BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power Cost Recovery Clause and Generating Performance Incentive Factor.	DOCKET NO. 930001-EI ORDER NO. PSC-93-0925-CFO-EI ISSUED: June 21, 1993

ORDER ON TAMPA ELECTRIC COMPANY'S REQUEST FOR CONFIDENTIAL TREATMENT OF PORTIONS OF ITS APRIL, 1993 FORMS 423

Tampa Electric Company (TECO) has requested specified confidential treatment of its FPSC forms 423-1(a), 423-2, 423-2(a), 423-2(b), and 423-2(c) for the month of April, 1993.

DATE	FORM	DOCUMENT NO.
April, 1993	423-1(a), 423-2, 423-2(a), 423-2(b), 423-2(c)	6362-93

TECO argues, pursuant to Section 366.093(3)(d), Florida Statutes, that lines 1-5 of column H, Invoice Price, on Form 423-1(a) contain contractual information which, if made public, would impair the efforts of TECO to contract for goods or services on favorable terms. The information indicates the price which TECO has paid for No. 2 fuel oil per barrel for specific shipments from specific suppliers. If disclosed, this information would allow suppliers to compare an individual supplier's price with the market for that date of delivery and thereby determine the contract pricing formula between TECO and that supplier. Disclosure of the Invoice Price would allow suppliers to determine the contract price formula of their competitors. Knowledge of each other's prices would give suppliers information with which to actually control the pricing in No. 2 oil by either all quoting a particular price or adhering to a price offered by a major supplier. This could reduce or eliminate any opportunity for a major buyer, like TECO, to use its market presence to gain price concessions from any individual supplier. The result of such disclosure, TECO argues, is reasonably likely to be increased No. 2 fuel oil prices and increased electric rates.

TECO argues that lines 1-5 of columns I, Invoice Amount; J, Discount; K, Net Amount; L, Net Price; M, Quality Adjustment; N, Effective Purchase Price; and O, Transport to Terminal, on Form 423-1(a) are entitled to confidential treatment because the contract information therein are algebraic functions of column H, Invoice Price. The publication of these columns together or independently, therefore, TECO argues, could allow a supplier to derive the Invoice Price of No. 2 oil paid by TECO. As to lines

1-5 of column M, TECO further argues that for fuel that does not meet contract requirements, TECO may reject the shipment, or accept the shipment and apply a quality adjustment. This, TECO argues, is a pricing term as important as the price itself rendering the rationale to classify relating to price concessions applicable. As to lines 1-5 of column N, TECO further argues that the information in this column is as entitled to confidential treatment as the invoice price due to the relatively few times quality or discount adjustments are applied. In other words, column N, Effective Purchase Price, will typically equal column H, Invoice Price. I find that lines 1-5 of columns H-O on Form 423-1(a) are entitled to confidential classification.

TECO has requested confidential treatment of lines 1-13 of column G, Effective Purchase Price, on Form 423-2 relating to Electro-Coal Transfer Facility - Big Bend Station, arguing disclosure would impair TECO's efforts to contract for goods or services on favorable terms. Additionally, one could ascertain the Total Transportation Charges by subtracting a disclosed Effective Purchase Price, column I, from the Delivered price at the Transfer Facility. A competitor with knowledge of the Total Transportation Charges could use that information in conjunction with the published Delivered Price at the Electro-Coal Transfer facility to determine the segmented transportation costs, i.e., the breakdown of transportation charges for river barge transport and for deep water transportation across the Gulf of Mexico from the transfer facility to Tampa. TECO argues it is this segmented transportation cost data which is entitled to confidential treatment in that disclosure would adversely affect TECO's future fuel and transportation contracts by informing potential bidders of current prices paid for services provided. Disclosure of fuel oil prices would indirectly affect bidding suppliers. Suppliers would be reluctant to provide significant price concessions to an individual utility if prices were disclosed because other purchasers would seek similar concessions. TECO further argues the information would inform other potential suppliers as to the price TECO is willing to pay for coal. This would provide present and potential coal suppliers information which could adversely affect TECO's ability to negotiate coal supply agreements.

TECO requests confidential treatment of lines 1-13 of column H, Total Transport Charges, on Form 423-2, relating to Electro-Coal Transfer Facility - Big Bend Station, arguing that their disclosure would also impair its efforts to contract for goods or services on favorable terms because, as discussed above, both columns G and H,

if disclosed, would enable competitors to determine segmented transportation charges. I find that columns G and H of Form 423-2, relating to Electro-Coal Transfer Facility - Big Bend Station, which reflect the F.O.B. Mine Prices resulting from negotiations with unaffiliated third-parties are entitled to confidential treatment.

