BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased power Cost Recovery Clause and Generating Performance Incentive Factor.	DOCKET NO. 950001-EI ORDER NO. PSC-95-0663-CFO-EI ISSUED: May 30, 1995

ORDER GRANTING
FPC'S REQUEST FOR CONFIDENTIAL
TREATMENT OF PORTIONS OF ITS JANUARY, 1995 FORMS 423

Florida Power Corporation (FPC), has requested specified confidential treatment of the following FPSC Forms:

MONTH/YEAR	FORMS	DOCUMENT NO.
February, 1995	423-1(a), 423-2, 423-2(a), 423-2(b), 423-2(c)	03942-95

FPC argues that the information contained in lines 1-2, 5-11, 16, 18-19 and 23 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. 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 lines 1-2, 5-11, 16, 18-19 and 23 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 asserts that disclosure of the information in lines 1-2, 5-11, 16, 18-19 and 23 of column J, Discount, and in the same lines of column M, Quality Adjustment, in conjunction with other information under columns K, L, M, or N, could also disclose the Invoice Price shown in column H by mathematical deduction. In addition, FPC argues that disclosure of the discounts resulting from bargaining concessions would impair the ability of FPC to obtain such concessions in the future.

FPC also argues that disclosure of the information under lines 1-2, 5-11, 16, 18-19 and 23 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, 5-11, 16, 18-19 and 23 of column P, Additional Transport Charges, was used in conjunction with the information located in the same lines of column Q, Other Charges, it would 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 1-5 for Transfer Facility IMT, lines 1-6 for Crystal River 1&2, and lines 1-7 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, 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 lines 1-5 for Transfer Facility IMT, lines 1-6 for Crystal River 1&2, and lines 1-7 for Crystal River 4&5 of column H, Total Transport Charges, on 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. Plant Price in column I, would also disclose the Effective Purchase Price in column G.

FPC maintains that the information in lines 1-5 for Transfer Facility IMT, lines 1-6 for Crystal River 1&2, and lines 1-7 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 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.

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

FPC argues that information in lines 1-5 for Transfer Facility IMT, lines 1-6 for Crystal River 1&2, and lines 1-7 for Crystal River 4&5 of column J, Base Price, is the same as those 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 for Transfer Facility IMT, for Crystal River 1&2, and for Crystal River 4&5, found in column K, Quality Adjustments, 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. FPC requests the information in line 4 for the Transfer Facility IMT, line 4 for Crystal River 1&2, and line 6 for Crystal River 4&5 of Column K, 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 1-5 for Transfer Facility IMT, lines 1-6 for Crystal River 1&2, and lines 1-7 for Crystal River 4&5 of column L, the Effective Purchase Price, is the same as those 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 423's: 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 for lines 1-5 of Transfer Facility IMT, lines 1-6 of Crystal River 1&2, and lines 1-7 of Crystal River 4&5 of column G on Form 423-2(b).

The information on Form 423-2(b), on column I, Rail Rate, lines 1-5 for Crystal River 1&2, and lines 1-6 for Crystal River 4 & 5, 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 the information in lines 1-5 for Crystal River 1 & 2 and lines 1-6 for Crystal River 4 & 5, of column J, Other Rail Charges, of Form 423-2(b), 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.

On Form 423-2(b), the information in line 6 of column M, Ocean Barge Rate, for Crystal River 1 & 2 and line 7 for Crystal River 4 & 5, FPC states 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.

The information in column P, Total Transportation Charges, in lines 1-5 for Transfer Facility IMT, lines 1-6 for Crystal River 1 & 2, and lines 1-7 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.

On Form 423-2(c), the information relating to lines 1-8, and 10 for Transfer Facility IMT, lines 1-2 for Crystal River 1 & 2, and line 1 for Crystal River 4 & 5 in columns J, Old Value, and K, New Value, FPC argues, relates to the particular columns on Form 423-2, 423-2(a), or 423-2(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-03942-95 relating to February 1995, show 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, 1993, the information will remain current during April, 1994. Thereafter, the initial May, 1993, 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 November, 1994, 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, 1995, 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.

In consideration of the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Florida Power Corporation's request for confidential classification for portions of document number 03942-95 is granted as set forth in the body of this Order. It is further

ORDERED that Florida Power Corporation's request for 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 J. Terry Deason, as Prehearing Officer, this 30th day of May, 1995.

J. TERRY DEASON, Commissioner and Prehearing Officer

(S E A L)

MTR

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2), 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.