

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-11-0494-CFO-EI  
ISSUED: October 25, 2011

ORDER GRANTING CONFIDENTIAL CLASSIFICATION TO PORTIONS OF  
PROGRESS ENERGY FLORIDA INC.'S 423 FORMS FOR JULY 2011  
(DOCUMENT NO. 06314-11)

Pursuant to Rule 25-22.006, Florida Administrative Code (F.A.C.), and Section 366.093, Florida Statutes (F.S.), Progress Energy Florida, Inc. (PEF) requests confidential classification of portions of its Form 423 Fuel Reports for July 2011. The confidential information is filed with the Commission as Document No. 06314-11. This request was filed on September 1, 2011 in Docket No. 110001-EI.

PEF represents that the information for which confidential classification is sought has not been publicly disclosed. PEF asserts that this information relates to sensitive pricing and contractual information for the purchase of fuel and transportation services. PEF maintains that the disclosure of this information to suppliers of such services "would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), F.S. As such, PEF contends that the information contained in its July 2011 423 Forms constitutes "proprietary, confidential business information" entitled to protection from disclosure pursuant to Section 366.093, F.S.

PEF filed 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. In its request, PEF alluded to Form 2C but no information concerning this form was submitted.

**Information For Which Confidential Classification Is Sought**

PEF requests confidential classification of the information contained in its Form 423-1A for July 2011, as illustrated in the following table.

**TABLE 1: FORM 423-1A**

LINE(S)	COLUMN(S)
1	H-P

PEF asserts that the information reported under Column H, "Invoice Price," identifies the basic component of the contract pricing mechanism. According to PEF, 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. PEF asserts

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that the likely result would be greater price convergence in future bidding. According to PEF, disclosure would also result in a reduced ability on the part of a major purchaser such as PEF to bargain for price concessions. PEF explains that suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect.

PEF also maintains that disclosure of the "Invoice Amount," reported in Column I, when divided by the "Volume" figure reported in Column G, would disclose the "Invoice Price" found in Column H. PEF asserts that disclosure of "Discount," figures reported in Column J, with other information reported in Columns K, L, M, or N, could also disclose the "Invoice Price" shown in Column H by mathematical deduction. PEF also asserts that disclosure of discounts resulting from bargaining concessions would impair the ability of PEF to obtain such concessions in the future. PEF maintains that Column N is particularly sensitive because it is usually the same as, or only slightly different from, the "Invoice Price" reported in Column H.

PEF asserts that disclosure of "Transportation to Terminal Charges," reported in Column O, in conjunction with the information under Column P, would also disclose the "Effective Purchase Price" reported in Column N by subtracting it from the "Delivered Price" available in Column Q.

PEF requests confidential classification for portions of its July 2011 Form 423-2, as set forth in the table below.

**TABLE 2: 423-2**

<b>PLANT NAME</b>	<b>LINE(S)</b>	<b>COLUMN(S)</b>
CRYSTAL RIVER TRANSF. FACILITY	1-9	H, I
TRANSF. FACILITY IMT	1-9	H, I
TRANSF. FACILITY UBT	1-6	H, I

PEF affirms that the "Effective Purchase Price" reported under Column H of Form 423-2 is also found on Form 423-2A, Column L, and on Form 423-2B, in Column G. PEF maintains that in nearly every case, it is the same as the F.O.B. mine price found under Column F on Form 423-2A, which is the current contract price of coal purchased from each supplier to PEF. PEF asserts that disclosure of the information in Column G would also enable suppliers to determine the prices of their competitors, which would likely result in greater price convergence in future bidding. According to PEF, disclosure would also result in a reduced ability on the part of a major purchaser such as PEF to bargain for price concessions. PEF asserts that suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect. In addition, PEF contends that the disclosure of the effective purchase price would reveal the total transportation cost reflected in Column H by subtracting Column G from the F.O.B. plant price in Column I. PEF contends that the information in Column I is entitled to confidential classification because disclosure of the total transportation cost, when subtracted from the F.O.B. plant price in Column I, would also disclose the effective purchase price in Column G.

PEF asserts that the information contained in its July 2011 Form 423-2A, as set forth in the table below, is entitled to confidential classification.

**TABLE 3: 423-2A**

<b>PLANT NAME</b>	<b>LINE(S)</b>	<b>COLUMN(S)</b>
TRANSF. FACILITY ASSOC.	1-2	F, H, J, K, L
CRYSTAL RIVER	1-9	F, H, J, K, L
TRANSF. FACILITY IMT	1-11	F, H, J, K, L
TRANSF. FACILITY UBT	1-6	F, H, J, K, L

PEF asserts that the "F.O.B. Mine Price" in Column F is the current contract price of coal purchased from each supplier. PEF maintains that 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. PEF asserts that disclosure would also likely result in a reduced ability on the part of a major purchaser such as PEF to bargain for price concessions. PEF claims that this is because suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect.

PEF asserts that Column H, "The Original Invoice Price," is the same as the "F.O.B. Mine Price" listed in Column F with the rare exception of instances when the supplier is willing and able to disclose its short haul and loading costs included in the contract price of coal. PEF concludes that disclosure of the information in Column H would be detrimental to it and its ratepayers as set forth above.

PEF alleges that "The Base Price" listed in Column J is also the same as the "Original Invoice Price" reported in Column H, since retroactive price adjustments (listed in Column I) are normally received well after the reporting month and are included on Form 423-2C at that time. According to PEF, the disclosure of this information would be detrimental to PEF and its ratepayers for the same reasons listed above.

