

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power	)	DOCKET NO. 900001-EI
Cost Recovery Clause and Generating	)	ORDER NO. 22510
Performance Incentive Factor.	)	ISSUED: 2-7-90
	)	

ORDER ON CONFIDENTIALITY

On January 12, 1990, Florida Power & Light (FPL) requested confidential classification of certain information reported on Commission Form 423-1(a) for November 1989. First, FPL has requested specified confidential classification of lines 3 through 12 of Columns H, I, J, K, L, M, N, P, and Q, and lines 1 through 2 of Columns H, I, K, L, N, and R. FPL argues that lines 3 through 12 of Column H 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.

DOCUMENT NUMBER-DATE

01171 FEB -7 1990

FPSC-RECORDS/REPORTING

ORDER NO. 22510  
DOCKET NO. 900001-EI  
PAGE 2

FPL argues that lines 3 through 12 of Columns I, K, L, M and N should be classified confidential because 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 price of oil. Further, the same lines in Column M include 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. The same lines in Column N reveal the existence of quality or discount adjustments and typically will be identical to H. The same lines in Columns P and Q, FPL argues, are algebraic variables of those in Column R 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. The same lines in both Columns P and Q, FPL argues, are alternatively entitled to confidential classification in that they contain terminalling, 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 terminalling, transportation, and petroleum inspection service costs.

FPL further argues that lines 1 through 2 of 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. 2 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. Non-disclosure 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

ORDER NO. 22510  
 DOCKET NO. 900001-EI  
 PAGE 3

that would otherwise not be available if the bids, or the winning bid itself, were to be publicly disclosed. 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.

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:

<u>LINE(S)</u>	<u>COLUMN</u>	<u>DATE</u>
3 - 4	H - N	09-30-90
5 - 9	H - N	06-30-91
10	H - N	05-03-90
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

Disclosure of pricing information during the contract period or prior to the negotiation of a new contract, FPL argues, is reasonably likely to impair its ability to negotiate future contracts. According to FPL, it typically renegotiates its No. 6 fuel oil contracts and fuel related services contracts prior to the expiration of such contracts. Contracts not renegotiated until after the current contract has expired are typically renegotiated within six months of the expiration of the contract. FPL concludes, therefore, that it is necessary to maintain the confidentiality of the identified information for six months after the expiration of the individual contract period to which the information relates.

FPL further argues that No. 6 fuel oil price information relating to oil not purchased pursuant to an already existing contract and the delivery terms of the agreement under which it is purchased should be kept confidential for a period of six months after the completion of the transaction. Six months, argues FPL, is necessary to allow FPL to use its market presence to gain price concessions during seasonal fluctuations in No. 6 fuel oil demand. Disclosure prior to that time, it is maintained, is likely to impair FPL's ability to negotiate such purchases.

ORDER NO. 22510  
DOCKET NO. 900001-EI  
PAGE 4

Section 366.093(1), Florida Statutes, states in pertinent part:

...Upon request of the public utility, any records received by the Commission which are shown to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1).

Subsection (3)(d) of the section defines proprietary confidential business information as, among other things, information concerning bids or other contractual data, the disclosure of which would impair the efforts of the utility to contract for services on favorable terms. Rule 25-22.006(4), Florida Administrative Code, states that classification of material as proprietary confidential business information can be justified by demonstrating how the information it contains falls under one or more of the statutory examples.

A review of Document No. 356-90, FPL's request for confidential treatment of isolated lines in identified columns of FPSC Form 423-1(a), reveals that the identified information is confidential information as contemplated by Section 366.093(3)(d), Florida Statutes;" disclosure of such information would be reasonably likely to impair FPL's efforts to contract for fuel and fuel related services on favorable terms in the future." The identified information, therefore, is entitled to confidential treatment.

In consideration of the foregoing, it is

ORDERED that the information that FPL seeks to protect from public disclosure on its November 1989 FPSC Form 423-1(a) as identified is confidential and shall be classified as confidential and shall be exempt from the requirements of Section 119.07(1), Florida Statutes. In addition, the proposed declassification dates shall apply. It is further

ORDERED that if a protest is filed within 14 days of the date of this order, it will be resolved by the appropriate Commission panel pursuant to Rule 25-22.006, Florida Administrative Code.

ORDER NO. 22510  
DOCKET NO. 900001-EI  
PAGE 5

By ORDER of Commissioner John T. Herndon, as Prehearing  
Officer, this 7th day of FEBRUARY, 1990.

John T. Herndon  
JOHN T. HERNDON, Commissioner  
and Prehearing Officer

( S E A L )

BAB