

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power) DOCKET NO. 950001-EI
Cost Recovery Clause and) ORDER NO. PSC-95-1082-CFO-EI
Generating Performance Incentive) ISSUED: August 30, 1995
Factor.)
_____)

ORDER GRANTING CONFIDENTIAL CLASSIFICATION

On July 25, 1995, Florida Power Corporation (FPC) filed a request for confidential classification of certain materials obtained as part of the Commission fuel audit in Docket No. 950001-EI. This request was given Document No. 07077-95 and contained staff audit workpapers related to a FPC affiliated fuel supplier, Electric Fuels Corporation (EFC), which were assigned Document No. 06836-95. On the same date, FPC also filed a Motion for Waiver of Twenty-One Day Filing Requirement. Rule 25-22.006(3)(a), Florida Administrative Code, says in part that

(t)o maintain continued confidential handling of the material the utility or other person must, with 21 days after the staff has obtained the material (or in the case of material obtained during the course of an audit, within 21 days after the field audit exit conference) file a request for confidential classification... **Absent good cause shown**, failure to file such a request within 21 days shall constitute a waiver of confidentiality.

(emphasis added). Although the rule provides the Commission with the discretion to grant a waiver, such discretion has been used sparingly.

In its motion, FPC maintains that this was the first time that the Commission field auditors requested documents from an affiliated fuel supplier. The EFC representative had complied with the request and supplied the documents under the belief that none of the confidential documents would be included with the audit report unless she was personally notified to the contrary. Despite this belief, the EFC representative was not advised of and did not attend the exit conference where FPC was told by the field auditors which documents would be retained by the field auditors as supporting workpapers for the audit report. As a result of the misunderstandings and miscommunication surrounding the confidential EFC documents, the EFC representative was not notified as requested and the 21-day period for requesting confidential classification elapsed without FPC filing the necessary request.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

In addition, FPC advised that at the time the final audit report was being readied for filing, the Commission's Division of Auditing and Financial Analysis determined that a request for confidential classification had not been timely filed and notified FPC of its the failure to file. Ordinarily no action would be taken by Staff; however, in this instance our Staff recognized that because of the confidential nature of the documents the ratepayer may suffer the consequence of higher fuel costs as a result of disclosure and that there were unusual circumstances surrounding the field audit document request. FPC was also advised by Staff that the confidentiality of the documents had been maintained by the Bureau of Records and Reporting pending the audit report.

FPC argues persuasively that the potential harm from disclosure would be higher fuel costs to FPC's ratepayers. Considering the mitigating incidents surrounding the failure to timely file the request for confidential classification and the potential harm to the ratepayers resulting from that failure, it is appropriate to waive the 21-day filing requirement.

Staff inspection of the initial filing revealed that it was facially deficient because the utility had not identified the lines at which the confidential material is found, as specified by Rule 25-22.006(4)(a), Florida Administrative Code (F.A.C.). On August 3, 1995, the utility filed a revised justification for confidential treatment, revised redacted copies of confidential documents, and revised highlighted documents specifying confidential material (Document No. 07452-95). This filing did identify confidential material by page and line.

Florida law provides, in Section 119.01, Florida Statutes, that documents submitted to governmental agencies shall be public records. The only exceptions to this law are specific statutory exemptions, and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This law derives from the concept that government should operate in the "sunshine."

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, F.A.C., FPC has the burden to show that the material submitted is qualified for confidential classification. Rule 25-22.006, F.A.C., provides that the Company may fulfill its burden by demonstrating that the information falls under one of the statutory examples set out in Section 366.093, Florida Statutes, or by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the Company or its ratepayers harm.

Section 366.093(3), Florida Statutes, provides several examples of proprietary confidential business information. Included in this list is "[i]nformation 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." To establish that material is proprietary confidential business information under Section 366.093(3) (d), Florida Statutes, a utility must demonstrate (1) that the information is contractual data, and (2) that the disclosure of the data would impair the efforts of the utility to contract for goods or services on favorable terms. This Commission has previously recognized that this latter requirement does not necessitate the showing of actual impairment, or the more demanding standard of actual adverse results; instead, it must simply be shown that disclosure is "reasonably likely" to impair the company's contracting for goods or services on favorable terms.

FPC argues that the information on the workpapers contain sensitive pricing information concerning contracts for the purchase of fuel and transportation services. Disclosure of this information to suppliers of such services would impair the ability of FPC or EFC, its affiliated coal supplier acting on FPC's behalf, to negotiate future fuel and transportation contracts on favorable terms. In particular FPC maintains that the highlighted information on workpaper 60-1, page 1 of 3, lines 2, 3, 5, 7, 10-12, 16-21, 26, 27, 33 and 35-37 identifies the base and adjusted contract prices for EFC/FPC's coal supplies and pricing terms of EFC/FPC's long-term contracts. Disclosure of the invoice price and terms would enable suppliers to determine the prices of their competitors. The likely result would be greater price convergence in future bidding. Disclosure would also result in 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 then expect. The same argument is advanced for workpaper 60-1, page 2 of 3, lines 3, 11, 12, 17, 18 and 25-27. As to the highlighted information on workpaper 60-1, page 3 of 3, lines 6, 7, 29 and 30, it identifies comparable information regarding FPC's oil suppliers and FPC offers the same justification.

