

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery  
clause with generating performance incentive  
factor.

DOCKET NO. 050001-EI  
ORDER NO. PSC-05-0590-CFO-EI  
ISSUED: May 27, 2005

ORDER GRANTING REQUESTS FOR CONFIDENTIAL CLASSIFICATION  
(DOCUMENT NOS. 04993-03, 05348-03, 10626-03)

On June 5, 2003, Progress Energy Florida, Inc. ("Progress") filed a request for confidential classification of specified portions of its response to Interrogatory No. 16 from Staff's Second Set of Interrogatories in Docket No. 030001-EI ("Attachment 16") (Document No. 04993-03).

On July 8, 2003, Progress filed a request for confidential classification of four contracts provided in response to Request No. 1 from Staff's First Request for Production of Documents in Docket No. 030001-EI ("Contracts") (Document No. 05348-03).

On November 19, 2003, Progress filed a request for confidential classification of specified portions of its responses to Interrogatory Nos. 48, 49, 59, 76, 78, and 82-84 of Staff's Fifth Set of Interrogatories ("Interrogatory Responses") and documents responsive to Request Nos. 5, 6, 9, 10, and 14 of Staff's Second Request for Production of Documents ("Requested Documents") (Document No. 10626-03).

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).

Document No. 04993-03 – Attachment 16

Progress contends that the information in this document for which it seeks confidential classification falls within one or more of the categories provided in Section 366.093(3), Florida Statutes, and thus constitutes proprietary confidential business information entitled to protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code.

DOCUMENT NUMBER-DATE

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FPCO-COMMISSION CLERK

Progress notes that Attachment 16 identifies the rate per ton paid in 2002 by its affiliated coal supplier, Progress Fuels Corporation (“PFC”), for waterborne coal transportation by component detail and in aggregate. Progress contends that disclosure of this information would provide PFC’s existing and potential waterborne transportation suppliers with a significant competitive advantage in bidding or negotiating for PFC’s future waterborne transportation service. Progress further contends that disclosure of this information, coupled with publicly available total delivered coal costs in the company’s monthly filings of FPSC Form 423, would allow existing and potential coal suppliers to calculate the FOB mine price of PFC’s coal purchases, thus providing these suppliers with a competitive advantage in bidding on PFC’s future coal purchases. Progress asserts that because of this competitive advantage, suppliers of both coal and transportation services would be able to avoid offering their lowest price and instead simply undercut PFC’s existing price, resulting in higher fuel costs for PFC, Progress, and its ratepayers. Progress asserts that this information is virtually identical to that provided in its monthly FPSC Form 423, and the justification for affording it confidential classification is virtually identical to that routinely provided by Progress and approved by the Commission. Finally, Progress states that this information is intended to be and is treated by the company as private and has not been disclosed.

Upon review, it appears that the 2002 rate information in Attachment 16 satisfies the criteria set forth in Section 366.093(3), Florida Statutes, for classification as proprietary confidential business information and, thus, shall be treated as confidential. In particular, the information constitutes “[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” and “[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.

Document No. 05348-03 – Contracts

Progress contends that the information in this document for which it seeks confidential classification satisfies the definition of proprietary confidential business information set forth in Section 366.093(3), Florida Statutes, and is thus entitled to protection from disclosure under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Progress notes that the Contracts included in this document are four contracts between PFC and suppliers of waterborne coal transportation services used by PFC for delivery of coal to Progress’ Crystal River plant site. Progress asserts that each of the Contracts contains binding terms which prohibit the parties from disclosing the contents of the Contracts to third parties and obligate the parties to obtain suitable safeguards to protect the Contracts when disclosure is legally required. Thus, Progress contends, PFC is required to seek and obtain protection against public disclosure of the Contracts to satisfy its contractual obligations and avoid potential liability for damages that its counter-parties may incur as a result of disclosure. Progress further contends that under its contract with PFC for the delivery of coal to the Crystal River plant site and as the party responsible for providing the Contracts in response to discovery, it finds it necessary to seek protection against disclosure of the Contracts to avoid any liability it may arguably have incurred

as a result of its response to discovery. Finally, Progress states that this information is intended to be and is treated by the company as private and has not been publicly disclosed.

Upon review, it appears that the Contracts satisfy the criteria set forth in Section 366.093(3), Florida Statutes, for classification as proprietary confidential business information and, thus, shall be treated as confidential. In particular, the Contracts constitute 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 business operations and ratepayers, and has not been voluntarily disclosed to the public. Further, it appears that information in the Contracts constitutes "[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" and "[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.

Document No. 10626-03 – Interrogatory Responses and Requested Documents

Progress contends that the information in this document for which it seeks confidential classification falls within one or more of the categories provided in Section 366.093(3), Florida Statutes, and thus constitutes proprietary confidential business information entitled to protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Progress asserts that this information is intended to be and is treated by the company as private and has not been publicly disclosed.

