

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-04-0915-CFO-EI  
ISSUED: September 20, 2004

ORDER GRANTING IN PART AND DENYING IN PART REQUEST  
FOR CONFIDENTIAL CLASSIFICATION  
(DOCUMENT NO. 05119-04)

On May 24, 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 the Deposition Transcript and Deposition Exhibits of Michael J. Majoros, Jr. (Document No. 05119-04). On June 1, 2004, Office of Public Counsel (OPC) and the Florida Industrial Power Users Group (FIPUG) filed a Joint Response in Opposition to Tampa Electric's Request.

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 the Deposition Transcript and Deposition Exhibits of Michael J. Majoros, Jr. 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 portions of the Deposition Transcript and Exhibits contain information concerning the contract terms and rates that were paid for transportation services under Tampa Electric's contracts with TECO Transport during the period 1998 through 2003 or that will be paid for transportation services under Tampa Electric's contract with TECO Transport that took effect January 1, 2004. Tampa Electric asserts that this is competitive contractual information, the disclosure of which would be harmful to the position of TECO Transport in negotiating future contracts with other clients. According to Tampa Electric, disclosing this information would also harm Tampa Electric's position in

DOCUMENT NUMBER-DATE

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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. Tampa Electric states that the disclosure of this information would be harmful to TECO Transport's competitive interests and to the ability of Tampa Electric to contract for goods and services on favorable terms. Tampa Electric further asserts that portions of the Deposition Transcript and Exhibits contain information, that although not necessarily confidential in and of itself, would allow one to back into confidential proprietary business information. Tampa Electric also contends that portions of the Deposition Transcript and Exhibits contain bid information provided in response to Tampa Electric's RFP or information contained in prior proposals relating to coal transportation. According to Tampa Electric, disclosing bidders' identities and the information included in their confidential proposals would discourage bidders from participation in future RFPs as they do not desire their competitors to have access to the terms and conditions under which they will bid on transportation services. Tampa Electric states that this information, in conjunction with publicly disclosed information, would allow a competitor to back into the contract rates established for Tampa Electric's contract with TECO Transport. Tampa Electric further asserts that portions of the Deposition Transcript and Exhibits contain information about the proprietary work product of Tampa Electric's consultant, Dibner Maritime Associates LLC (DMA). Tampa Electric contends that the disclosure of this information could allow duplication of the consultant's work without compensation for DMA's efforts to gather and update the information and develop methods of analysis. Tampa Electric argues that this information is a trade secret of DMA. Tampa Electric states that this information relates to competitive interests, the disclosure of which would impair DMA's competitive business interests by diminishing the demand for DMA's proprietary work product. Finally, Tampa Electric asserts that portions of the Deposition Transcript and Exhibits contain information that reveal the identity of bidders that submitted proposals in response to Tampa Electric's RFP. Tampa Electric states that disclosing bidders' identities and the information included in their confidential proposals would discourage bidders from participation in future RFPs. Tampa Electric states that this information is intended to be and is treated by Tampa Electric as private and has not been publicly disclosed.

In their Joint Response, FIPUG and OPC argue that most of the information for which Tampa Electric seeks confidential treatment is identical to the information in the prefiled testimony and exhibits of FIPUG/OPC witness Michael J. Majoros, Jr. that the Commission found not to be confidential in Order No. PSC-04-0544-CFO-EI, issued May 26, 2004. FIPUG and OPC request that the information be denied confidential classification since the Commission has already found it to be public information. In addition, FIPUG and OPC state that the information appearing on Page 86, lines 6-8, of the Deposition Transcript should not be granted confidential classification since the same information appears unredacted elsewhere in the Deposition Transcript.

Upon review, I find that the requested information is confidential for the reasons identified by the company, with the exception of the information in which Order No. PSC-04-0544-CFO-EI has already found to not be confidential and some titles, column headings, and text

within Deposition Exhibits that reveal no confidential information. In addition, the information appearing on Page 86, lines 6-8, of the Deposition Transcript appears unredacted on Page 59 and thus is denied confidential classification. The information for which Tampa Electric requests confidential classification and the ruling on each item is set forth below:

