in Docket No. 110001-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. Paragraph (3)(d) of Section 366.093 F.S., 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."

PEF contends that designated portions of the information contained in the 423 Report, as more specifically described in the table in Attachment A, 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, F.A.C. PEF states that this information is intended to be and is treated by PEF as private and has not been publicly disclosed.

PEF provides, in Attachment A to this Order, a matrix providing justification and support for confidential classification of the information in each section of the 423 Report (Forms 423-1A, 2, 2A and 2B) on a line-by-line, column-by-column basis.

Time Period For Confidential Classification

PEF requests confidential classification for this information for a period exceeding 18 months. According to Section 366.093(4), F.S., confidential classification may only extend for 18 months from the issuance of an Order granting confidential classification unless "the Commission finds, for good cause, that the protection from disclosure shall be for a specified longer period." PEF requests that the information be treated as confidential for a period of twenty-four months.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

In support of its request for extended confidential treatment, PEF asserts that the information in document number 01428-11, as identified in Attachment A hereof, is comprised of the fuel and transportation contracts from which the costs in the 423 Report are derived and which contain annual price adjustment provisions. PEF asserts that if existing or potential fuel and transportation suppliers were to obtain confidential contract pricing information for a prior reporting month within the currently effective 12-month adjustment period, current pricing information would be disclosed. In addition, PEF states that if contractual pricing information for a reporting month in the previous 12-month adjustment period were to be obtained, the information would be only one adjustment removed from the current price. PEF states that suppliers knowledgeable in the recent escalation experience of their market could readily calculate a reasonably precise estimate of the current price.

To guard against providing suppliers with such a competitive advantage, PEF states, confidential information must be protected from disclosure for the initial 12-month period in which it could remain current, and for the following 12-month period in which it can be readily converted into essentially current information. As an example, PEF explains, if information for the first month under an adjusted contract price is reported in May of Year 1, the information will remain current through April of Year 2 and that thereafter, the initial May, Year 1 information will be only one escalation adjustment removed from the current information reported each month through April, Year 3. If confidential classification of the May, Year 1 information were to expire after 18 months, PEF contends, suppliers would be able to accurately estimate current prices in October, Year 2 using information that had been current only six months earlier.

PEF further states that an 18-month confidentiality period would effectively waste the protection given in the first six months of the second 12-month pricing period (months 13 through 18) by disclosing information of the same vintage in the last six months of the pricing period. PEF states that the information disclosed in months 19 through 24 would be equally as detrimental in terms of revealing the current price as the information protected from disclosure during the preceding six months. To make the protection provided in months 13 through 18 meaningful, PEF argues, it must be extended through month 24. PEF further argues that extending the confidentiality period by six months would mean that the information will be one additional price adjustment further removed from the current price at the time of disclosure.

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.” Thus, the information identified in Document No. 01428-11 shall be granted confidential classification.

Section 366.093(4), F.S., provides that any finding by the Commission that records contain proprietary confidential business information shall be effective for a period not to exceed 18 months, absent good cause shown. PEF has shown good cause to extend the period of confidentiality to twenty-four months. Accordingly, the information identified in Document No. 01428-11, shall be granted confidential classification for a period of twenty-four months from the issuance of this Order. At the conclusion of the 24-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 Ronald A. Brisé, as Prehearing Officer, that PEF's Request for Confidential Classification of Document No. 01428-11 is granted. It is further

ORDERED that the information in Document No. 01428-11, for which confidential classification has been granted, shall remain protected from disclosure for a period of twenty-four 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 Ronald A. Brisé, as Prehearing Officer, this 29th day of September, 2011.



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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.

ATTACHMENT A**FORM 423-1A**

Line	Column	Justification
1-9	H	(1) §366.093(3)(d) The information under "Invoice Price", identifies the basic component of the contract pricing mechanism. Disclosure of the invoice price, particularly if in conjunction with information under other columns discussed below, would enable suppliers to determine the pricing mechanisms of their competitors. The likely result would be greater price convergence in future bidding. Disclosure would also result in a reduced ability on the part of a major purchaser such as PEF to bargain for price concessions, since suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect.
1-9	I	(2) §366.093(3)(d) Disclosure of the Invoice Amount, when divided by the Volume figure available from column G, would also disclose the Invoice Price in column.
1-9	J	(3) §366.093(3)(d) Disclosure of the Discount, in conjunction with other information under columns K, L, M or N, could also disclose the Invoice Price shown in column H by mathematical deduction. In addition, disclosure of discounts resulting from bargaining concessions would impair the ability of PEF to obtain such concessions in the future for the reasons discussed in item (1) above.
1-9	K	(4) §366.093(3)(d) See item (3) above.
1-9	L	(5) §366.093(3)(d) See item (3) above
1-9	M	(6) §366.093(3)(d) See item (3) above
1-9	N	(7) §366.093(3)(d) See item (3) above. This column is particularly sensitive because it is usually the same as or only slightly different from the Invoice Price in column H.
1-9	O	(8) §366.093(3)(d) Disclosure of the Transportation to Terminal Charges, in conjunction with the information under column P, would also disclose the Effective Purchase Price in column N by subtracting them from the Delivered Price available in column Q.
1-9	P	(9) §366.093(3)(d) See item (8) above.

