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PROGRESS ENERGY SERVICE COMPANY, LLC

May 20, 2004

VIA OVERNIGHT DELIVERY

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

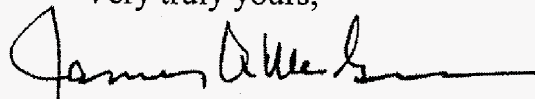
Re: Docket No. 031057-EI; Waterborne Transportation Audit  
Workpapers; **Request for Confidential Classification.**

Dear Ms. Bayó:

Enclosed for filing in the subject docket on behalf of Progress Energy Florida, Inc., are an original and seven copies of its Request for Confidential Classification. Also enclosed is a sealed envelope containing the audit workpapers subject to the Request, with the confidential information highlighted. **These documents should be held as Confidential Information in accordance with Rule 25-22.006, F.A.C.** Two public copies of the documents, with the confidential information redacted, are also enclosed with the Request.

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 Word format is also enclosed. Thank you for your assistance in this matter.

Very truly yours,



James A. McGee

JAM/scc  
Enclosures

cc: Parties of record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Review of Progress Energy  
Florida's benchmark for Waterborne  
Transportation Transactions with  
Progress Fuels.

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Docket No. 031057-EI

Submitted for filing:  
May 21, 2004

**REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Progress Energy Florida, Inc. (Progress Energy or the Company), pursuant to pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., hereby requests confidential classification of the highlighted information on the documents contained in the sealed envelope enclosed with this Request. These documents consists of the confidential portions of the audit workpapers produced during the course of the Staff Audit of the waterborne transportation costs incurred by Progress Fuels Corporation (PFC) in 2003, Audit Control No. 04-028-2-1 (the Confidential Workpapers). Two copies of a public version of the Confidential Workpapers, with the confidential information redacted, are included with this Request. In support hereof, Progress Energy states as follows.

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” (paragraph 366.093(3)(d)). The designated portions of the Confidential Workpapers fall within this statutory category and, thus, constitute propriety confidential business information entitled to protection under Section 366.093 and Rule 25-22.006.

2. To facilitate the discussion of the highlighted information contained in the Confidential Workpapers (identified by circled numbers 1 through 109 in the lower right-hand corner of each page), the information has been divided into the following confidentiality categories, each of which lists the individual Workpapers that contain confidential information in that category.

| <b>Categories of Confidential Information</b>   | <b>Confidential Workpaper No.<br/>(circled in lower right corner)</b>                  |
|---|--|
| A. Waterborne transportation contractual prices or costs per ton, or costs for which the related tons are publicly available.     | 13, 34, 35, 39-41, 43-51, 60, 61, 63, 64, 70, 72, 75, 77-83, 86, 88-90, 92-94, 99-103. |
| B. Coal commodity contractual prices or costs per ton, or costs for which the related tons are publicly available.                | 2, 24-33, 34, 35, 59, 71-77, 84, 85, 87, 88, 91, 92, 95-98, 105-107, 108.              |
| C. Quality adjustments and other contractual terms and specifications for waterborne transportations services and coal purchases. | 26, 32, 33, 36-38, 62, 65-69, 72, 73, 75, 76, 104, 105, 107.                           |
| D. Financial data from PFC’s income statement.  | 3-12, 14-23, 42, 50-58.  |
| E. Market price proxies or weighting factors.   | 1, 109.  |

A discussion of the justification for confidential classification of the highlighted information in each of these categories follows.

