

## BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power Cost Recovery ) DOCKET NO. 900001-EI  
 Clause and Generating Performance Incentive Factor.) ORDER NO. 22643  
 ) ISSUED: 3-6-90

ORDER REGARDING FPC'S REQUEST FOR CONFIDENTIAL TREATMENT  
 OF ITS JULY, AUGUST, AND SEPTEMBER, 1989 FORMS 423

Florida Power Corporation (FPC), pursuant to Section 366.093, Florida Statutes, and Rules 25-22.006, Florida Administrative Code, has filed the following requests for specified confidential treatment of its monthly FPSC Forms 423 in Docket No. 890001-EI:

<u>MONTH/YEAR</u>	<u>FORMS</u>	<u>DATE FILED</u>	<u>DOCUMENT NO.</u>
July 1989	1(a), 2(a), 2(b), 2(c)	Sept. 15, 1989	9233-89
Aug. 1989	1(a), 2(a), 2(b), 2(c)	Oct. 19, 1989	10320-89
Sept. 1989	1(a), 2, 2(a), 2(b), 2(c)	Nov. 27, 1989	11455-89
Sept. 1989	1(a), 2, 2(a), 2(b), 2(c)	Dec. 8, 1989	11820-89

As the above table indicates, FPC seeks confidential treatment of its Forms 423-1(a), 2(a), 2(b) and 2(c) for the months of July and August, 1989, and for those forms, as well as Form 423-2, for the month of September, 1989.

In its requests related to its July and August, 1989, fuel report forms, FPC has failed to highlight the lines and columns contained in the forms for which it seeks confidentiality and to provide specific justifications for each line or column; FPC has simply requested confidential classification of various forms. Rule 25-22.006(4)(c), Florida Administrative Code, provides that:

The burden of proof shall be on the source to show that the document or other material in question contains bona fide proprietary confidential business information. A request for specified confidential classification that fails to identify the proprietary information in sufficient detail to permit a reasoned analysis or which is insufficient on its face. In the alternative, the source may be directed to file a more detailed request before a ruling is made.

We find that FPC should be directed to file a more detailed request for the forms relating to July and August, 1989, as discussed above.

DOCUMENT NUMBER-DATE

02055 MAR -6 1990

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As to its requests relating to September, 1989, FPC has properly included and highlighted the relevant forms and columns. FPC argues that the information contained in column H, Invoice Price, of Form 423-1(a) identifies the basic component of the contract pricing mechanism. Disclosure of the invoice price, FPC contends, particularly in conjunction with information provided in other columns as discussed below, would enable suppliers to determine the pricing mechanisms of their competitors. A likely result would be greater price convergence in future bidding and 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 expect. FPC also argues that disclosure of column I, Invoice Amount, when divided by the figure available in column G, Volume, would also disclose the Invoice Price in column H.

FPC also argues that disclosure of column J, Discount, in conjunction with other information under columns K, Net Amount, L, Net Price, M, Quality Adjustment, or N, Effective Purchase Price, could also disclose the Invoice Price available in column H by mathematical deduction. In addition, FPC maintains, disclosure of discounts resulting from bargaining concessions would impair its ability to obtain such concessions in the future for the reasons discussed above. Information contained in column N is particularly sensitive, FPC argues, because it is usually the same as or only slightly different from the Invoice Price in column H.

FPC argues that disclosure of the information in column P, Additional Transport Charges, in conjunction with the information located in column Q, Other Charges, would also disclose the Effective Purchase Price in column N by subtracting them from the Delivered Price available in column R. FPC, therefore, concludes that the information contained in columns P and Q are entitled to confidential treatment. We find such disclosure could ultimately adversely affect FPC's ratepayers.

FPC further argues that the information in column G on FPSC Form 423-2, Effective Purchase Price, is also found in column L, Effective Purchase Price, on FPSC Form 423-2(a), and in column G, Effective Purchase Price, on FPSC Form 423-2(b). FPC argues that in nearly every case, the Effective Purchase Price is the same as the F.O.B. Mine Price found under column F on FPSC Form 423-2(a), which is the current contract price of coal purchased from each supplier by Electric Fuels Corporation (EFC) for delivery to FPC. Disclosure of this information, FPC contends, would enable suppliers to determine the prices of their competitors which, again, would likely result in greater price convergence in future bidding and a reduced ability on the part of a major purchaser, such as

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EFC, to bargain for price concessions on behalf of FPC, since suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect. In addition, FPC contends that disclosure of the Effective Purchase Price would also disclose the Total Transportation Cost in column H by subtracting column G from the F.O.B. Plant Price in column I.

