

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's
2004-2008 waterborne transportation contract
with TECO Transport and associated
benchmark.

DOCKET NO. 031033-EI
ORDER NO. PSC-04-0541-CFO-EI
ISSUED: May 26, 2004

ORDER GRANTING IN PART AND DENYING IN PART
REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 01491-04, 03480-04)

On February 10, 2004, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Tampa Electric Company (Tampa Electric) filed a request for confidential classification of portions of its answers to Office of Public Counsel's (OPC) Second Set of Interrogatories (Nos. 15-56) (Document No. 01491-04). On April 5, 2004, Tampa Electric filed a request for confidential classification of portions of its answers to OPC's Third Set of Interrogatories (Nos. 57-61) (Document No. 03480-04).

Section 366.093(1), Florida Statutes, provides that "any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from [the Public Records Act]." Section 366.093(3), Florida Statutes, defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations, and has not been voluntarily disclosed to the public. Section 366.093(3), Florida Statutes, provides that proprietary confidential business information includes, but is not limited to "[t]rade secrets" (subsection a), "[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms" (subsection d) and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information" (subsection e).

Tampa Electric contends that portions of its answers to OPC's Second and Third Set of Interrogatories fall within these categories and thus constitutes proprietary confidential business information entitled to protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Tampa Electric states that this information is intended to be and is treated by Tampa Electric as private and has not been publicly disclosed.

Tampa Electric requests confidential classification for the specific data listed in Attachment A and Attachment B to this order, which is incorporated herein by reference. The justification for Tampa Electric's request for confidential classification of this specific data is also set forth in Attachment A and Attachment B. Upon review, I find that the information in

DOCUMENT NUMBER-DATE

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Tampa Electric's request is confidential for the reasons identified by the company, with the exception of portions of Tampa Electric's answer to Interrogatory No. 37 in OPC's Second Set of Interrogatories and portions of Tampa Electric's answers to Interrogatory Nos. 57-58 in OPC's Third Set of Interrogatories.

With regards to Interrogatory No. 37, Bates Stamp Page No. 23 lists the number of tons of coal purchased and information regarding mines and docks from where coal was purchased in 2002 and 2003. Tampa Electric reports similar data on the FERC 423 Form and the FPSC 423-2 Form for every coal purchase it makes. Information regarding tons of coal purchased and the docks through which they were moved can be gleaned from publicly available data. Locations of river docks for specific purchases can be approximated from publicly available mine locations and number of tons of coal. Tampa Electric states that public disclosure of its actual coal purchases from different locations in the past two years would harm the company's negotiating position in its attempts to purchase coal at the most economic rate, by providing insight into locations where the company might expect to take coal deliveries in the future. Since information regarding mines and docks from which coal was purchased in 2002 and 2003 is listed in the FERC and FPSC 423 Forms, it appears that information regarding the locations where Tampa Electric has historically taken delivery of coal is already publicly available. Therefore, confidential classification is denied for the above mentioned portions of Tampa Electric's answer to Interrogatory No. 37.

With regards to Interrogatory Nos. 57-58, Tampa Electric's answer lists coal and synfuel tonnages for 2003-2004, mine sources, and river dock locations. Tampa Electric states that this information conveys the company's current purchases, purchasing strategy, and its expected solid fuel needs for 2004 and beyond. Tampa Electric reports similar data on the FERC 423 Form and the FPSC 423-2 Form for every coal purchase it makes. It appears that historical information for which confidential classification is requested is available to the public from sources other than Tampa Electric's answer to Interrogatory Nos. 57-58. Confidential classification is granted for all 2004 tonnages and to the mine name listed for the Southern Indiana river dock on Bates Stamp Page No. 1. Confidential classification is denied for the 2003 tonnages and for the other mine names listed on Bates Stamp Page Nos. 1-2.

Pursuant to Section 366.093(4), Florida Statutes, the information for which confidential classification is granted herein shall remain protected from disclosure for a period of 18 months from the date of issuance of this order. At the conclusion of the 18 month period, the confidential information will no longer be exempt from Section 119.07(1), Florida Statutes, unless Tampa Electric or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

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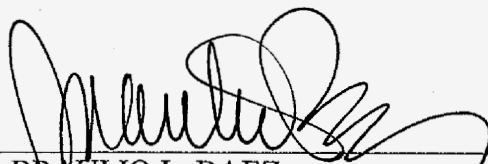
Based on the foregoing, it is

ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document Nos. 01491-04 and 03480-04 is granted in part and denied in part, as set forth in the body of this order. It is further

ORDERED that the information in Document Nos. 01491-04 and 03480-04 for which confidential classification has been granted shall remain protected from disclosure for a period of 18 months from the date of issuance of this order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Chairman Braulio L. Baez, as Prehearing Officer, this 26th day of May, 2004.


