

ORIGINAL

STATE OF FLORIDA



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DIVISION OF THE COMMISSION CLERK &  
ADMINISTRATIVE SERVICES  
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# Public Service Commission

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

DATE: November 7, 2005

TO: OFFICE OF THE GENERAL COUNSEL  
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT  
XX DIVISION OF ECONOMIC REGULATION  
DIVISION OF REGULATORY COMPLIANCE  
& CONSUMER ASSISTANCE

FROM: DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

CMP \_\_\_\_\_

COM \_\_\_\_\_

CTR \_\_\_\_\_

ECR \_\_\_\_\_

GCL \_\_\_\_\_

OPC \_\_\_\_\_

RCA \_\_\_\_\_

SCR \_\_\_\_\_

SGA \_\_\_\_\_

SEC 1

OTH Lockard

DOCUMENT NO(s): 10732-05

DESCRIPTION: Progress (Dailey) - (CONFIDENTIAL) Certain highlighted  
information contained in transcript and late-filed Exh No. 1 of  
deposition of Donna M. Davis taken by OPC on 10/25/05.  
[x-ref. DN 10669-05]

SOURCE: Progress Energy Florida, Inc.

DOCKET NO(S): 050001-EI

The above material was received with a filing of a request for confidential classification and motion for protective order. Please prepare a recommendation for the attorney assigned to the case by completing the section below and forwarding a copy of this memorandum, together with a brief memorandum supporting your recommendation, to the attorney. Copies of your recommendation should also be provided to the Division of the Commission Clerk and Administrative Services, Bureau of Records and Hearing Services, and to the Office of General Counsel.

DOCUMENT NUMBER-DATE

10990 NOV 15 05

FPSC-COMMISSION CLERK

**Please read each of the following and check if applicable.**

- The document(s) is (are), in fact, what the utility asserts it (them) to be.
- The utility has provided enough details to perform a reasoned analysis of its request.
- The material has been received incident to an inquiry.
- The material is confidential business information because it includes:

- (a) Trade secrets;
- (b) Internal auditing controls and reports of internal auditors;
- (c) Security measures, systems, or procedures;
- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company to contract for services on favorable terms;
- (e) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities;
- (f) Tax returns or tax-related information;
- (g) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information.

The material appears to be confidential in nature and harm to the company or its ratepayers will result from public disclosure.

The material appears not to be confidential in nature.

The material is a periodic or recurring filing and each filing contains confidential information.

Response prepared by: Bernadine Williams

Date: 11-13-05

cc:  GCL     FLL  
 CMP     CCA  
 ECR     RCA  
 MMS

# Hopping Green & Sams

Attorneys and Counselors

Writer's Direct Dial No.  
(850) 425-2328

November 4, 2005

## **BY HAND DELIVERY**

Blanca Bayó  
Director Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

Re: Docket No. 050001-EI  
Request for Confidential Classification and Motion for Protective Order  
**CONFIDENTIAL MATERIALS ENCLOSED**

Dear Ms. Bayó:

Enclosed for filing on behalf of Progress Energy Florida, Inc., (PEF) are the following:

(1) The original and seven copies of PEF's Request for Confidential Classification and Motion for Protective Order, including Exhibit A, which identifies by page and line the information for which PEF seeks confidential treatment. (A diskette containing the Request in Word format is also included);

(2) A package containing Exhibit B, which includes two redacted copies of the confidential documents; and

(3) A CONFIDENTIAL package containing Exhibit C which includes one copy of the documents on which the confidential material has been highlighted.

Please stamp and return the enclosed extra copy of this filing. If you have any question regarding this filing, please contact the undersigned.

Very truly yours,

*Virginia C Dailey*  
Virginia C. Dailey

VCD/dg  
Enclosures  
cc: certificate of service

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FLORIDA PUBLIC SERVICE  
COMMISSION  
05 NOV -7 AM 11:02  
DIVISION OF  
ECONOMIC REGULATION

DOCUMENT NUMBER-DATE

10731 NOV-4 05

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY, on behalf of Progress Energy Florida, that PEF's Request for Confidential Classification and Motion for Protective Order in Docket No. 050001-EI has been furnished by hand-delivery (\*) or by regular U.S. mail to the following this 4th day of November, 2005.

