

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Review of Progress Energy Florida, Inc.'s benchmark for waterborne transportation transactions with Progress Fuels.

DOCKET NO. 031057-EI  
ORDER NO. PSC-04-0705-CFO-EI  
ISSUED: July 20, 2004

On April 29, 2004, the parties to this docket filed a Joint Motion for Approval of Stipulation and Settlement. The Stipulation and Settlement was filed under a Notice of Intent to Request Confidential Classification. On May 17, 2004, Progress Energy Florida, Inc. ("PEF") filed a Request for Confidential Classification of specified information on lines 3 and 6 of paragraph 4, page 1 of its Stipulation and Settlement. The Stipulation and Settlement is assigned Document No. 04986-04.

Section 366.093(1), Florida Statutes, 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 [the Public Records Act]." Section 366.093(3), Florida Statutes, 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. Section 366.093(3) provides that proprietary confidential business information includes, but is not limited to "[i]rade secrets" (subsection a), "[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" (subsection d), and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information" (subsection c).

In its request, PEF indicates that the information for which it seeks confidential classification identifies the rates for the transportation of waterborne coal deliveries to PEF by Progress Fuels Corporation ("PFC") in 2004. For the reasons set forth below, PEF contends that this information constitutes proprietary confidential business information pursuant to Section 366.093(3)(d), Florida Statutes. 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 disclosure of these rates would provide a supplier of alternative rail transportation services direct knowledge of the transportation rates against which it must compete. PEF states that this knowledge would give the supplier a significant competitive advantage in upcoming contract renewal negotiations because it would no longer need to make its best offer to ensure the competitiveness of its rates against the unknown rates of alternative

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transportation available to PFC. Instead, PEF states, the supplier would offer the highest rates that allowed it to maintain a marginally competitive position against the known rates of PFC's alternative transportation. PEF asserts that, as a result, PFC, PEF, and PEF's ratepayers would incur higher costs for coal transportation than they would otherwise incur.

Further, PEF asserts that disclosure of this information, coupled with publicly available delivered prices of waterborne coal, could be used to calculate the commodity price of the coal purchased by PFC for use by PEF. PEF states that knowledge of the commodity price paid by PFC would allow existing and potential coal suppliers to avoid bidding their lowest price and instead simply undercut PFC existing price. PEF asserts that, as a result, PFC, PEF, and PEF's ratepayers would incur higher fuel charges than they would otherwise incur.

Finally, PEF asserts that the rates for which it seeks confidential classification provide the same or substantially similar competitively sensitive information as that contained in (1) PEF's monthly Form 423 filings with this Commission, which are consistently accorded confidential classification, and (2) Document No. 04144-03 for which confidential classification was granted by Order No. PSC-03-1298-CFO-EO, issued November 13, 2003, in Docket No. 030001-EI.

Upon review, I find that the specified rates on lines 3 and 6 of paragraph 4, page 1 of the Stipulation and Settlement constitute proprietary confidential business information as defined in Section 366.093, Florida Statutes. In particular, I find that this information falls within the category of "[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." Accordingly, PEF's Request for Confidential Classification of Document No. 04986-04 is granted.

Pursuant to Section 366.093(4), Florida Statutes, 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), Florida Statutes, 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 Charles M. Davidson, as Prehearing Officer, that Progress Energy Florida, Inc.'s Request for Confidential Classification of Document No. 04986-04 is granted. It is further

ORDERED that the information in Document No. 04986-04 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 of the date of declassification of the materials discussed herein.

By <sup>4</sup>ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 20th day of July, 2004.

  
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CHARLES M. DAVIDSON  
Commissioner and Prehearing Officer

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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 Director, Division of the Commission Clerk and Administrative Services, 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.