

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-05-1184-CFO-EI
ISSUED: December 2, 2005

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION
AND MOTION FOR TEMPORARY PROTECTIVE ORDER
(DOCUMENT NO. 10493-05)

On October 31, 2005, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Progress Energy Florida, Inc. (PEF) filed a request for confidential classification of portions of the deposition transcript and exhibits of Albert W. Pitcher and a supplemental response to OPC's Fifth Request for Production of Documents, No. 13 (Document No. 10493-05). By the same filing, PEF also requested a Temporary Protective Order, pursuant to Rule 25-22.006(6), Florida Administrative Code.

Request for Confidential Classification

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, "[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 portions of the deposition transcript and exhibits of Albert W. Pitcher and a supplemental response to OPC's Fifth Request for Production of Documents, No. 13, fall within these categories and thus constitutes proprietary confidential business information entitled to protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. PEF states that this information is intended to be and is treated by PEF as private and has not been publicly disclosed.

PEF requests confidential classification for the information listed below:

DOCUMENT NUMBER-DATE

11373 DEC-2 05

FPSC-COMMISSION CLERK

| Document | Page | Line | Column | Description of Information | Statutory Justification |
|---|------|-----------------------------|--|---|--|
| Albert W. Pitcher Deposition Transcript | 50 | 1, 9, 12 | | contains information regarding the prices paid by Progress for coal under particular contracts | § 366.093(3)(d), (e), F.S. |
| | 51 | 7 | | contains information regarding the price paid by Progress for coal under a particular contract | |
| | 53 | 23 | | contains information regarding the price paid by Progress for coal under a particular contract | |
| | 54 | 21 | | contains information regarding the price paid by Progress for coal under a particular contract | |
| | 57 | 8, 11 | | contains information regarding the price paid by Progress for coal under a particular contract | |
| | 58 | 7, 8, 10, 15, 18, 21 | | contains information regarding the prices paid by Progress for coal under particular contracts | |
| | 59 | 13, 25 | | contains information regarding the prices paid by Progress for coal under particular contracts | |
| | 65 | 5, 13 | | contains information regarding transportation prices paid by Progress associated with coal purchases | |
| | 77 | 20 | | contains information regarding market prices for coal in April 2004 | |
| | 78 | 2, 4, 9, 10, 14, 16, 19, 22 | | contains information regarding market prices for coal and prices paid by Progress for coal under particular contracts | |
| 79 | 3 | | contains information regarding market prices for coal after April 2004 | | |
| Deposition Exhibit 1 | 2 | 1-4 | | includes prices and other contractual data for coal purchases – copy of PEF's Responses to Citizens' Second Set of Interrogatories – request for confidential classification for this information was filed on October 4, 2005 and granted on October 19, 2005 by Order No. PSC-05-1012-PCO-EI. | § 366.093(3)(d), (e), and § 366.093(4), F.S. |
| | 3 | 1-4 | | | |
| | 4 | 1-21 | | | |
| | 5 | 1-3 | | | |
| | 6 | 1-8 | | | |

