

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power) DOCKET NO. 950001-EI
Cost Recovery Clause and) ORDER NO. PSC-95-1076-CFO-EI
Generating Performance Incentive) ISSUED: August 29, 1995
Factor.)
_____)

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION

On June 23, 1995, Tampa Electric Company (TECO or company) requested confidential classification for a portion of the exhibit attached to the prepared direct testimony of Mr. William N. Cantrell (Exhibit WNC-1) which was filed in this docket. Said exhibit is composed of Document No. 1, Page 2 of 2 and Document No. 2, Page 2 of 2 and has been assigned Commission document number 05924-95.

Florida law provides, in Section 119.01, Florida Statutes, that documents submitted to governmental agencies shall be public records. The only exceptions to this law are specific statutory exemptions, and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This law derives from the concept that government should operate in the "sunshine."

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, TECO has the burden to show that the material submitted is qualified for confidential classification. Rule 22.006, Florida Statutes, provides that the company may fulfill its burden by demonstrating that the information falls under one of the statutory examples set out in Section 366.093, Florida Statutes, or by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the company or its ratepayers harm.

TECO offers several arguments in support of its request for confidential treatment of Document No. 1, Page 2 of 2, Lines 1, 3, 5 and 7 - 9. The utility asserts that the total price and the weighted average per ton water transportation price from all Tampa Electric coal sources shown on line 1 is entitled to confidential classification under Section 366.093(3)(d) and (e), Florida Statutes. Disclosure of this information would impair the efforts of Tampa Electric to contract for goods and services on favorable terms. In addition, it would harm the competitive interests of Tampa Electric's transportation affiliates and thereby ultimately harm Tampa Electric and its Customers. The prices shown on line 1 can be used with other publicly available data to determine the segmented transportation prices for river barge transportation

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services as well as ocean barge transportation services. There exists vigorous competition among suppliers of these transportation services and any public disclosure of prices charged by Tampa Electric's affiliates would eliminate any negotiating leverage which the affiliates have in marketing their services to others.

The market for bulk commodity transportation is very competitive. Aside from the coal transportation services performed for Tampa Electric, the TECO Transport and Trade affiliates currently transport coal and other bulk commodities for other Customers as well. The affiliates anticipate that additional markets for coal will soon develop in Florida for both industrial and electric power generation purposes, and hope to capture a portion of the transportation demand created by those markets. This market is very competitive.

TECO's transportation affiliates are not engaged solely in the one-way transportation of coal, however, Mid-South Towing Company has provided, and continues to provide, both upstream and downstream transportation services for other bulk commodities, including grain and phosphate products. Electro-Coal Transfer Corporation is involved in the direct vessel-to-vessel transfer of grain and other bulk commodities in addition to the transfer of coal and coke on diverse routes, including phosphates from Florida to New Orleans, and grain from New Orleans to international markets.

As commercial enterprises, the affiliates face significant competition for each of the other transportation, transfer and storage services that they perform. Operators on the inland waterways include approximately 2,000 individual carriers. In size these carriers range from operators of single towboats to those operating large fleets of vessels and barges. Only a very small percentage of inland waterway traffic is subject to regulation. Exempt carriers are not required to publish revenues, operating data rates or financial information.

With reference to the river transportation of coal and other bulk commodities, Mid-South Towing Company's principal competitors include, among others: the Ohio River Company; American Commercial Barge Line Company; Dravo Mechling Corporation; and The Valley Line Company. Mid-South Towing also faces internodal competition from the railroads.

Electro-Coal Transfer Corporation competes with others for the performance of transfer and storage services. Electro-Coal's principal competitors with both shoreside transfer and ground storage capabilities are: International Marine Terminal; Burnside Terminals, Inc.; and New Orleans Bulk Terminal. A portion of the transfer market is also served by companies whose operations are mid-stream in the Mississippi River. Principal among these is Cooper-Smith Company.

Finally, TECO argues Gulfcoast Transit Company competes with many other companies to provide ocean-going tug and barge transportation service. Principal among those competitors are: Dixie Carriers, Inc.; Sheridan Towing Company; Red Circle Transport Company; and Beker Industries, Inc.