TECO requests confidential treatment of lines 1-13 of column H, Original Invoice Price, on Form 423-2(a) relating to Electro-Coal Transfer Facility - Big Bend Station, because disclosure would enable one to subtract that price from the publicly disclosed Delivered Price at the Electro-Coal Transfer Facility and thereby determine the segmented river transportation cost. Such disclosure, TECO argues, would impair its efforts to contract for goods or services on favorable terms due to rationale similar to that offered for confidential treatment of column O, Effective Purchase Price, of Form 423-2 (Electro-Coal Transfer Facility - Big Bend Station).

TECO similarly requests confidential treatment of lines 1-13 of column J, Base Price, on Form 423-2(a), relating to Electro-Coal Transfer Facility - Big Bend Station, in that disclosure would enable a competitor to "back-into" the segmented transportation cost using the publicly disclosed Delivered Price at the transfer facility; one could subtract column J, Base Price Per Ton, from the Delivered Price at the transfer facility, to obtain the River Barge Rate.

TECO also contends that lines 1-13 of column L, Effective Purchase Price, on Form 423-2(a), relating to Electro-Coal Transfer Facility - Big Bend Station, are entitled to confidentiality since, if disclosed, they would enable a competitor to back into the segmented waterborne transportation costs using the already disclosed Delivered Price of coal at the transfer facility. Such disclosure, TECO argues, would impair its efforts to contract for goods or services on favorable terms for the reasons discussed in relation to column G, Form 423-2 (Electro-Coal Transfer Facility - Big Bend Station). I agree that the numbers in lines 1-13 of columns H, J, and L, reflect actual costs negotiated and obtained in arms-length transactions with unaffiliated third parties which, if disclosed, could cause harm to TECO's customers.

TECO requests confidential treatment of lines 1-13 of columns G, Effective Purchase Price; I, Rail Rate; K, River Barge Rate; L, Transloading Rate; M, Ocean Barge Rate; N, Other Water Charges; O,

Other Related Charges; and P, Total Transportation Charges on Form 423-2(b) relating to the Electro-Coal Transfer Facility - Big Bend Station. TECO argues that disclosure of the Effective Purchase Price per ton would impair its ability to contract for goods or services on favorable terms by enabling a competitor to back into the segmented transportation costs by using the publicly disclosed Delivered Price for coal at the transfer facility; one could obtain the River Barge Rate by subtracting the Effective Purchase Price per ton from the price per ton delivered at Electro-Coal. I find that the waterborne costs contained in columns G, I, K, L, M, N, O, and P involve acceptable cost allocation between TECO and its waterborne affiliates, Mid-South Towing, Electro-Coal Transfer, and Gulf Coast Transit, and, as such, are entitled to confidentiality.

TECO also requests confidential treatment of lines 1-3 of columns G, Effective Purchase Price, and H, Total Transportation Charges on Form 423-2; lines 1-3 of columns H, Original Invoice Price; J, Base Price, and L, Effective Purchase Price, on Form 423-2(a); and lines 1-3 of columns G, Effective Purchase Price; I, Rail Rate; K, River Barge Rate; L, Transloading Rate; M, Ocean Barge Rate; N, Other Water Charges; O, Other Related Charges; and P, Total Transportation Charges, on Form 423-2(b), all relating to the Electro-Coal Transfer Facility - Gannon Station. TECO offers rationale identical to that offered in relation to those columns on Forms 423-2, 2(a), and 2(b) relating to the Electro-Coal Transfer Facility - Big Bend Station. I find that the referenced information in Forms 423-2, 2(a), and 2(b) relating to the Electro-Coal Transfer Facility - Gannon Station is entitled to confidential treatment for the same reasons provided for the Electro-Coal Transfer Facility - Big Bend Station.

TECO requests confidential treatment of line 1 of columns G, Effective purchase Price; and H, Total Transportation Charges on Form 423-2 relating to the Big Bend Station and lines 1-3 of the same columns on the same form relating to the Gannon Station. TECO contends that disclosure of the Effective Purchase Price in both cases would impair its efforts to contract for goods and services on favorable terms, because if one subtracts the information in this column from that in column I, F.O.B. Plant Price, one can obtain the segmented transportation cost, including transloading and ocean barging. TECO also argues that disclosure of the Total Transport Charges would similarly impair its contracting ability by enabling a competitor to determine segmented transportation charges.

TECO similarly argues that line 1 of columns H, Original Invoice Price; J, Base Price; and L, Effective Purchase price of Forms 423-2(a) relating to the Big Bend Station and lines 1-3 of the same columns of the same form relating to Gannon Station are entitled to confidential treatment in that disclosure would allow a competitor to deduce the segmented terminating and ocean barge transportation cost and terminating and ocean barge rate on rail rate, respectively.