Transcript Page & Line No.	Ruling
Page 12, line 13	Grant
Page 12, line 18	Deny
Page 13, line 1	Deny the Second Highlighted Number
Page 13, line 6	Grant
Page 13, line 10	Deny the Second Highlighted Number
Page 14, line 3	Grant
Page 14, line 4	Grant
Page 26, lines 22, 23	Grant
Page 50, lines 12, 15, 20, 22	Grant
Page 51, lines 3, 5	Grant
Page 54, line 4	Grant
Page 54, line 7	Grant
Page 54, line 14	Grant
Page 54, line 18	Deny
Page 54, line 21	Grant
Page 54, line 24	Grant
Page 55, lines 5, 23	Grant
Page 56, line 2	Grant
Page 57, lines 19, 20, 24, 25	Grant
Page 58, lines 4, 8	Grant
Page 58, line 11	Grant
Page 58, lines 14, 23	Grant
Page 59, line 20	Grant
Page 60, lines 2, 4, 5, 7, 23	Grant
Page 61, lines 2, 13, 17, 19	Grant
Page 63, line 6	Grant
Page 67, line 22	Grant
Page 75, lines 6, 7	Grant
Page 79, line 9	Grant
Page 79, line 10	Deny
Page 79, line 11	Grant
Page 79, line 21	Deny
Page 79, line 22	Grant

Page 79, line 23	Grant
Page 81, line 7	Deny
Page 85, line 22	Grant
Page 86, lines 6, 7, 8	Deny
<b>Errata Sheet</b>	
Line 2	Grant
<b>Deposition Exhibits</b>	
Late Filed Deposition Exhibit No. 1 (MJM-1), Page 1 of 5, line 1 under "Comparison of Rates" heading	Grant
Late Filed Deposition Exhibit No. 1 (MJM-1), Page 1 of 5, line 2 under "Comparison of Rates" heading	Deny
Late Filed Deposition Exhibit No. 1 (MJM-1), Page 1 of 5, line 3 under "Comparison of Rates" heading	Grant
Late Filed Deposition Exhibit No. 1 (MJM-1), Page 1 of 5, line 4 under "Impact of Adjustments" heading	Grant
Late Filed Deposition Exhibit No. 1 (MJM-1), Page 1 of 5, line 5 under "Impact of Adjustments" heading	Grant
Late Filed Deposition Exhibit No. 1 (MJM-1), Page 1 of 5, line 6 under "Impact of Adjustments" heading	Grant
Late Filed Deposition Exhibit No. 1 (MJM-1), Page 1 of 5, line 7 under "Impact of Adjustments" heading	Grant
Late Filed Deposition Exhibit No. 1 (MJM-1), Page 1 of 5, line 8 under "Impact of Adjustments" heading	Grant

Late Filed Deposition Exhibit No. 1 (MJM-1), Page 1 of 5, line 4 under "Source by Row" heading	Grant
Late Filed Deposition Exhibit No. 1 (MJM-1), Page 1 of 5, line 5 under "Source by Row" heading	Grant
Late Filed Deposition Exhibit No. 1 (MJM-1), Page 1 of 5, line 6 under "Source by Row" heading	Deny the Second Number (the Snavelly King rate)
Late Filed Deposition Exhibit No. 1 (MJM-1), Page 1 of 5, line 7 under "Source by Row" heading	Grant
Late Filed Deposition Exhibit No. 1 (MJM-1), Page 2 of 5	Deny all titles, column headings, and text in the first 8 rows and both footnotes
Late Filed Deposition Exhibit No. 1 (MJM-1), Page 3 of 5	Grant for all numbers  Deny for the remaining information
Late Filed Deposition Exhibit No. 1 (MJM-1), Page 4 of 5	Deny all titles, column headings, and text in the first 8 rows and both footnotes
Late Filed Deposition Exhibit No. 1 (MJM-1), Page 5 of 5	Grant for all numbers except the rate that appears on the bottom row, last column on the right  Deny for the remaining information

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,

ORDER NO. PSC-04-0915-CFO-EI  
DOCKET NO. 031033-EI  
PAGE 6

unless Tampa Electric or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

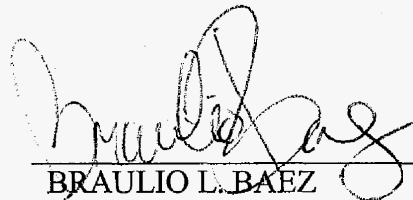
Based on the foregoing, it is

ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document No. 05119-04 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 No. 05119-04 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 20th day of September, 2004



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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-

ORDER NO. PSC-04-0915-CFO-EI

DOCKET NO. 031033-EI

PAGE 7

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.