

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of long-term fuel supply and transportation contracts for Hines Unit 4 and additional system supply and transportation, by Progress Energy Florida, Inc.

DOCKET NO. 041414-EI
ORDER NO. PSC-05-0456-CFO-EI
ISSUED: April 28, 2005

ORDER GRANTING THIRD REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 03982-05)

On March 1, 2005, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Progress Energy Florida, Inc. (PEF) filed its third request for confidential classification of its response to Staff's Request for Production No. 6 from Staff's Second Request for Production of Documents to Progress Energy Florida, Inc. (Nos. 5-6). Then, on April 22, 2005, PEF filed a revised justification matrix to its third request for confidential classification along with an updated copy of PEF's response to Staff's Request for Production No. 6, with the allegedly confidential portions of the document highlighted consistent with the revised justification matrix (Document No. 03982-05).

Section 366.093(1), Florida Statutes, 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 [the Public Records Act]." Section 366.093(3), Florida Statutes, 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. Section 366.093(3), Florida Statutes, provides that proprietary confidential business information includes, but is not limited to "[t]rade secrets" (subsection a); "[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" (subsection d); and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information" (subsection e).

PEF contends that its response to Staff's Request for Production No. 6 from Staff's Second Request for Production of Documents to Progress Energy Florida, Inc. (Nos. 5-6) falls within these categories and thus constitutes proprietary confidential business information entitled to protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. PEF states that this information is intended to be and is treated by PEF as private and has not been publicly disclosed.

DOCUMENT NUMBER - DATE

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PEF requests that the following information be granted confidential classification:

DOCUMENTS	PAGE/LINE	JUSTIFICATION
Gas Purchase Agreement between BP Energy Company seller" and Florida Power Corporation "buyer" dated April 1, 2001.	Bates No. PEF000180 all the words after "Exhibit A," and before "Day shall mean."	§366.093(3)(e), Fla. Stat.
	Bates No. PEF000181 all the words after "quantity of gas," and before "Transporter(s) shall mean."	The information in question relates to PEF's competitive interests, the disclosure of which would impair PEF's competitive business interests.
	Bates No. PEF000183 all the words after "Transporter requirements," and before "if either Party."	§366.09(3)(d), Fla. Stat
	Bates No. PEF000183 all the words after "of penalties," until the end of the page.	The information in question concerns contractual data, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.
	Bates No. PEF000184 all information on page.	
	Bates No. PEF000185 all the information on page.	
	Bates No. PEF000186 all the words before "Article XII Billing and Payment."	
	Bates No. PEF000188 all the words after "discovered inaccuracies."	
	Bates No. PEF000189 all the words before "Article XVII Notices and Correspondence."	
	Bates No. PEF000189 all the words after "To Seller," and before "To Buyer."	
Bates No. PEF000190 all the words after "of the audit."		

	<p>Bates No. PEF000191 all the words after “obligations for the same.”</p> <p>Bates No. PEF000192 all information on page.</p> <p>Bates No. PEF000193 all words before “Article XXI Miscellaneous Provisions.”</p> <p>Bates No. PEF000194 all the words after “is expressly waived,” and before “This agreement.”</p> <p>Bates No. PEF000194 all the words after “by both Parties,” and before “This Agreement may.”</p> <p>Bates No. PEF000194 all the words after “execution hereof.”</p> <p>Bates No. PEF000195 all information on page.</p> <p>Bates No. PEF000196 all words before IN WITNESS WHEREOF.”</p> <p>Bates No. PEF000197 all information on page.</p>	
<p>Gas Services Agreement dated July 22, 1998 (the “Agreement”) between Florida Power Corporation (“Florida Power”) and Citrus Trading Corp. (“Citrus”)</p>	<p>Bates No. PEF000122 through PEF000123 all information on pages.</p> <p>Bates No. PEF000127 all the words after “by the Parties,” and before “Florida Power has.”</p>	<p>§366.093(3)(e), Fla. Stat.</p> <p>The information in question relates to PEF’s competitive interests, the disclosure of which would impair PEF’s competitive business interests.</p> <p>§366.09(3)(d), Fla. Stat.</p>

