

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 090001-EI
ORDER NO. PSC-09-0767-CFO-EI
ISSUED: November 18, 2009

ORDER GRANTING CONFIDENTIAL CLASSIFICATION TO PORTIONS OF FLORIDA
POWER & LIGHT COMPANY'S 423 FORMS FOR JULY 2008
(DOCUMENT NO. 09072-08)

Pursuant to Rule 25-22.006, Florida Administrative Code (F.A.C.), and Section 366.093, Florida Statutes (F.S.), Florida Power & Light Company (FPL) requests confidential classification of portions of its Form 423 Fuel Reports for July 2008. The confidential information is filed with the Commission as Document No. 09072-08. This request was filed in Docket No. 080001-EI.

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 July 2008, 423 Forms constitutes "proprietary confidential business information" entitled to protection from disclosure pursuant to Section 366.093, F.S.

Information For Which Confidential Classification Is Sought

FPL requests confidential classification of the information contained in its Form 423-1(a) for July 2008, as illustrated in the following table. FPL states that 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), F.S.

TABLE 1: 423-1(a)

| LINES | COLUMN |
|-------|-------------|
| 1-10 | 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 would allow suppliers to determine the contract price formula of their competitors. According to FPL, this knowledge of fuel oil prices is reasonably likely to cause the suppliers to converge on a

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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. FPL contends that the end result 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. The information found in Column J includes early payment incentives in the form of a discount. 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 1-10, 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 1-10, 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 that Column N should be granted confidential classification for the same reasons that Column H is granted confidential classification.

FPL requests that the information contained in Form 423-1(a), Lines 1-10, 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 variables from Column R. Columns P and Q also contain terminaling, transportation service, and petroleum inspection service information. FPL asserts that these services in Florida tend to be as oligopolistic, if not more so, than the services of fuel oil 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, 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, transportation services, and petroleum 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 such price concessions resulting in higher prices to FPL and its customers.

FPL also requests confidential classification for portions of its July 2008 Report Form 423-2, as set forth in the table below.

TABLE 2: 423-2

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

FPL asserts that disclosure of the “Effective Purchase Price” in Column G and “Total Transportation Costs” in Column H 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. FPL maintains the data in Columns G and H informs other potential suppliers of the price SJRPP is paying for coal. According to FPL, disclosure of this information, which is particularly sensitive given SJRPP’s reliance on long-term contracts with fixed price provisions or short-term spot transactions, could adversely affect FPL’s interests in subsequent solicitations for coal and in negotiating coal supply agreements. Further, FPL contends that the service provider itself typically designates the transportation costs in the contract as confidential. FPL contends that the disclosure of the total transportation costs would enable potential coal suppliers to calculate the effective purchase price by subtracting Column H from Column I. Likewise, FPL contends that the 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.

In addition, FPL asserts that the information contained in its July 2008 Report Form 423-2(a), as set forth in the table below, is entitled to confidential classification.

TABLE 3: 423-2(a)

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

FPL asserts that disclosure of the “Effective Purchase Price” found in Column L 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 the data in Column L informs other potential suppliers of the price SJRPP is paying for coal. FPL asserts that disclosure of this information could adversely affect FPL’s interest in subsequent solicitations for coal and/or in negotiating coal supply agreements. Furthermore, providing the purchase price would enable one to ascertain the total transportation charges in Column H of Form 423-2, which FPL also seeks to protect.

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

FPL also requests confidential classification for the information contained in its July 2008 Report Form 423-2(b), as set forth in the table below.

TABLE 4: 423-2(b)

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

FPL maintains that the “Effective Purchase Price” contained in Column G of Form 423-2(b) is entitled to confidential classification because it would impair the efforts of JEA, acting on its own behalf and as agent for FPL, to contract for goods or services at the SJRPP on favorable terms. The data, according to FPL, informs other potential suppliers of the price SJRPP is paying for coal. Disclosure of this information could adversely affect FPL’s interests in subsequent solicitations for coal and/or in negotiating coal supply agreements, according to FPL. FPL also asserts that allowing access to the purchase price would enable one to ascertain the total transportation charges in Column P, which FPL also seeks to protect, by subtracting the effective purchase price from the delivered price at the transfer facility shown in Column Q.

Columns I and P show transportation prices. FPL asserts that disclosure of this information would impair the efforts of JEA, acting on its own behalf and as agent for FPL, to contract for goods and services at SJRPP on favorable terms. FPL maintains that disclosure would enable potential coal suppliers to calculate Column G, which FPL seeks to protect, by subtracting Column P from Column Q. 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.

Ruling

Upon review, it appears that FPL is entitled to confidential classification of the information contained in Document No. 09072-08 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), F.S. 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. Moreover, none of the documentation discussed herein contains any information regarding the compensation of FPL executives. Therefore, FPL’s request for confidential classification of information contained in its Form 423 Fuel Reports for July 2008, Document No. 09072-08, is granted.

Pursuant to Section 366.093(4), F.S., 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), F.S., unless FPL 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 Nathan A. Skop, as Prehearing Officer, that Florida Power & Light Company's request for confidential classification of portions of Document No. 09072-08 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. 09072-08 shall be granted confidential classification for a period of eighteen (18) months from the date of the issuance 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 Nathan A. Skop, as Prehearing Officer, this 18th day of November, 2009.



NATHAN A. SKOP
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), F.S., to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, F.S., 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 Office of Commission Clerk, 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.