

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-97-1526-CFO-EI  
ISSUED: December 4, 1997

ORDER GRANTING

FLORIDA POWER & LIGHT COMPANY'S REQUEST FOR CONFIDENTIAL  
TREATMENT OF PORTIONS OF ITS APRIL, 1997, FORM 423  
(DOCUMENT NO. 10061-97)

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) for the month of April, 1997. The confidential information is located in Document No. 10061-97. FPL argues that the information contained in its April, 1997, 423 Forms constitutes contractual data the disclosure of which would impair the efforts of the utility to contract for goods or services on favorable terms. FPL maintains that the information contained in the 423 Forms 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 28 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 its efforts "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 any one supplier.

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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, terminalling 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, terminalling and transportation services are oligopolistic. Additionally, FPL asserts that the fuel oil information should be granted confidential classification because, according 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. This is another reason why FPL asserts that the information in column M should be granted confidential classification.

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 argues that columns P and Q are also entitled to confidential classification because they include terminalling and

transportation services. FPL argues that in Florida these services tend to have the same, if not more severe, oligopolistic attributes as do 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 terminalling 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 this contract data is reasonably likely to result in increased prices for petroleum and inspection services.

FPL requests confidential classification for the information contained in lines 7-12 of columns H, I, K, L N, and R of its Form 423-1(a) because this information is contractual information which, if made public, would impair FPL's efforts "to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. The information delineates 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 a bidding process. At the request of the No. 2 fuel oil suppliers, FPL has agreed to not publicly disclose any supplier's bid. This non-disclosure agreement protects both FPL's ratepayers and the bidding suppliers. As to FPL's ratepayers, the non-public bidding procedure provides FPL with a greater variation in the range of bids that would otherwise not be available if the bids, or the winning bid by itself, were publicly disclosed. With public disclosure of the No. 2 fuel oil prices found on FPL's Form 423-2(a), the bids would narrow to a closer range around the last winning bid, eliminating the possibility that one supplier might, based on economic situation, come in substantially lower than the other suppliers. Non-disclosure likewise protects the suppliers from divulging any economic advantage that supplier may have which the others have not discovered.

#### 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 28, Form 423-1(a) not be declassified until October 31, 1997. FPL requests that the information contained in columns H, I, K, L, N, and R, lines 7 through 12 of Form 423-1(a) not be declassified until December 31, 1998. FPL requests that the information in column P, lines 1 through 6 of Form 423-1(a) not be disclosed until March 31, 1997. FPL also requests that the information contained in column Q lines 1 through 28 of Form 423-1(a) not be declassified until October 31, 1998. 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 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 April, 1997, Form 423 shall be granted for the requested amount of time.

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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 10061-97 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 4th day of December, 1997.

  
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SUSAN F. CLARK, Commissioner and  
Prehearing Officer

( S E A L )

GAJ

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)

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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.