	<p>Bates No. PEF000129 all the words after "of the Lateral," and before "MMBtu means."</p> <p>Bates No. PEF000133 all the words after "the following procedures."</p> <p>Bates No. PEF000134 through PEF000138 all the information on pages.</p> <p>Bates No. PEF000139 all the words before "Section 2.5 Taxes"</p> <p>Bates No. PEF000140 all information on page.</p> <p>Bates No. PEF000143 all the words before "Article IV Term."</p> <p>Bates No. PEF000144 all the words after "Secondary Term."</p> <p>Bates No. PEF000147 All words after "section 12.4"</p> <p>Bates No. PEF000148-PEF000149 all information on the page.</p> <p>Bates No. PEF000150 all the words before "Article VIII Laws and Regulatory Bodies."</p> <p>Bates No. PEF000151 all the words after "Florida Power."</p> <p>Bates No. PEF000152 all the words before "Article IX Representations and Warranties."</p>	<p>The information in question concerns contractual data, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p>
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	<p>Bates No. PEF000155 through PEF000157 all the information on pages.</p> <p>Bates No. PEF000158 all the words before "Article XI Notices."</p> <p>Bates No. PEF000159 all the words before "FLORIDA POWER:"</p> <p>Bates No. PEF000160 all the words after "its preparation."</p> <p>Bates No. PEF000161-PEF000162 all information on pages.</p> <p>Bates No. PEF000163 all the words before "Section 12.7 Other Agreements."</p> <p>Bates No. PEF000164 all the words after "such termination."</p> <p>Bates No. PEF000165-PEF000167 all information on pages.</p>	
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PEF states that the materials at issue contain confidential competitive business information contained in contracts between PEF and fuel suppliers. Specifically, Staff's Document Request No. 6 calls for confidential contracts between PEF and potential fuel suppliers. PEF states that public disclosure of the information in question would violate the confidentiality provisions contained in those contracts and would impair PEF's ability to contract for services such as fuel supply on competitive and favorable terms. PEF negotiates with potential fuel suppliers and transportation companies to obtain competitive contracts for fuel options that provide economic value to PEF and its ratepayers. In order to obtain such contracts, PEF must be able to assure fuel suppliers and transportation companies that sensitive business information, such as the quantity and pricing terms of their contracts, will be kept confidential.

Upon review, it appears that the above-referenced information contained in PEF's response to Staff's Request for Production No. 6 from Staff's Second Request for Production of

Documents to Progress Energy Florida, Inc. (Nos. 5-6) satisfies the criteria set forth in Section 366.093(3), Florida Statutes, for classification as proprietary confidential business information and shall be treated as confidential. In particular, the information constitutes “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Thus, this information is granted confidential classification.

Pursuant to Section 366.093(4), Florida Statutes, the information for which confidential classification is granted herein shall remain protected from disclosure for a period of 18 months from the date of issuance of this order. At the conclusion of the 18 month period, the confidential information will no longer be exempt from Section 119.07(1), Florida Statutes, unless PEF or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

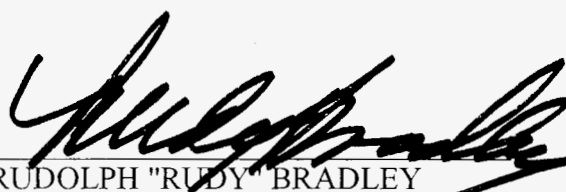
Based on the foregoing, it is

ORDERED by Commissioner Rudolph “Rudy” Bradley, as Prehearing Officer, that Progress Energy Florida, Inc.’s Third Request for Confidential Classification of Document No. 03982-05 is granted. It is further

ORDERED that the information in Document No. 03982-05 for which confidential classification has been granted shall remain protected from disclosure for a period of 18 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 Rudolph “Rudy” Bradley, as Prehearing Officer, this 28th day of April, 2005



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)

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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 Director, Division of the Commission Clerk and Administrative Services, 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.