

BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power Cost Recovery)	DOCKET NO.	900001-EI
Recovery Clause and Generating Performance)	ORDER NO.	22606
Incentive Factor.)	ISSUED:	2-27-90
)		

ORDER REGARDING FPL'S REQUEST FOR CONFIDENTIAL TREATMENT
OF AUGUST, AND SEPTEMBER, OCTOBER, NOVEMBER,
AND DECEMBER, 1989 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 Forms 423-1(a):

<u>MONTH/YEAR</u>	<u>FORM</u>	<u>DOCUMENT NO.</u>	<u>DATE FILED</u>
August 1989	423-1(a)	10150-89	Oct. 13, 1989
September 1989	423-1(a)	11137-89	Nov. 16, 1989
October 1989	423-1(a)	11994-89	Dec. 18, 1989
November 1989	423-1(a)	356-90	Jan. 16, 1990
December 1989	423-1(a)	1455-90	Feb. 16, 1990

As the above table indicates, FPL seeks confidential treatment of its Forms 423-1(a) relating to the months of August, September, October, November, and December, 1989. As to FPL's requests relating to August and September, 1989, FPL has failed to highlight the lines and columns contained in Form 423-1(a) for which it seeks confidentiality and to provide specific justifications for each line or column; FPL has simply requested that the entire form be classified confidential. Rule 25-22.006(4)(c), Florida Administrative Code, provides that:

The burden of proof shall be on the source to show that the document or other material in question contains bona fide proprietary confidential business information. A request for specified confidential classification that fails to identify the proprietary information in sufficient detail to permit a reasoned analysis or which is insufficient on its face. In the alternative, the source may be directed to file a more detailed request before a ruling is made.

We find that FPL should be directed to file a more detailed request for the months of August and September, 1989.

As to FPL's request relating to October, 1989, FPL has requested specified confidential classification of lines 9-29 of columns H, Invoice Price; I, Invoice Amount; J, Discount; K, Net Amount; L, Net Price; M,

DOCUMENT NUMBER-DATE

01820 FEB 27 1990

FPSC-RECORDS/REPORTING

ORDER NO. 22606
DOCKET NO. 900001-EI
PAGE 2

Quality Adjustment; N, Effective Purchase Price; P, Additional Transportation Charges, and Q, Other Charges; and lines 1-8 of columns H, I, K, L, M, N, and R, Delivered Price, on Form 423-1(a). As to FPL's request relating to November, 1989, FPL has requested specified confidential classification of lines 3-12 of those same former columns, and lines 1-2 on those same latter columns. As to FPL's request for December, 1989, FPL has requested specified confidential classification of lines 36-38 of columns H, I, J, K, L, M, N, P, and R and lines 12-15, and 35 of columns H, I, K, L, N and R. FPL argues that column H, Invoice Price, contain 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. If disclosed, 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.

Contract pricing formulas typically contain two components: a mark-up in the market quoted price for that day and a transportation charge for delivery at an FPL chosen port of delivery. Disclosure of the invoice price would allow suppliers to determine the contract price formula of their competitors. FPL contends that the knowledge of each other's prices (i.e. contract formulas) among No. 6 fuel oil suppliers is reasonably likely to cause suppliers to converge on a target price, or follow a price leader, thereby effectively eliminating any opportunity for a major buyer, like FPL, to use its market presence to gain price concessions from any one supplier. As a result, FPL contends, No. 6 fuel prices will likely increase resulting in increased electric rates. Once other suppliers learn of a price concession, the conceding supplier will be forced, due to the oligopolistic nature of the market, to withdraw from future concessions. Disclosure of the invoice price of No. 6 fuel oil paid by FPL to specific fuel suppliers, FPL concludes, is reasonably likely to impair FPL's ability to negotiate price concessions in future No. 6 fuel oil contracts.

FPL argues that 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 of the contract data found therein are 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 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

ORDER NO. 22606
DOCKET NO. 900001-EI
PAGE 3

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. Columns P, Additional Charges; and Q, Other Charges; FPL also argues, 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. We find that, due to oligopolistic nature of the terminaling, transportation, and petroleum inspection service markets, disclosure would ultimately adversely affect FPL's ratepayers.