BRAULIO L. BAEZ
Chairman 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.

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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; or (2) 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 the Commission Clerk and Administrative Services, 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.

**JUSTIFICATION FOR CONFIDENTIAL TREATMENT OF HIGHLIGHTED
PORTIONS OF TAMPA ELECTRIC'S RESPONSES TO OPC'S SECOND
SET OF INTERROGATORIES (FILED FEBRUARY 2, 2004)**

<u>Bates Stamp Page No.</u>	<u>Interrogatory No.</u>	<u>Detailed Description</u>	<u>Rationale</u>
11	25	All Yellow Highlighted Information	(1), (2)
14	28	All Yellow Highlighted Information	(3)
20	34	All Yellow Highlighted Information	(3)
23	37	All Yellow Highlighted Information	(2)
25	39	All Yellow Highlighted Information	(1)
27	41	All Yellow Highlighted Information	(1)
33	47	All Yellow Highlighted Information	(4)

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- (1) The information contained on the listed pages contains information about the contract terms, rates or amounts that will be paid for transportation services under Tampa Electric's contract with TECO Transport that took effect January 1, 2004. This information is competitive contractual information, the disclosure of which would be harmful to the position of TECO Transport in negotiating future contracts with other clients. Disclosing this information would also harm Tampa Electric's position in determining rates for future transportation contracts since the providers bid responses might be influenced if they had knowledge of the previous or current contract rates. The disclosure of this information would therefore be harmful to TECO Transport's competitive interests and to the ability of Tampa Electric to contract for goods and services on favorable terms, and as such, the information is entitled to confidential treatment pursuant to Section 366.093(d) and (e), Florida Statutes.
- (2) The information contained on the listed pages describes in detail Tampa Electric's expected 2004 coal needs by type and from different areas on the waterborne supply course or its actual coal purchases from different locations in the past two years. Both the projected and the recent actual data provide insight into locations where the company might expect to take coal deliveries in the future. Inasmuch as the company has not already contracted for all of its future expected coal needs, public disclosure of this information would harm the company's negotiating position in its attempts to purchase coal at the most economic rate. Consequently, this information is entitled to protection

under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code.

- (3) The information contained on the listed pages contains the proprietary work product of Tampa Electric's consultant, Dibner Maritime Associates LLC or "DMA". The disclosure of this information could allow duplication of the consultant's work without compensation for the consultant's efforts to develop expertise, gather and update information and develop methods of analysis. This information is in the nature of a trade secret owned by DMA. It is also in the nature of information relating to competitive interests, the disclosure of which would impair DMA's competitive business interests by diminishing the demand for DMA's proprietary work product. As such, the information in question is entitled to confidential treatment pursuant to Section 366.093 (3)(a) and (e), Florida Statutes.
- (4) The information contained on the listed pages discloses a bidder's identity and contains bid information provided in response to Tampa Electric's RFP. Disclosing bidders' identities and the information included in their confidential proposals would discourage those bidders from participation in future RFPs as they do not desire for their competitors to have access to the terms and conditions under which they will bid on transportation services. As such public disclosure of the information contained on these pages would adversely affect the competitive interests of the 2003 RFP bidders and potential future bidders as well as the ability of Tampa Electric to contract for goods and services on favorable terms. The disclosure of this information would therefore be harmful to the competitive interests of Tampa Electric, and as such, the information is entitled to confidential treatment pursuant to Section 366.093(d) and (e), Florida Statutes.

**JUSTIFICATION FOR CONFIDENTIAL TREATMENT OF
HIGHLIGHTED PORTIONS OF TAMPA ELECTRIC'S RESPONSES TO
OPC'S THIRD SET OF INTERROGATORIES (FILED MARCH 15, 2004)**

<u>Bates Stamp Page No.</u>	<u>Interrogatory No.</u>	<u>Detailed Description</u>	<u>Rationale</u>
1	57	All Yellow Highlighted Information	(1)
2	58	All Yellow Highlighted Information	(1)

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- (1) The information contained on the listed pages contains discloses a detailed description of Tampa Electric's expected solid fuel needs from specific mines and from different areas on the waterborne supply course during 2003 and 2004. This information reveals the company's current purchases and purchasing strategy. Inasmuch as the company is not already contracted for all of its expected solid fuel needs during 2004 and beyond, public disclosure of this information would harm the company's negotiating position in its attempts to purchase fuel at the most economic rate. Consequently, this information, as well, is entitled to protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code.