

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Tampa
Electric Company.

DOCKET NO. 130040-EI
ORDER NO. PSC-13-0393-CFO-EI
ISSUED: August 26, 2013

ORDER GRANTING TAMPA ELECTRIC COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION AND
MOTION FOR TEMPORARY PROTECTIVE ORDER (DOCUMENT NO. 04906-13)

On August 21, 2013, pursuant to Section 366.093, 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 its responses to the WCF Hospital Utility Alliance's (HUA) Third Request for Production of Documents, Document No. 151, Bates stamp pages 3-253; Document No. 152, Bates stamp pages 255-2025; Document No. 153, Bates stamp pages 2027-2032; Document No. 155, Bates stamp pages 2035-2053; and HUA's Fourth Request for Production of Documents, No. 167b, Bates stamp pages 3432-3433 (Document No. 04906-13).

Request for Confidential Classification

Section 366.093(1), F.S., provides that records which the Commission has found to contain proprietary confidential business information shall be kept confidential and shall be exempt from Chapter 119, F.S. 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. Sections 366.093(3)(d) and (e), F.S., provide that proprietary confidential business information includes, but is not limited to:

- (d) Information 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.
- (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Pursuant to Section 366.093, F.S., and Rule 25-22.006(4)(c), F.A.C., the utility has the burden of demonstrating that materials qualify for confidential classification. The utility must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which would impair or harm the competitive business of the provider of the information.

TECO contends that the information contained in its responses to HUA's Third Request for Production of Documents, Document No. 151, Bates stamp pages 3-253; Document No. 152,

Bates stamp pages 255-2025; Document No. 153, Bates stamp pages 2027-2032; Document No. 155, Bates stamp pages 2035-2053; and HUA's Fourth Request for Production of Documents, No. 167b, Bates stamp pages 3432-3433, falls within these categories and, thus, constitutes proprietary confidential business information entitled to protection under Section 366.093, 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.

Specifically, TECO states that its response to HUA's Third Request for Production of Documents, Nos. 151 and 152, contains details of its natural gas commodity and transportation contracts through the year 2014. Disclosure of this type of fuel pricing information would adversely affect TECO's ability to negotiate and secure the lowest price possible for natural gas in the future. The information contained in its response to HUA's Third Request for Production of Documents, No. 153, contains detailed information about TECO's generation system operations, the disclosure of which would allow competitors to offer energy and capacity during times of the utility's peak needs resulting in higher costs to TECO's ratepayers. The information contained in HUA's Third Request for Production of Documents, No. 155, contains proprietary generation and transmission expansion information provided to TECO senior management and TECO Board members on a confidential basis. Disclosure of this information would provide prospective bidders with insight into TECO's needs which may impact the pricing as well as the terms and conditions of its proposals to the detriment of TECO's ratepayers. Finally, TECO's response to HUA's Fourth Request for Production of Documents, Nos. 167b, contains team member negotiated salaries and data purchased under contract for employee compensation benchmarking. Disclosure of this type of information could adversely affect the ability of TECO to retain current employees and hire new employees.

Upon review, it appears the above-referenced information satisfies the criteria set forth in Sections 366.093(3)(d) and (e), F.S., for classification as proprietary confidential business information. The information at issue concerns 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 information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information. Thus, the information identified in Document No. 04906-13, specifically, Document No. 151, Bates stamp pages 3-253; Document No. 152, Bates stamp pages 255-2025; Document No. 153, Bates stamp pages 2027-2032; Document No. 155, Bates stamp pages 2035-2053; and Document No. 167b, Bates stamp pages 3432-3433, 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 of TECO's assertions of the confidential nature of the information contained in HUA's Third Request for Production of Documents, Document No. 151, Bates stamp pages 3-253; Document No. 152, Bates stamp pages 255-2025; Document No. 153, Bates stamp pages 2027-2032; Document No. 155, Bates stamp pages 2035-2053; and HUA's Fourth Request for Production of Documents, No. 167b, Bates stamp pages 3432-3433, TECO's Motion for Temporary Protective Order is hereby granted. As a result, this information shall be protected from disclosure pursuant to Rule 25-22.006(6), F.A.C.

Based on the foregoing, it is

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document No.04906-13, is granted, as set forth herein. It is further

ORDERED that the information in Document No. 04906-13 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 Julie I. Brown, as Prehearing Officer, this 26th day of August, 2013.



JULIE I. BROWN

Commissioner and Prehearing Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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.