Disclosing the amounts charged by these affiliates to TECO would permit the affiliates' other Customers, who may be paying higher prices for similar services, to bargain for more favorable terms from the affiliates.

The total and per ton prices shown on line 1 is also entitled to confidential protection because of the short period of time which has transpired since the company converted from a cost-based transportation arrangement to a market-based approach. Disclosure of the market-based price would enable a competitor to more closely approximate what the transportation affiliates' cost-based rates were under the old arrangement. Over time this effect will lessen. However, the recency of the conversion necessitates protecting this information from public disclosure.

The (over\under) benchmark shown on line 3 requires confidential protection for the same reasons as the total price and weighted average per ton water transportation price shown on line 1, because the information on line 3 is an arithmetic function of lines 1 and 2. Disclosure of the amount on line 3 would enable competitors to determine the value of line 1. Therefore, the line 3 figure is entitled to confidential protection for the same reasons as the amounts shown on line 1.

The total transportation cost shown on line 5 and in the description of the line 1 amount is entitled to confidential protection because it, too, is an arithmetic function of the total tons transported shown in line 4 and the weighted average water transportation price shown in line 1. Therefore, the total transportation cost is entitled to confidential protection for the same reasons referred to above with respect to the line 1 amount.

The total cost (over\nder) benchmark amount shown on line 7 is also an arithmetic function of the preceding lines which can be used to calculate the weighted average water transportation cost shown on line 1. Therefore, the line 7 amount is entitled to confidential protection for the same reasons cited above with respect to the amount shown on line 1.

The prior years' cumulative benefit shown on line 8 is, likewise, entitled to confidential protection. This number is an arithmetic function of the prior years' weighted average price for transportation services and its disclosure would enable a competitor to determine that weighted average price from the total tons transported.

The net benefit of 1988-1994 shown on line 9 is, likewise, entitled to confidential protection. This number is an arithmetic calculation of lines 7 and 8, disclosure of which would allow a competitor to calculate those amounts. Therefore, line 9 is entitled to confidential protection for the same reasons as the amounts on lines 7 and 8.

TECO requests confidential classification for Document No. 2, Page 2 of 2, Lines 1, 3, 5 and 7. Line 1 shows the weighted average per ton price of coal purchased reflected in line 1. The company asserts that this information is contractual data the disclosure of which would adversely affect the ability of Tampa Electric and Gatliff to contract for the purchase and sale, respectively, of goods (coal) on favorable terms. As such, this information is protected under §366.093(3)(d) and (e), Florida Statutes. If the contractual price charged by Gatliff Coal Company to Tampa Electric for coal supplier under the parties' current contract is made public, it will adversely affect Gatliff's ability to negotiate higher prices with other purchasers. If other potential purchasers know how low Gatliff was willing to price coal sold to Tampa Electric, that price may be viewed by the other potential purchasers as a ceiling on the amount they are willing to pay for Gatliff coal. This would place Gatliff coal at a competitive disadvantage in the negotiating process.

The price per ton is also sensitive in that it provides a general approximation of Gatliff's costs, given the short duration of time the pricing formula has been in effect. Over time this effect will lessen. However, with only one year having elapsed under the new pricing methodology, confidential protection is still essential.

The amount shown on line 3 (over/under benchmark) is entitled to confidential classification because it can be used in conjunction with the coal price benchmark shown on line 2 to determine the company's weighted average price of coal purchased shown on line 1.

The total cost shown on line 5 is entitled to confidential classification because it, too, is a function of the average price of coal purchased times the total tons purchased. Disclosure of the total cost would reveal the weighted average price of coal shown on line 1.

The total cost over/under benchmark shown on line 7 is, likewise, entitled to confidential protection. This number is an arithmetic function of the weighted average price of coal purchased and its disclosure would enable a competitor to determine that weighted average price.

Finally, TECO argues disclosure of the weighted average price per ton of Gatliff coal or any information which would enable one to derive that price would also enable one to derive TECO Transport and Trade's segmented transportation prices using other publicly available information.

The material for which classification is sought is intended to be and is treated by TECO and its affiliates as confidential private information and has not been disclosed.