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|--|-----|------|----------------------------------|--|--|
| Late-Filed Deposition Exhibit 3, titled "List of Responses to 4/04 Solicitation" | 1 | 1-14 | O-R | contains information regarding bid pricing and other contractual terms received by Progress for coal purchases | § 366.093(3)(d), (e), F.S. |
| | | 15 | O | | |
| | 2 | 1-23 | E, G, I, K, M-O, W, Y, Z, AA, BB | | |
| | | 24 | Y | | |
| Late-Filed Deposition Exhibit 4, titled "List of Coal Purchases from 4/04 Solicitation" | 1 | 1-8 | E, F, W, Y | contains information regarding bid pricing and other contractual terms received by Progress for coal purchases | § 366.093(3)(d), (e), F.S. |
| | | 9 | E, G, I, V | | |
| Deposition Exhibit 5, titled "Progress Energy Ballpark Transport Costs for Coal Transport" | 1 | 1-4 | | contains information regarding transport costs by barge and by rail associated with coal purchases | §366.093(3)(d), (e), Florida Statutes |
| Deposition Exhibit 6, titled "Progress Energy Coal Contracts" | 1 | 1-17 | E | contains information derived from coal supply contracts, including the sources of coal and the terms of the contracts | §366.093(3)(d), (e), Florida Statutes |
| Deposition Exhibit 7, titled "FPSC Form 423" for January 2005 | 3 | 1-9 | g, h | contains information regarding contractual terms of coal purchases – request for confidential classification for this information was filed on April 8, 2005 [PSC document nos. 03465-05, 03466-05, and 03467-05] and granted on April 19, 2005 by Order No. PSC-05-0418-CFO-EI. | §366.093(3)(d), (e), and §366.093(4), Florida Statutes |
| | 4 | 1-9 | f, h, j, k, l | | |
| | 5 | 1-9 | g, i, j, p | | |
| | 6 | 1-12 | j, k | | |
| | 7 | 1-6 | g, h | | |
| | 8 | 1-6 | f, h, j, k, l | | |
| | 9 | 1-6 | g, i, j, p | | |
| | 10 | 1-10 | j, k | | |
| | 11 | 1 | g, h | | |
| | 12 | 1 | f, h, j, k, l | | |
| | 13 | 1 | g, l, p | | |
| | 15 | 1-8 | g, h | | |
| | 16 | 1-8 | f, h, j, k, l | | |
| | 17 | 1-8 | g, k, l, p | | |
| 18 | 1-8 | j, k | | | |

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|--|-----------------------------------|-------------------------|---------|--|---------------------------------------|
| Late-filed Deposition Exhibit 8, titled "Spot Bids and related documentation associated with spot purchase from PFC shown on Form 423 for January, 2005" | 1 | 1-13 | E | contains information regarding bid pricing and other contractual terms received by Progress for coal purchases | §366.093(3)(d), (e), Florida Statutes |
| | | 10, 11, 13 | A | | |
| | 2 | 1-10 | F | | |
| | | 7, 8, 10 | A | | |
| | | 11-19 | | | |
| | 3 | 1 | | | |
| | 4 | 1-9 | A, B, K | | |
| | | 3-9 | C | | |
| | | 10-17, 23-38 | D | | |
| | | 23-38 | E, J | | |
| | | 1-9, 18-22, 23-38 | F | | |
| | | 1-9, 23-38 | G | | |
| | | 3-9, 10, 12-16, 23-38 | H | | |
| | | 10, 12-16, 23-38 | I | | |
| | | 1-9, 10, 23-38 | L | | |
| | | 1, 3-5, 8, 9, 10, 23-38 | M | | |
| | | 4, 5, 8-10, 23-38 | N | | |
| | | 5 | 1-26 | | |
| | 2, 3, 8, 10-14, 16, 18-22, 25, 26 | | C | | |
| | 1-11, 15 | | F, G | | |
| | 1, 3-11 | | H | | |
| | 1-11, 13-14 | | K, L | | |
| | 3, 4, 9, 13 | | M, N | | |
| | 27 | | | | |
| | 6 | 1-28 | A-I | | |
| | 7 | 1-20 | A-H | | |
| | 8 | 1-28 | A-H | | |

