



Public Service Commission

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COMMISSION
CLERK

DATE: September 3, 2003
TO: Office of General Counsel (Rodan)
FROM: Division of Auditing and Safety (Freeman, Vandiver) *F. Vandiver*
RE: Docket 030001-EI, Recommendation concerning Progress Energy Florida, Inc.'s, (Progress Energy's) request for confidential classification concerning a portion of the staff's audit report and working papers obtained during the preparation of "Progress Energy Florida (Formerly Florida Power Corporation) Fuel Adjustment Clause Audit for the Twelve Months Ended December 31, 2002", Audit Control No. 03-034-2-2, Documents Numbered 03990-03, 04012-03, 04157-03, 04144-03 and 07931-03

On April 11, 2003, when copies of certain portions of staff's working papers obtained or prepared during the "Progress Energy Florida (Formerly Florida Power Corporation) Fuel Adjustment Audit for the Twelve Months Ended December 31, 2002", were delivered to Progress Energy Florida, Inc., at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with the provisions of Rule 25-22.006(3)(a)(2), Florida Administrative Code (FAC).

On May 1, 2003, staff filed document 03990-03 consisting of those specified portions of the working papers.

On May 2, 2003, staff distributed its audit report in this case, document 04012-03.

On May 7, 2003, staff distributed its audit report a second time, document 04157-03.

On May 7, 2003, and as corrected on May 28, 2003, the utility filed a request pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, FAC, that selected portions of the audit report and working papers prepared during the audit receive confidential classification. The utility's request includes redacted copies for public inspection (Exhibit B, document 04143-03) and highlighted copies (document 04144-03).

On May 15, 2003, staff requested that the staff audit report in this case (Documents 04012-03 and 04157-03) be held in a confidential status pending the results of the Progress Energy request.

On August 26, 2003, staff reported that it had accounted for and recalled all copies of the staff audit report either by retrieving copies of the report, by accepting that the distributed copy of the report had been destroyed, or by accounting for copies of the report in the hands of Progress Energy or Public Counsel. On August 26, 2003, staff filed the copies of this audit report that were retrieved and in staff's possession (Document 07931-03).

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Documents 03990-03, 004012-03, 04157-03, 04144-03, and 07931-03 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of Progress Energy's request for confidential classification.

Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific items of a statutory provision. Subsections 366.093(3)(b)(d) and (e) provide the following exemptions:

"Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes but is not limited to:....

(b) Internal auditing controls and reports of internal auditors....

(d) 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 and services on favorable terms.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information...."

According to Section 366.093, F.S., and Rule 25-22.006, FAC, the utility has the burden of demonstrating that materials qualify for confidential classification. According to Rule 25-22.006, FAC, the utility must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility, the provider of the information or the ratepayer harm.

Staff Analysis of the Request

Reading the Progress Energy filing reveals the sensitive material consists of:

1. Actual regulatory allowance provided to Progress Energy Florida, Inc., to purchase waterborne transportation;

Commission Order PSC-93-1331-FOF-EI, dated August 3, 1993, effectively set an allowance in dollars per ton for Progress Energy to ship coal by water to the utility electric plants. Order PSC-93-1331-FOF-EI establishes an allowance for coal transportation services to be purchased such as short-haul rail/truck transportation to the up-river dock, up-river barge transloading, river barge transportation, Gulf barge transloading, Gulf barge transportation to the electric plant and port fees and assist tug charges. From this regulatory allowance, the utility must provide the actual transportation of its coal. Progress Energy contracts at the full allowed transportation allowance with an affiliate "Progress Fuels Corporation (PFC)" to buy and transport coal from the mine to the utility plant. This affiliate receives a profit if it provides services at a lower cost and suffers a loss if the actual cost exceeds its contract price.

Progress Energy asserts staff's working papers contain sensitive information that would allow suppliers to obtain or calculate the current regulatory waterborne transportation allowance per ton. Progress Energy further asserts that if this waterborne transportation allowance was known, then coal vendors could use public information concerning the delivered price of coal to determine the price of coal paid. Coal vendors would then have a significant advantage when submitting their bids to sell coal in the future. Progress Energy asserts that because of this competitive advantage, the coal vendors would be able to avoid bidding their lowest price and instead simply undercut the existing price. As a result, PFC, Progress Energy and ultimately its customers would incur higher fuel costs because PFC's coal vendors were forearmed with this sensitive and competitively valuable information.

Section 366.093(3)(d), F.S., provides an exemption from public access for sensitive contractual information release of which would impair the public utility or its affiliates to contract for goods and services. Section 366.093(3)(e), F.S., provides an exemption from public records access for competitively sensitive information the release of which could harm the business of the provider of that information.