FPC further argues that the figures in column H, Total Transport Charges, of Form 423-2 are the same as the figures in column P, Total Transportation Charges, on Form 423-2(b). In addition, FPC contends that disclosure of the Total Transportation Cost, when subtracted from the F.O.B. Mine Price in column I would also disclose the Effective Purchase Price in column G. We find such disclosure could adversely affect FPC's ratepayers.

FPC also argues that column F, F.O.B. Mine Price, of Form 423-2(a) is the current contract price of coal purchased from each supplier by EFC for delivery to FPC. Disclosure of this information, FPC maintains, would enable suppliers to determine the prices of their competitors which would likely result in greater price convergence in future bidding and a reduced ability on the part of a major purchaser, such as EFC, to bargain for price concessions on behalf of FPC since suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect.

Column H, Original Invoice Price, FPC argues, is the same as in column F, F.O.B. Mine Price, except in rare instances when the supplier is willing and able to disclose its Shorthaul and Loading Charges in column G, if any, included in the contract price of coal. Disclosure, FPC argues, would be detrimental for the reasons identified for column F of this form. Column I, Retroactive Price Adjustment, FPC argues, are normally received well after the reporting month and are, therefore, included on Form 423-2(c) at that time, along with the resulting new price. Disclosure of this information, FPC contends, would, therefore, disclose the F.O.B. Mine Price.

FPC argues that column J, Base Price, is the same as the original Invoice Price in column H because Retroactive Price Adjustments available in column I are typically received after the reporting month and are included on Form 423-2(c) at that time. Disclosure, FPC contends, would, therefore, be detrimental for the reasons identified above as those that would result from disclosure of F.O.B. Mine Prices. FPC further argues that column K, Quality Adjustments, are typically received after the reporting month and are, therefore, also included on Form 423-2(c) at that time. These adjustments, FPC informs, are based on variations in

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coal quality characteristics, usually BTU content, between contract specifications and actual deliveries. Disclosure of this information, FPC concludes, would allow the F.O.B. Mine Price to be calculated using the associated tonnage and available contract BTU specifications. FPC also maintains that column L, the Effective Purchase Price, is the same as the Base Price in column J because quality adjustments are typically not reported in column K. Disclosure of the information therein, FPC concludes, would, therefore, disclose the F.O.B. Mine Prices. As FPC previously noted in discussing column G of Form 423-2, the Effective Purchase Price is available in three places in the Form 423s: column L on Form 423-2(a) and both column G's on Forms 423-2 and 423-2(b). FPC argues that its justification for non-disclosure in the discussion relating to those columns applies here.

FPC additionally argues that column H, Additional Shorthaul & Loading Charges, of Form 423-2(b) are EFC's transportation rates to move coal purchased F.O.B. mine to a river loading dock for waterborne delivery to FPC. These short haul moves, FPC informs, are made by rail or truck, often with the alternative to use either. This provides EFC with the opportunity to play one alternative against the other to obtain bargaining leverage. Disclosure of these short haul rates, FPC concludes, would provide the rail and truck transportation suppliers with the prices of their competitors, and would severely limit EFC's bargaining leverage.

Column I, Rail Rate, FPC argues, 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 maintains, 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 railroads would be reluctant to grant concessions that other rail users would then expect.

FPC also argues that Column J, Other Rail Charges, consists of EFC's railcar ownership cost. This cost, FPC contends, is internal trade secret information which is not available to any party with whom EFC contracts, railroads or otherwise. If this information were disclosed to the railroad, FPC concludes, their existing knowledge of EFC's Rail Rates would allow them to determine EFC's total rail cost and to better evaluate EFC's opportunity to economically use competing transportation alternatives.