| | | | |
|---|------------------------------------|--------------------------|-----------|
| Late-filed Deposition Exhibit 8, titled "Spot Bids and related documentat ion associated with spot purchase from PFC shown on Form 423 for January, 2005" | 9 | 1-20 | A-H |
| | 10 | 1-5 | |
| | 11 | 1-3 | |
| | 13 | 1 | |
| | 14 | 1-4 | |
| | 15 | 1-6 | |
| | 16 | 1-37 | A-H |
| | 17 | 1-9 | A, B |
| | | 1-9, 10-17 | C |
| | | 10-17, 24-39 | D, E |
| | | 1-9, 18-19, 21-23, 24-39 | F |
| | | 1-9, 24-39 | G, K, L |
| | | 3-6, 8-10, 12-16, 24-39 | H |
| | | 10, 12-16, 24-39 | I |
| | | 24-39 | J, N |
| | | 3-6, 8, 9, 24-39 | M |
| | | 18 | 1-4, 8-27 |
| | 2, 3, 10, 11, 14-17, 19-23, 26, 27 | | C |
| | 1-11, 15-16 | | F, G |
| | 2-10 | | H |
| | 1-8, 12-13 | | K, L |
| | 1-2, 6-8, 12 | | M |
| | 28 | | N/A |
| | | | |
| | 19 | 1-2 | |
| | 20 | 1-3 | |
| | 21 | 1 | |
| | 29 | 1 | |
| 31 | 1 | | |
| 34 | 1 | | |

| | | | | | |
|---|-----|------|---------------|--|--|
| | 36 | 1 | | | |
| | 38 | 1 | | | |
| Deposition Exhibit 9, titled "FPSC Form 423" for February 2005 | 5 | 1 | g, h | contains information regarding contractual terms of Progress coal purchases – request for confidential classification for this information was filed on April 21, 2005 [PSC document nos. 03897-05, 03898-05, and 03899-05] and granted on April 26, 2005 by Order No. PSC-05-0446-CFO-EI. | §366.093(3)(d), (e), and §366.093(4), Florida Statutes |
| | 6 | 1-11 | g, h | | |
| | 7 | 1-5 | g, h | | |
| | 8 | 1-7 | g, h | | |
| | 9 | 1 | f, h, j, k, l | | |
| | 10 | 1-11 | f, h, j, k, l | | |
| | 11 | 1-5 | f, h, j, k, l | | |
| | 12 | 1-7 | f, h, j, k, l | | |
| | 13 | 1 | g, l, p | | |
| | 14 | 1-11 | g, k, l, p | | |
| | 15 | 1-5 | g, i, j, p | | |
| | 16 | 1-7 | g, i, j, p | | |
| | 17 | 1 | j, k | | |
| 19 | 1-2 | j, k | | | |
| 20 | 1-4 | j, k | | | |
| Supplemental Response to OPC's 5th Request for Production of Documents (No. 13) | 1 | 1-18 | G | | |

PEF contends that the information contained in portions of the deposition transcript and exhibits consists of the prices paid by PEF for coal or coal transportation, prices contained in bids presented to PEF for coal or coal transportation, pricing information from market publications to which Progress Fuels Corporation (PFC) subscribes, information on PEF's confidential PSC 423 Form Fuel Reports, and information that can be used in conjunction with other publicly available data to derive confidential coal or coal transportation pricing. PEF contends that the supplemental response to OPC's Fifth Request for Production of Documents, No. 13, contains information concerning sensitive coal prices and other pricing terms.

Upon review, it appears that the above-referenced information contained in portions of the deposition transcript and exhibits of Albert W. Pitcher and PEF's supplemental response to OPC's Fifth Request for Production of Documents, No. 13, 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. 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.

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.

Motion for Temporary Protective Order

PEF also seeks 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 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 is granted. I find that PEF has demonstrated that the material 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.

Based on the foregoing, it is

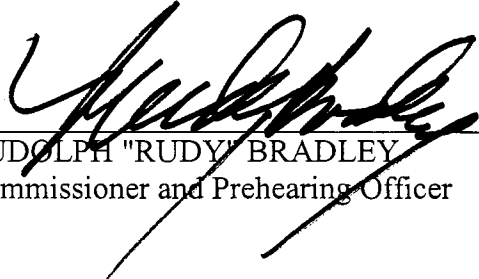
ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Progress Energy Florida, Inc.'s Request for Confidential Classification of Document No. 10493-05 is granted. It is further

ORDERED that the information in Document No. 10493-05 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. It is further

ORDERED that the Motion for Temporary Protective Order filed by Progress Energy Florida, Inc. is granted.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 2nd day of December, 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.