BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power Cost Recovery Clause and Generating Performance Incentive Factor.	) DOCKET NO. 910001-EI) ORDER NO. 25475) ISSUED: 12/12/91

ORDER ON FPC'S REQUEST FOR CONFIDENTIAL TREATMENT OF PORTIONS OF ITS AUGUST, 1991 FORMS 423

SPECIFIED CONFIDENTIAL

Florida Power Corporation (FPC), has requested specified confidential treatment of the following FPSC Forms:

MONTH/YEAR	FORMS	DOCUMENT NO.
August 1991	423-1(a), 423-2, 423-2(a), 423-2(b), 423-2(c)	11214-91

FPC argues that the information contained in lines 1-7, 9-10, and 12-23 of column H, Invoice Price, of Form 423-1(a) identifies the basic component of the contract pricing mechanism. Disclosure of the invoice price, FPC contends, particularly in conjunction with information provided in other columns as discussed below, would enable suppliers to determine the pricing mechanisms of their competitors. A likely result would be greater price convergence in future bidding and a reduced ability on the part of a major purchaser, such as FPC, to bargain for price concessions since suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would expect. FPC also argues that disclosure of lines 1-7, 9-10, and 12-23 of column I, Invoice Amount, when divided by the figure available in column G, Volume, would also disclose the Invoice Price in column H.

FPC asserts that disclosure of the information in lines 1-7, 9-10, and 12-23 of column J, Discount, and in line 24 of column M, Quality Adjustment, in conjunction with other information under columns K, L, M, or N, could also disclose the Invoice Price shown in column H by mathematical deduction. In addition, FPC argues that disclosure of the discounts resulting from bargaining concessions would impair the ability of FPC to obtain such concessions in the future.

FPC also argues that disclosure of the information under lines 1-7, 9-10, and 12-23 of columns K, Net Amount; L, Net Price; or N, Effective Purchase Price, could be used to disclose the Invoice

Price in column H, by mathematical deduction. Information contained in column N is particularly sensitive, FPC argues, because it is usually the same as or only slightly different from the Invoice Price in column H.

FPC argues that if the information in lines 1-7, 9-10, and 12-23 of column P, Additional Transport Charges, was used in conjunction with the information located in the same lines of column Q, Other Charges, it would result in disclosure of the Effective Purchase Price in column N by subtracting the figures from the Delivered Price available in column R. FPC, therefore, concludes that the information contained in columns P and Q is entitled to confidential treatment.

FPC further argues that the information on FPSC Form 423-2, in column G, Effective Purchase Price, is also found in column L, Effective Purchase Price, on FPSC Form 423-2(a), and in column G, Effective Purchase Price, on FPSC Form 423-2(b). FPC argues that in nearly every case, the Effective Purchase Price is the same as the F.O.B. Mine Price found under column F on FPSC Form 423-2(a), which is the current contract price of coal purchased from each supplier by Electric Fuels Corporation (EFC) for delivery to FPC. Disclosure of this information, FPC contends, would enable suppliers to determine the prices of their competitors which, again, would likely result in greater price convergence in future bidding and a reduced ability on the part of a major purchaser, such as EFC, to bargain for price concessions on behalf of FPC, since suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect. In addition, FPC contends that disclosure of the Effective Purchase Price would also disclose the Total Transportation Cost in column H, by subtracting column G from the F.O.B. Plant Price in column I.

FPC contends that the figures in column H, Total Transport Charges, on Form 423-2 are the same as the figures in column P, Total Transportation Charges, on Form 423-2(b). In addition, FPC contends that disclosure of the Total Transportation Cost, when subtracted from the F.O.B. Plant Price in column I, would also disclose the Effective Purchase Price in column G.

FPC maintains that column F, F.O.B. Mine Price, of Form 423-2(a) is the current contract price of coal purchased from each supplier by EFC for delivery to FPC. Disclosure of this information, FPC maintains, would enable suppliers to determine the prices of their competitors which would likely result in greater

price convergence in future bidding and a reduced ability on the part of a major purchaser, such as EFC, to bargain for price concessions on behalf of FPC since suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect.

Column H of Form 423-2(a), Original Invoice Price, FPC argues, is the same as in column F, F.O.B. Mine Price, except in rare instances when the supplier is willing and able to disclose its Shorthaul and Loading Charges in column G, if any, included in the contract price of coal. Disclosure, FPC argues, would be detrimental for the reasons identified for column F of this form.

