

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of two unit power sales agreements with Southern Company Services, Inc. for purposes of cost recovery through capacity and fuel cost recovery clauses, by Progress Energy Florida, Inc.

DOCKET NO. 041393-EI
ORDER NO. PSC-05-0728-CFO-EI
ISSUED: July 6, 2005

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NOS. 05936-05, 05423-05, 05392-05, 05393-05, 05394-05, AND 05395-05)

On June 22, 2005, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(3), and (4), Florida Administrative Code, Progress Energy Florida, Inc. (PEF) filed a request for confidential classification of information included in certain exhibits submitted into the record of this proceeding. (Document Nos. 05936-05, 05423-05, 05392-05, 05393-05, 05394-05, and 05395-05).

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 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 the information included in certain exhibits submitted into the record of this proceeding fall within these categories and thus constitute 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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PEF requests that the following information be granted confidential classification:

Exhibit No. & Document Description	Page No(s).	Line No(s).	Column(s)	Justification
Exhibit No. 18 - Calculations based on cross examination hypothetical	1	1	A	§ 366.093(3)(d)(e)
	1	2-8	B-M	§ 366.093(3)(d)(e)
Exhibit No. 21 – Burns & McDonnell Solid Fuel Resource Feasibility Study	All (except cover)	All	N/A	§ 366.093(3)(d)(e)
Exhibit No. 22 – 03/08/04 Natural Gas Forecast	1	1-41	A-C	§ 366.093(3)(d)(e)
	1	1-27	D	§ 366.093(3)(d)(e)
Exhibit No. 23 – 09/19/04 Natural Gas Forecast	1	1-45	A-C, F-G	§ 366.093(3)(d)(e)
	1	1-25	D	§ 366.093(3)(d)(e)
	1	1-31	E	§ 366.093(3)(d)(e)
Exhibit No. 24 – 02/11/05 Natural Gas Forecast	1	1-43	A-C, G-H	§ 366.093(3)(d)(e)
	1	25-43	D	§ 366.093(3)(d)(e)
	1	1-25	E	§ 366.093(3)(d)(e)
	1	1-28	F	§ 366.093(3)(d)(e)

PEF contends that this information is intended to be and is treated as private and has not been voluntarily disclosed to the public. PEF states that the exhibits at issue contain confidential information including contractual data, such as pricing information, as well as fuel forecasting and market projection data, the disclosure of which would impair the efforts of PEF or its affiliates to negotiate contracts for goods and services on favorable terms. Furthermore, some of the information relates to the competitive interests of Progress Energy and/or Southern Company, the disclosure of which would impair their competitive businesses.

PEF states that public disclosure of the information contained in Exhibit No. 18 would place PEF or its affiliates at a competitive disadvantage when negotiating with other power suppliers, who would know what PEF had recently agreed to pay Southern Company. Armed with this information, other suppliers could tailor prices to remain marginally competitive to the Southern Company rates. Moreover, PEF is obligated under UPS Agreements to maintain the confidentiality of this information.

According to PEF, the entire report contained in Exhibit No. 21 reflects assumptions developed by PEF for potential development of solid fuel resources. These assumptions and the resulting data and analysis reflect strategic business planning efforts which relate to PEF's competitive interests. If disclosed, this information would impair PEF's competitive business by allowing others insight into PEF's strategic planning efforts, as well as valuable data and analysis developed at PEF's expense. Additionally, the report includes fuel forecasts and other cost estimates which, if disclosed, would provide potential vendors with information that could be used to their competitive advantage in future contract negotiations with PEF. Rather than

make their best offers to ensure the competitiveness of their rates, potential vendors could simply offer the highest rates that would allow them to maintain a marginally competitive position against the market forecasts.

PEF maintains that the information contained in Exhibit Nos. 22, 23, and 24 includes natural gas forecast information, the disclosure of which would place PEF or its affiliates at a competitive disadvantage when negotiating with fuel suppliers. Disclosure of the forecast information would provide potential fuel suppliers with knowledge of what PEF may expect to pay for natural gas in the future. This knowledge would give suppliers significant competitive advantage in future contract negotiations because they would no longer need to make their best offers to ensure the competitiveness of their rates against PEF's forecasts. Instead, suppliers could simply offer the highest rates that would allow them to maintain a marginally competitive position against the PEF market forecasts.

Upon review, it appears that the above-referenced information included in certain exhibits submitted into the record of this proceeding 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 concerning bids or other contractual data, the disclosure of which would impair the efforts of the company to contract for 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.

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 Request for Confidential Classification of Document Nos. 05936-05, 05423-05, 05392-05, 05393-05, 05394-05, and 05395-05 is granted. It is further

ORDERED that the information in Document Nos. 05936-05, 05423-05, 05392-05, 05393-05, 05394-05, and 05395-05, 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.

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By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this
6th day of July, 2005.


RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

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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.