

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-04-0539-CFO-EI
ISSUED: May 26, 2004

ORDER GRANTING REQUESTS FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NOS. 01500-04, 01932-04, 05241-04)

On February 2, 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 six pages of output requested by Staff from the computer models of Tampa Electric witness Brent Dibner (Document No. 01500-04). On February 11, 2004, Tampa Electric filed a request for confidential classification of nine pages of output requested by Staff from the computer models of Mr. Dibner (Document No. 01932-04). On May 5, 2004, Tampa Electric filed a request for confidential classification of 21 pages of output requested by Staff from the computer models of Mr. Dibner (Document No. 05241-04).

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 the pages of output from Mr. Dibner's computer models that Staff printed out and requested be filed with the Commission for further assessment 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.

The justification for Tampa Electric's request for confidential classification of this specific data is set forth in Attachment A, which is an Affidavit of Mr. Dibner explaining the

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need to protect these models from disclosure to any person. Upon review, I find that this information is confidential for the reasons identified by the company.

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.

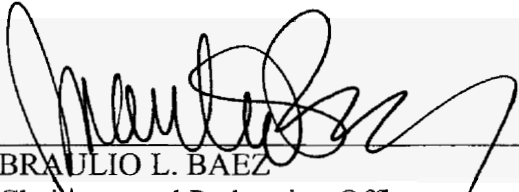
Based on the foregoing, it is

ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document Nos. 01500-04, 01932-04, and 05241-04 is granted. It is further

ORDERED that the information in Document Nos. 01500-04, 01932-04, and 05241-04 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.

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.

AFFIDAVIT OF BRENT DIBNER

I, Brent Dibner, am the President of Dibner Maritime Associates, LLC with my primary business address at 151 Laurel Road, Chestnut Hill, MA 02467.


I am in possession of the Florida Industrial Power Users Group's First Request for Production of Documents to Tampa Electric Company (Nos. 1-23). I have reviewed the definitions, instructions, and requests. Request for Production of Documents No. 14 instructs me to provide full, working copies of the "Inland Model" and the "Ocean Model" that were used to develop the rates that are the subject of my work for Tampa Electric and are pertinent to Tampa Electric's coal transportation hearing before the Florida Public Service Commission.



The models requested are proprietary models that represent the sum of my knowledge and expertise in the inland river and ocean transportation industries. I do not make them public or even available for sale to the public precisely because they represent my intellectual property and form the basis of my livelihood. These two models are custom-built to accurately describe the specific barge, towboat, and ocean-vessel operations that are necessary to transport coal from specific locations to specific destinations. The models are large and complex, and draw upon more than 27 years of management consulting experience and expertise that I have gained from almost continuous involvement in this industry, including consulting to many leading inland barge lines as well as a number of shippers. My career as a management consultant specializing in the maritime industry, and particularly the U.S. maritime industry, is based upon factual development of intellectual capital that has been carefully created, maintained, and utilized. My livelihood is based upon the competitive advantages that I have relative to other sources of information, analysis, insight, and expertise. These competitive advantages depend on not providing other existing or potential competitors with the benefit of my 27 years of experience. In my 27 years of practice, I have sold, managed and delivered between \$50 million and \$80 million of consulting services on a wide range of topics, but a significant portion of this revenue was tied to U.S.-flag maritime transportation and inland river transportation. It is reasonable to assume that my expertise in these areas represents many millions of dollars of past revenue and many millions of dollars of potential revenue in my future career. My models are supported by related or separate insights and databases of information that collectively, along with my models, represent my expertise. If my intellectual capital is disseminated to others, the value of my future career will be impaired.

In addition, the models that I and others in this industry use must be managed by highly knowledgeable users. In the hands of another person with less understanding, experience, knowledge, and/or sensitivity a model can quickly produce misleading, erroneous or harmful results. My models are not designed to be stretched or pulled to the point of breakage by other parties but are tools with which to apply my expert knowledge and assumptions. My models are also supported by many other efforts that represent an even greater portion of my knowledge, expertise and competitive advantage. I rarely transfer models to my clients precisely because they are highly prone to misuse.

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My models should not be produced for the reasons given above. In addition to those facts, the reality is that my models are not necessary to gain an understanding of the evaluation and analysis I completed for Tampa Electric. The recommended market rates are straightforward and based on bids received or the market analysis I completed. All of my work is described in detail in my testimony and final report. In my testimony and exhibit filed in Docket No. 030001-EI and to be filed in Docket No. 031033-EI, I have provided descriptions of the principles, results, and explanations of these models, as well as comparisons of the market rates with bid rates. I have answered all questions asked of me concerning these models. I have described or discussed many of the drivers of the inland and ocean modes in my report and during the deposition. During my deposition with Tampa Electric witness, Joann Wehle, I reviewed information presented to me and offered guidance on its usefulness, accuracy and limitations. I compared my model's results with bids and with Tampa Electric's current rates. I described the core return assumptions, the value of barges, and the modest returns on asset value that I assumed. The composition of rates provides further insights into the capital costs, variable costs, and fuel costs. In my report, filed as the exhibit to my testimony, I provided precise guidance as to many of the contractual terms, operational factors and elements that are the basis for the established market rates. In my report pages 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 70, 71, 74, 75, 76, 77, and 78 provide a comprehensive description of factors, assumptions, cost structures, considerations, competitive rates, etc. The information included in my report is sufficient to provide any persons with a passing knowledge of the general transportation industry with the basis to create or modify their own straightforward model to approximate rates and evaluate whether the bids received and the rates I developed are of a reasonable order of magnitude, without the production of the models themselves.


Brent Dibner, President
Dibner Maritime Associates, LLC



ANGELA LYNN LLEWELLYN
Notary Public - State of Florida
My Commission Expires Mar 24, 2006
Commission # DD 101564
Bonded By National Notary Assn.
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