

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 090007-EI
ORDER NO. PSC-09-0704-CFO-EI
ISSUED: October 23, 2009

ORDER GRANTING PROGRESS ENERGY FLORIDA, INC.'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 03529-09)

On April 16, 2009, 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) filed a request for confidential classification of certain information provided in its response to Staff's First Request for Production of Documents (PODs) Nos. 1 through 6 (Document No. 03529-09). This request was filed in Docket No. 090007-EI.

Request for Confidential Classification

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. Paragraphs (d) and (e) of Section 366.093(3), 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 the information contained in its response to Staff's First Request for PODs Nos. 1 through 6, as more specifically described in the table in Attachment A, falls within these categories and, thus, constitutes 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 specifically alleges that if the information for which it seeks confidential classification is disclosed, particularly the pricing information and other contractual terms, the efforts of the Florida Electric Power Coordinating Group, Inc. (FCG) and PEF to obtain consulting services on favorable terms could be compromised by potential contractors changing their negotiating behavior when FCG or PEF seek to negotiate similar contracts in the future. PEF asserts that in order to secure contracts, FCG and PEF must be able to assure such

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companies that efforts will be made to ensure that sensitive business information, such as the terms of their contracts and proposals, will be kept confidential. According to PEF, absent such measures, companies would run the risk that sensitive business information that they provided in their contracts would be made available to the public, and as a result, end up in the possession of potential competitors. PEF claims that faced with that risk, persons or companies who otherwise would contract with FCG or PEF might decide not to do so if the terms of their contracts or proposals were not kept confidential. PEF claims that the information provided constitutes confidential 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. Furthermore, PEF asserts that disclosure of the sensitive information described above would impair the competitive interests of suppliers and counter-parties with whom PEF does business, and public disclosure of this information would impair their competitive businesses.

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 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.” Moreover, none of the documentation discussed herein contains any information regarding the compensation of PEF executives. Thus, the information identified in Document No. 03529-09, as specifically described in Attachment A, 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 Nathan A. Skop, as Prehearing Officer, that Progress Energy Florida, Inc.’s Request for Confidential Classification of Document No. 03529-09 is granted. It is further

ORDERED that the information in Document No. 03529-09 for which confidential classification has been granted, as described in Attachment A, 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 Nathan A. Skop, as Prehearing Officer, this 23rd day of October, 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 25-22.060, 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.

Attachment A

DOCUMENT DESCRIPTION	BATE NOS.	LINES	COLUMN
Agreement for Services between Florida Electric Power Coordinating Group, Inc. and Atmospheric and Environmental Research, Inc.	PEF-POD1-00325	1-12	N/A
	PEF-POD1-00327	1-16	N/A
	PEF-POD1-00328	1-28	N/A
	PEF-POD1-00329	All	N/A
	PEF-POD1-00330	All	N/A
	PEF-POD1-00331	1-4	N/A
	PEF-POD1-00332	1-11	N/A
FGG Funding Request Document	PEF-POD1-00335	1-8, 11-15, 16-21	B
		1-10, 16-22	D