Category A Disclosure of the waterborne transportation price and cost information contained in the Confidential Workpapers would provide PFC's existing and potential suppliers of waterborne transportation services with a competitive advantage in bidding or negotiating for PFC's future waterborne transportation services. By the same token, disclosure of PFC's waterborne transportation prices and costs would provide its supplier of rail transportation services detailed knowledge of the alternative transportation mode against which this supplier must compete, thus giving it a significant competitive advantage in upcoming contract renewal negotiations with PFC. Once given this competitive advantage, these waterborne and rail transportation suppliers would no longer need to offer their lowest price and, instead, would be able to tailor their offers to simply undercut PFC's existing prices. As a result, PFC and Progress Energy would incur higher fuel costs than if PFC's transportation suppliers were not forearmed with this sensitive and competitively damaging information. Because these higher fuel costs would ultimately be borne by customers of Progress Energy through the fuel charge on their electric bills, disclosure of this waterborne transportation information would be contrary to, and in disregard of, the best interests of the Company's customers.

In addition, disclosure of this extensive information about PFC's waterborne transportation prices and costs, coupled with publicly available delivered prices and costs, would allow knowledgeable participants in the coal supply business to

determine or closely approximate PFC's commodity prices by simple subtraction. As the discussion below regarding the commodity information in Category B will explain, this would provide PFC's existing and potential coal suppliers an important and damaging competitive advantage in bidding for PFC's future coal purchases. The higher fuel costs from this supplier advantage, in addition to the cost impact of the transportation suppliers' competitive advantage, would further harm the interests of Progress Energy's customers

The highlighted information contained in the Confidential Workpapers for Category A provides the same or substantially similar competitively sensitive information as that contained (a) in Progress Energy's Form 423 monthly filings in the ongoing Fuel and Purchased Power Cost Recovery proceedings, which are 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 in Docket No. 030001-EI, (c) in document DN 04144-03 for which confidential classification was granted by Order No. PSC-03-1298-CFO-EI, issued November 13, 2003 in Docket No. 030001-EI, and (d) in document DN 10626-03 for which confidential classification is pending pursuant to Progress Energy's request filed November 19, 2003 in Docket No. 030001-EI.

Category B Disclosure of the coal commodity information contained in the Confidential Workpapers would give existing and potential coal suppliers a

major competitive advantage in bidding for PFC's future coal purchases, much the same as the advantage described above that coal and transportation suppliers would gain from disclosure of PFC's waterborne transportation information. Specifically, knowledge of this detailed information about PFC's commodity prices and costs would allow these coal suppliers to avoid bidding their lowest price and, instead, simply undercut PFC's existing price. As a result, PFC and Progress Energy would incur higher fuel costs, and the Company's customers would pay higher fuel charges on their electric bills, than if PFC's coal suppliers were not given the unwarranted and harmful advantage that this competitively sensitive information would provide. As is the case PFC's waterborne transportation information, disclosure of the coal commodity price and cost information in the Confidential Workpapers would disregard the interests of the Company's customers.

The highlighted information contained in the Confidential Workpapers for Category B provides the same or substantially similar competitively sensitive information as that contained (a) in Progress Energy's Form 423 monthly filings in the ongoing Fuel and Purchased Power Cost Recovery proceedings, which are consistently accorded confidential classification by the Commission, (b) in document DN 11296-02 for which confidential classification was granted by Order No. PSC-03-0035-CFO-EI, issued January 6, 2003 in Docket No. 030001-EI, (c) in document DN 04788-03 for which confidential classification was

granted by Order No. PSC-03-1184-CFO-EI, issued October 21, 2003 in Docket No. 030001-EI, (d) in document DN 10626-03 for which confidential classification is pending pursuant to Progress Energy's request filed November 19, 2003 in Docket No. 030001-EI, and (e) in document DN 11182-03 for which confidential classification is pending pursuant to Progress Energy's request filed November 26, 2003 in Docket No. 030001-EI.

