



# 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:** May 13, 2008

**TO:** Office of General Counsel (Bennett)

**FROM:** Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver) F W

**RE:** Docket No. 080001-EI, Progress Energy Florida, Inc.'s (the Utility's) Request for Confidential Classification of Portions of the Staff Audit Working Papers Prepared During the Progress Energy Florida, Inc., 2007 Hedging Activities Audit for the Historical Year Ended December 31, 2007, Control No. 07-353-2-1, Documents 03018-08 and 03308-08

On April 8, 2008, when copies of certain of staff's audit working papers prepared during the "Progress Energy Florida, Inc., 2007 Hedging Activities Audit for the Historical Year Ended December 31, 2007", were delivered to Progress Energy Florida 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 April 16, 2008, staff filed Document No. 03018-08 consisting of those specified portions of the staff audit working papers.

On April 23, 2008, Progress Energy Florida, Inc., filed a request pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, FAC, that portions of the sensitive working papers prepared by the staff receive confidential classification. The Utility's request includes redacted copies for public inspection (Document No. 03307-08) and highlighted copies (Document No. 03308-08).

CMF \_\_\_\_\_ Documents numbered 03018-08 and 03308-08 are currently held by the Office of the Commission Clerk as confidential pending resolution of Utility's request for a confidential classification.

COM \_\_\_\_\_

CTR \_\_\_\_\_

ECR \_\_\_\_\_ 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. Subsections

CCU \_\_\_\_\_ 366.093(3)(d) and (e), F.S., provide the following exemptions.

OFC \_\_\_\_\_

RCA \_\_\_\_\_

SOR \_\_\_\_\_

SOA \_\_\_\_\_

SEC \_\_\_\_\_

OTF *Manguside*

DOCUMENT NUMBER-DATE

03998 MAY 14 08

Progress Energy Florida, Inc  
Request for confidential Classification  
May 13, 2008

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:

....

(d) Information 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.

(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 Florida, Inc. filing reveals the sensitive material consists of:

Fuels information related to hedging activities, reporting limits, tolling reports, and volumes and costs.

Subsection 366.093(d), F. S., provides that the Commission may grant a confidential classification to sensitive contractual information to include bidding information if release of that information will impair the ability of the utility or its affiliates to contract on favorable terms.

Subsection 366.093(e), F. S., provides that the Commission may grant a confidential classification to sensitive information concerning competitive business interests if release of that information will harm the provider of that information.

Progress Energy Florida, Inc  
Request for confidential Classification  
May 13, 2008

Joseph McCallister, Director of Gas and Oil Trading in the Regulated Fuels Department, reports that this section is responsible for natural gas and fuel oil acquisition for Progress Energy Florida and Progress Energy Carolinas. Mr. McCallister and the Utility assert release of materials relating to hedging activities, reporting limits, tolling reports, and volumes and costs would impair the efforts of the utility and its affiliates to negotiate fuel supply contracts on a favorable basis. Further, Mr. McCallister and the Utility report this information will also impair the competitive businesses of Progress Energy Florida, Inc. and its fuel suppliers. Witness McCallister and the Utility identify sensitive materials within working papers titled: "Risk Limits", "Gas Hedging", "No. #6 Oil Hedging", and "No. #2 Oil Hedging".

After reading the material identified by witnesses McCallister and the Utility, we agree that its release during the next 18 months would reasonably be expected to impair the ability of Progress Energy Florida or its affiliates to contract favorably for goods and services. Also, release of this material could reasonably be expected to impair the competitive business of Progress Energy Florida and its vendors. Therefore, we recommend that the material be granted a confidential classification on the basis that the material meets the exemptions provided by Subsections 366.093(3)(d) and (e), Florida Statutes.

#### **Information Held as Confidential**

To qualify as proprietary confidential business information the material must also be held as private and not be released to the public. The Utility and Witness McCallister assert that this information has not been released the public, and the information and contracts are treated and continue to be treated as private.

#### **Duration of the Confidential Classification Period**

The Utility requests that this material remain confidential for a period of "at least 18 months" and that the material be returned to the utility once the information is no longer needed for the Commission to conduct its business.

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 a further extension of the confidential classification before the classification period tolls.

#### **Staff Recommendation**

Based upon reading 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**

Working Paper Number	Title	Page	Lines	Recommendation	Type of Material Classified as Confidential
Documents 03018-08 and 03308-08					
47/1 Summary	Risk Limits	1	All	Grant	Sensitive Contractual and Competitive Business Information
47	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/1	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/2	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/3	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/4	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/5	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/6	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/7	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/8	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/9	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/20	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information

Working Paper Number	Title	Page	Lines	Recommendation	Type of Material Classified as Confidential
Documents 03018-08 and 03308-08					
47/11	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/12	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/13	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/14	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/15	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/16	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/17	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/18	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47/19	Gas Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47-1	# 6 Oil Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47-2	# 6 Oil Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47-3	# 6 Oil Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47-4	# 6 Oil Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47-5	# 6 Oil Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information

Working Paper Number	Title	Page	Lines	Recommendation	Type of Material Classified as Confidential
Documents 03018-08 and 03308-08					
47-6	# 6 Oil Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information
47-7	# 2 Oil Hedging	1	All	Grant	Sensitive Contractual and Competitive Business Information

A temporary copy of this recommendation will be held for a short period at the following address  
I: 03308-08.2007 progress hedging raf.doc

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