Column K, River Barge Rate, FPC argues, is EFC's contract rate for barge transportation from up-river loading docks to the Gulf barge transloading facility at the mouth of the Mississippi. Disclosure of

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this information would enable other suppliers of river barge transportation to determine the prices of their competitors, which would likely result in greater price convergence in future bidding and a reduced ability on the part of a high volume user, such as EFC, to bargain for price concessions on behalf of FPC, since suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect.

Column L, Transloading Rate, FPC argues, is EFC's contract rate for terminaling services at International Marine Terminals (IMT). Disclosure of this contract rate to other suppliers of terminaling services, FPC argues, would be harmful to EFC's ownership interest in IMT by placing IMT at a disadvantage in competing with those suppliers for business on the lower Mississippi.

Column M, Ocean Barge Rate, FPC argues, is EFC's contract rate for cross-barge transportation to Crystal River by Dixie Fuels Limited (DFL). Disclosure of this contract rate to other suppliers of cross-Gulf transportation services, FPC contends, would be harmful to EFC's ownership interest in DFL by placing DFL at a disadvantage in competing with those suppliers for business on the Gulf. Such a disadvantage in competing for back-haul business would also reduce the credit to the cost of coal it provides. Column P, Total Transportation Charges, FPC argues, are the same as the Total Transportation Cost under column H on Form 423-2, and are entitled to confidential treatment for reasons identical to those discussed in relation to those charges. We find such disclosure could ultimately adversely affect FPC's ratepayers.

The information in column J, Old Value, and column K, New Value, of Form 423-2(c), FPC argues, relates to the particular column on Form 423-2, 2(a), or 2(b) to which the adjustment applies. The column justifications above also apply to the adjustments for those columns reported on Form 423-2(c), especially retroactive price increases and quality adjustments which apply to the majority of the adjustments on that form. We find such disclosure could ultimately adversely affect FPC's ratepayers.

In its various requests for confidential classification, FPC has failed to propose declassification dates, justifications therefore, or reasons it is unable to propose such dates. 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 for a specified longer period.



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Rule 25-22.006(4)(a), Florida Administrative Code, requires that the offered justification for confidential treatment include a date by which the involved material is no longer proprietary confidential business information or a statement that such a date cannot be determined and the reasons therefore. Florida Power Corporation's requests address only confidential classification; they are silent as to declassification. Florida Power Corporation has failed to provide us not only with proposed declassification dates, but with a basis for determining the validity of the proposed dates. While the maximum statutory period of 18 months is available, we are unable to determine the period for which confidential classification is justified. We find that in the future FPC should clarify its requests for confidential treatment by providing either the required proposed date of declassification or reasons for its inability to propose such date. Without classification, for now, we will observe the statutory period.

In the future, we would advise FPC to provide the Commission with proposed declassification dates and a basis upon which we can make an informed determination as to the validity of those dates; FPC will not automatically benefit from the statutory period. Instead, FPC will not only be required to demonstrate entitlement to confidentiality, but the necessary period of that entitlement.

In consideration of the foregoing, it is

ORDERED that Florida Power Corporation is directed to refile its requests for confidential classification relating to July and August, 1989, as discussed in the body of this order. It is further

ORDERED that Florida Power Corporation's request for confidential treatment of columns H, I, J, K, L, M, N, and O on Form 423-1(a) (all plants) for the month of September, 1989 is granted. It is further

ORDERED that Florida Power Corporation's request for confidential treatment of columns G and H on Form 423-2 for the month of September, 1989 is granted. It is further

ORDERED that Florida Power Corporation's request for confidential treatment of columns F, G, H, I, J, and L on Form 423-2(a) (all plants) for the month of September, 1989 is granted. It is further

ORDERED that Florida Power Corporation's request for confidential treatment of columns G, H, I, J, K, L, M, N, O, and P on Form 423-2(b) (all plants) for the month of September, 1989 is granted. It is further

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ORDERED that Florida Power Corporation's request for confidential treatment of columns J and K of Form 423-2(c) (Plant: Transfer Facility TTI Systems, Inc.) for the month of September, 1989 is granted. It is further

ORDERED that the confidential classifications granted herein shall be effective for 18 months from the date of this order. 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(3)(d), Florida Administrative Code.

By ORDER of Commission John T. Herndon, as Prehearing Officer, this 6th day of March, 1990.

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

( S E A L )

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