

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for Confidential Classification
by Progress Energy Florida, Inc. regarding
portions of Annual Status Report.

DOCKET NO. 100370-EI
ORDER NO. PSC-10-0558-CFO-EI
ISSUED: September 7, 2010

ORDER GRANTING PROGRESS ENERGY FLORIDA'S MODIFIED REQUEST
FOR CONFIDENTIAL CLASSIFICATION (DOCUMENT 03650-10)

On May 3, 2010, Progress Energy Florida, Inc. ("PEF") filed a Request for Confidential Classification pursuant to Section 366.093, Florida Statutes (F.S.) and Rule 25-22.006(3), Florida Administrative Code (F.A.C.), concerning information contained in PEF's Annual Status Report (the "Annual Report"). The confidential information was filed as Document No. 03650-10. On August 27, 2010, PEF filed a Notice of Partial Withdrawal and Modification to its Request for Confidential Classification ("Modified Request"). In the Modified Request, PEF specifically requests that only the body of the Table on Page 464 under the Columns entitled "Remaining Budgeted Costs to Complete Plant" and "Total Estimated Cost of Plant," and not including amounts contained in the "Total" row, be granted confidential classification for a period of 18 months.

PEF's Request for Confidential Classification

PEF states that the information for which it seeks confidential classification is "proprietary confidential business information" within the meaning of Section 366.093(3)(d) and (e), F.S., as it is information relating 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" or "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." PEF states that this information is intended to be and has been treated as confidential by PEF, and at no time has the information been publically disclosed.

PEF alleges the information in the body of the Table on Page 464 of the Annual Report contains information regarding PEF's nuclear projects, the disclosure of which would impair PEF's competitive business interests and ability to negotiate favorable contracts, and violate the contracts' nondisclosure provisions, and further, would harm PEF's competitive business interests if made publically available. PEF further alleges that the information contained in the Table on Page 464 contains details regarding PEF's budgeted and estimated costs for the Levy Nuclear Project, costs driven by confidential contracts with various vendors, including contracts for the purchase of equipment, materials, and services necessary for the construction and operation of the Levy Nuclear Project. PEF maintains that public dissemination of these costs would have an adverse effect on PEF's competitive interests, as it would inform third-parties with whom PEF must contract how much PEF has budgeted for certain goods and/or services, thus allowing those companies to artificially inflate their proposals to the detriment of PEF and its customers. PEF additionally maintains that the costs identified in the Table are fueled by

DOCUMENT NUMBER DATE

07506 SEP-7 2010

FPSC-COMMISSIONER CLERK

contracts already in place that are subject to confidentiality provisions, which prohibit the disclosure of the terms of the contracts to third parties; PEF states that if third parties were made aware of confidential contractual terms, they may offer PEF less competitive terms in future negotiations, such that PEF's efforts to obtain competitively priced supply and service contracts could be undermined.

Ruling

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided by law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. Rule 25-22.006(4)(c), F.A.C., provides that it is the company's burden to demonstrate that the documents fall into one of the statutory examples set out in Section 366.093(3), F.S., or to demonstrate that the information is proprietary confidential information, the disclosure of which will cause the company or its ratepayers harm.

Section 366.093(3), F.S., in pertinent part, 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.

Section 366.093(3)(d) and (e), F.S., state that proprietary confidential business information includes "[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."

Upon review, I find that the information contained in Document No. 03650-10, specifically the information contained on Page 464 of the Annual Status Report within the body of the Table entitled "Budgeted and Actual In-Service Costs of Nuclear Power Plant," under the Columns "Remaining Budgeted Costs to Complete Plant" and "Total Estimated Cost of Plant," excluding the amounts shown in the "Total" row, consists of competitively sensitive contractual pricing data which has not been publically disclosed. This information therefore qualifies as proprietary confidential business information pursuant to Sections 366.093(3)(d) and (e), F.S. Accordingly, PEF's request for confidential classification of this information is hereby granted. Further, as provided by Section 366.093(4), F.S., this material shall be granted confidential classification for a period of 18 months.

Based on the foregoing, it is


ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that Progress Energy Florida, Inc.'s Request for Confidential Classification of Document 03650-10, as modified, is granted as set forth in the body of this Order. It is further

ORDERED that pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., the confidentiality granted to material specified herein shall expire eighteen (18) months from the date of the issuance of this Order in the absence of a renewed request for confidential treatment pursuant to Section 366.093, F.S. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period. It is further

ORDERED that this docket shall be closed.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 7th day of September, 2010.


LISA POLAK EDGAR
Commissioner and Prehearing Officer

(S E A L)

AJT

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

ORDER NO. PSC-10-0558-CFO-EI
DOCKET NO. 100370-EI
PAGE 4

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.