FPC argues that column J, Base Price, is the same as the original Invoice Price in column H because Retroactive Price Adjustments available in column I are typically received after the reporting month and are included on Form 423-2(c) at that time. Disclosure, FPC contends, would, therefore, be detrimental for the reasons identified above as those that would result from disclosure of F.O.B. Mine Prices found in Column F.

FPC further argues that line 2 of column K, Quality Adjustments, for Transfer Facility IMT and line 1 of the same column for Crystal River 1 & 2, on Form 423-2(a), are typically received after the reporting month and are, therefore, also included on Form 423-2(c) at that time. These adjustments, FPC informs, are based on variations in coal quality characteristics, usually BTU content, between contract specifications and actual deliveries. Disclosure of this information, FPC concludes, would allow the F.O.B. Mine Price to be calculated using the associated tonnage and available contract BTU specifications.

FPC also maintains that column L, the Effective Purchase Price, is the same as the Base Price in column J because quality adjustments are typically not reported in column K. Disclosure of the information therein, FPC concludes, would, therefore, disclose the F.O.B. Mine Prices.

As FPC previously noted in discussing column G of Form 423-2, the Effective Purchase Price is available in three places in the Form 423's: column L on Form 423-2(a) and both column G's on Forms 423-2 and 423-2(b). FPC argues its basis for non-disclosure in the discussion relating to those columns applies here.

FPC additionally argues that for Transfer Facility IMT, line 1 of column H, Additional Shorthaul & Loading Charges, of Form 423-2(b) is EFC's transportation rates to move coal purchased F.O.B. mine to a river loading dock for waterborne delivery to FPC. These short haul moves, FPC informs, are made by rail or truck, often with the alternative to use either. This provides EFC with the opportunity to play one alternative against the other to obtain bargaining leverage. Disclosure of these short haul rates, FPC concludes, would provide the rail and truck transportation suppliers with the prices of their competitors, and would severely limit EFC's bargaining leverage.

Concerning the information on Form 423-2(b), on column I, Rail Rate, line 1 for Transfer Facility IMT, lines 1-2 of Transfer Facility TTI Systems, Inc., lines 1-3 for Crystal River 1 & 2, and lines 1-3 for Crystal River 4 & 5, FPC argues, are functions of EFC's contract rate with the railroad, and the distance between each coal supplier and Crystal River. Because these distances are readily available, FPC maintains, disclosure of the Rail Rate would effectively disclose the contract rate. This would impair the ability of a high volume user, such as EFC, to obtain rate concessions since railroads would be reluctant to grant concessions that other rail users would then expect.

FPC also argues that lines 1-3 for Crystal River 1 & 2 and lines 1-3 for Crystal River 4 & 5, of column J, Other Rail Charges, of Form 423-2(b), consists of EFC's railcar ownership cost. This cost, FPC contends, is internal trade secret information which is not available to any party with whom EFC contracts, railroads or otherwise. If this information were disclosed to the railroad, FPC concludes, their existing knowledge of EFC's Rail Rates would allow them to determine EFC's total rail cost and to better evaluate EFC's opportunity to economically use competing transportation alternatives.

On Form 423-2(b), for Transfer Facility IMT, lines 1-6 of column K, River Barge Rate, is EFC's contract rate for transportation from up-river loading docks to Gulf barge transloading facilities at the mouth of the Mississippi River. According to FPC, disclosure of this information would enable other suppliers of river barge transportation to determine their competitor's prices which may result in greater price convergence in future bidding. FPC further claims that disclosure would also result in a reduced ability on the part of high volume users, such as EFC, to bargain for price concessions on behalf of FPC because

suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect.

On Form 423-2(b), for Transfer Facility IMT, lines 1-6 of column L, Transloading Rate, is, according to FPC, EFC's contract rate for terminaling services at International Marine Terminals (IMT). FPC claims that disclosure of terminaling service rates to other suppliers of such services would harm EFC's interest in IMT by placing IMT at a disadvantage in competing with those suppliers for business on the lower Mississippi.

On Form 423-2(b), line 4 for Crystal River 1 & 2, and line 4 for Crystal River 4 & 5, of column M, Ocean Barge Rate, FPC argues, is EFC's contract rate for cross-barge transportation to Crystal River by Dixie Fuels Limited (DFL). Disclosure of this contract rate to other suppliers of cross-Gulf transportation services, FPC contends, would be harmful to EFC's ownership interest in DFL by placing DFL at a disadvantage in competing with those suppliers for business on the Gulf. Such a disadvantage in competing for back-haul business would also reduce the credit to the cost of coal it provides.