Staff Analysis of the Request (continued)

2. Sensitive information concerning how the Progress Energy waterborne transportation allowance is set; and

Progress Energy asserts staff's audit report discloses sensitive information concerning how published indices are used to calculate the coal waterborne transportation allowance as well as provides a discussion as to the differences which would have resulted if a different version of the published indices was used. This information would allow existing and potential coal suppliers to iteratively calculate, that is, "back in to", the weighting factors for the annual adjustment indices, which, in turn, allow the coal suppliers to determine PFC's current and future waterborne transportation cost allowances per ton. These coal vendors could then use public information to determine the coal cost at the mine, thus obtaining a competitive advantage in submitting bids to sell coal in the future. Progress Energy asserts this advantage would translate into higher coal costs for PFC, Progress Energy and eventually the ratepayers.

3. Internal auditing controls and reports of the internal auditor.

Progress Energy asserts staff's working papers contain information taken from Progress Energy's internal Auditors. This type of information is provided an exemption by Section 366.093(3)(b), F.S.

Lastly, Progress Energy asserts that this designated information is intended to be and is treated as private and the information has not been publicly disclosed.

Duration of the Confidential Classification Period

Progress Energy requests that this material be returned to the utility once this information is no longer needed for the Commission to conduct its business. However we note the Commission staff's audit reports and the related working papers for this type of audit are retained on file by the Commission for 25 years.

According to the provisions of Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Without cause shown for a longer period, we recommend that the period of confidential classification be set as 18 months. As deemed necessary, the utility may request an extension of the confidential classification before the period tolls.

Staff Recommendation

Based upon reading the filing, and for the reasons presented above, we recommend the utility's request be granted and that the identified material be granted a confidential classification for 18 months.

A detailed recommendation regarding the material follows:

Detailed Recommendation

Utility Identifying Page Number	Staff Work Paper Number	Sensitive Areas	Recommend	Type of Information Classified Confidential
Documents 04012-03, 04157-03, 04144-03 and 07931-03				
WP 11	Audit Report Disclosure 2	4 Marked field	Grant	Calculation method for transportation allowance
Documents 03990-03 and 04144-03				
WP 1	WP 10-5A, page 3	Marked field	Grant	Reports transportation Allowance
WP 2	WP 10-5B, page 2	2 marked fields	Grant	Reports transportation Allowance
WP 3	WP 10-5B, page 3	2 marked fields	Grant	Reports transportation Allowance
WP 4	WP 10-5B, page 4	3 marked fields	Grant	Reports transportation Allowance
WP 5	WP 10-5B, page 5	3 marked fields	Grant	Reports transportation Allowance
WP 6	WP 10-5B, page 6	2 marked fields	Grant	Reports transportation Allowance
WP 7	WP 10-5B, page 7	2 marked fields	Grant	Reports transportation Allowance
WP 8	WP 10-5B, page 8	Marked field	Grant	Reports transportation Allowance
WP 9	WP 10-5B, page 9	2 marked fields	Grant	Reports transportation Allowance
WP 10	WP 10-5B, page 10	2 marked fields	Grant	Reports transportation Allowance
WP 12	WP 46-8	2 marked fields	Grant	Internal auditing controls or reports of internal auditor

Utility Identifying Page Number	Staff Work Paper Number	Sensitive Areas	Recommend	Type of Information Classified Confidential
Documents 03990-03 and 04144-03				
WP 13	WP 46-7	3 marked fields	Grant	Internal auditing controls or reports of internal auditor
WP 14	WP 46-5	Marked field	Grant	Internal auditing controls or reports of internal auditor
WP 15	WP 46-4	3 marked fields	Grant	Internal auditing controls or reports of internal auditor
WP 16	WP 46-3	Marked field	Grant	Internal auditing controls or reports of internal auditor
WP 17	WP 46-2, page 2	Marked field	Grant	Internal auditing controls or reports of internal auditor
WP 18	WP 46-2, Page 1	5 marked fields	Grant	Internal auditing controls or reports of internal auditor
WP 19	WP 46-1	3 marked fields	Grant	Internal auditing controls or reports of internal auditor
WP 20	WP 46	2 marked fields	Grant	Internal auditing controls or reports of internal auditor
WP 21	WP 46 Lead	4 marked fields	Grant	Internal auditing controls or reports of internal auditor
WP 22	WP 45-4, Page 2	4 marked fields	Grant	Internal auditing controls or reports of internal auditor
WP 23	WP 45-1	11 marked fields	Grant	Internal auditing controls or reports of internal auditor
WP 24	WP 45	14 marked fields	Grant	Internal auditing controls or reports of internal auditor

A temporary copy of this recommendation will be held at I:04144-03.prog.raf.wpd for a short period.

CC: Division of Auditing and Safety (Rohrbacher)
 Division of Commission Clerk and Administrative Services (Flynn)