BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power Cost Recovery Clause and Generating Performance Incentive Factor.	))))	DOCKET NO. 900001-EI ORDER NO. 23385 ISSUED: 8-22-90

ORDER ON FPC'S REQUEST FOR CONFIDENTIAL TREATMENT OF PORTIONS OF ITS JANUARY, FEBRUARY AND MARCH, 1990 FORMS 423

SPECIFIED CONFIDENTIAL

Florida Power Corporation (FPC) requests specified confidential treatment of its January, February and March, 1990, for the following FPSC Fuel Report Forms pursuant to 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code:

MONTH/YEAR	FORM	DOCUMENT NO.
January, 1990	423-1(a), 2, 2(a), 2(b), 2(c)	4776-90
February, 1990	423-1(a), 2, 2(a), 2(b), 2(c)	4835-90
March, 1990	423-1(a), 2, 2(a), 2(b), 2(c)	4811-90

First, 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.

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 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 contends 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.

Column I, F.O.B. Plant Prices ($/Ton), on Form 423-2 relating to Crystal River 4 and 5 for the month of March, 1990, has been blacked-out but no justification for specified confidential treatment offered. Rule 25-22.006(4)(3), Florida Administrative Code, provides that a request for confidential classification that fails to provide the required justification for classification may be denied as insufficient on its face. We find, therefore, that FPC's request relating to column I of that form is insufficient on its face and is not entitled to confidential treatment.

FPC maintains 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 of the form, 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 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 its basis 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, of the form, 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, of the form 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, of the form, 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 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, of the form, 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, of the form, 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, of the form, 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.

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.

An examination of FPC documents numbered DN-4835-90, 4776-90 and 4811-90, relating to January, February, and March, 1990, respectively, shows that they contain confidential information which, if released, could affect the company's ability to contract for fuel on favorable terms.

DECLASSIFICATION

FPC seeks protection from disclosure of the confidential information identified in its request for a period of 24 months. FPC maintains that this is the minimum time necessary to ensure that disclosure will not allow suppliers to determine accurate estimates of the then-current contract price.

FPC explains that the majority of EFC's contracts contain annual price adjustment provisions. If suppliers were to obtain confidential contract pricing information for a prior reporting month at any time during the same 12-month adjustment period, current pricing information would be disclosed. In addition, if the previously reported information were to be obtained during the following 12-month period, the 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.

To guard against this competitive disadvantage, FPC maintains, confidential information requires protection from disclosure not only for the initial 12-month period in which it could remain current, but for the following 12-month period in which it can be easily converted into essentially current information. For example, if information for the first month under an adjusted contract price is reported in April, 1990, the information will remain current during March, 1991. Thereafter, the initial April, 1990, information will be one escalation adjustment removed from the current information reported each month through March, 1992. If confidential treatment were to expire after 18 months, suppliers would be able to accurately estimate current prices in October, 1991, using information that had been current only 6 months earlier.

An 18-month confidentiality period would effectively waste the protection given in the first 6 months of the second 12-month pricing period (months 13 through 18) by allowing disclosure of the information in the last 6 months of the pricing period, which would be equally detrimental in terms of revealing the current price. To make the protection currently provided in months 13 through 18 meaningful, FPC argues, protection should be extended through month 24. Extending the confidentiality period by 6 months, FPC explains, would mean that the information will be an additional 12 months and one price adjustment further removed from the current price at the time of disclosure.

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 made for a specified longer period. FPC seeks confidential classification in its request relating to January, February, and March, 1990, for a 24-month period. We find FPC has shown good cause for the Commission to extend its protection of the identified confidential information from 18 to 24 months.

The Commission, however, directs FPC's attention to Rule 25-22.006(4)(c), FAC, governing requests for confidential classification. Utilities are required to submit a "line by line" justification for such classification. Currently, FPC is properly providing justification by column on contract subject matter such as "Effective Purchase Price" or "Base Price". In the future, we request FPC to provide justification "line-by-line". For guidance on the preferred format, see FPL's recent Form 423 filings, especially its charts relating to justifications and declassification including line-by-line references and expiration dates, respectively.

In consideration of the foregoing, it is

ORDERED that the information FPC seeks to protect from public disclosure on its January, February and March, 1990 FPSC Forms 423-1(a), 423-2, 423-2(a), 423-2(b) and 423-2(c) identified in DN-4776-90, 4835-90, and 4811-90 is confidential and shall be exempt from the requirements of Section 119.07(1), Florida Statutes, with the following exception: the request of specified confidential treatment of column I, F.O.B., Mine Price, on Form 423-2, relating to Crystal River 4 and 5 for the month of March, 1990, is insufficient on its face and is denied. It is further

ORDERED that Florida Power Corporation's request for the declassification dates included in the text of this Order are granted. 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 Commissioner Betty Easley, as Prehearing Officer, this 22nd day of AUGUST, 1990.

Betty Easley

BETTY EASLEY, Commissioner
and Prehearing Officer

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