

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 090007-EI
ORDER NO. PSC-09-0774-CFO-EI
ISSUED: November 18, 2009

ORDER GRANTING PROGRESS ENERGY FLORIDA, INC.'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 10151-09)

On October 1, 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 Fourth Request for Production of Documents (PODs) Nos. 13 and 15 (Document No. 10151-09). 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 Fourth Request for PODs Nos. 13 and 15, 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 its responses to Staff's Fourth Request for PODs consists of three contracts related to the design, construction, operation, and/or components of various environmental projects. PEF further alleges that these contracts include contractual data, such as pricing and other contractual terms, negotiated between the parties. PEF contends that if the information for which it seeks confidential classification is disclosed to potential contractors, PEF's efforts to obtain options that provide economic value to both PEF and its ratepayers could be compromised by potential contractors changing their negotiating behavior when PEF seeks to

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negotiate similar contracts in the future. PEF further maintains that in order to secure contracts, PEF must be able to assure contractors that sensitive business information, such as the terms of their contracts, will be kept confidential. Absent such measures, PEF contends, contractors would run the risk that sensitive business information that they provided in their contracts with PEF would be made available to the public and, as a result, end up in possession of potential competitors. PEF alleges that faced with that risk, persons or companies who otherwise would contract with PEF might decide not to do so if PEF did not keep those terms of their contracts confidential.

PEF states that for these reasons, disclosure of the information for which PEF seeks confidential classification would place PEF at a competitive disadvantage when negotiating with other contractors, and therefore, would impair PEF's efforts to contract for similar services and commodities. PEF further states that the information relates to the competitive interests of PEF and its contractors, the disclosure of which 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. 10151-09, 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 information contained in Document No. 10151-09, as described in Attachment A, is granted. It is further

ORDERED that the information in Document No. 10151-09 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 18th day of November, 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	PAGE(S)	LINE(S)
Contract No. 433059 Between Progress Energy Florida, Inc. and Evaptech ME	2 of 49 (Part I, Section 2)	All
	12 of 15 (Part III, Section 10 - 10.1.5)	1 - 20
	13 of 15 (Part III, Section 11 - 11.6.1)	All
	14 of 15 (Part III, Section 11.6.2 - 11.13)	1 - 39
	1 of 2 (Part III, Schedule C)	All
	2 of 2 (Part III, Schedule C)	All
	1 of 1 (Part III, Schedule E)	All
	1 of 3 (Part III, Schedule H)	All
	2 of 3 (Part III, Schedule H)	All
	3 of 3 (Part III, Schedule H)	All
Contract No. 221186 Between Progress Energy Florida, Inc. and Mesa Associates, LLC.	3 of 9 (Contract Invoicing and Acceptance of Deliverables)	1 - 26
	4 of 9 (Schedule)	1 - 4
	4 of 9 (Target Price)	5 - 10
	5 of 9, (Target Price)	All
	5 of 9 (Performance Incentives)	All
	6 of 9 (Performance Incentives)	1-15
	45 of 78 (Exhibit 1, Milestones)	1-2
	45 of 78 (Exhibit 1, Performance Schedule)	3-21
	1 - 3 (Exhibit 2, Project Milestone Schedule)	All
67 of 78 (Exhibit 3, Rate Schedules)		

DOCUMENT DESCRIPTION	PAGE(S)	LINE(S)
Contract No. 406464 Between Progress Energy Florida, Inc. and Terra Environmental Technologies, Inc.	1 (Section 2)	1 - 2
	13 (Section 20, Insurance)	1 - 9
	31	1
	1 (Product Handling)	1 - 6
	1 (Fees)	7 - 16
	2 (Fees)	All
	3 (Fees)	All