Category C The highlighted information in this category of the Confidential Workpapers identifies quality and performance price adjustments and other sensitive contractual terms and specifications negotiated by PFC for the purchase of coal and waterborne transportation services, in addition to the contractual pricing and cost information on certain of the Workpapers described in Categories A and B above. Disclosure of these contractual terms and specifications would be detrimental to PFC, Progress Energy and its customers in two ways. First, disclosure would place PFC at a competitive disadvantage in future negotiations with potential suppliers of similar coal and waterborne transportation services who would use the most advantageous of these terms and specifications as the beginning point, or floor, of their bargaining position and the least advantageous terms and specifications as their ceiling, knowing in either case that they had been previously accepted by PFC. Second, existing and potential suppliers of coal and waterborne transportation services would be less willing, or unwilling, to offer PFC special or unique concessions on contractual

terms and specification if they were aware that such concessions may be disclosed to other potential purchasers who would then demand similar concessions. Either or both of these situations would impair PFC's efforts to contract for goods and services on favorable terms, to the detriment of Progress Energy's customers in the form of higher fuel charges on their electric bills.

The highlighted information on the Confidential Workpapers listed in Category C regarding quality adjustments and contractual terms and specifications provides the same or substantially similar competitively sensitive 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 04788-03 for which confidential classification was granted by Order No. PSC-03-1184-CFO-EI, issued October 21, 2003 in Docket No. 030001-EI, and (c) in document DN 11182-03 for which confidential classification is pending pursuant to Progress Energy's request filed November 26, 2003 in Docket No. 030001-EI.

Category D The highlighted information in this category of the Confidential Workpapers identifies detailed monthly and annual financial data for 2003 from the income statement of PFC's regulated operations, *i.e.*, the portion of its business dedicated to the procurement and delivery of coal to Progress Energy's Crystal River plant site. Disclosure of this publicly unavailable information would provide existing and potential suppliers of coal and



transportation services, as well as competitors, with a highly detailed breakdown of the various financial and operational components affecting PFC's profitability. When coupled with other publicly available information, such as the corresponding monthly data from the FPSC Form 423 regarding individual suppliers, quantities and delivered prices, this information would allow these suppliers an otherwise unavailable insight into the strengths and vulnerabilities of PFC's regulated operations which they could then use to gain a competitive advantage in future negotiations with PFC for coal and transportation services. Negotiating with suppliers who are forearmed with this detailed knowledge of the nuances of PFC's profitability would impair its efforts to contract for goods and services on favorable terms, to the detriment of Progress Energy's customers in the form of higher fuel charges on their electric bills.

The highlighted information in the Confidential Workpapers from Staff audit of PFC's 2003 waterborne transportation costs listed in Category D regarding sensitive financial data from the regulated income statement of PFC provides the same or substantially similar competitively sensitive information as that contained in document DN 04788-03, the audit workpapers from the Staff audit of PFC's 2002 waterborne transportation costs, for which confidential classification was granted by Order No. PSC-03-1184-CFO-EI, issued October 21, 2003 in Docket No. 030001-EI.

Category E The highlighted information in this category of the Confidential Workpapers identifies Progress Energy's waterborne coal transportation market price proxy for 2003. Disclosure of PFC's 2003 waterborne transportation price, coupled with publicly available delivered prices of waterborne coal, would enable existing and potential coal suppliers to readily determine the commodity price of the coal purchased by PFC in 2003, thereby giving these suppliers 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 and Progress Energy, would incur higher fuel costs, and the Company's customers would pay higher fuel charges on their electric bills, than if PFC's suppliers were not forearmed with this sensitive and competitively damaging information.

The highlighted market price proxy information in the Confidential Workpapers 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, (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 Docket No. 030001-EI, (c) in document DN 10626-03 for which confidential classification is pending pursuant to Progress Energy's request filed November 19, 2003 in

Docket No. 030001-EI, (d) in document DN 02135-04 for which confidential classification is pending pursuant to Progress Energy's request filed February 16, 2004 in Docket No. 031057-EI, and (e) in document DN 04986-04 for which confidential classification is pending pursuant to Progress Energy's request filed May 17, 2004 in Docket No. 031057-EI.

3. 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.

4. 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 version of the Confidential Workpapers containing the highlighted information 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.

