

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 090079-EI
ORDER NO. PSC-09-0636-PCO-EI
ISSUED: September 17, 2009

ORDER GRANTING MOTION FOR TEMPORARY PROTECTIVE ORDER

On August 6, 2009, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006(6)(c), Florida Administrative Code (F.A.C.), Progress Energy Florida, Inc. (PEF) filed a Motion for Temporary Protective Order to exempt from Section 119.07(1), F.S., certain confidential information included in PEF's responses to the Office of Public Counsel's (OPC) Fourteenth Request for Production of Documents, No. 277 and OPC's Eleventh Set of Interrogatories, No. 396. This request was filed in Docket No. 090079-EI. No other party filed a response to PEF's motion, and the time for doing so has expired.

Motion for Temporary Protective Order

PEF contends that its response to OPC's aforementioned discovery requests include sensitive and confidential information related to non-regulated labor rates, hours worked, and final compensation, the disclosure of which could harm the competitive business interests of the provider of information.¹ Specifically, PEF contends that such information, if made available to the public, could place PEF at a competitive disadvantage with respect to competitors when attempting to contract for like services, as well as parties with which PEF would hope to contract in the future. Further, PEF asserts that if market participants possessed PEF's confidential information, they would be able to adjust their behavior in the market place thereby changing the prices at which PEF is able to contract for such services. Accordingly, PEF submits that the information is exempt pursuant to Section 366.093(3)(e), F.S.

Analysis & Ruling

Rule 25-22.006(6), F.A.C., codifies the Commission's policy regarding the protection of confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006(6)(c), F.A.C., in pertinent part, states:

When a utility or other person agrees to allow Public Counsel to inspect or take possession of utility information for the purpose of determining what information is to be used in a proceeding before the Commission, the utility may request a temporary protective order exempting the information from Section 119.07(1), F.S. If the information is to be used in a proceeding before the Commission, then the utility must file a specific request for a protective order under paragraph (a) above.

¹ None of the documentation discussed herein contains any information regarding the compensation of PEF executives.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Upon consideration, PEF's Motion for Temporary Protective Order of documents responsive to OPC's Fourteenth Request for Production of Documents, No. 277 and OPC's Eleventh Set of Interrogatories, No. 396 is granted. PEF has made sufficient assertions that the material should be protected from disclosure pursuant to Rule 25-22.006(6)(c), F.A.C., while OPC reviews the information to determine what information will be used in this proceeding. Accordingly, this information will be protected from disclosure pursuant to Rule 25-22.006(6), F.A.C.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Motion for Temporary Protective Order filed by Progress Energy Florida, Inc. is hereby granted as set for the herein.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 17th day of September, 2009.



NATHAN A. SKOP
Commissioner and Prehearing Officer

(S E A L)

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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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.