

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 100001-EI  
ORDER NO. PSC-10-0067-CFO-EI  
ISSUED: January 28, 2010

ORDER GRANTING TAMPA ELECTRIC COMPANY'S  
REQUEST FOR CONFIDENTIAL CLASSIFICATION AND  
MOTION FOR TEMPORARY PROTECTIVE ORDER  
(DOCUMENT NO. 09088-09)

On September 1, 2009, pursuant to Section 366.093(3), Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Tampa Electric Company (TECO) filed a request for confidential classification of certain highlighted information contained in TECO's Schedule E12 for the period January 2010 through December 2010, (Bates Stamp Page 21; Page 21 of Exhibit CA-3 to the pre-filed direct testimony of Carlos Aldazabal) (Document No. 09088-09). This request was filed in Docket No. 090001-EI.

Section 366.093(1), F.S., 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 Section 119.07(1) [the Public Records Act]." Section 366.093(3), F.S., 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), F.S., paragraphs (d) and (e), provide that proprietary confidential business information includes, but is not limited to "[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;" and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

TECO contends that the information contained in Schedule E12, TECO's Capacity Costs Estimated for the Period January 2010 through December 2010, specifically all columns in the rows entitled "Hardee Power Partners;" "Calpine - D;" "Reliant Energy Services - D;" "Pasco Cogen - D;" "Subtotal Capacity Purchases;" "Seminole Electric - D;" Various Market Based;" and "Subtotal Capacity Sales" falls within these categories and, thus, constitutes proprietary confidential business information entitled to protection under Section 366.093(3), F.S., and Rule 25-22.006, F.A.C. TECO states that this information is intended to be and is treated by TECO as private and has not been publicly disclosed.

TECO claims that the highlighted information contained in Schedule E12, specifically all columns in the rows entitled "Hardee Power Partners;" "Calpine - D;" "Reliant Energy Services - D;" "Pasco Cogen - D;" "Subtotal Capacity Purchases;" "Seminole Electric - D;" Various Market Based;" and "Subtotal Capacity Sales," shows estimated purchase amounts pursuant to confidential contracts negotiated by and between TECO and certain energy providers, thus

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qualifying it as information concerning bids or other contractual data, the disclosure of which would impair the efforts of TECO to contract for goods or services on favorable terms. TECO also asserts that this information relates to its competitive interests, the disclosure of which would impair TECO's competitive business.

### Ruling

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3)(d), F.S., for classification as proprietary confidential business information. The information consists of negotiated contracts for capacity purchases and sales between TECO and various counter-parties, and thus constitutes "[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." Moreover, none of the documentation discussed herein contains any information regarding the compensation of TECO executives. Thus, the information identified in Document No. 09088-09, specifically all columns in the rows entitled "Hardee Power Partners;" "Calpine - D;" "Reliant Energy Services - D;" "Pasco Cogen - D;" "Subtotal Capacity Purchases;" "Seminole Electric - D;" Various Market Based;" and "Subtotal Capacity Sales," shall be granted confidential classification.

Pursuant to Section 366.093(4), F.S., 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), F.S., unless TECO or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

### Motion for Temporary Protective Order

TECO also seeks protection of the documents as provided in Section 366.093(2), F.S., and Rule 25-22.006(6), F.A.C., while the material is in the possession of the Office of Public Counsel (OPC). Section 366.093(2), F.S., directs that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by any party subject to the public records law as confidential and exempt from the public records law. Section 119.07(1), F.S. Rule 25-22.006(6), F.A.C., codifies the Commission's policy regarding the protection of confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006(6)(a), F.A.C., in pertinent part, states:

In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure.

In addition, Rule 25-22.006(6)(c), F.A.C., states that if a party allows OPC to inspect or take possession of utility information, then that "utility may request a temporary protective order exempting the information from section 119.07(1), F.S."

Upon consideration, TECO's Motion for Temporary Protective Order is granted. TECO has demonstrated that the material is proprietary confidential business information. Accordingly, this information will be protected from disclosure pursuant to Rule 25-22.006(6), F.A.C.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of information contained in Document No. 09088-09, specifically all columns in the rows entitled "Hardee Power Partners;" "Calpine - D;" "Reliant Energy Services - D;" "Pasco Cogen - D;" "Subtotal Capacity Purchases;" "Seminole Electric - D;" Various Market Based;" and "Subtotal Capacity Sales," is granted. It is further

ORDERED that the information in Document No. 09088-09 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. It is further

ORDERED that the Motion for Temporary Protective Order filed by Tampa Electric Company is granted.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 28th day of January, 2010.



NATHAN A. SKOP

Commissioner 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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.