

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 980001-EI
ORDER NO. PSC-98-1382-CFO-EI
ISSUED: October 14, 1998

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S REQUEST FOR CONFIDENTIAL TREATMENT OF PORTIONS OF ITS MARCH, 1998, FORM 423 (DOCUMENT NO. 05213-98)

Florida Power & Light Company (FPL), pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, has requested specified confidential treatment for its 423 Forms for the month of March, 1998. The confidential information is located in Document No. 05213-98. FPL asserts that disclosure of this information to suppliers would impair the ability of FPL to negotiate future fuel and transportation contracts on favorable terms. As such, FPL contends that the information contained in FPL's March, 1998, 423 Forms constitutes proprietary confidential business information entitled to protection from disclosure pursuant to Section 366.093(1) and (3)(d), Florida Statutes.

INFORMATION FOR WHICH CONFIDENTIAL CLASSIFICATION IS SOUGHT

FPL requests that the information contained in Form 423-1(a), lines 1-15, column H be given confidential classification because this information is contractual information which, if made public "would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. This information delineates the price FPL has paid for No. 6 fuel oil per barrel for specific shipments from specific suppliers. According to FPL, this information would allow suppliers to compare an individual supplier's price with the market quote for that date of delivery and thereby determine the contract pricing formula between FPL and that supplier. FPL asserts that disclosure of the invoice price would allow suppliers to determine the contract price formula of their competitors. The knowledge of each others' prices for No. 6 fuel oil is reasonably likely to cause the suppliers to converge on a target price, or to follow a price leader, according to FPL. FPL claims that this would effectively eliminate any opportunity for a major buyer like FPL to use its market presence to gain price concessions from any one supplier. The end result, FPL contends, is reasonably likely to be increased No. 6 fuel oil prices and, therefore, increased electric rates.

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FPL contends that the information contained in Form 423-1(a), lines 1-15, columns I through N is entitled to confidential treatment because it is an algebraic function of column H. FPL asserts that this means the publication of these columns together or independently could allow a supplier to derive the invoice price of oil. FPL requests that the information contained in Form 423-1(a), lines 1-15, column J be given confidential treatment because some FPL fuel contracts provide for an early payment incentive in the form of a discount from the invoice price. According to FPL, the existence and amount of such discount should be confidential for the reasons stated above relative to price concessions. In addition, FPL asserts that disclosure of discounts resulting from bargaining concessions would impair the ability of FPC to obtain such concessions in the future.

FPL requests that the information contained in Form 423-1(a), lines 1-15, column M be granted confidential classification because FPL may reject a shipment of fuel that does not meet contract requirements, or it may accept the shipment and apply a quality adjustment. This is, in effect, according to FPL, a pricing term which is as important as the price itself and its therefore confidential for the same reason as the price concession information discussed above. FPL asserts that the information contained in Form 423-1(a), lines 1-15, column N is as important as the information contained in column H for confidentiality because of the relatively few times that there are quality or discount adjustments. FPL contends that column N will equal column H most of the time. Consequently, FPL contends, column N should be granted confidential classification for the same reasons as column H.

FPL requests that the information contained in Form 423-1(a), lines 1-15, columns P and Q be granted confidential classification. Column R is used to mask the delivered price of fuel such that the invoice or effective price of fuel cannot be determined. Columns P and Q are algebraic variables of column R. As a result, FPL asserts that disclosure of columns P and Q would allow a supplier to calculate the invoice or effective purchase price of oil contained in columns H and N discussed above by subtracting these columnar variables from column R. Columns P and Q also contain terminalling and transportation service information. FPL asserts that these services in Florida tend to be as oligopolistic, or more so, than the services of fuel suppliers. FPL maintains that disclosure of this contract information is reasonably likely to result in higher prices for petroleum inspection services.

FPL requests that the Commission find that the No. 2 fuel oil information is contractual data and that FPL's ability to procure No. 2 fuel oil is reasonably likely to be impaired by the disclosure of the information identified above. FPL asserts that this is because of the bidding process through which FPL obtains No. 2 fuel oil. FPL claims that this process is not reasonably expected to provide the lowest bids possible if disclosure of the last winning bid is, in effect, made public through disclosure of FPL's Form 423-1(a).

FPL requests that the No. 6 fuel oil data be identified as contractual data. FPL also request confidential classification for this information because it is information that can adversely impact FPL's ability to procure No. 6 fuel oil, terminalling and transportation service, and petroleum inspection services. According to FPL, this is because the markets in which FPL must procure No. 6 fuel oil, terminalling and transportation services, and fuel inspection services are oligopolistic. FPL asserts that, pursuant to economic theory, a substantial buyer in an oligopolistic market can obtain price concessions not available to other buyers, but the disclosure of such concessions would end them, resulting in higher prices to that purchaser.

REQUESTED DATE(S) OF DECLASSIFICATION

FPL seeks protection from disclosure of the confidential information identified in its Form 423-1(a) lines 1-5, columns H-N, until March 30, 2000. FPL requests that the information contained in its Form 423-1(a) lines 6-15, columns H-N, **only** be granted confidential classification until September 30, 1998. FPL requests that the information contained in Form 423-1(a), lines 1-5, columns P-Q, be granted confidential classification until September 30, 2000. FPL requests that the information contained in Form 423-1(a), lines 6-15, columns P-Q **only** be granted confidential classification until September 30, 1998. FPL determined the date of declassification by adding six months to the last day of the contract period under which the goods or services identified on Form 423-2(a) or 423-1(b) were purchased. Disclosure of pricing information during the contract period or prior to the negotiation of a new contract is reasonably likely to impair FPL's ability to negotiate future contracts as described above. FPL claims that it typically renegotiates its No. 6 fuel oil contracts and fuel-related services contracts prior to the end of such contracts. However, on occasion, some contracts are not renegotiated until after the end of the current contract period. In those instances,

the contracts are typically renegotiated within six months. Consequently, it is necessary to maintain the confidentiality of the information identified as confidential on FPL's Form 423-1(a) or 423-1(b) for six months after the end of the individual contract period to which the information relates.

FPL requests that information on the No. 6 fuel oil price contained on Form 423-1(a) or 423-1(b) for oil that was not purchased pursuant to an already existing contract be kept confidential for six months after the delivery. FPL requests this because the terms of the agreement under which this type of oil is purchased are fulfilled on delivery. FPL maintains that the information requires an extra six months because it is the minimum amount of time necessary for gaining price concessions during seasonal fluctuations in the demand for No. 6 fuel oil. FPL asserts that disclosure of this information any sooner than six months after completion of the transaction is reasonably likely to impair FPL's ability to negotiate such purchases.

CONCLUSION

Upon review, it appears that FPL is entitled to confidential classification of the information contained in Document No. 05213-98 for the periods described under the section entitled Declassification above. FPL has requested confidential classification for fuel pricing and fuel adjustment information. This appears to be contractual and bid information the public disclosure of which "would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. Disclosure of this information could lead to higher fuel prices and, as a result, higher rates.

Therefore, FPL's request for confidential classification of information contained in its March, 1998, Form 423-1(a) Document No. 05213-98 is granted. Good cause having been shown, the information for which confidential classification has been granted shall be treated as confidential for the time periods requested within the body of this Order.

In consideration of the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Florida Power & Light Company's request for confidential

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classification for portions of document number 05213-98 is granted as set forth in the body of this Order. It is further

ORDERED that the confidential information identified in Florida Power & Light Company's Form 423-1(a) for March, 1998, shall be granted confidential classification until the declassification dates contained within the body of this Order. 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.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 14th day of October, 1998.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)

GAJ

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.

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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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Records and Reporting, 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.