The information in column P, Total Transportation Charges, of Form 423-2(b), FPC argues, is the same as the Total Transportation Cost under column H on Form 423-2, and is entitled to confidential treatment for reasons identical to those discussed in relation to those charges. In the case of rail deliveries to the Crystal River Plants, the figures represent EFC's current rail transportation rate. In the case of waterborne deliveries to the Crystal River Plants, the figures represent EFC's current Gulf barge transportation rate. In the case of water deliveries to the IMT "Plant," the figures represent EFC's current river transportation rate. Disclosure of these transportation rates would enable coal suppliers to bid a F.O.B. mine price calculated to produce a delivered plant price at, or marginally below, FPC's current delivered price, which is available on Form 423-2, column I. FPC argues that without this opportunity to calculate a perceived maximum price, suppliers would be more likely to bid their best price.

On Form 423-2(c), the information in columns J, Old Value, and K, New Value, FPC argues, relates to the particular columns on Form 423-2, 423-2(a), or 423-2(b) to which the adjustment applies. The column justifications above also apply to the adjustments for those columns reported on Form 423-2(c), especially retroactive price

172

increases and quality adjustments which apply to the majority of the adjustments on that form.

An examination of FPC document numbered DN-11214-91 relating to August, 1991, shows that it contains confidential information which, if released, could affect the company's ability to contract for fuel on favorable terms. We find, therefore, the information is entitled to confidential treatment.

DECLASSIFICATION

FPC seeks protection from disclosure of the confidential information identified in its request for a period of 24 months. FPC maintains that this is the minimum time necessary to ensure that disclosure will not allow suppliers to determine accurate estimates of the then-current contract price.

FPC explains that the majority of EFC's contracts contain annual price adjustment provisions. If suppliers were to obtain confidential contract pricing information for a prior reporting month at any time during the same 12-month adjustment period, current pricing information would be disclosed. In addition, if the previously reported information were to be obtained during the following 12-month period, the information would be only one adjustment removed from the current price. Suppliers knowledgeable in the recent escalation experience of their market could, according to FPC, readily calculate a reasonably precise estimate of the current price.

To guard against this competitive disadvantage, FPC maintains, confidential information requires protection from disclosure not only for the initial 12-month period in which it could remain current, but for the following 12-month period in which it can be easily converted into essentially current information. For example, if information for the first month under an adjusted contract price is reported in April, 1990, the information will remain current during March, 1991. Thereafter, the initial April, 1990, information will be one escalation adjustment removed from the current information reported each month through March, 1992. If confidential treatment were to expire after 18 months, suppliers would be able to accurately estimate current prices in October, 1991, using information that had been current only 6 months earlier.

An 18-month confidentiality period would effectively waste the protection given in the first 6 months of the second 12-month pricing period (months 13 through 18) by allowing disclosure of the information in the last 6 months of the pricing period, which would be equally detrimental in terms of revealing the current price. To make the protection currently provided in months 13 through 18 meaningful, FPC argues, protection should be extended through month 24. Extending the confidentiality period by 6 months, FPC explains, would mean that the information will be an additional 12 months and one price adjustment further removed from the current price at the time of disclosure.

Section 366.093(4), Florida Statutes, provides that any finding by the Commission that records contain proprietary confidential business information is effective for a period set by the Commission not to exceed 18 months, unless the Commission finds, for good cause, that protection from disclosure shall be made for a specified longer period. FPC seeks confidential classification in its request relating to August, 1991, for a 24-month period. We find FPC has shown good cause for the Commission to extend its protection of the identified confidential information from 18 to 24 months.

In consideration of the foregoing, it is

ORDERED that the information Florida Power Corporation seeks to protect from public disclosure on its August, 1991 FPSC Forms 423-1(a), 423-2(a), 423-2(b) and 423-2(c) identified in DN-11214-91 is confidential and shall continue to be exempt from the requirements of Section 119.07(1), Florida Statutes. It is further

ORDERED that Florida Power Corporation's request for the declassification date included in the text of this Order is granted.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 12th day of DECEMBER, 1991.

Betty Easley

BETTY EASLEY, Commissioner
and Prehearing Officer

(S E A L)

MAB:bmi
fpcaug.mb

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2), 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.