

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel Purchased Power) DOCKET NO. 960001-EI
Cost Recovery Clause and) ORDER NO. PSC-96-0197-CFO-EI
Generating Performance Incentive) ISSUED: February 13, 1996
Factor.)
_____)

ORDER REGARDING FPL'S REQUEST FOR
CONFIDENTIAL TREATMENT OF AUGUST, 1995 FORMS 423

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 of various columns of the following FPSC Form 423-1(a):

<u>MONTH/YEAR</u>	<u>FORM</u>	<u>DOCUMENT NO.</u>
August, 1995	423-1(a)	10249-95

FPL has requested specified confidential classification of lines 4-18 of columns H, Invoice Price; I, Invoice Amount; J, Discount; K, Net Amount; L, Net Price; M, Quality Adjustment; N, Effective Purchase Price; P, Additional Transportation Charges, and Q, Other Charges, on Form 423-1(a). FPL argues that column H, Invoice Price, contains contractual information which, if made public, would impair its efforts to contract for goods or services on favorable terms pursuant to Section 366.093(3)(d), Florida Statutes. The information, FPL maintains, delineates the price that FPL has paid for No. 6 fuel oil per barrel for specific shipments from specific suppliers. This information would, therefore, allow suppliers to compare a supplier's price with the market quote in order to determine the contract pricing formula between FPL and that supplier. Such formulas are made up of a markup in the quoted market price and a transportation charge for delivery to FPL's chosen port. Disclosure of the invoice price would allow competitors to derive this formula. Competitor's with this knowledge would likely converge on a target price, thereby reducing the likelihood that FPL would be able to obtain a price concession. The result would be higher fuel prices which would be passed on to FPL's ratepayers as higher rates. FPL asserts that the material identified as confidential information is intended to be and is treated by FPL as private and has not been otherwise publicly disclosed to the best of FPL's knowledge and belief.

FPL argues that lines 4-18 of columns I, Invoice Amount; J, Discount; K, Net Amount; L, Net Price; M, Quality Adjustment; and N, Effective Purchase Price, should be classified confidential because the contract data found therein is an algebraic function of column H; the publication of these columns together, or independently, FPL argues, could allow suppliers to derive the invoice price of oil. In addition, the same lines in column J

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reveal the existence and amount of an early payment incentive in the form of a discount reduction in the invoice price, the disclosure of which would allow suppliers again to derive the invoice price of oil. Further, column M includes a pricing term, a quality adjustment applied when fuel does not meet contract requirements, which, if disclosed, would also allow a supplier to derive the invoice price. Column N reveals the existence of quality or discount adjustments and will typically, FPL contends, be identical to H. FPL further argues that lines 4-18 of columns P, Additional Charges, and Q, Other Charges, are algebraic variables of column R, Delivered Price; and would allow a supplier to calculate the Invoice or Effective Purchase Price of oil by subtracting the columnar variables in H and N from column R. They are, therefore, entitled to confidential classification. Both columns P and Q, FPL argues, are alternatively entitled to confidential classification in that they contain terminaling, transportation, and petroleum inspection service costs which, due to the small demand for them in Florida, have the same, if not more severe, oligopolistic attributes as have fuel oil suppliers. Accordingly, FPL contends, disclosure of this contract data would result in increased prices to FPL for terminaling, transportation, and petroleum inspection service costs.

In addition, FPL requests confidential treatment of the information found in Lines 1-3 of Columns H, I, K, L, N, and R. FPL asserts that this information is contractual information which, if made public, "would impair the efforts of [FPL] to contract for goods or services on favorable terms." Section 366.093 (3) (d), Florida Statutes. This information shows the price FPL has paid for No. 2 fuel oil per barrel for specific shipments. This type of fuel is purchased through a bidding process and, at the request of No. 2 fuel oil suppliers, FPL has agreed not to disclose any bid. This agreement protects the suppliers and FPL's ratepayers. This type of bidding process allows FPL greater flexibility in its bid range than would be available if the bids were made public. Should the bids be made public, other suppliers would likely narrow their bids to an area near the last winning bid, thereby reducing the possibility that one supplier might, based on his economic situation, come in with a substantially lower bid. FPL argues that non-disclosure protects these suppliers from having to divulge any economic advantage other suppliers might not have discovered.

I, hereby, deny FPL's request for confidential treatment of Lines 1 and 2 of Column R. The aggregate of these two numbers has already been reported in FPL's Federal Energy Regulatory Commission filings. This information is already available to the public; therefore, confidential treatment is denied. The remainder of FPL's request for confidentiality is reasonable. Thus, with the exception of Lines 1 and 2 for Column R, the lines listed above are granted confidential treatment.

DECLASSIFICATION

FPL further requests the following proposed declassification dates which have been determined by adding six months to the last day of the contract period under which the goods or services identified were purchased:

<u>FORM</u>	<u>LINE(S)</u>	<u>COLUMN(S)</u>	<u>DATE</u>
423-1(a)	4 - 6	H - N	06-30-96
423-1(a)	7 - 9	H - N	05-31-96
423-1(a)	10	H - N	03-15-96
423-1(a)	11 - 18	H - N	02-28-96
423-1(a)	4 - 18	Q	06-30-96
423-1(a)	1 - 3	H, I, K, L, N, R	12-31-95

FPL requests that the confidential information identified above not be disclosed until the identified date of declassification. Disclosure of pricing information, FPL argues, 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 maintains that it typically renegotiates its No. 2 and No. 6 fuel oil contracts and fuel related services contracts prior to the end of such contracts. On occasion, however, some contracts are not renegotiated, until after the end of the current contract period. In those instances, the contracts are usually renegotiated within six months. Accordingly, FPL states, it is necessary to maintain the confidentiality of the information identified as confidential on FPL's Form 423-1(a) for an additional six months.

FPL has requested a longer time period for classification of confidential information in the instance listed below:

<u>FORM</u>	<u>LINE(S)</u>	<u>COLUMN(S)</u>	<u>DATE REQUESTED</u>	<u>DATE GRANTED</u>
423-1(a)	4 - 18	P	03-31-99	05-30-97

FPL asserts that this time period is necessary to ensure that FPL is able to bargain on competitive terms in future negotiations for contractual provisions which will ultimately protect FPL's ratepayers. For the information subject to confidential treatment

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discussed earlier, FPL requested confidential treatment for a period of time up to the contract term, which did not exceed 18 months, plus an additional 6 month period at the end of the contract period to permit time for renegotiation. Its request comported with Rule 25-22.006(8)(a), Florida Administrative Code. That information is, therefore, entitled to an extension of its declassification dates as cited above. However, FPL requests that the confidential information regarding the above item not be declassified for a period slightly under four years. Section 366.093(4), Florida Statutes, states that "[a]ny 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 shown, that the protection from disclosure shall be for a specified longer period." With regard to lines 4-18 of column P, good cause has not been shown to hold this contractual information confidential for such a lengthy period. Instead, this contractual data is entitled to confidential status for a period of 18 months from the month in which this Order is issued. Near the end of this time period, FPL may resubmit a petition to extend this period of confidentiality. Thus, if such a petition is filed by FPL before the period's expiration, the prehearing officer will consider extending the period of confidentiality.

In consideration of the foregoing, it is

ORDERED that Florida Power & Light Company's request for confidential classification of the above specified information in Form 423-1(a) for August, 1995, the document identified as DN 10249-95 is granted or denied, as discussed within the body of this Order. It is further

ORDERED that the proprietary confidential business information shall remain confidential for the periods of time discussed 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.

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By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 13th day of February, 1996.



J. TERRY DEASON, 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 120.59(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.