

BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power Cost) DOCKET NO. 900001-EI
 Recovery Clause and Generating Perform-) ORDER NO. 23124
 ance Incentive Factor.) ISSUED: 6-27-90
)

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER

ORDER GRANTING TAMPA ELECTRIC COMPANY'S
 REQUEST FOR HEARING

BY THE COMMISSION:

On January 18, 1990, Tampa Electric Company (TECO) requested specified confidential treatment of portions of its FPSC forms 423-1(a), 423-2, 423-2(a), and 423-2(b) for the month of November, 1989. On February 1, 1990, TECO supplemented its request. On February 26, 1990, Prehearing Officer John T. Herndon, pursuant to Rule 25-22.006, Florida Administrative Code, issued Order No. 22596 setting forth a tentative ruling granting, in part, and denying, in part, TECO's request. On March 12, 1990, TECO filed both a protest to certain portions of Order No. 22596, pursuant to Rule 25-22.006, Florida Administrative Code, and a request for hearing, pursuant to Section 120.57, Florida Statutes. Tampa Electric Company seeks to present evidence on the substantial harm which would allegedly befall TECO and its affiliates if certain information discussed in the order is denied confidential treatment.

Rule 25-22.006(3)(c), Florida Administrative Code, provides that "Commission panel assigned to the case will hear any protest to the prehearing officer's ruling." Commission practice is to hear protests to tentative confidentiality rulings at an Agenda Conference because those rulings typically involve legal, as opposed to factual, disputes. TECO's protest, however, raise several issues of material fact, mainly, whether substantial harm would befall TECO and its affiliates if the information discussed in Order No. 22596 is denied confidential treatment.

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TECO, in its protest, has raised at least two issues of material fact. First, it was the position of the Commission that disclosure of affiliate-supplier information cannot result in an impairment of contracts where TECO's conduct in relation to its affiliates in their post-market based transactions does not involve legally binding negotiated contracts, but, instead, a transfer pricing arrangement. In its protest, however, TECO asserted that "negotiations took place throughout 1988." A factual dispute arises as to whether TECO and its coal and transportation affiliates have a contractual or transfer pricing arrangement.

Second, denial of TECO's request for special confidential treatment of its rail rates between Gatliff and Gannon was partially premised on the understanding that in October, 1986, Staff had obtained documents disclosing the rail contract rates between TECO and CSX railroad. The contract, effective August 28, 1985, was for a 5-year period; rail rates included in TECO's November, 1989, request, therefore, had been previously disclosed and could not now be found entitled to confidential treatment. In its protest, however, TECO indicated that it had renegotiated its rail contract in 1989. Accordingly, previous disclosure of the 1985 contract rates would not enable one to compute 1989 rail rates which would then be entitled to confidential treatment. A factual dispute results as to whether the 1985 contract terms are still in effect or were renegotiated in 1989.

Section 120.57, Florida Statutes, provides for formal proceedings "whenever the proceeding involves a disputed issue of material fact." Because TECO has raised several disputed issues of material fact in its protest, the Commission finds that TECO is entitled to a hearing.

The Commission further finds that it should hear TECO's protest as soon as possible; rulings on TECO's confidentiality requests associated with its monthly fuel reports have been deferred until this protest is resolved. The regularly scheduled hearing in this docket is scheduled for August 22-24, 1990. We find, therefore, that this issue should be included in that hearing.

In consideration of the foregoing, it is

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ORDERED that Tampa Electric Company's request for a hearing on its protest to Order No. 22596 is granted and will be included in the regularly scheduled hearing in this docket on August 22-24, 1990.

By ORDER of the Florida Public Service Commission,
this 27th day of JUNE, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

BAB

by: Kay DeLeon
Chief, Bureau of Records

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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and

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filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.