

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 040001-EI
ORDER NO. PSC-04-1006-CFO-EI
ISSUED: October 18, 2004

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NOS. 09861-04 AND 09862-04)

On September 9, 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 Exhibit JTW-2 to the testimony of Joann T. Wehle filed in this docket September 9, 2004 (Document No. 09861-04) and portions of the direct testimony of Benjamin F. Smith filed in this docket September 9, 2004 (Document No. 09862-04).

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 Exhibit JTW-2 and portions of the direct testimony of Mr. Smith 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 all information on Document No. 1, Page 2 of 2, of Exhibit JTW-2. Tampa Electric also requests confidential classification for the information on Page 3, lines 23-24, and Page 6, lines 1 and 3, of the direct testimony of Mr. Smith. With regard to Exhibit JTW-2, Tampa Electric contends that disclosure of this information would impair the efforts of Tampa Electric to contract for goods and services on favorable terms. Tampa Electric asserts that disclosure of this information would harm the

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competitive interests of Tampa Electric's transportation affiliates and thereby ultimately harm Tampa Electric and its customers. According to Tampa Electric, vigorous competition exists among suppliers of waterborne transportation services and any public disclosure of prices charged by Tampa Electric's affiliates would eliminate any negotiating leverage that the affiliates have in marketing their services to others. Tampa Electric contends that disclosing the amounts charged by affiliates to Tampa Electric would permit the affiliates other customers, who may be paying higher prices for similar services, to bargain for more favorable terms. Tampa Electric states that the weighted average per ton price for waterborne transportation from all Tampa Electric coal sources is entitled to confidential protection for the reasons discussed above. Tampa Electric further states that the total transportation cost, the per-ton over/under benchmark, and the total cost over/under benchmark each require confidential protection because they are mathematic functions of the weighted average per-ton price and publicly available information. According to Tampa Electric, disclosing these amounts, in conjunction with the public information on tons transported or the transportation benchmark, would enable competitors to determine the weighted average price for waterborne transportation charged by Tampa Electric's transportation affiliates. Therefore, Tampa Electric states that these amounts are entitled to confidential classification for the same reasons cited with respect to the weighted average per ton price for waterborne transportation. Tampa Electric contends that the prior years' cumulative benefit and the net benefit for 1998-2003 are also entitled to confidential classification since the prior years' cumulative benefit 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. Tampa Electric asserts that the net benefit for 1998-2003 is an arithmetic function of the confidential cost over/under benchmark and the prior years' cumulative benefit, the disclosure of which would allow a competitor to calculate those amounts.

With regard to the direct testimony of Mr. Smith, Tampa Electric states that certain information discloses Tampa Electric's purchased power strategy in terms of the company's mix of long-term and short-term market purchases. Tampa Electric states that this information relates to competitive interests, the disclosure of which would impair the competitive business of Tampa Electric. Tampa Electric further states that disclosure of certain information in Mr. Smith's testimony would disclose not only the company's purchasing strategy with respect to purchased power, but also the company's planned risk exposure. According to Tampa Electric, those who have an interest in supplying Tampa Electric's purchased power needs could use this information to negotiate more favorable terms, to the detriment of Tampa Electric and its ratepayers.

Upon review, it appears that the above-referenced information contained in Document No. 1, Page 2 of 2, of Exhibit JTW-2 and Page 3, lines 23-24, and Page 6, lines 1 and 3 of Mr. Smith's direct testimony satisfies the criteria set forth in Section 366.093(3), Florida Statutes, for classification as proprietary confidential business information and, thus, shall be treated as confidential. The information constitutes "[i]nformation relating to competitive interests, the

disclosure of which would impair the competitive business of the provider of the information.” Thus, this information is granted confidential classification.

Tampa Electric requests confidential classification for this information for a period exceeding 18 months. According to Section 366.093(4), Florida Statutes, confidential classification may only extend for 18 months from the issuance of an Order granting confidential classification unless “the Commission finds, for good cause, that the protection from disclosure shall be for a specified longer period.” Section 366.093(4), Florida Statutes. Tampa Electric addresses the need for extending the 18 month period to September 9, 2006, by asserting that public disclosure prior to that date could adversely affect the competitive interests of Tampa Electric’s affiliates and Tampa Electric itself. Tampa Electric further asserts that the longer period of time is necessary to allow Tampa Electric’s affiliated transportation companies to negotiate future contracts without their competitors and other customers having access to information which would adversely affect the ability of these affiliates to negotiate future contracts. Tampa Electric contends the duration of confidential treatment requested with respect to matters relating to Tampa Electric’s purchased power strategy will avoid compromising its ability to contract for goods and services on favorable terms. According to Tampa Electric, the period of time requested will ultimately protect Tampa Electric and its customers.

Tampa Electric appears to have provided sufficient information concerning the harm which could arise from not protecting this information until September 9, 2006. Accordingly, good cause having been shown, the information granted confidential classification shall be held as confidential until September 9, 2006.

Based on the foregoing, it is


ORDERED by Commissioner Rudolph “Rudy” Bradley, as Prehearing Officer, that Tampa Electric’s Request for Confidential Classification of Document Nos. 09861-04 and 09862-04 is granted. It is further

ORDERED that the information in Document Nos. 09861-04 and 09862-04 for which confidential classification has been granted shall remain protected from disclosure until September 9, 2006. 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.

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By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this
18th day of October, 2004


RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)

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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; 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.