



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 7, 2005

TO: Marlene Stern, Attorney, General Counsel

FROM: Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver) ^f ^a

RE: Docket 050078-EI, Recommendation concerning Progress Energy Florida Inc.'s (Progress Energy's) 9th request for confidential classification concerning a portion of the staff audit working papers prepared during "Progress Energy Florida Rate Case Audit for the Year ended December 31, 2004", Audit Control No. 05-025-2-1, Documents Numbered 06228-05, 06936-05, and 08404-05

On June 30, 2005, when copies of certain of staff's audit working papers obtained or prepared during the "Progress Energy Rate Case Audit for the Year Ended December 31, 2004", were delivered to Progress Energy at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with the provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On July 13, 2005, staff filed documents 06228-05 consisting of those specified portions of the staff audit working papers.

On July 28, 2005, Progress Energy filed a request pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, FAC, that selected portions of the working papers prepared by the staff during the audit receive confidential classification. The utility's request included redacted copies for public inspection (Document 06937-05) and highlighted copies (Document 06936-05).

On September 2, 2005, after discussions with the staff, Progress Energy reduced the size of its request and filed additional redacted copies for public use (Document 08405-05) and an additional copy of the material with the sensitive information highlighted (Document 08404-05).

Documents 06228-05, 06936-05 and 08404-05 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of Progress Energy's request for confidential classification.

Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific items of a statutory provision. Subsection 366.093(3)(d), F.S., provides the following exemption:

DOCUMENT NUMBER-DATE

08558 SEP-9 05

Subsection 366.093, F.S., provides; “Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person’s or company’s business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes but is not limited to:

....

(e) Information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider of the information”

According to Section 366.093, F.S., and Rule 25-22.006, FAC, the utility has the burden of demonstrating that materials qualify for confidential classification. According to Rule 25-22.006, FAC, the utility must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility, the provider of the information or the ratepayer harm.

Staff Analysis of the Request

Reading the Progress Energy filing reveals the sensitive material consists of information concerning Progress Energy’s competitive business interests.

Subsection 366.093(3)(e) provides that the Commission may grant a confidential classification to materials which if released would harm the competitive business of the provider of the information.

Progress Energy witness Javier Portuondo, Director, Regulatory Services – Florida for Progress Energy, identifies the following working papers as containing sensitive business information: “Working Paper 8, Minutes of Board of Director’s Meetings”, “Working Papers 9-1 and 9-3, External Audit Information”, and “Working Paper 10-22, Non Regulated Services.”

We have read the filing and the amended materials and agree that portions of the Board of Director’s minutes and information concerning non regulated services, if released, would cause harm to the competitive business of Progress Energy. Also, we agree that release of the sensitive audit strategies and work program of Progress Energy’s external auditor would harm the competitive business of that auditor in the marketplace. We therefore recommend that this material be granted a confidential classification

Information held as confidential

Lastly, Progress Energy and witness Portuondo assert this sensitive information is treated by the company as private and the information has not been publicly disclosed.

Duration of the Confidential Classification Period

In its request, Progress Energy does not specify how long the classification period should remain in effect. According to the provisions of Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Without cause shown for a longer period, we recommend that the period of confidential classification be set as 18 months. As deemed necessary, the utility may request an extension of the confidential classification before the period tolls.

Staff Recommendation

Based upon reading the filing as well as the amendment to the filing, and for the reasons presented above, we recommend the utility's request be granted and that the identified material be granted a confidential classification for 18 months. A detailed recommendation follows:

Detailed Recommendation

Staff Work Paper Number	Work Paper Title	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 066628-05, 06936-05 and 08404-05					
8	Minutes of Board of Director's Meetings	Lead Memo	Area after "meeting"	Grant	Sensitive competitive business information
8	Minutes of Board of Director's Meetings	2	Area after "March 7 Minutes"; Area after "March 17, 2004 Minutes"	Grant	Sensitive competitive business information
8	Minutes of Board of Director's Meetings	3	Area after "Specified Confidential"; Area after "April 12, 2004"	Grant	Sensitive competitive business information
8	Minutes of Board of Director's Meetings	4	Area after "power."; Area after "2004"	Grant	Sensitive competitive business information

Staff Work Paper Number	Work Paper Title	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 066628-05, 06936-05 and 08404-05					
8	Minutes of Board of Director's Meetings	5	Area after "November 17, 2004"; Area after "December 8, 2004"; Area after "January 10, 2005"	Grant	Sensitive competitive business information
8	Minutes of Board of Director's Meetings	6	Area after "Specified Confidential"	Grant	Sensitive competitive business information
9-1	External Audit Information	2	All	Grant	Sensitive competitive business information
9-1	External Audit Information	3	All	Grant	Sensitive competitive business information
9-3	External Audit Information	1	All	Grant	Sensitive competitive business information
10-22	Non Regulated Services	1	All	Grant	Sensitive competitive business information

A temporary copy of this recommendation will be held at I:06936-05.progressraf.doc for a short period.

CC: Division of Regulatory Compliance and Consumer Assistance (Rohrbacher)
Division of Commission Clerk and Administrative Services (Flynn)