

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power
Cost Recovery Clause and
Generating Performance Incentive
Factor.

DOCKET NO. 970001-EI
ORDER NO. PSC-97-1228-CFO-EI
ISSUED: October 10, 1997

ORDER GRANTING
FLORIDA POWER & LIGHT COMPANY'S REQUEST FOR CONFIDENTIAL
TREATMENT OF PORTIONS OF ITS JUNE, 1997, FORM 423
(DOCUMENT NO. 07854-97)

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 for FPSC form 423-1(a), 423-2, 423-2(a), 423-2(b), and 423-2(c) for the month of June, 1997. The confidential information is located in Document No. 07854-97. The information contained in FPL's June, 1997, 423 Forms constitutes 1) contractual data and, 2) the disclosure of this data would impair the efforts of the utility to contract for goods or services on favorable terms. FPL maintains that the information contained in the Form 423s is proprietary confidential business information entitled to protection from disclosure pursuant to section 366.093(1) and (3)(d), Florida Statutes.

FPL argues that the information contained in lines 1 through 19 of columns H, I, J, K, L, M, N, P and Q of Form 423-1(a) 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 (1995). The information in column H delineates the invoice price FPL has paid for No. 3 and No. 6 fuel oil per barrel for specific shipments from specific suppliers. 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 generally contain two components, a markup 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. The knowledge of each others' prices among No. 3 and No. 6 fuel oil suppliers is reasonably likely to cause the suppliers to converge on a target price, or to follow a price leader, effectively eliminating any opportunity for a major buyer like FPL to use its market presence to gain price concessions from

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any one supplier. The end result is reasonably likely to be increased No. 3 and No. 6 fuel oil prices and therefore increased electric rates.

In addition, FPL contends that the No. 3 and No. 6 fuel oil data identified in its 423-1(a) form are contractual data and that FPL's ability to procure No. 3 and No. 6 fuel oil, terminaling and transportation services, and petroleum inspection services is reasonably likely to be impaired by the disclosure of the information identified because: the markets in which FPL, as a buyer, must procure No. 3 and No. 6 fuel oil, terminaling and transportation services are oligopolistic; and, pursuant to economic theory, a substantial buyer in an oligopolistic market can obtain price concessions not available to other buyers, but the disclosure of such concessions would end them, resulting in higher prices to that purchaser.

FPL asserts that the contractual data found in columns I through N on Form 423-1(a) are an algebraic function of column H. FPL asserts that the publication of these columns together, or independently, could allow a supplier to derive the invoice price of oil. FPL also maintains that some FPL fuel contracts provide for an early payment incentive in the form of a discount from the invoice price. The existence and amount of such discount is confidential for the reasons stated above relative to price concessions. FPL explains that it may either reject a shipment of fuel that does not meet its contract requirements, or it may accept the shipment and apply a quality adjustment. FPL asserts that these actions operate as pricing terms and that they are as important as the price itself and are therefore entitled to confidential treatment for the reasons stated relative to price concessions.

FPL contends that column N is entitled to the same confidential treatment as column H because of the relatively few times that there are quality or discount adjustments. Column N will equal column H most of the time, according to FPL, and, as a consequence, column N is entitled to the same confidential protection as column H above. FPL asserts that the information in column R of 423-1(a) 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, and, as a consequence, FPL argues that disclosure of columns P and Q would

allow a supplier to calculate the invoice or effective purchase price of oil (columns H and N) by subtracting these columnar variables from column R.

In related transactions, FPL argues that terminaling and transportation services in Florida tend to have the same, if not more severe, oligopolistic attributes of fuel oil suppliers. In 1987, FPL claims that it was only able to find eight qualified parties with an interest in bidding either or both of these services. Of these, four responded with transportation proposals and six with terminaling proposals. Because of the small demand in Florida for both of these services, market entry is difficult. FPL also asserts that petroleum inspection services have the market characteristics of an oligopoly. Because of the limited number of fuel terminal operations, there are correspondingly few requirements for fuel inspection services. In FPL's last bidding process for petroleum inspection services, there were only six qualified bidders. Consequently, disclosure of these contract data is reasonably likely to result in increased prices for petroleum and inspection services.

DECLASSIFICATION

FPL requests that the information contained in columns H through N lines 1 and 2 of Form 423-1(a) not be declassified until June 30, 1998. FPL requests that the information contained in columns H through N lines 3 through 19 of Form 423-1(a) not be declassified until December 31, 1997. FPL also requests that the information contained in column Q lines 1 through 19 of Form 423-1(a) not be declassified until December 31, 1997. FPL's rationale for the declassification request is that the date of declassification is determined 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 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 in the detailed request for confidentiality for information contained in the Form 423-1(a). FPL typically renegotiates its No. 3 and No. 6 fuel oil contracts and fuel-related services contracts prior to the end of such contracts. However, on occasion, some contracts are not renegotiated until after the end of the current contract period. In those instances, the contracts are typically renegotiated within 6 months. Consequently, it is necessary to maintain the confidentiality of the information identified as confidential on

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FPL's Form 423-1(a) for six months after the end of the individual contract period to which the information relates.

FPL further requests that the No. 3 and No. 6 fuel oil price information on 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 that price information identified as confidential be kept confidential for a period of 6 months after the delivery. A 6 month period 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. 3 and No. 6 fuel oil. Disclosure of this information any sooner than six months after completion of the transaction is reasonably likely to impair FPL's ability to negotiate such purchases.

Upon review, it appears that the information discussed above is proprietary confidential business information. Good cause having been shown, FPL's request for confidential treatment for requested portions of its June 1997 Form 423 shall be granted.

In consideration of the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Florida Power & Light Company's request for confidential classification for portions of document number 07854-97 is granted as set forth in 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.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 10th day of October, 1997.



SUSAN F. CLARK, 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, 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.