TECO similarly requests confidential treatment of line 1 of columns G, Effective Purchase Price; I, Rail Rate; K, River Barge Rate; L, Transloading Rate; M, Ocean Barge Rate; N, Other Water Charges; O, Other Related Charges; and P, Total Transportation Charges, on Form 423-2(b), relating to Big Bend Station, and lines 1-3 of the same columns for the same form relating to Gannon Station. TECO argues that disclosure of either Effective Purchase Price per ton would enable a competitor to back into the segmented transportation cost of termination and Ocean Barge Rates by subtracting that price per ton from the F.O.B. Plant Price per ton. The information presented in these columns relating to Gannon Station simply involves permissible cost allocation between TECO and an affiliate, Gatliff Coal. I find, therefore, disclosure of line 1 of columns G and H on Form 423-2 relating to Big Bend Station, and lines 1-3 of the same columns on the same form relating to Gannon Station; line 1 of columns H, J, and L on Form 423-2(a) relating to Big Bend Station and lines 1-3 of the same columns on the same form relating to Gannon Station; and line 1 of columns G, I, K, L, M, N, O, and P on Form 423-2(b) relating to Big Bend Station and lines 1-3 of the same columns on the same form relating to Gannon Station, would impair TECO's ability to contract for similar goods or services on favorable terms and the information is entitled to confidential treatment.

TECO further argues that disclosure of its Rail Rate per ton in column I on all its Forms 423-2(b) would impair the ability of TECO and its affiliate to negotiate favorable rail rates with the various railroads serving areas in the vicinity of TECO's coal suppliers. Gatliff has other coal buying customers with other railway options; disclosure of railrates, therefore, would impair the contracting ability of a TECO affiliate and could ultimately adversely affect TECO's ratepayers.

TECO also requests confidential treatment for information found on Form 423-2(c), on line 11 of columns J and K (page 2 of 2). TECO argues that information under J reveals the actual rate

paid for river barge transportation, and thus, the data is proprietary and confidential, disclosure of which would enable competitors to determine the price TECO pays its coal suppliers. Furthermore, TECO argues, this information should also be protected for the same reasons information contained in Form 423-2, column G, was found confidential. The data in column K consists of the direct rail rate which when subtracted from the total delivered price of coal, reveals the rate paid for Gatliff coal. This is contractual information and if made public would "impair the efforts of the public utility to contract for goods and services on favorable terms" and have a direct impact on TECO's future fuel contracts by informing potential bidders of prices currently being paid.

TECO asserts that the material for which it seeks classification is intended to be and is treated by TECO and its affiliates as private and has not been disclosed.

I find TECO's request to be reasonable, and, therefore, I find the lines listed above to be confidential proprietary business information.

DECLASSIFICATION

TECO further requests the following proposed declassification dates:

FORMS	LINE(S)	COLUMN	DATE
423-1(a)	1 - 5	H - O	06-11-95
423-2	1 - 13	G - H	06-11-95
423-2(a)	1 - 13	H,J,L	06-11-95
423-2(b)	1 - 13	G,I,K,L, M,N,O,P	06-11-95
423-2(c)	11	J,K	06-11-95

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Prior to October 1, 1989, Section 366.093, Florida Statutes, governing the confidential treatment of utility records, was silent as to the period of time for which a finding of confidentiality was effective. Rule 25-22.006(4)(a), Florida Administrative Code, simply provided that the justification shall include a date after which the material is no longer proprietary confidential business information or a statement that such a date cannot be determined

and the reasons therefore. Effective October 1, 1989, subsection 366.093(4), Florida Statutes, was enacted to provide that:

> [a]ny 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 the protection from disclosure shall be for a specified longer period.

As to the fuel oil contract data in DN-6362-93, TECO explains that its interests would be best protected by classifying the material until at least six months after the contracts expire, because future contract negotiations would be impaired if such material, which contains pricing information, were disclosed prior to the negotiation of a new contract. TECO states negotiations are normally completed within six months. TECO further indicates that a two year classification period generally will account for this six month negotiation period.

As to the coal and coal transportation information contained in DN-6362-93, TECO explains that the disclosure of that information before the passage of two years could affect the viability of its affiliates which provide those services to TECO and to outside non-regulated customers, which in turn could affect the price TECO ultimately pays for those services. TECO further explains this potential effect as follows:

> 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 the

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 data 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.

I find that TECO has shown good cause for an extended period of classification. The material in DN-6362-93 as discussed above, will remain classified until two years from the dates of the respective requests for classification, as listed in the revised chart.

In consideration of the foregoing, it is

ORDERED that Tampa Electric Company's request for confidential treatment of the above specified information in Forms 423-1(a), 423-2, 423-2(a), 423-2(b), and 423-2(c) as discussed in the body of this Order is granted. It is further

ORDERED that the declassification dates for Forms 423-1(a), 423-2, 423-2(a), 423-2(b), and 423-2(c) as discussed in the text of this Order is hereby granted.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer, this 21st day of June, 1993.

J. TERRY DEASON, Chairman and
Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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