

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-97-1223-CFO-EI
ISSUED: October 10, 1997

ORDER GRANTING

FLORIDA POWER CORPORATION'S REQUEST FOR CONFIDENTIAL
TREATMENT OF PORTIONS OF ITS MAY, 1997, FORM 423
(DOCUMENT NO. 07171-97)

Florida Power Corporation (FPC), 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), 423-2, 423-2(a), 423-2(b), and 423-2(c) for the month of May, 1997. The confidential information is located in Document No. 07171-97. FPC argues that disclosure of this information to suppliers would impair the ability of FPC or Electric Fuels Corporation (EFC), its affiliated coal supplier acting on FPC's behalf, to negotiate future fuel and transportation contracts on favorable terms. As such, the information contained in FPC's May, 1997, 423 Forms constitutes proprietary confidential business information entitled to protection from disclosure pursuant to section 366.093(1) and (3)(d), Florida Statutes.

FPC argues that the information contained in lines 1, 2, 5, 6, 9-16, 18-20, 23-28 of 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. FPC asserts that 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 because suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect. FPC also argues that disclosure of lines 1, 2, 5, 6, 9-16, 18-20, 23-28 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 argues that for this reason, the information contained in the above lines of column I should also be granted confidential treatment.

FPC asserts that disclosure of the information in lines 1, 2, 5, 6, 9-16, 18-20, and 23-28 of column J, Discount, in conjunction with other information under columns K, L, M or N, could also

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disclose the Invoice Price shown in column H by mathematical deduction. In addition, disclosure of discounts resulting from bargaining concessions would impair the ability of FPC to obtain such concessions in the future for the reasons discussed above in relation to column H.

For the same reasons as it argues for the confidentiality of column H, FPC also argues that disclosure of the information under lines 1, 2, 5, 6, 9-16, 18-20, and 23-28 of columns K, Net Amount; L, Net Price; M, Quality Adjustment; or N, Effective Purchase Price, could be used to disclose the Invoice Price in column H, by mathematical deduction. 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 if the information in lines 1, 2, 5, 6, 9-16, 18-20, and 23-28 of column P, Additional Transport Charges, were used in conjunction with the information located in the same lines of column Q, Other Charges, it would likely result in disclosure of the Effective Purchase Price in column N by subtracting the figures from the Delivered Price available in column R. FPC, therefore, concludes that the information contained in the above referenced lines of columns P and Q is entitled to confidential treatment.

FPC further argues that the type of information on FPSC Form 423-2, in lines 1-9 for Transfer Facility IMT, lines 1-7 for Crystal River 1&2, and lines 1-6 for Crystal River 4&5 of column G, 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, because 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.

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FPC contends that the figures in lines 1-9 for Transfer Facility IMT, lines 1-7 for Crystal River 1&2, and lines 1-6 for Crystal River 4&5 of column H, Total Transport Cost, on Form 423-2 when subtracted from the F.O.B. Plant Price in column I, would also disclose the Effective Purchase Price in column G.

FPC maintains that the information in lines 1-9 for Transfer Facility IMT, lines 1-7 for Crystal River 1&2, and lines 1-6 for Crystal River 4&5 of 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. FPC asserts that this would likely lead to a reduced ability on the part of a major purchaser, such as EFC, to bargain for price concessions on behalf of FPC because suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect.

The information in lines 1-9 for Transfer Facility IMT, lines 1-7 for Crystal River 1&2, and lines 1-6 for Crystal River 4&5 of Column H of Form 423-2(a), Original Invoice Price, FPC argues, is the same as the information 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 costs 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.

FPC contends that the information contained in column I, Retroactive Price Increases, are normally received well after the reporting month and are included on Form 423-2(c) at that time, along with the resulting new price. FPC maintains that for this reason, disclosure of this information would therefore disclose the F.O.B. mine price in column F and, therefore, the information in column I should be granted confidential treatment.

FPC argues that information in lines 1-9 for Transfer Facility IMT, lines 1-7 for Crystal River 1&2, and lines 1-6 for Crystal River 4&5 of column J, Base Price, of form 423-2(a), is the same as information contained in 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 found in Column F.

FPC further argues that the information in lines 1-9 for Transfer Facility IMT, lines 1-7 for Crystal River 1&2, and lines 1-5 for Crystal River 4&5, Quality Adjustments, in column K on Form 423-2(a), is typically received after the reporting month and is, therefore, also included on Form 423-2(c) at that time. Some of the information is, however, available at this time. FPC, therefore, requests the information be given confidential treatment. 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 information in lines 1-9 for Transfer Facility IMT, lines 1-7 for Crystal River 1&2, and lines 1-6 for Crystal River 4&5 of column L, the Effective Purchase Price, is the same as information contained in 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 Gs on Forms 423-2 and 423-2(b). FPC argues that its basis for non-disclosure in the discussion relating to those columns applies here for lines 1-9 of Transfer Facility IMT, lines 1-7 of Crystal River 1&2, and lines 1-6 of Crystal River 4&5 of column G on Form 423-2(b).

Concerning the information on Form 423-2(b), on column I, Rail Rate, lines 1-7 for Crystal River 1&2, and lines 1-5 for Crystal River 4 & 5, FPC argues, are functions 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 the information in lines 1-7 for Crystal River 1 & 2 and lines 1-5 for Crystal River 4 & 5, of column J, Other Rail Charges, of Form 423-2(b), reflects 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.

The information in column P, Total Transportation Charges, in lines 1-9 for Transfer Facility IMT, lines 1-7 for Crystal River 1 & 2, and lines 1-6 for Crystal River 4 & 5 of Form 423-2(b), FPC argues, is the same as the Total Transportation Cost under column H on Form 423-2, and is entitled to confidential treatment for reasons identical to those discussed in relation to those charges. In the case of rail deliveries to the Crystal River Plants, the 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 the IMT "Plant," the figures represent EFC's current river transportation rate. Disclosure of these transportation rates would enable coal suppliers to bid a F.O.B. mine price calculated to produce a delivered plant price at, or marginally below, FPC's current delivered price, which is available on Form 423-2, column I. FPC argues that without this opportunity to calculate a perceived maximum acceptable price, suppliers would be more likely to bid their best price.

FPC argues that the information in column J and column K, is entitled to confidential treatment because the information under these columns relates to column I on Form 423-2, 2(a), or 2(b) to which the adjustment applies.

An examination of the information contained in Document No. 07171-97 relating to FPC's May, 1997, Form 423s shows that they contain confidential information which, if released, could affect the company's ability to contract for fuel on favorable terms. Therefore, as discussed above, the information for which confidentiality is sought is granted confidential classification.

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 May, 1994, the information will remain current during April, 1995. Thereafter, the initial May, 1994, information will be one escalation adjustment removed from the current information reported each month through April, 1995. If confidential treatment were to expire after 18 months, suppliers would be able to accurately estimate current prices in October, 1995, 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

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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 February, 1997, for a 24-month period. FPC has shown good cause for the Commission to extend its protection of the identified confidential information from 18 to 24 months. FPC's request to extend the time period for confidentiality is, therefore, granted. The declassification date will be 24 months from the date of this Order.

Based on the foregoing, good cause having been shown, FPC's request for an extension of the declassification date is granted.

In consideration of the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Florida Power Corporation's request for confidential classification for portions of document number 07171-97 is granted as set forth in the body of this Order. It is further

ORDERED that Florida Power Corporation's request for an extension of the declassification date 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 10th day of October, 1997.



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.

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) 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.