5. Progress Energy asks that this request be considered on its merits despite its filing out of time. The office transition and relocation of certain key personnel involved in coordinating the review and designation of confidential information in the workpapers provided to the Company at the conclusion of the Staff audit led to an inadvertent oversight in monitoring the filing deadline for requesting confidential classification of the workpapers.<sup>1</sup> Upon discovery of this oversight,

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<sup>1</sup> These circumstances also led to an oversight of the filing deadline for requesting confidential classification of the Company's response to the same Staff audit. That request for confidential classification is being filed in conjunction with this request.

the Company immediately completed the process of reviewing and designating the confidential information in the audit workpapers and the preparation of this request. To the best of Progress Energy's knowledge and belief, the audit workpapers have been maintained by the Commission consistent with the safekeeping afforded confidential information during the lapse in filing this request. Progress Energy believes and represents that no party or interested person has been or will be prejudiced by this filing lapse, and that, to the contrary, the interest of the Company's customers has been and will continue to be served by maintaining the confidentiality of the information subject to this request. As described above regarding the merits of granting confidential classification, the only consequence that can possibly result from the disclosure of this information would be an increase in the cost of purchasing and delivering coal to the Crystal River plant site, which the Company's customers would ultimately bear through higher fuel charges on their electric bills.

Any such a detrimental consequence to Progress Energy's customers can be avoided under the principle of "excusable neglect". Where excusable neglect exists, the law favors allowing a party to have its controversy decided on the merits. *Lloyd's Underwriter's at London v. Ruby, Inc.*, 801 So.2d 138, 139 (Fla. 4th DCA 2001). The courts have explained that "[w]here inaction results from clerical or secretarial error, reasonable misunderstanding, a system gone awry or any other of the foibles to which human nature is heir, then upon timely

application accompanied by a reasonable and credible explanation the matter should be permitted on the merits." (quoting *Shurgard Storage Centers, Inc. v. Parker*, 755 So.2d 695, 696 (Fla. 4th DCA 1999) and *Gateway Am. Bank of Fla. v. Lucky Jet Corp.*, 720 So.2d 1141, 1142 (Fla. 4th DCA 1998)). See also, *Florida West Coast Railroad v. Maxwell*, 601 So.2d 298 (Fla. 1st DCA 1992) (relying on the quotation above). The principle of "excusable neglect" originated in connection with default judgments in civil cases, but the courts have recognized its applicability in the administrative context. See *Hamilton County Bd. of County Comm'rs v. Department of Env'tl. Regulation*, 587 So.2d 1378 (Fla. 1st DCA 1991) (Department erred in striking untimely exceptions to recommended order without considering party's claim that late filing was due to excusable neglect). In fact, this Commission has applied the principle in connection with a late-filed confidentiality request. Order No. PSC-96-0407-CFO-WS (Late-filed confidentiality request due to "inadvertent clerical error" did not constitute waiver of confidentiality). See also, Order No. 96-0569-FOF-TL (Late filing of regulatory assessment fee due to "unusually heavy workload" and personnel absences constituted excusable neglect).

Progress Energy respectfully suggests that its late filing of this request should be considered the result of excusable neglect in its own right, and that taking into consideration the interests the Company's customers lends further support to such a finding.

WHEREFORE, Progress Energy requests that the highlighted information in Confidential Workpapers enclosed with this request be accorded confidential classification for the reasons set forth above.

Respectfully submitted,



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Attorney for  
PROGRESS ENERGY FLORIDA, INC.

**PROGRESS ENERGY FLORIDA  
DOCKET NO. 031057-EI**

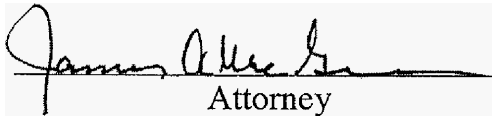
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Request for Confidential Classification on behalf of Progress Energy Florida has been furnished to the following individuals by regular U.S. Mail the 20<sup>th</sup> day of May, 2004.

Wm. Cochran Keating, IV, Esquire  
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