

ORIGINAL



JAMES A. MCGEE
ASSOCIATE GENERAL COUNSEL
PROGRESS ENERGY SERVICE CO., LLC

November 19, 2003

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED T-80
03 NOV 19 AM 9:45
COMMISSION
CLERK

Re: Docket No. 030001-EI; **Request for Confidential Classification.**

Dear Ms. Bayó:

Enclosed for filing in the subject docket on behalf of Progress Energy Florida, Inc., formerly Florida Power Corporation, is an original and fifteen copies of its Request for Confidential Classification. The documents containing the information for which confidential classification is sought was highlighted and included with Progress Energy's Notice of Intent to Request Confidential Classification filed on October 29, 2003 in a separate sealed envelope. A public copy of the documents, with the confidential information redacted, was attached to each copy of the Notice. **The documents containing the highlighted information should continue to be held as Confidential Information in accordance with Rule 25-22.006, F.A.C.**

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. A 3½ inch diskette containing the above-referenced Request in WordPerfect format is also enclosed. Thank you for your assistance in this matter.

Very truly yours,

James A. McGee

- AUS _____
- CAF _____
- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- SEC _____
- OTH _____

JAM/scc
Enclosure

cc: Parties of record

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
8 51 NOV 19 03
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost
Recovery Clause and Generating
Performance Incentive Factor.

Docket No. 030001-EI

Submitted for filing:
November 19, 2003

REQUEST FOR CONFIDENTIAL CLASSIFICATION

Progress Energy Florida, Inc., formerly Florida Power Corporation, (Progress Energy or the Company), pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., hereby requests confidential classification of the highlighted information on its responses to Staff's Fifth Set of Interrogatories, Nos. 48, 49, 59, 76, 78, and 82 - 84 (the Interrogatory Responses), and on the documents responsive to Staff's Second Request for Production of Documents, Nos. 5, 6, 9, 10 and 14 (the POD Documents), the relevant pages of which were contained in the sealed envelope enclosed with Progress Energy's Notice of Intent to Request Confidential Classification filed on October 29, 2003. A public version of the Interrogatory Responses and the POD Documents, with the confidential information redacted, was attached to each filed copy of the Notice of Intent. In addition, Progress Energy waives any claim of confidentiality with respect to (a) the highlighted information under the column "Delivered" in Interrogatory Responses 48 and 49, (b) the highlighted information in Interrogatory Response 77, and (c) the highlighted information on the first page of POD Documents 5 and 14 for the line entitled "Total Weighted % Change" under the column "Estimated 2003". In support of this request for confidential classification, Progress Energy states as follows:

DOCUMENT NUMBER-DATE

11619 NOV 19 8

FPSC-COMMISSION CLERK

Justification for Confidential Classification

1. Subsection 366.093(1), F.S., provides that any records “found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1) [requiring disclosure under the Public Records Act].” Proprietary confidential business information includes, but is not limited to, “[i]nformation concerning . . . 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” (subsection 366.093(3)(d)), and “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information” (subsection 366.093(3)(e)). The designated portions of the Interrogatory Responses and POD Documents fall within these statutory categories and, thus, constitute propriety confidential business information entitled to protection under Section 366.093 and Rule 25-22.006.

2. With respect to Interrogatory Responses 48 and 49, the highlighted information under the column labeled “Commodity” identifies the contractual commodity price of coal to be purchased in 2004 and 2005, respectively, by Progress Energy’s coal supplier, Progress Fuels Corporation (PFC). Disclosure of the commodity price would provide PFC’s existing and potential coal and waterborne transportation suppliers with a significant competitive advantage in bidding or negotiating for PFC’s future coal purchases and waterborne transportation services. Because of this competitive advantage, the suppliers would be able to avoid offering their lowest price and instead simply undercut PFC’s existing price. As a result, PFC, Progress Energy, and ultimately its customers would incur higher fuel costs than if PFC’s suppliers were not forearmed with this competitively sensitive and valuable information.

3. The highlighted information in Interrogatory Responses 48 and 49 provides the same or substantially similar price and cost information as that contained (a) in Progress Energy's Form 423 monthly filings in this proceeding which is consistently accorded confidential classification by the Commission, and (b) in document DN 11296-02 for which confidential classification was granted by Order No. PSC-03-0035-CFO-EI, issued January 6, 2003.

4. With respect to Interrogatory Response 59, the highlighted information identifies the unit transportation cost of coal deliveries to the Crystal River plant site by rail and by water for 2002, 2003 and 2004. Disclosure 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 Progress Energy's current, publicly available delivered price. Without an opportunity to use the transportation rates in this manner, suppliers would find it necessary to bid their best price. Any such use of this information can only result in higher fuel costs incurred by Progress Energy and its customers. Consequently, the effect of disclosure would be to impair the efforts of Progress Energy to contract for goods and services on favorable terms for the benefit of its customers.

5. The highlighted information in Interrogatory Response 59 provides the same or substantially similar price and cost information as that contained (a) in Progress Energy's Form 423 monthly filings in this proceeding which is consistently accorded confidential classification by the Commission, (b) in document DN 12104-02 for which confidential classification was granted by Order No. PSC-03-0036-CFO-EI, issued January 6, 2003, and (c) in document DN 04144-03 for which confidential classification was granted by Order No. PSC-03-1298-CFO-EI, issued November 13, 2003.