According to PEF, Column K includes adjustments for variations in coal quality characteristics between contract specifications and actual deliveries. PEF asserts that the disclosure of the information in Column K would allow the F.O.B. Mine price to be calculated using the associated tonnage and available contract Btu specifications. Column L is the "Base Price" of Column J adjusted by the "Quality Adjustments" reported in Column K. PEF concludes that disclosure of these prices would be detrimental to PEF and its ratepayers for the same reasons as given for Column F above.

PEF requests confidential classification for the information contained in its July 2011 Form 423-2B, as set forth in the table below.

**TABLE 4: FORM 423-2B**

PLANT NAME	LINE(S)	COLUMN(S)
CRYSTAL RIVER	1-9	G, I, J, K, L, M, N, O
TRANSF. FACILITY IMT	1-8	G, I, J, K, L, M, N, O
TRANSF. FACILITY UBT	1-5	G, I, J, K, L, M, N, O

PEF maintains that the information contained in Column G of Form 423-2B is the same as that described above for Form 423-2A and is entitled to confidential classification for the same reasons as given under Form 423-2A. PEF concludes that disclosure of the information contained in Column G would enable suppliers to determine the prices of their competitors, which would likely result in greater price convergence in future bidding. PEF also concludes that disclosure of the information in Column G would result in a reduced ability on the part of PEF to bargain for price concessions since suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect.

PEF asserts that the information reported in Column I, "Rail Rate," is a function of its contract rate with the railroad and the distance between each coal supplier and Crystal River. Because these distances are readily available, PEF asserts that disclosure of the rail rate would effectively disclose the contract rate. PEF concludes that this would impair the ability of a high volume user such as PEF to obtain rate concessions because railroads would be reluctant to grant concessions that other rail users would then expect.

Similarly, PEF asserts that the information reported in Column J, "Other Rail Charges," consists of its railcar ownership cost. PEF maintains that this cost reflects internal trade secret information which is not available to any party with whom it contracts. PEF maintains that, if this information is disclosed to the railroad, their existing knowledge of PEF's rail rates would allow the railroad to determine PEF's total rail cost and be better able to evaluate PEF's opportunity to economically use other competing transportation alternatives.

PEF alleges that the figures reported in Column K, "River Barge Rate," in Column L "Transloading Rate," in Column M, "Ocean Barge Rate," and in Column N, "Other Charges Incurred," are each a portion of the total cost reported in the "Transportation Charges" of Column O of Form 423-2B. According to PEF, in the case of waterborne deliveries to the Crystal River Plants, the figures represent portions of PEF's current waterborne transportation rate. PEF claims that disclosure of all or any portion of these transportation rates would enable coal suppliers to bid a F.O.B. mine price calculated to produce a delivered plant price at or marginally below PEF's current delivered price, which information is available from Form 423-2, Column I. PEF concludes that keeping this price information confidential will more likely result in suppliers bidding their best price.

PEF maintains that the figures reported in Column P, "Transportation Charges," are the total costs reported as transportation charges. According to PEF, in the case of rail deliveries to

the Crystal River Plants, these figures represent PEF's current rail transportation rate. In the case of waterborne deliveries to the Crystal River plants, the figures represent PEF's current Gulf barge transportation rate. In the case of water deliveries to IMT, the figures represent PEF's current river transportation rate. PEF contends that protection of these transportation rates would lead suppliers to bid their best price without an opportunity to calculate a perceived maximum acceptable price.

### **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 24 months. PEF asserts that this is the minimum time necessary to ensure that subsequent disclosure will not allow suppliers to determine accurate estimates of the then-current contract price.

In support of its request for extended confidential treatment, PEF asserts that the majority of its contracts contain annual price adjustment provisions. According to PEF, if suppliers were to obtain confidential contract information for a prior reporting month at any time during the same 12-month adjustment period, current pricing information would be disclosed. PEF maintains that, if the previously reported information is only one adjustment removed from the current price, suppliers knowledgeable in the recent escalation experience of their market could readily calculate a reasonably precise estimate of the current price. PEF concludes that, to guard against this competitive disadvantage, the confidential information requires protection 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 easily converted into essentially current information.

PEF maintains that an 18-month confidentiality period would effectively waste the protection given in the first six months of the second 12-month pricing period by allowing disclosure of the same vintage information in the last six months of the pricing period. The information disclosed in the six months following the expiration of the 18-month confidentiality period would be equally detrimental to PEF's interests and to its ratepayers, in terms of revealing the current price, as the information protected from disclosure during the preceding six months. To make the protection meaningful, PEF asserts that it should be extended six months beyond the end of the 18-month confidentiality period permitted by statute. PEF maintains that doing so would mean that the information would be an additional 12 months and one price adjustment further removed from the current price at the time of disclosure.

### **Ruling**

Upon review, it appears that PEF is entitled to confidential classification of the information contained in Document No. 06314-11. The information described above appears to be "information 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.” Section 366.093(3)(d), F.S. This information reveals invoice prices, transportation charges, and coal prices. The public disclosure of any of this information could reduce PEF’s competitiveness in the marketplace. This, in turn, could result in higher prices for transportation and coal. Therefore, PEF’s request for confidential classification of information contained in its Form 423 Fuel Reports for July 2011, Document No. 06314-11, is granted.

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 24 months. Accordingly, the information identified in Document No. 06314-11, shall be granted confidential classification for a period of 24 months from the issuance of this Order.

Based on the foregoing, it is

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that the request by Progress Energy Florida, Inc. for confidential classification of portions of Document No. 06314-11 is granted as set forth in the body of this Order. It is further

ORDERED that the information described within the body of this Order and contained in Document No. 06314-11 shall be granted confidential classification for a period of 24 months from the date of the issuance of this Order. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 25th day of October, 2011.



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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), F.S., to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, F.S., 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.