

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Progress
Energy Florida, Inc.

DOCKET NO. 050078-EI
ORDER NO. PSC-05-0831-PCO-EI
ISSUED: August 16, 2005

ORDER GRANTING MOTION FOR TEMPORARY PROTECTIVE ORDER

On July 6, 2005, Progress Energy Florida, Inc. (PEF) filed a Motion for Temporary Protective Order, pursuant to Rule 25-22.006(6), Florida Administrative Code, covering certain documents sought in discovery by the Office of Public Counsel (OPC). No party filed a response to PEF's motion.

PEF states that portions of supplemental documents responsive to Document Request No. 71 and 75 in OPC's First Request for Production contain sensitive proprietary business information. PEF states that portions of its supplemental response to Request No. 71 contain benchmarking studies conducted by third parties which must be kept confidential pursuant to contractual confidentiality provisions. PEF states that portions of its supplemental response to Request No. 75 contain PEF's projected and estimated figures for short and long term debt, off balance sheet obligations, preferred stock, and common equity, along with other sensitive business information that PEF does not make publicly available. PEF asserts that disclosure of this proprietary confidential business information would adversely impact its competitive business interests. PEF states that portions of its responses to Document Request Nos. 146-148 in OPC's Sixth Request for Production also contain sensitive proprietary business information. PEF states that portions of its response to Request Nos. 146-147 contain information concerning PEF's internal audits. PEF states that portions of its response to Request No. 148 contain confidential financial information and confidential tax information related to costs and expenses that PEF incurs as well as details regarding PEF's revenue. PEF asserts that it is seeking protection of the documents as provided in Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code.

Section 366.093(2), Florida Statutes, directs that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by any party subject to public records law as confidential and exempt from the public records law, Section 119.07(1), Florida Statutes. Rule 25-22.006(6), Florida Administrative Code, codifies the Commission's policy protecting confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006, in pertinent part, states:

(6)(a) In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure. The protective

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order shall specify how the confidential information is to be handled during the course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.

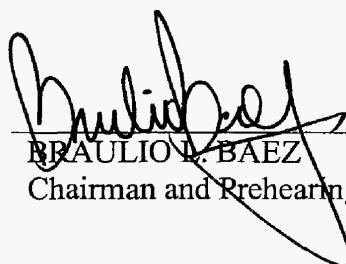
In addition, Rule 25-22.006(6)(c), Florida Administrative Code, states that if a party allows OPC to inspect or take possession of utility information, then that "utility may request a temporary protective order exempting the information from section 119.07(1), F.S."

Upon consideration, PEF's Motion for Temporary Protective Order of portions of supplemental documents responsive to Document Request Nos. 71 and 75 in OPC's First Request for Production, and Document Request Nos. 146-148 in OPC's Sixth Request for Production, is granted. I find that PEF has demonstrated that the material requested by OPC appears to be proprietary confidential business information. Accordingly, this information will be protected from disclosure pursuant to Rule 25-22.006(6), Florida Administrative Code. As provided in Order No. PSC-05-0487-PCO-EI, issued May 4, 2005, the Order Establishing Procedure for this docket, OPC is required to provide PEF and all other parties seven days notice of its intent to use any confidential information at the hearing.

Based on the foregoing, it is

ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that the Motion for Temporary Protective Order filed by Progress Energy Florida, Inc. is granted.

By ORDER of Chairman Braulio L. Baez, as Prehearing Officer, this 16th day of August, 2005.



BRAULIO L. BAEZ
Chairman 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.