With respect to its responses to Interrogatory Nos. 48 and 49, Progress states that the information under the column labeled "Commodity" identifies the contractual commodity price of coal to be purchased in 2004 and 2005, respectively, by PFC. Progress contends that 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. Progress asserts that because of this advantage, the suppliers would be able to avoid offering their lowest price and instead simply undercut PFC's existing price, resulting in higher fuel costs for PFC, Progress, and its ratepayers. Progress further asserts that this information provides the same or substantially similar price and cost information as that contained in its Form 423 monthly filings which are consistently granted confidential classification by the Commission and in Document No. 11296-02, which was also granted confidential classification.

With respect to its response to Interrogatory No. 59, Progress states that the information for which it seeks confidential classification identifies the unit transportation cost of coal deliveries to the Crystal River plant site by rail and water for 2002, 2003, and 2004. Progress contends that disclosure of these transportation rates would enable coal suppliers to bid an FOB mine price calculated to produce a delivered plant price at or marginally below Progress' current, publicly available delivered price. Progress asserts that suppliers would otherwise find it necessary to bid their best price. Thus, Progress contends that the effect of disclosure of this information would be to impair Progress' efforts to contract for goods and services on favorable

terms. Progress further asserts that this information provides the same or substantially similar price and cost information as that contained in its Form 423 monthly filings which are consistently granted confidential classification by the Commission and in Document Nos. 12104-02 and 04144-03, which were also granted confidential classification.

With respect to its response to Interrogatory No. 76, Progress states that the information for which it seeks confidential classification identifies the contractual waterborne coal transportation rates of PFC in 2002 for each transportation component and in total. Progress asserts that disclosure of these contractual rates would contravene binding terms in each of the related contracts which prohibit the parties from disclosing the contents of the Contracts to third parties and obligate the parties to obtain suitable safeguards to protect the Contracts when disclosure is legally required. Thus, Progress contends, PFC is required to seek and obtain protection against public disclosure of the Contracts to satisfy its contractual obligations and avoid potential liability for damages that its counter-parties may incur as a result of disclosure. Progress further contends that under its contract with PFC for the delivery of coal to the Crystal River plant site and as the party responsible for providing the Contracts in response to discovery, it finds it necessary to seek protection against disclosure of the Contracts to avoid any liability it may arguably have incurred as a result of its response to discovery.

In addition, Progress asserts that disclosure of PFC's waterborne transportation rates would place it at a serious competitive disadvantage in negotiations for new rail transportation rates because the rail carriers would know the rates against which they must compete. Progress contends that the effect of disclosure of this information would be to impair Progress' efforts to contract for goods and services on favorable terms.

With respect to its responses to Interrogatory Nos. 82, 83, and 84, Progress states that the information for which it seeks confidential classification identifies Progress' waterborne coal transportation market price proxy for 2004, 2003, and 2002, respectively. Similarly, with respect to Document Request Nos. 5 and 14, Progress states that the information for which it seeks confidential classification identifies Progress' waterborne coal transportation market price proxy for 2004, and for 2001 and 2002, respectively. In addition, with respect to Document Request Nos. 6 and 14, Progress states that the information for which it seeks confidential classification identifies the weighting factors used to escalate Progress' market price proxy. Progress contends that 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, would allow existing and potential coal suppliers to 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. Progress asserts that the suppliers would be able to avoid bidding their lowest price and instead simply undercut PFC's existing price, resulting in higher fuel costs for PFC, Progress, and its ratepayers.

Progress further asserts the market price proxy information in Interrogatory Nos. 82, 83, and 84, and in Document Request Nos. 5 and 14, provides the same or substantially similar price information as that contained in its Form 423 monthly filings which are consistently granted confidential classification by the Commission and in Document No. 04144-03, which was also

granted confidential classification. In addition, Progress asserts the market price proxy weighting factors in Document Request Nos. 6 and 14 provides the same or substantially similar information as contained in Document No. 04144-03, which was granted confidential classification.

With respect to Document Request Nos. 9 and 10, Progress states that the information for which it seeks confidential classification 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. Progress contends that disclosure of these major maintenance costs, which DFL recovers through future rates for cross-Gulf transportation services, would give other potential suppliers of these services a significant competitive advantage in bidding to provide such services to Progress’ Crystal River plant site after the expiration of DFL’s current contract. Progress asserts that because of this 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. Progress asserts that this would result in higher fuel costs for PFC, Progress, and its ratepayers.

Upon review, it appears that those portions of the Interrogatory Responses and Requested Documents listed above, for which Progress seeks confidential classification, satisfy the criteria set forth in Section 366.093(3), Florida Statutes, for classification as proprietary confidential business information and, thus, shall be treated as confidential. In particular, the specified information in the Interrogatory Responses and Requested Documents constitutes 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 business operations and ratepayers, and has not been voluntarily disclosed to the public. Further, it appears that the information constitutes “[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” and “[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.

#### Confidentiality Period

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 Progress or another affected person shows, and the Commission finds, that the records continue to be entitled to protection as 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 requests for confidential classification of Document Nos. 04993-03, 05348-03, and 10626-03 are granted. It is further

ORDERED that the information in Document Nos. 04993-03, 05348-03, and 10626-03 for which confidential classification has been granted shall remain protected from disclosure for a period of eighteen (18) months from the date of 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 Rudolph "Rudy" Bradley, as Prehearing Officer, this  
27th day of May, 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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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.