FPC contends that the data on page 60-1/3, lines 1 and 2, columns 3, 6, 13; lines 13 and 14, columns 2, 4, 5, 7, 11, 12 and 13; lines 17 and 18, column 2 and 13; and line 23, columns 2 through 6 identifies the invoice price of EFC/FPC contractual suppliers and their freight rates. The freight price is a function of EFC's contract rate with the railroad and the distance between each coal supplier and Crystal River. Since these distances are readily available, 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 railroad would be reluctant to grant concessions that other rail users would then expect. Disclosure of EFC/FPC's water transportation rates would allow the contract cost of coal to be determined by subtracting the water rate from the delivered cost of coal. FPC asserts that the same rationale would apply to the information contained on page 60-3/2, line 1, columns 2, 3, 6 and 13; line 2, columns 3, 6 and 13; lines 5 and 6, columns 2 and 13; line 13, columns 2, 4, 5, 7-9, 11 and 13; line 14, columns 4, 5, 7-9, 11 and 13; and lines 17 and 18, columns 2 and 13.

Accordingly, the foregoing information regarding contractual information is found to be proprietary confidential business information and is granted confidential status.

Section 366.093 (3)(e), Florida Statutes, identifies as confidential information "Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." The utility has requested that the remaining highlighted information in various documents be found proprietary confidential business information on the basis of Sections 366.093 (1) and (d). This information, however, does not appear to result from bids or other contractual data; instead, the information more closely relates to competitive interests and will be considered on that basis. FPC maintains the data on page 60-1/2, lines 7, 9, and 10, columns 2-4 and 6, and on line 8, column 7 identifies components of EFC's internal financial information as to overhead, additional car cost, and interest. This information is proprietary data of EFC's and is not available anywhere else publicly. Potential coal suppliers can use this information on competitive alternatives in their offers of coal by rail and water and impair EFC's ability to obtain the lowest cost coal and transportation on behalf of FPC. Further, FPC argues this rationale is also valid for the highlighted information on page 60-1/5, lines 2, 5 and 6, columns 1-4, and lines 7 and 9, columns 2-4; page 60-1/7, line 2, column 2, lines 3-5, columns 2-5, and line 6, columns 2-4; page 60-2/1, lines 7, 9, 10, columns 2-4 and 6, line 8, column 6, and lines 18 and 19, columns 1-5; page 60-3/1, lines 7, 9 and 10, columns 2-4 and 6, and line 8, column 7; page 60-3/4, lines 2, 5 and 6, columns 1-4, and lines 7 and 9, columns 2-4; page 60-3/6, line 2, column 2, lines 3-5, columns 2-4, and line 6; and page 60-4/1, line 7, columns 2-4, 6 and 7, and lines 9 and 10, lines 2-4 and 6. Accordingly, the foregoing information is found to be proprietary confidential business information and is granted confidential status.

DECLASSIFICATION

FPC seeks protection from disclosure of the confidential information identified in its request for a period of 24 months, which is necessary to protect FPC and its ratepayers against adverse effects on future negotiations that would result from disclosure of the information to potential fuel and transportation suppliers. 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 May, 1993, the information will remain current during April, 1994. Thereafter, the initial May, 1993, information will be one escalation adjustment removed from the current information reported each month through April, 1995. If confidential treatment were to expire after 18 months, suppliers would be able to accurately estimate current prices in November, 1994, 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

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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 April, 1995, for a 24-month period. FPC has shown good cause for the Commission to extend its protection of the identified confidential information from 18 to 24 months. FPC's request to extend the time period for confidentiality is, therefore, granted. The declassification date will be 24 months from the date of this Order.

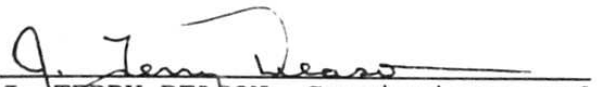
In consideration of the foregoing, it is

ORDERED that Florida Power Corporation's request for confidential classification of the above specified information contained in the documents identified as Document No. 06836-95, Document No. 07077-95 and Document No. 07452-95 is granted, as discussed within the body of this Order. It is further

ORDERED that the proprietary confidential business information shall remain confidential for a period of 24 months from the date 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 time period for confidential status.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 30th day of August, 1995.



J. TERRY DEASON, Commissioner and
Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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