

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-97-1515-CFO-EI
ISSUED: December 3, 1997

ORDER GRANTING

FLORIDA POWER & LIGHT COMPANY'S REQUEST FOR CONFIDENTIAL
TREATMENT OF PORTIONS OF ITS MAY, 1997, FORM 423
(DOCUMENT NO. 06566-97)

Florida Power & Light Company (FPL), 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), for the month of May, 1997. The confidential information is located in Document No. 06566-97. FPL argues that disclosure of this information to suppliers would impair the ability of FPL to negotiate future fuel and transportation contracts on favorable terms. As such, the information contained in FPL'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.

FPL requests that the information contained in Form 423-1(a) lines 1-13 column H be given confidential classification because this information is contractual information which, if made public "would impair the efforts of public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. This information delineates the price FPL has paid for No. 6 fuel oil per barrel for specific shipments from specific suppliers. 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 formulae generally 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. Discounts and quality adjustment components of fuel price contract formulas are discussed in paragraphs 3 and 4. Disclosure of the invoice price would allow suppliers to determine the contract price formula of their competitors. The knowledge of each others' prices for No. 6 fuel oil is reasonably likely to cause the suppliers to converge on a target price, or to follow a price leader, effectively eliminating any opportunity for a major buyer like FPL to use its market presence to gain price concessions from any one supplier. The end

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result is reasonably likely to be increased No. 6 fuel oil prices and therefore increased electric rates.

FPL contends that the information contained in Form 423-1(a) lines 1-13 columns I, H, J, K, L, M and N are entitled to confidential treatment because they contain information which is an algebraic function of column H. This means that the publication of these columns together or independently could allow a supplier to derive the invoice price of oil. FPL requests that the information contained in Form 423-1(a) lines 1-13 column J be given confidential treatment because some FPL fuel contracts provide for an early payment incentive in the form of a discount from the invoice price. The existence and amount of such discount is confidential for the reasons stated above relative to price concessions. 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.

FPL requests that the information contained in Form 423-1(a) lines 1-13 column M be granted confidential classification because FPL may reject a shipment of fuel that does not meet contract requirements, or it may accept the shipment and apply a quality adjustment. This is, in effect, a pricing term which is as important as the price itself and its therefore confidential for the same reason as the price concession information discussed above. FPL argues that the information contained in Form 423-1(a) lines 1-13 column N is as important as the information contained in column H for confidentiality because of the relatively few times that there are quality or discount adjustments. Column N will equal column H most of the time. Consequently, column N should be granted confidential classification for the same reasons as column H.

FPL requests that the information contained in Form 423-1(a) lines 1-13 columns P and Q be granted confidential classification because column R is used to mask the delivered price of fuel such that the invoice or effective price of fuel cannot be determined. Columns P and Q are algebraic variables of column R. As a result, disclosure of columns P and Q would allow a supplier to calculate the invoice or effective purchase price of oil contained in columns H and N discussed above by subtracting these columnar variables from column R. Columns P and Q also contain terminalling and transportation service information. These services in Florida tend to be as oligopolistic or more so than fuel suppliers. FPL explains that in 1987 it was only able to find eight qualified

parties with an interest in bidding either or both of these services. Of these, four responded with transportation proposals and six with terminalling proposals. Because of the small demand in Florida for both of these services, market entry is difficult. Petroleum inspection services also have the market characteristics of an oligopoly. Because of the limited number of fuel terminal operations, there are correspondingly few requirements for fuel inspection services. In FPL's last bidding process for petroleum inspection services, only six qualified bidders were found for FPL's bid solicitations. Consequently, disclosure of these contract data is reasonably likely to result in higher prices for petroleum inspection services.

FPL requests that the Commission find that the No. 2 fuel oil information is contractual data and that FPL's ability to procure No. 2 fuel oil is reasonably likely to be impaired by the disclosure of the information identified because the bidding process through which FPL obtains No. 2 fuel oil is not reasonably expected to provide the lowest bids possible if disclosure of the last winning bid is, in effect, made public through disclosure of FPL's Form 423-1(a).

FPL requests that the No. 6 fuel oil data be identified as contractual data and that FPL's ability to procure No. 6 fuel oil, terminalling and transportation service, and petroleum inspection services is reasonably likely to be impaired by the disclosure of the information identified. This is because the markets in which FPL must procure No. 6 fuel oil, terminalling and transportation services, and fuel inspection services are oligopolistic and pursuant to economic theory, a substantial buyer in an oligopolistic market can obtain price concessions not available to other buyers, but the disclosure of such concessions would end them, resulting in higher prices to that purchaser.

DECLASSIFICATION

FPL seeks protection from disclosure of the confidential information identified in its Form 423-1(a) line 1 columns H-N until June 30, 1998. FPL seeks confidential classification of the information in Form 423-1(a) lines 2-13 columns H-N, line 14 of column P, and lines 1-13 of column Q until January 31, 1998. Finally, FPL requests confidential classification of the information contained in Form 423-1(a) line 14 columns H, I, K, L, N and R until December 31, 1998. FPL requests that the confidential information identified above not be disclosed until

the identified date of declassification. FPL determined the date of declassification by adding six months to the last day of the contract period under which the goods or services identified on Form 423-2(a) or 423-1(b) were purchased. Disclosure of pricing information during the contract period or prior to the negotiation of a new contract is reasonably likely to impair FPL's ability to negotiate future contracts as described above. FPL claims that it typically renegotiates its No. 6 fuel oil contracts and fuel-related services contracts prior to the end of such contracts. However, on occasion, some contracts are not renegotiated until after the end of the current contract period. In those instances, the contracts are typically renegotiated within six months. Consequently, it is necessary to maintain the confidentiality of the information identified as confidential on FPL's Form 423-1(a) or 423-1(b) for six months after the end of the individual contract period to which the information relates.

FPL requests that information on the No. 6 fuel oil price contained on Form 423-1(a) or 423-1(b) for oil that was not purchased pursuant to an already existing contract be kept confidential for six months after the delivery. FPL requests this because the terms of the agreement under which this type of oil is purchased are fulfilled on delivery. FPL insists that the information requires an extra six months because it is the minimum amount of time necessary for gaining price concessions during seasonal fluctuations in the demand for No. 6 fuel oil. Disclosure of this information any sooner than six months after completion of the transaction is reasonably likely to impair FPL's ability to negotiate such purchases.

Concerning the No. 2 fuel oil pricing information appearing on FPL's Form 423-1(a) and 423-1(b) for which confidential classification is sought, FPL argues that this information should remain confidential for the time period the contract is in effect, plus six months. Disclosure of pricing information during the contract period or prior to the negotiation of a new contract is reasonably likely to impair FPL's ability to negotiate future contracts as described above. FPL claims that it typically negotiates its No. 2 fuel oil contracts prior to the end of such contracts. However, on occasion, some contracts are not negotiated until after the end of the current contract period. In those instances, the contracts are typically renegotiated within six months. Consequently, it is necessary to maintain the confidentiality of the information identified as confidential on

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Form 423-1(a) or 423-1(b) for six months after the end of the individual contract period to which the information relates.

Based on the foregoing, good cause having been shown, FPL's request for confidential classification of information contained in its May, 1997, Form 423-1(a) Document No. 06566-97 is granted.

In consideration of the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Florida Power & Light Company's request for confidential classification for portions of document number 06566-97 is granted as set forth in the body of this Order. It is further

ORDERED that Florida Power & Light Company'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 3rd day of December, 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.