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Attorney

**BEFORE THE PUBLIC SERVICE COMMISSION**

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

Docket No. 050001-EI

Dated: November 4, 2005

**PROGRESS ENERGY FLORIDA'S  
REQUEST FOR CONFIDENTIAL CLASSIFICATION  
AND MOTION FOR PROTECTIVE ORDER**

PROGRESS ENERGY FLORIDA, INC. ("PEF" or the "Company"), pursuant to Section 366.093, Florida Statutes ("F.S."), and Commission Rule 25-22.006, Florida Administrative Code ("F.A.C."), hereby requests confidential classification and a protective order to prevent disclosure of certain highlighted confidential information contained in the transcript of the deposition of Donna M. Davis taken by the Office of Public Counsel ("OPC") on October 25, 2005. This request is also intended to serve as a request for a protective order, within the contemplation of Rule 25-22.006(6)(b), F.A.C., such that it will protect the Confidential Information from public disclosure while in the possession of the Office of Public Counsel. In support of its request, Progress Energy states as follows.

1. A list of the confidential information in question appears in Exhibit A (referred to as "Confidential Information"). Exhibit A includes a justification for designating the Confidential Information proprietary confidential business information under the above-referenced statute and rule. A single yellow highlighted copy of the Confidential Information is contained in the sealed envelope enclosed herewith, and labeled Exhibit B. A public version of the deposition transcript, with the Confidential Information redacted, is attached hereto and labeled Exhibit C.

PROGRESS ENERGY FLORIDA'S  
REQUEST FOR CONFIDENTIAL CLASSIFICATION  
AND MOTION FOR A PROTECTIVE ORDER  
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2. The deposition of Ms. Davis taken by OPC concerns coal purchases made in 2004 and 2005. The highlighted portions of the deposition contain information from PEF's confidential 423 Form Fuel Reports regarding the prices paid by Progress for coal and/or coal transportation information. PEF is willing to provide the requested information to OPC, so long as the Confidential Information is protected from the harm that would result from public disclosure.

2. The Confidential Information consists of pricing information for coal purchases by PEF's affiliate, Progress Fuels Corporation (PFC). Disclosure of this information would provide coal suppliers with knowledge of prices that PFC has paid and prices other suppliers have offered. This knowledge would give suppliers significant competitive advantage in future negotiations because they would no longer need to make their best offers to ensure the competitiveness of their rates. Instead, suppliers could simply offer the highest rates that would allow them to maintain a marginally competitive position. As such, disclosure of this information would impair the efforts of the Company or its affiliates to contract for goods or services on favorable terms. *See* § 366.093(3)(d), F.S. Furthermore, the information relates to the competitive interests of Progress Energy and its affiliates, the disclosure of which would impair their competitive businesses. *Id.* § 366.093(3)(e). Accordingly, such information constitutes "proprietary confidential business information" which is exempt from disclosure under the Public Records Act pursuant to Section 366.093(1), F.S.

3. The Confidential Information is derived from PEF's confidential 423 Forms. Disclosure of these Forms and the related information regarding sensitive pricing and contractual terms for the purchase of coal and transportation services would impair PEF's efforts to contract

PROGRESS ENERGY FLORIDA'S  
REQUEST FOR CONFIDENTIAL CLASSIFICATION  
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for goods or services on favorable terms. § 366.093(3)(d), F.S. Further, PEF's confidential 423 Forms are already subject to protection under Commission orders granting confidential classification to the Forms. *See, e.g.*, Order Nos. PSC-05-0418-CFO-EI (Apr. 19, 2005) (granting confidential classification to confidential pricing information in PEF's Form 423 Fuel Reports for January 2005); PSC-05-0446-CFO-EI (Apr. 26, 2005) (granting confidential classification to confidential pricing information in PEF's Form 423 Fuel Reports for February 2005).

4. The Confidential Information for which PEF seeks protection by this motion for protective order is intended to be and is treated by the Company as private and has not been publicly disclosed.

WHEREFORE, Progress Energy Florida respectfully requests that the highlighted Confidential Information be accorded confidential classification for the reasons set forth above and requests a protective order to protect the Confidential Information from public disclosure while in the possession of the Office of Public Counsel.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of November, 2005.

HOPPING GREEN & SAMS, P.A.

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PROGRESS ENERGY FLORIDA'S  
REQUEST FOR CONFIDENTIAL CLASSIFICATION  
AND MOTION FOR A PROTECTIVE ORDER  
DOCKET NO. 050001-EI

EXHIBIT A

PROGRESS ENERGY FLORIDA  
JUSTIFICATION FOR CONFIDENTIAL TREATMENT OF INFORMATION  
TRANSCRIPT OF DEPOSITION OF DONNA M. DAVIS (OCTOBER 25, 2005)

<b>Document</b>	<b>Page</b>	<b>Line</b>	<b>Description of Information</b>	<b>Statutory Justification</b>
Deposition	28	25	contains information regarding the prices paid by Progress for coal under a particular contract	§ 366.093(3)(d), (e), F.S.
	29	7-8	contains information regarding the price paid by Progress for coal under a particular contract	