FORM 423-2

Plant Name, Line No.	Column	Justification
Transfer Facility - Associated, 1-4 Crystal River, 1-10 Transfer Facility - IMT, 1-6 Transfer Facility - UBT, 1-6	H	(10) §366.093(3)(d) The Effective Purchase Price is also found on Form 423-2A, column L, and on Form 423-2B, column G. In nearly every case it is the same as the FOB Mine Price found under column F on Form 423-2A, which is the current contract price of coal purchased from each supplier PEF, adjusted for quality. Disclosure of this information would enable suppliers to determine the prices of their competitors, which would likely result in greater price convergence in future bidding. Disclosure would also result in a reduced ability on the part of a major purchaser such as PEF to bargain for price concessions since suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect. In addition, disclosure of the Effective Purchase Price would also disclose the Total Transportation Cost in column H by subtracting column G from the FOB Plant Price in column I.
Transfer Facility - Associated, 1-4 Crystal River, 1-10 Transfer Facility - IMT, 1-6 Transfer Facility - UBT, 1-6	I	(11) §366.093(3)(d) See item (25) below. In addition, disclosure of the Total Transportation Cost would also disclose the Effective Purchase Price in column G when subtracted from the FOB Plant Price in column I.

FORM 423-2A

Plant Name, Lines	Column	Justification
Transfer Facility - Associated, Crystal River, 1-3 Transfer Facility - IMT, 1-3 Transfer Facility - UBT, 1-4	F	(12) §366.093(3)(d) The FOB Mine Price is the current contract price of coal purchased from each supplier by PEF. Disclosure of this information would enable suppliers to determine the prices of their competitors, which would likely result in greater price convergence in future bidding. Disclosure would also result in a reduced ability on the part of a major purchaser such as PEF to bargain for price concessions since suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect.
Transfer Facility - Associated, Crystal River, 1-3 Transfer Facility - IMT, 1-3 Transfer Facility - UBT, 1-4	H	(13) §366.093(3)(d) The Original Invoice Price is the same as the FOB Mine Price in column F, except in rare instances when the supplier is willing and able to disclose its short haul and loading costs (column G), if any, included in the contract price of coal. Disclosure would therefore be detrimental for the reasons identified in item (12) above.
Transfer Facility - Associated, Crystal River, 1-3 Transfer Facility - IMT, 1-3 Transfer Facility - UBT, 1-4	J	(14) §366.093(3)(d) The Base Price is the same as the Original Invoice Price in column H, since retroactive price adjustments (column I) are normally received well after the reporting month and are included on Form 423-2C at that time. Disclosure would therefore be detrimental for the reasons identified in item (12) above.
Transfer Facility - Associated, Crystal River, 1-3 Transfer Facility - IMT, 1-3 BTU Transfer Facility - UBT, 1-4	K	(15) §366.093(3)(d) These adjustments are based on variations in coal quality characteristics (usually BTU content) between contract specifications and actual deliveries. Disclosure of this information would allow the FOB mine price to be calculated using the associated tonnage and available contract specifications.
Transfer Facility - Associated, Crystal River, 1-3 Transfer Facility - IMT, 1-3 Transfer Facility - UBT, 1-4	L	(16) §366.093(3)(d) The Effective Purchase Price is the Base Price in column J adjusted by Quality Adjustments reported in column K. Disclosure would therefore be detrimental for the reasons identified in item (12) above.

