

BEFORE THE PUBLIC SERVICE COMMISSION

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

DOCKET NO. 040001-EI
ORDER NO. PSC-04-0320-CFO-EI
ISSUED: March 25, 2004

ORDER GRANTING CONFIDENTIAL CLASSIFICATION TO PORTIONS OF
FLORIDA POWER & LIGHT COMPANY'S 423 FORMS FOR DECEMBER, 2003
(DOCUMENT NO. 03410-04)

Pursuant to Rule 25-22.006, Florida Administrative Code, and Section 366.093, Florida Statutes, Florida Power & Light Company (FPL) requests confidential classification of portions of its Form 423 Fuel Reports for December, 2003. The confidential information is filed with the Commission as Document No. 03410-04.

FPL represents that the information for which confidential classification is sought is intended to be and is treated by FPL as confidential, and to the best of FPL's knowledge and belief, has not been publicly disclosed. FPL asserts that disclosure of this information to suppliers of such services "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 its December, 2003, 423 Forms constitutes "proprietary confidential business information" entitled to protection from disclosure pursuant to Sections 366.093(1) and (3)(d), Florida Statutes.

INFORMATION FOR WHICH CONFIDENTIAL CLASSIFICATION IS SOUGHT

FPL requests confidential classification of the information contained in its Form 423-1(a) for December, 2003, as illustrated in the following table. FPL states 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.

TABLE 1: 423-1(a)

LINES	COLUMN
1-15	H-N, P, Q

FPL maintains that the information listed in Column H delineates the price per barrel that FPL has paid for fuel oil for specific shipments from specific suppliers. According to FPL, disclosure of 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. As such, FPL asserts that disclosure of the invoice price

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would allow suppliers to determine the contract price formula of their competitors. According to FPL, the knowledge of each others' prices for fuel oil is reasonably likely to cause the suppliers to converge on a target price, or to follow a price leader. 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 fuel oil prices and, therefore, increased electric rates.

FPL contends the data found in Columns I through N are an algebraic function of Column H. FPL asserts that publication of these columns together or independently could allow a supplier to derive the invoice price of oil. According to FPL, the existence and amount of such discount should be confidential for the reasons stated above relative to price concessions. With respect to the information contained in Form 423-1(a), Lines 1-15, Column M, FPL asserts that for fuel that does not meet contract requirements, it may reject the shipment, or accept the shipment and apply a quality adjustment. FPL asserts that this is, in effect, a pricing term which is as important as the price itself and is therefore confidential for the reasons stated above relative to price concessions.

FPL asserts that the information contained in Form 423-1(a), Lines 1-15, Column N, is as important as Column H, from a confidentiality standpoint 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 is granted confidential classification.

FPL requests that the information contained in Form 423-1(a), Lines 1-15, Columns P & 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 terminaling and transportation service information. FPL asserts that these services in Florida tend to be as oligopolistic, if not more so, than the services of fuel suppliers. FPL maintains that disclosure of this contract information is reasonably likely to result in increased prices for terminaling and transportation services.

FPL requests that the fuel oil data be granted confidential classification. FPL requests confidential classification for this information because it is contractual information as well as information that can adversely impact FPL's ability to procure fuel oil, terminaling and transportation service, and petroleum inspection services. According to FPL, this is because the markets in which FPL, as a buyer, must procure fuel oil, terminaling and transportation services, and fuel inspection services are oligopolistic. FPL asserts that as a substantial buyer in an oligopolistic market, it may obtain price concessions not available to other buyers, but the disclosure of such concessions would end them, resulting in higher prices to FPL.

FPL requests confidential classification for portions of its Form 423-2 as illustrated in the table below:

TABLE 2: 423-2

LINE(S)	COLUMN(S)
1-2	G, H

FPL asserts that disclosure of the “Effective Purchase Price” would impair the efforts of JEA, acting on its own behalf and as agent for FPL, to contract for goods or services at the St. Johns River Power Park (SJRPP) on favorable terms. In addition, FPL contends, disclosure of the effective purchase price would disclose the total transportation cost reflected in Column H by subtracting Column G from the delivered price at the transfer facility in Column I.

FPL asserts that disclosure of the “Total Transportation Cost” would impair the efforts of JEA, acting on its own behalf and as an agent for FPL, to contract for goods or services at SJRPP on favorable terms. FPL contends that the service provider itself typically designates the transportation costs in the contract as confidential. In addition, FPL contends, disclosure of this information would enable potential coal suppliers to calculate Column G by subtracting Column H from Column I.

FPL asserts that the information contained in its Form 423-2(a) as illustrated in the table below is entitled to confidential classification:

TABLE 3: 423-2(a)

LINE(S)	COLUMN(S)
1-2	F, H, J, L

FPL asserts that disclosure of the “Effective Purchase Price” would impair the efforts of JEA, acting on its own behalf and as an agent for FPL, to contract for goods or services at the SJRPP on favorable terms. FPL maintains that disclosure of this information would enable suppliers to determine the prices of their competitors, which would likely result in greater price convergence in future bidding. FPL further asserts that disclosure of this information could adversely affect FPL’s interest in subsequent solicitations for coal and/or in negotiating coal supply agreements.

FPL asserts that the information presented in these columns are all mathematical derivatives of Column L whereby a competitor could take the information in these columns, and by using other publicly available information, ascertain the total transportation charges in Column H on Form 423-2.

FPL also requests confidential classification for the information contained in its Form 423-2(b) as illustrated in the table below:

TABLE 4: 423-2(b)

LINE(S)	COLUMN(S)
1-2	G, I, P

FPL maintains that the information contained in Column G of Form 423-2(b) is the same as that described above for Form 423-2 (Table 2), and is entitled to confidential classification for the same reasons as given under Form 423-2 (Table 2). FPL asserts that disclosure of the information in Column I, the total transportation cost, would impair the efforts of JEA, acting on its own behalf and as an agent for FPL, to contract for goods or services at the SJRPP on favorable terms. FPL further asserts that disclosure of this information could adversely affect FPL's interest in subsequent solicitations for coal and/or in negotiating coal supply agreements given SJRPP's reliance on long-term contracts with fixed price provisions or short-term spot transactions.

CONCLUSION

Upon review, it appears that FPL is entitled to confidential classification of the information contained in Document No. 03410-04 for a period of 18 months. The information described above appears to be "information 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." Section 366.093(3)(d), Florida Statutes. This information reveals invoice prices, transportation charges, and coal prices.

The public disclosure of any of this information could reduce FPL's competitiveness in the marketplace. This, in turn, could result in higher prices for transportation and coal. Therefore, FPL's request for confidential classification of information contained in its Form 423 Fuel Reports for December, 2003, Document No. 03410-04, is granted.

Based on the foregoing, it is


ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Florida Power & Light Company's request for confidential classification of portions of Document No. 03410-04 is granted as set forth in the body of this Order. It is further

ORDERED that the information described within the body of this Order and contained in Document No. 03410-04 shall be granted confidential classification for a period of eighteen (18) months from the date of the issuance of this Order. It is further

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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 Rudolph "Rudy" Bradley, as Prehearing Officer, this 25th day of March, 2004.



RUDOLPH "RUDY" BRADLEY
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.