

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 980001-EI
ORDER NO. PSC-98-0630-CFO-EI
ISSUED: May 6, 1998

ORDER GRANTING CONFIDENTIAL CLASSIFICATION TO PORTIONS OF FLORIDA POWER CORPORATION'S 423 FORMS FOR JANUARY, 1998
(DOCUMENT NO. 03461-98)

Pursuant to Rule 25-22.006, Florida Administrative Code, and Section 366.093, Florida Statutes, Florida Power Corporation (FPC) requests confidential classification of certain information on its Form 423 Fuel Reports for the month of January, 1998. FPC asserts that the information contained in these reports relates to sensitive pricing and contractual information for the purchase of fuel and transportation services. FPC maintains that the disclosure of this information to suppliers of such services "would impair the ability of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. FPC asserts, therefore, that this information is proprietary, confidential business information and as such, is entitled to protection from disclosure under Sections 366.093(1), and (3)(d), Florida Statutes. FPC affirms that this information has not been publicly disclosed. FPC requests that this information be granted confidential classification for 24 months from the date of the issuance of this Order. As justification therefor FPC asserts that this time period is necessary "to protect FPC and its ratepayers against the adverse effects on future negotiations that would result from disclosure of the information to potential fuel and transportation suppliers."

INFORMATION FOR WHICH CONFIDENTIAL CLASSIFICATION IS SOUGHT

FPC requests that the information contained in the following table be granted confidential classification:

TABLE 1: FORM 423-1A

FORM	LINES	COLUMNS
423-1A	1, 3-5, 8-13, 15-19, 22, 26-28	H-N, P, Q

FPC asserts that the information under column H, "Invoice Price," identifies the basic component of the contract pricing mechanism. According to FPC, disclosure of the invoice price, particularly if in conjunction with information under other columns discussed

DOCUMENT NUMBER-DATE

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FPC-RECORDS/REPORTING

below, would enable suppliers to determine the pricing mechanisms of their competitors. FPC asserts that the reasonably likely result would be greater price convergence in future bidding. Disclosure, according to FPC, would also result in a reduced ability on the part of a major purchaser such as FPC to bargain for price concessions. FPC explains that this would be because suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect.

FPC also maintains that disclosure of the "Invoice Amount," column I, when divided by the "Volume" figure in column G, would disclose the "Invoice Price" found in column H. FPC asserts that disclosure of "Discount," column J, with other information in columns K, L, M, or N, could also disclose the "Invoice Price" shown in column H by mathematical deduction. FPC also asserts that disclosure of discounts resulting from bargaining concessions would impair the ability of FPC to obtain such concessions in the future. FPC maintains that column N is particularly sensitive because it is usually the same as or only slightly different from the "Invoice Amount" in column H.

FPC asserts that disclosure of "Additional Transportation Charges," column P, in conjunction with the information under column Q, would also disclose the "Effective Purchase Price" in column N by subtracting it from the "Delivered Price" available in column R.

FPC requests confidential classification for portions of its Form 423-2 as illustrated in the table below:

TABLE 2: FORM 423-2

FORM	PLANT NAME	LINES	COLUMNS
423-2	TRANSF. FACILITY IMT	1-11	G, H
423-2	CRYSTAL RIVER 1 & 2	1-11	G, H
423-2	CRYSTAL RIVER 4 & 5	1-6	G, H

FPC affirms that the effective purchase price is found on Form 423-2A, column L, and on Form 423-2B, column G. FPC maintains that in nearly every case, it is the same as the F.O.B. mine price found under column F on Form 423-2A, which is the current contract price of coal purchased from each supplier by Electric Fuels Corporation (EFC) for delivery to FPC. FPC asserts that disclosure of the information in column G would also enable suppliers to determine the prices of their competitors, which would likely result in greater price convergence in future bidding. Disclosure, according to FPC, would also result in a reduced ability on the part of a major purchaser such as EFC to bargain for price concessions on behalf of FPC. FPC asserts that suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect. In addition, FPC contends, disclosure of the effective purchase price would disclose the total transportation cost reflected in column H by subtracting column G from the F.O.B. plant price in column I.

FPC contends that the information in column H is entitled to confidential classification because disclosure of the total transportation cost, when subtracted from the F.O.B. plant price in column I, would also disclose the effective purchase price in column G.

FPC asserts that the information contained in its Form 423-2A as illustrated in the table below is entitled to confidential classification:

TABLE 3: FORM 423-2A

FORM	PLANT	LINES	COLUMNS
423-2A	TRANSF. FACILITY IMT	1-11 2-8	F, H-J, L K
423-2A	CRYSTAL RIVER 1 & 2	1-1 1-2, 8, 10	F, H, I, J, L K
423-2A	CRYSTAL RIVER 4 & 5	1-6 N/A	F, H, I, J, L K
423-2A	ALL PLANTS	N/A	I ONLY

FPC asserts that the F.O.B. mine price in column F is the current contract price of coal purchased from each supplier by EFC for delivery to FPC. FPC maintains that disclosure of this information would enable suppliers to determine the prices of their competitors, which would likely result in greater price convergence in future bidding. FPC asserts that disclosure would also likely result in a reduced ability on the part of a major purchaser such as EFC to bargain for price concessions on behalf of FPC. FPC claims that this is because suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect.