Form 423-2B

Plant Name, Lines	Column	Justification
Transfer Facility - Associated, 1-4 Crystal River, 1-10 Transfer Facility - IMT, 1-6 Transfer Facility - UBT, 1-6	G	(17) §366.093(3)(d) See item (16) above.
Transfer Facility - Associated, 1-4 Crystal River, 1-10 Transfer Facility - IMT, 1-6 Transfer Facility - UBT, 1-6	I	(18) §366.093(3)(d) The information under Rail Rate is a function of PEF's contract rate with the railroad and the distance between each coal supplier and Crystal River. Since these distances are readily available, disclosure of the Rail Rate would effectively disclose the contract rate. This would impair the ability of a high volume user such as PEF to obtain rate concessions, since railroads would be reluctant to grant concessions that other rail users would then expect.
Transfer Facility - Associated, 1-4 Crystal River, 1-10 Transfer Facility - IMT, 1-6 Transfer Facility - UBT, 1-6	J	(19) §366.093(3)(d) Other Charges Incurred consist of PEF's railcar ownership cost. This cost is internal information which is not available to any party with whom PEF contracts, railroads or otherwise. If this information were disclosed to the railroad, their existing knowledge of PEF's rail rates would allow them to determine PEF's total rail cost and be better able to evaluate PEF's opportunity to economically use competing transportation alternatives
Transfer Facility - Associated, 1-4 Crystal River, 1-10 Transfer Facility - IMT, 1-6 Transfer Facility - UBT, 1-6	K	(20) §366.093(3)(d) The figures under River Barge Rate are a portion of the total cost reported in the Transportation Charges under column P on Form 423-2B. See item (24) below. In the case of Waterborne deliveries to the Crystal River Plants, the figures represent PEF's current river barge transportation rate. Disclosure of these transportation rates would enable coal suppliers to bid a FOB mine price calculated to produce a delivered plant price at or marginally below PEF's current delivered price, which is available on Form 423-2, column 1. Without this opportunity to calculate a perceived maximum acceptable price, suppliers would be more likely to bid their best price.
Transfer Facility - Associated, 1-4 Crystal River, 1-10 Transfer Facility - IMT, 1-6 Transfer Facility - UBT, 1-6	L	(21) §366.093(3)(d) The figures under Transloading Rate are a portion of the total cost reported in the Transportation Charges under column P on Form 423-2B. See item (24) below. In the case of waterborne deliveries to the Crystal River Plants, the figures represent PEF's current transloading rate. Disclosure of these transportation rates would enable coal suppliers to bid a FOB mine price calculated to produce a delivered plant price at or marginally below PEF's current delivered price, which is available on Form 423-2, column 1. Without this opportunity to calculate a perceived maximum acceptable price, suppliers would be more likely to bid their best price.
Transfer Facility - Associated, 1-4 Crystal River, 1-10 Transfer Facility -	M	(22) §366.093(3)(d) The figures under Ocean Barge Rate are a portion of the total cost reported in the Transportation Charges under column P on Form 423-2B. See item (24) below. In the case of waterborne deliveries to the Crystal

IMT, 1-6 Transfer Facility - UBT, 1-6		River Plants, the figures represent PEF's current transloading rate. Disclosure of these transportation rates would enable coal suppliers to bid a FOB mine price calculated to produce a delivered plant price at or marginally below PEF's current delivered price, which is available on Form 423-2, column 1. Without this opportunity to calculate a perceived maximum acceptable price, suppliers would be more likely to bid their best price.
Transfer Facility - Associated, 1-4 Crystal River, 1-10 Transfer Facility - IMT, 1-6 Transfer Facility - UBT, 1-6	N	(23) §366.093(3)(d) The figures under Other Charges Incurred are a portion of the total cost reported in the Transportation Charges under column P on Form 423-2B. See item (24) below. In the case of waterborne deliveries to the Crystal River Plants, the figures represent PEF's current transloading rate. Disclosure of these transportation rates would enable coal suppliers to bid a FOB mine price calculated to produce a delivered plant price at or marginally below PEF's current delivered price, which is available on Form 423-2, column 1. Without this opportunity to calculate a perceived maximum acceptable price, suppliers would be more likely to bid their best price.
Transfer Facility - Associated, 1-4 Crystal River, 1-10 Transfer Facility - IMT, 1-6 Transfer Facility - UBT, 1-6	O	(24) §366.093(3)(d) The figures under Total Transportation Charges are the total cost reported as transportation charges. In the case of waterborne deliveries to the Crystal River Plants, the figures represent PEF's current transloading rate. Disclosure of these transportation rates would enable coal suppliers to bid a FOB mine price calculated to produce a delivered plant price at or marginally below PEF's current delivered price, which is available on Form 423-2, column 1. Without this opportunity to calculate a perceived maximum acceptable price, suppliers would be more likely to bid their best price.