

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 120001-EI
ORDER NO. PSC-12-0448-CFO-EI
ISSUED: August 28, 2012

ORDER GRANTING PROGRESS ENERGY FLORIDA'S REQUEST FOR CONFIDENTIAL
CLASSIFICATION (DOCUMENT NO. 05213-12)

On August 1, 2012, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Progress Energy Florida, Inc. (PEF) requested confidential classification (Request) of certain information provided in Exhibit MO-1 to the direct testimony of PEF witness Marcia Olivier dated August 1, 2012, specifically Schedule E12-B, Page 2 of 2 and for certain information contained in PEF's 2013 Risk Management Plan, specifically Pages 1 through 4 and Attachments A, B, C, D, E, F, G and H. (Document No. 05213-12). This request was filed in Docket No. 120001-EI.

Section 366.093(1), F.S., 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 Section 119.07(1) [the Public Records Act]." Section 366.093(3), F.S., 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. Sections (3)(d) and (e) of Section 366.093 F.S., provide 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" and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

PEF contends that designated portions of the information provided in Exhibit MO-1 to the direct testimony of PEF witness Marcia Olivier dated August 1, 2012, specifically Schedule E12-B, Page 2 of 2 and for information contained in PEF's 2013 Risk Management Plan, specifically Pages 1 through 4 and Attachments A, B, C, D, E, F, G, and H, (Document No. 05213-12), as more specifically described in the table in Attachment C to its Request, and the affidavits of Marcia Olivier and Joseph McCallister, fall within these categories and, thus, constitute proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. PEF states that this information is intended to be and is treated by PEF as private and has not been publicly disclosed.

PEF asserts that, as indicated in Attachment C to its Request and the Affidavit of Marcia Olivier in support of its Request, the information for which PEF requests confidential classification is "proprietary confidential business information" within the meaning of Section

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366.093(3), F.S. Specifically, PEF asserts, the highlighted information in Exhibit MO-1 provides the number of megawatts for specific purchases or sales. In combination with other non-confidential cost data provided in the exhibit, PEF asserts that this information could be used to determine the capacity charges for each contract. PEF asserts that disclosure of this information would enable wholesale providers to determine the prices of their competitors, which could result in greater price convergence in future negotiations. PEF asserts that suppliers would no longer need to make their best offers to ensure the competitiveness of their prices against the disclosed prices. Instead, PEF asserts, suppliers could simply offer the highest prices that would allow them to maintain a marginally competitive position against the disclosed prices. As such, PEF asserts, disclosure of the information would impair PEF's efforts to contract for goods or services on favorable terms pursuant to Section 366.093(3)(d), F.S. Additionally, PEF asserts that if the information at issue was disclosed to PEF's competitors, PEF's efforts to obtain competitive energy supply that provides economic value to both PEF and its ratepayers could be compromised by PEF's competitors changing their consumption or purchasing behavior within the relevant markets. PEF asserts that such information constitutes "proprietary confidential business information" which is exempt from disclosure under the Public Records Act pursuant to Sections 366.093(1) and (3)(e), F.S.

In addition, PEF asserts, specific information contained in PEF's 2012 Risk Management Plan, Pages 1 through 4 and Attachments A, B, C, D, E, F, G, and H provide "proprietary confidential business information" within the meaning of Section 366.093(3), F.S. PEF also asserts that portions of the information in PEF's Risk Management Plan provides forecasted costs, hedging volumes, hedging percentages, internal policies and guidelines, collateral summaries and unrealized forecasted hedge values and that disclosure of this information would enable fuel suppliers to have insight to PEF's internal risk management guidelines and to obtain competitive information, which could result in greater price convergence in future negotiations. PEF asserts that fuel suppliers would no longer need to make their best offers to ensure the competitiveness of their prices against the disclosed prices. Instead, PEF asserts, fuel suppliers could simply offer the highest prices that would allow them to maintain a marginally competitive position against the disclosed forecasted costs and percentages. PEF contends that disclosure of the information would impair the Company's efforts to contract for goods or services on favorable terms pursuant to Section 366.093(3)(d), F.S.

PEF asserts that, if the information at issue was disclosed, PEF's efforts to obtain a competitive energy supply that provides economic value to both PEF and its ratepayers could be compromised by PEF's competitors changing their consumption or purchasing behavior within the relevant markets. Accordingly, PEF asserts, such information constitutes "proprietary confidential business information" which is exempt from disclosure under the Public Records Act pursuant to Sections 366.093(1), F.S. PEF asserts that the information which is the subject of this Request is intended to be and is treated as confidential by PEF.

Time Period For Confidential Classification

According to Section 366.093(4), F.S., confidential classification may only extend for 18 months from the issuance of an Order granting confidential classification unless "the

Commission finds, for good cause, that the protection from disclosure shall be for a specified longer period.” PEF has not requested an extension of the 18 month statutory period.

Ruling

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. 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, the information identified in Document No. 05213-12 shall be granted confidential classification.

Pursuant to Section 366.093(4), F.S., 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), F.S., unless PEF or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that Progress Energy Florida, Inc.’s Request for Confidential Classification of Document No. 05213-12 is granted. It is further

ORDERED that the information in Document No. 05213-12 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.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 28th day of August, 2012.



EDUARDO E. BALBIS
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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.