

BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power))
 Cost Recovery Clause and))
 Generating Performance Incentive))
 Factor.))

DOCKET NO. 910001-EI
 ORDER NO. 24043
 ISSUED: 1/29/91

ORDER GRANTING TAMPA ELECTRIC COMPANY'S REQUEST
 FOR SPECIFIED DECLASSIFICATION DATES FOR PORTIONS
 OF ITS AUGUST, 1990 423 FILINGS

Tampa Electric Company (TECO) requested specified confidential treatment of its FPSC forms 423-1(a), 423-2, 423-2(a), 423-2(b), and 423-2(c) for the month of August, 1990 on October 17, 1990. TECO's request was granted in Order No. 23739 issued on November 8, 1990. TECO's request for specified declassification dates, however, were denied by this same Order. Consequently, TECO protested that portion of Order No. 23739 denying their requested declassification dates on November 21, 1990.

Prior to October 1, 1989, Section 366.093, Florida Statutes, governing the confidential treatment of utility records, was silent as to the period of time for which a finding of confidentiality was effective. Rule 25-22.006(4)(a), Florida Administrative Code, simply provided that the justification shall include a date after which the material is no longer proprietary confidential business information or a statement that such a date cannot be determined and the reasons therefore. Effective October 1, 1989, subsection 366.093(4), Florida Statutes, was enacted to provide that:

[a]ny finding by the commission that records contain proprietary confidential business information is effective for a period set by the commission not to exceed 18 months, unless the commission finds, for good cause, that the protection from disclosure shall be for a specified longer period.

In order for the Public Service Commission (the Commission) to determine whether there is "good cause" to extend the confidential classification period, the utility must provide a detailed justification that explains why the material should remain classified confidential for a period exceeding the statutorily

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mandated 18 month period. Conclusory justifications will not suffice. The justification must be sufficiently detailed so that one may make a well reasoned finding.

In TECO's August, 1990 form 423 filing (DN-9290-90), they provided the following justification in their request for extended declassification dates.

Tampa Electric requests that the confidential information above not be disclosed until the identified date of declassification. The company has calculated that two years from the date of this filing is the minimum period of time needed to protect Tampa Electric's affiliates and, ultimately, Tampa Electric and its Customers from the harms which would occur if competitors or potential Customers of Tampa Electric's affiliates are made aware of the information which is the subject of this request. Quite clearly, information of recent vintage would give a competitor or a present or potential Customer a strategic advantage in the negotiating process. Tampa Electric submits that if the information is a least two years old, then this advantage can be reduced to an acceptable level which is not as likely to cause harm to Tampa Electric's affiliates or to Tampa Electric's own Customers.

In Order No. 23739 TECO's requested declassification dates were denied because the rationale provided was conclusory in nature. TECO presented the Commission with a justification based on their conclusion that 2 years of confidential classification were needed in order to avoid bestowing upon competitors an unfair economic advantage without explaining why and how competitors would benefit. TECO failed to provide a detailed justification, and thus, failed to show cause.

It should be noted that prior to the issuance of Order No. 23739, TECO was put on notice that their rationale for extended classification periods was insufficient on its face. In Order No. 23639 relating to TECO's July, 1990 423 filing, TECO's proposed declassification dates were rejected because the rationale provided was conclusory in nature. Furthermore, in that same order, TECO was explicitly referred to FPL and FPC's recent 423 filings for

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guidance on the matter. Nevertheless, TECO provided the same justification for their proposed declassification dates in their August, 1990 423 filing, and as a result, the request was again denied.

On November 21, 1990, TECO filed a Protest to Order No. 23739 where it provided a detailed justification for the declassification dates provided in their August, 1990 423 filing and requested that the Commission enter an order granting confidential protection for a period of two years. That motion was amended on January 8, 1991 where TECO requested that the protest be directed to the prehearing officer for reconsideration, and in the alternative, to the full Commission for review.