TECO has fulfilled its burden to show that the material submitted is qualified for confidential classification. The material contained in document number 05924-95 is found to be proprietary confidential business information and, as such, is granted confidential status.

The company requests July 30, 1997 as the date of declassification for Document No. 1, Page 2 of 2, Lines 1, 3, 5, and 7 - 9, and Document No. 2, Page 2 of 2, Lines 1, 3, 5 and 7 and has offered the following justifications for its request:

Tampa Electric seeks protection of the coal and coal transportation contract information specified as confidential for a minimum period of two years. The need for two or more years of confidentiality is vital not only to company and its ratepayers, but to the vendors of coal and coal transportation services as well. Bidders for the sale of coal will always seek to optimize their profit margin. Full knowledge of the prices paid by the utility for coal enables the bidder to increase the price bid and thereby optimize the bid from the viewpoint of the seller and to

the detriment of the ratepayer. TECO firmly believes that the disclosure of information on prices paid within the last two years will increase the price Tampa Electric will be required to pay for coal and will be detrimental to ratepayers.

Recent bids received by Tampa Electric contained a \$4.17 per ton spread between the bids. The low bid undoubtedly would have been higher with full knowledge of prices paid by Tampa Electric. Bidders will always seek to optimize their profits by submitting bids that are as high as the market will bear. If market data is disclosed which discourages suppliers from bidding competitively, they will increase their bids to the level of past payments to other suppliers by the buyer.

Gatliff Coal and TECO Transport & Trade sell coal and bulk commodity transportation services in the open non-regulated marketplace. The prices at which their goods and services are sold are not publicly disclosed anywhere by publication or voluntary dissemination because it would materially lessen their competitive posture with customers other than Teco. Outside customers who negotiate for coal or coal transportation services are placed at a competitive advantage for these goods or services if they know the cost of the services. An analyst for an outside customer of Gatliff or TECO Transport who reads the written transcripts of public fuel hearings or reads the written orders of the FPSC can easily discover that until November 1, 1988, Tampa Electric paid cost for coal from Gatliff and for coal transportation from TECO Transport. Further, the publication of the stipulation agreement between the parties in 1988 indicated that the initial benchmark price was close to cost and subsequent testimony indicates the revised contract escalates from cost.

As long as an outside customer does not know how such an escalation clause changes price, the cost cannot be calculated. However, publicizing the price of coal or coal transportation services will tell an outside customer how much the escalation has been and make it easy for him to calculate cost. Because of seasonality of costs in both businesses, a full year's cost data is necessary for an accurate cost measurement. A second year must pass before one full year can be compared with a second year to measure the escalation accurately. So a perceptive vendor seeks two years of data to make his cost estimates. The competitive industries recognize that data beyond two years is not helpful to

them, as enough factors may change in that time frame for costs to be much different from what was incurred. Any date less than two full years old is extremely valuable to outside customers in contracting for services with Gatliff or TECO Transport. The difference of small amounts per ton can mean millions of dollars' difference in cost.

A loss of outside business by Gatliff or TECO Transport will affect not only Gatliff or TECO Transport, but if large enough it could affect the credibility of the companies. The prices negotiated with Tampa Electric by these vendors took into consideration their costs and revenues at the time of negotiation, including the revenues from outside customers. A significant loss of outside business could cause Gatliff or TECO Transport to fail, since under market pricing regulation Tampa Electric will not make up the difference to them in cost. In turn, a failure of these vendors would leave Tampa Electric and its customers with only higher cost alternatives for Blue Gem coal and for coal transportation to Tampa, a higher cost that would be paid by Tampa Electric's ratepayers. So the continued credibility of Gatliff and TECO Transport is important to protect Tampa Electric's ratepayers from higher cost alternatives.

TECO points out that the above rationale for a two-year time period for confidential protection of the information in question has been approved previously by the Commission in this docket.

Based on the foregoing, July 30, 1997 is found to be an appropriate date for declassification.

In consideration of the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the request for confidential classification of document number 05924-95, filed by Tampa Electric Company is granted as set forth in the body of this Order. It is further

ORDERED that this information shall be classified as proprietary confidential business information for the periods discussed 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 period.

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By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 29th day of August, 1995.


J. TERRY DEASON, Commissioner and
Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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