FPL further argues that columns H, I, K, L, N, and R is contractual information which, if made public, would impair FPL's efforts to contract for goods or services on favorable terms pursuant to Section 366.093(3)(d), Florida Statutes. The information indicates the price FPL has paid for No. 2 fuel oil per barrel for specific shipments from specific suppliers. No. 2 fuel oil is purchased through the bidding process. At the request of No. fuel oil suppliers, FPL has agreed not to publicly disclose any supplier's bid. This non-disclosure agreement, FPL argues, protects both the bidding suppliers and FPL's ratepayers. If the No. 2 fuel oil prices were disclosed, FPL argues, the range of bids would narrow toward the last winning bid eliminating the possibility that one supplier might, based on its economic situation, submit a bid substantially lower than the other suppliers. Non-disclosure also protects a supplier from divulging any economic advantage that that supplier may have that the others have not discovered. It also protects the ratepayers by providing a non-public bidding procedure resulting in a greater variation in the range of bids that would otherwise not be available if the bids, or the winning bid itself, were to be publicly disclosed.

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:

ORDER NO. 22606
 DOCKET NO. 900001-EI
 PAGE 4

<u>MONTH</u>	<u>LINE(S)</u>	<u>COLUMN(S)</u>	<u>DATE</u>
October 1989	9-12	H-N	09/30/90
	13	H-N	03/26/90
	14	H-N	03/31/90
	15-24	H-N	06/30/91
	25-28	H-N	09/30/90
	9-29	P	12/31/92
	9-29	Q	02/28/92
	1-8	H, I, K, L, N, R	06/30/90
November 1989	3-4	H-N	09/30/90
	5-9	H-N	06/30/91
	10	H-N	05/30/90
	11-12	H-N	05/06/90
	3-12	P	12/31/92
	3-12	Q	02/28/92
	1-2	H, I, K, L, N, R	06/30/90 06/30/90
December 1989	36-38	H - N	06/30/91
	36-38	P	12/31/92
	36-38	Q	02-28/92
	12-15, 35	H, I, K, L, N, R	06/30/90

FPL requests that the confidential information identified above not be disclosed until the identified date of declassification. FPL has determined the date of declassification by adding 6 months to the last day of the contract period under which the goods or services identified on Form 423-1(a) were purchased. 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. 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 six

ORDER NO. 22606
DOCKET NO. 900001-EI
PAGE 5

months after the end of the individual contract period the information relates to.

With respect to No. 6 fuel oil price information on the Form 423-1(a) for oil that was not purchased pursuant to an already existing contract, and the terms of the agreement under which it is purchased are fulfilled upon delivery, FPL requests the price information identified as confidential be kept confidential for a period of six months after the delivery. Six months, FPL maintains, is the minimum amount of time necessary for confidentiality of these types of purchases to allow FPL to utilize its market presence in gaining price concessions during seasonal fluctuations in the demand for No. 6 fuel oil. Disclosure of this information any sooner than six months after completion of the transaction, FPL argues, is reasonably likely to impair FPL's ability to negotiate such purchases.

FPL further maintains that the No. 2 fuel oil pricing information appearing on FPL's Form 423-1(a), for which confidential classification is sought, should remain confidential for the time period the contract is in effect, plus six months. Disclosure of pricing information during the contract period or prior to the negotiation of a new contract is, FPL argues, reasonably likely to impair FPL's ability to negotiate future contracts as described above. FPL typically negotiates its No. 2 fuel oil contracts prior to the end of such contracts. On occasion, however, some contracts are not negotiated, until after the end of the current contract period. In those instances the contracts are typically renegotiated within six months. Accordingly, FPL maintains that it is necessary to maintain the confidentiality of the information identified as confidential on FPL's Form 423-1(a) for six months after the end of the individual contract period the information relates to.

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 for a specified longer period. FPL seeks confidential classification which turns on the expiration dates of contracts, some of which apparently expire in 1992, up to four (4) years from the date of the relevant month. It would appear, however, that FPL has offered "good cause" to be entitled to extended protection from disclosure as to those contracts for the period indicated.

In consideration of the foregoing, it is

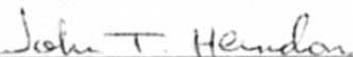
ORDER NO. 22606
DOCKET NO. 900001-EI
PAGE 6

ORDERED that Florida Power & Light Company's request for confidential classification of lines 36-38 of columns H, I, J, K, L, M, N, P and Q, and lines 12-5, and 35 of columns H, I, K, L, N, and R on FPSC Form 423-1(a) is granted. It is further

ORDERED that Florida Power & Light Company's request for the declassification dates included in the text of this order is granted. It is further

ORDERED that Florida Power & Light Company's requested declassification dates are granted.

By ORDER of Commissioner John T. Herndon, as Prehearing Officer, this 27th day of FEBRUARY, 1990.



JOHN T. HERNDON, Commissioner
and Prehearing Officer

(S E A L)

BAB/sj/6117L

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.

ORDER NO. 22606
DOCKET NO. 900001-EI
PAGE 7

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.