In its Protest TECO explains that its interests would be best protected by classifying the fuel oil contract data until at least six months after the contracts expire, because future contract negotiations would be impaired if such material, which contains pricing information, were disclosed prior to the negotiation of a new agreement. TECO states negotiations are normally completed within six months. TECO further indicates that a two year classification period generally will account for this six month negotiation period.

As to the coal and coal transportation data contained in the 423 filings, TECO explains that the disclosure of that data before the passage of two years could affect the viability of its affiliates which provide those services to TECO and to outside non-regulated customers, which in turn could affect the price TECO ultimately pays for those services. TECO further explains this potential effect as follows:

An analyst for an outside customer of Gatliff or TECO Transport who reads the written transcripts of public fuel hearings or reads the written orders of the FPSC can easily discover that until November 1, 1988, Tampa Electric paid cost for coal from Gatliff and for coal transportation from TECO Transport. Further, the publication of the stipulation agreement between the parties in 1988 indicated that the initial benchmark price was close to cost and subsequent testimony indicates the revised contract escalates from cost.

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As long as an outside customer does not know how such an escalation clause changes price, the cost cannot be calculated. However, publicizing the price of coal or coal transportation services will tell an outside customer how much the escalation has been and make it easy for him to calculate cost. Because of the seasonality of costs in both businesses, a full year's cost data is necessary for an accurate cost measurement.

A second year must pass before one full year can be compared with a second year to measure the escalation accurately. So a perceptive vendor seeks two years of data to make his cost estimates. The competitive industries recognize that data beyond two years is not helpful to them, as enough factors may change in that time frame for costs to be much different from what was incurred. Any data less than two full years old is extremely valuable to outside customers in contracting for services with Gatliff or TECO Transport. The difference of small amounts per ton can mean millions of dollars' difference in cost.

A loss of outside business by Gatliff or TECO Transport will affect not only Gatliff or TECO Transport, but, if large enough, it could affect the credibility of the companies. The prices negotiated with Tampa Electric by these vendors took into consideration their costs and revenues at the time of negotiation, including the revenues from outside customers. A significant loss of outside business could cause Gatliff or TECO Transport to fail, since under market pricing regulation Tampa Electric will not make up the difference to them in cost. In turn, a failure of these vendors would leave Tampa Electric and its customers with only higher cost alternatives for Blue Gem coal and for coal transportation to Tampa, a higher cost that would be paid by Tampa

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Electric's ratepayers. So the continued credibility of Gatliff and TECO Transport is important to protect Tampa Electric's ratepayers from higher cost alternatives.

Unlike TECO's August, 1990 423 filing, the above rationale is detailed and not based on mere conclusions. TECO sufficiently outlines how and why their competitor will benefit if confidential information is declassified prior to the 2 years requested and provides competent and substantial evidence so that the Commission can make a well reasoned finding.

The purpose of a petition for reconsideration is to bring to the attention of the prehearing officer or the Commission some point which it failed to consider when it rendered its initial order. See Diamond Cab Company of Miami v. King, 146 So. 2d 889 (Fla. 1962) and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). The abovementioned justification was not considered when the original decision in Order No. 23739 was rendered, and thus, it is proper to consider it at this point. A review of TECO's Protest reveals that it has provided competent and substantial evidence that the utility and its customers will be significantly harmed by premature disclosure of information that was rendered confidential by Order No. 23739. Consequently, I find that TECO has shown "good cause" and the declassification dates requested in their August, 1990 423 filing should be granted.

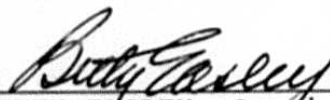
In consideration of the foregoing, it is

ORDERED that Tampa Electric Company's request for the declassification dates included in the text of DN-9290-90 is hereby granted. It is further

ORDERED that if a protest is filed within 14 days of the date of this Order it will be resolved by the appropriate Commission Panel pursuant to Rule 25-22.006(3)(d), Florida Administrative Code.

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By ORDER of Commissioner Betty Easley, as Prehearing Officer,
this 29th day of JANUARY, 1991.



BETTY EASLEY, Commissioner
and Prehearing Officer

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