FPC asserts that columns H-L are all mathematical derivatives of column F whereby a competitor could take the information in these columns and by using other publicly available information, deduce the F.O.B. mine price for coal.

FPC also requests confidential classification for the information contained in its Form 423-2B as illustrated in the table below:

TABLE 4: FORM 423-2B

FORM	PLANT	LINES	COLUMNS
423-2B	TRANSF. FACILITY IMT	1-11	G, P
423-2B	CRYSTAL RIVER 1 & 2	1-11	G, I-J, P
423-2B	CRYSTAL RIVER 4 & 5	1-6	G, I-J, P

FPC maintains that the information contained in column G of Form 423-2B is the same as that described above for Form 423-2 (Table 2), and is entitled to confidential classification for the same reasons as given under Form 423-2 (Table 2). FPC asserts that the information in column I, "Rail Rate," is a function of EFC's contract rate with the railroad and the distance between each coal supplier and Crystal River. Because these distances are readily available, FPC asserts that disclosure of the rail rate would effectively disclose the contract rate. FPC asserts that this would impair the ability of a high volume user such as EFC to obtain rate concessions because railroads would be reluctant to grant concessions that other rail users would then expect.

Similarly, FPC asserts that column J, "Other Rail Charges," consists of EFC's railcar ownership cost. FPC maintains that this cost reflects internal trade secret information which is not available to any party with whom EFC contracts. FPC maintains that if this information is disclosed to the railroad, their existing knowledge of EFC's rail rates would allow them to determine EFC's total rail cost and be better able to evaluate EFC's opportunity to economically use other competing transportation alternatives.

FPC maintains that column P, "Transportation Charges," is the same as the information under Column H of Form 423-2, Table 2. According to FPC, in the case of rail deliveries to the Crystal River Plants, these figures represent EFC's current rail transportation rate. In the case of waterborne deliveries to the Crystal River plants, the figures represent EFC's current Gulf barge transportation rate. In the case of water deliveries to IMT, the figures represent EFC's current river transportation rate. FPC contends that protection of these transportation rates would lead suppliers to bid their best price without an opportunity to calculate a perceived maximum acceptable price.

FPC requests confidential classification for the portions of its Form 423-2C as illustrated in the table below:

TABLE 5: FORM 423-2C

FORM	PLANT	LINES	COLUMNS
423-2C	TRANSF. FACILITY IMT	NONE	J, K
423-2C	TRANSF. FACILITY TTI	NONE	J, K
423-2C	CRYSTAL RIVER 1 & 2	1, 2	J, K
423-2C	CRYSTAL RIVER 4 & 5	1	J, K

FPC asserts that the type of information under columns J and K relates to the particular column on Form 423-2, 2A, or 2B to which the adjustment applies. The column justifications above for Form 423-2A, columns I and K, apply here.

REQUESTED DATE OF DECLASSIFICATION

FPC seeks protection from disclosure of the confidential information identified in the tables above for 24 months. FPC asserts that this is the minimum time necessary to ensure that subsequent disclosure will not allow suppliers to determine accurate estimates of the then-current contract price.

Pursuant to Section 366.093(4), Florida Statutes, confidential protection may only be granted for a period of 18 months unless the entity requesting confidential classification shows good cause why the period should be extended. As justification for an extension of the statutory period, FPC asserts that the majority of EFC's contracts contain annual price adjustment provisions. According to FPC, if suppliers were to obtain confidential contract information for a prior reporting month at any time during the same 12 months adjustment period, current pricing information would be disclosed. In addition, FPC maintains that if the previously reported 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.

FPC contends that in order to guard against this competitive disadvantage, confidential information requires protection from disclosure for the initial 12 month period in which it could remain current and for the following 12 month period in which it can be easily converted into essentially current information.

FPC maintains that an 18 month confidentiality period would effectively waste the protection given in the first six months of the second 12 month pricing period by allowing disclosure of the same vintage information in the last six months of the pricing period. The information disclosed in the six months following the expiration of the 18 month confidentiality period would be equally as detrimental to FPC's interests and to its ratepayers, in terms of revealing the current price as the information protected from disclosure during the preceding six months. To make the protection meaningful, FPC asserts that it should be extended six months beyond the end of the 18 month confidentiality period permitted by statute. FPC maintains that doing so would mean that the information would be an additional 12 months and one price adjustment further removed from the current price at the time of disclosure.

ORDER NO. PSC-98-0630-CFO-EI
DOCKET NO. 980001-EI
PAGE 7

CONCLUSION

Upon review, 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), Florida Statutes. This information reveals invoice prices, transportation charges and coal prices.

The public disclosure of any of these could reduce FPC's competitiveness in the marketplace. This, in turn, could result in higher prices for transportation and coal.

This information, therefore, is entitled to confidential classification. FPC has provided adequate justification for extending the confidentiality period an extra six months. The information described above for which confidential classification is requested shall be granted confidential classification for a period of 24 months from the date of the issuance of this Order.

It is therefore

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the information described within the body of this Order and contained in Document No. 03461-98 is granted confidential classification. It is further

ORDERED that the information described within the body of this Order and contained in Document No. 03461-98 shall be granted confidential classification for a period of 24 months from the date of the issuance of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

ORDER NO. PSC-98-0630-CFO-EI
DOCKET NO. 980001-EI
PAGE 8

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 6th Day of May, 1998.



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.

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.