6. With respect to Interrogatory Response 76, the highlighted information identifies the contractual waterborne transportation rates of PFC in 2002 for each transportation component and in total. Disclosure of these contractual transportation rates would contravene binding terms in each of the related contracts which prohibit the parties from disclosing the contents to third parties and obligate the parties to obtain suitable safeguards to protect the contract terms when disclosure is legally required, such as is currently the case. Thus, PFC, as a party to the contracts, is required to seek and obtain the safeguards against public disclosure of the contracts' contents requested herein in fulfillment of its contractual obligation and to avoid potential liability for damages that its contractual counter-parties may incur as a result of disclosure. Progress Energy, under its contract with PFC for the delivery of coal to the Crystal River plant site and as the party responsible for providing the related contractual information in Interrogatory Response 76, also finds it necessary and appropriate to seek such safeguards against disclosure of the contract terms to avoid any liability it may arguably have incurred as a result of its response to Staff's discovery.¹

Moreover, disclosure of PFC's waterborne transportation rates would place it at a serious competitive disadvantage in upcoming negotiations for new rail transportation rates, since the rail carriers would know PFC's waterborne transportation rates against which the rail carriers must compete. Any such use of this information can only result in higher fuel costs incurred by Progress Energy and its customers. Consequently, the effect of disclosure would be to impair the efforts

¹ In addition to potential liability under Progress Energy's contract with PFC, liability could arguably be asserted under various theories by PFC's contractual counter-parties, although Progress Energy does not acknowledge, and expressly denies, the validity or merit of any such assertion.

of Progress Energy to contract for goods and services on favorable terms for the benefit of its customers.

7. With respect to Interrogatory Responses 82, 83 and 84, the highlighted information identifies Progress Energy's waterborne coal transportation market price proxy for 2004, 2003 and 2002, respectively. Similarly, the highlighted information in POD Documents 5 and 14 identifies Progress Energy's waterborne coal transportation market price proxy for 2004, and for 2001 and 2002, respectively. In addition, the highlighted information in POD Documents 6 and 14 identifies the weighting factors used to escalate Progress Energy's market price proxy. Disclosure of these waterborne transportation prices and the weighting factors that can be used to calculate past and future waterborne transportation prices, coupled with publicly available delivered prices of waterborne coal, existing and potential coal suppliers could readily determine the FOB mine price of the coal purchased by PFC, thereby giving them a significant competitive advantage in bidding for PFC's future coal purchases. Because of this competitive advantage, the suppliers would be able to avoid bidding their lowest price and instead simply undercut PFC's existing price. As a result, PFC, Progress Energy, and ultimately its customers would incur higher fuel costs than if PFC's suppliers were not forearmed with this sensitive and competitively valuable information.

8. The highlighted market price proxy information in Interrogatory Responses 82, 83 and 84, and in POD Documents 5 and 14, provides the same or substantially similar price information as that contained (a) in Progress Energy's Form 423 monthly filings in this proceeding which is consistently accorded confidential classification by the Commission, and (b) in document DN 04144-03 for which confidential classification was granted by Order No. PSC-03-1298-CFO-EI,

issued November 13, 2003. In addition, the highlighted market price proxy weighting factors in POD Documents 6 and 14 provides the same or substantially information for which confidential classification was also granted by Order No. PSC-03-1298-CFO-EI.

9. With respect to POD Documents 9 and 10, the highlighted information on each of the two pages identifies the maintenance expenses and capital expenditures, and related "out of service" time, for each barge and tug vessel of Dixie Fuels Limited (DFL), PFC's affiliated cross-Gulf transportation supplier, over the period from 2003 through 2011. Disclosure of these major maintenance costs, which DFL must recover through future rates for cross-Gulf transportation services, would give other potential suppliers of these service a significant competitive advantage in bidding to provide cross-Gulf coal transportation to Progress Energy's Crystal River site after the expiration of DFL's current contract in March 2005.² Because of this competitive advantage, these suppliers would be better able to anticipate the cost level included in DFL's bid and tailor their bids accordingly, thus avoiding the need to bid their lowest price. As a result, PFC, Progress Energy, and ultimately its customers would incur higher fuel costs than if PFC's suppliers were not forearmed with this sensitive and competitively valuable information.

10. The designated information for which confidential classification is sought by this Request is intended to be and is treated by the Company as private and has not been publicly disclosed.

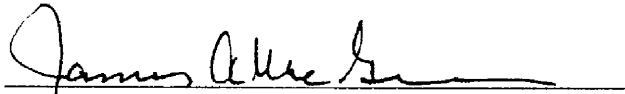
² In conjunction with the November 2003 hearings in this docket, Staff and Progress Energy agreed to the use of a RFP bidding process for cross-Gulf transportation services prior to the expiration of the current DFL contract.

Duration of Confidential Classification

11. Progress Energy requests an 18-month confidentiality period, consistent with Rule 25-22.006 (9)(a), F.A.C. In addition, Progress Energy asks that the Interrogatory Responses and POD Documents be returned to the Company when the Commission no longer needs the information to conduct its business, in accordance with Rule 25-22.006 (9)(b), F.A.C.

WHEREFORE, Progress Energy requests that the highlighted information in the Interrogatory Responses and POD Documents enclosed with its previously filed Notice of Intent be accorded confidential classification for the reasons set forth above.

Respectfully submitted,



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Attorney for
PROGRESS ENERGY FLORIDA, INC. and
PROGRESS FUELS CORPORATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to the following individuals by regular U.S. Mail the 19th day of November, 2003:

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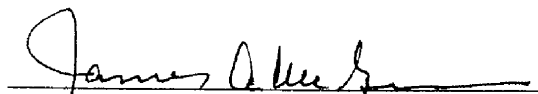
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