

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power ) DOCKET NO. 940001-EI  
Cost Recovery Clause and ) ORDER NO. PSC-94-1158-CFO-EI  
Generating Performance Incentive ) ISSUED: September 21, 1994  
Factor. )  
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ORDER DENYING TAMPA ELECTRIC COMPANY'S  
MOTION FOR RECONSIDERATION AND GRANTING  
CONFIDENTIAL CLASSIFICATION

On August 23, 1994, the Commission through its Prehearing Officer issued Order No. PSC-94-1017-CFO-EI which granted in part and denied in part Tampa Electric Company's (TECO or the company) request for confidential classification for certain documents provided to Commission staff in the performance of its annual fuel expense audit ending March 31, 1993. TECO filed a Motion for Reconsideration of a Portion of said Order on September 2, 1994.

TECO requests that the Commission, through the prehearing officer, reconsider the denial of confidential treatment of certain tonnages reflected on Workpaper 58-3, page 1 and Workpaper 58-3, page 2 of the Staff's workpapers. In TECO's original request for confidential treatment of this material it provided the following rationale:

(1) This is the actual contract pricing information, both pricing and annual tonnage requirements. This pricing information can be used in conjunction with FPSC Forms 423 to derive the segmented transportation costs per ton for Mid-South Towing Company. This could adversely affect the ability of Tampa Electric to contract for coal supplies on favorable terms and, thus, should be protected under Section 366.093(3)(d), Fla. Stat.

Confidential classification was denied on the basis that without the associated cost data, calculations cannot be made of the unit price. In the Motion for Reconsideration, TECO is now putting forward a much broader and more complex explanation of why disclosure of the information would impair TECO's ability to contract for the goods and services. TECO argues that it seeks to protect "contract minimum and maximum tonnage levels to prevent them from being used by suppliers to determine the flexibility available to the utility in supply choices....[if]...made public, other suppliers will know whether deliveries are being made at the

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maximum levels." Consequently, a spot supplier aware that "maximum tonnage levels are being taken could bid a price higher than the contract price knowing that the utility cannot automatically turn to the contract as a source." In circumstances where contracts are delivering at the minimum level, "a supplier may not price as aggressively knowing that there is no way to obtain a part of the business held by the contract." These arguments might have been persuasive had they not been made for the first time in TECO's motion for reconsideration.

This Commission has no duty to look outside the four corners of a request for confidential classification when ruling upon the request. Under Section 366.093, Florida Statutes and Rule 25-22.006, Florida Administrative Code, it is TECO's burden to demonstrate, in its initial pleading, that the materials qualify for confidential classification. Since TECO failed to carry its burden in its initial request, its motion for reconsideration of Order No. PSC-94-1017-CFO-EI is denied.

This Commission, however, is well aware that if bidding by spot suppliers is not fully competitive the utility's customers ultimately will directly bear the burden of higher fuel costs. Fuel contracts are long-term contracts with fixed maximum and minimums. The utility has shown that disclosure of the tonnage levels can give an unfair advantage to the spot suppliers and could negatively impact the utility's ability to obtain low cost spot fuel contracts. Therefore, on the Commission's own motion the information shown on Workpaper 58-3, p.1, and Workpaper 58-3, p.2 as detailed in Order No. PSC-94-1017-CFO-EI is found to be proprietary business information and is granted confidential classification for a period of two years from the date of that order.

It is, therefore

ORDERED by Susan F. Clark, as prehearing officer that Tampa Electric Company's Motion for Reconsideration is denied. It is further

ORDERED that confidential classification be granted to the proprietary business information specified herein, as discussed in the body of this Order, for a period of two years from the date of Order No. PSC-94-1017-CFO-EI. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

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By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 21st day of September, 1994.

  
SUSAN F. CLARK, Commissioner and  
Prehearing Officer

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NOTICE OF 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 Section 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 judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility of the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and 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.