

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Allied Universal Corporation and Chemical Formulators, Inc. Against Tampa Electric Company for violation of Sections 366.03, 366.06(2) and 366.07, F.S., with respect to rates offered under commercial/industrial service rider tariff; petition to examine and inspect confidential information; and request for expedited relief.

DOCKET NO.000061-EI
ORDER NO. PSC-00-1886-CFO-EI
ISSUED: October 16, 2000

ORDER GRANTING IN PART AND DENYING IN PART REQUEST FOR
CONFIDENTIAL TREATMENT OF DOCUMENT NOS. 03140-00, 03141-00,
03142-00, 03143-00, 08254-00 AND 09709-00

On January 20, 2000, Allied Universal Corporation and Chemical Formulators, Inc. (Allied) filed a formal complaint against Tampa Electric Company (TECO). The complaint alleges that: 1) TECO violated Sections 366.03, 366.06(2), and 366.07, Florida Statutes, by offering discriminatory rates under its Commercial/Industrial Service Rider (CISR) tariff; and, 2) TECO breached its obligation of good faith under Order No. PSC-98-1081A-FOF-EI. On March 28, 2000, Odyssey Manufacturing Company (Odyssey) requested permission to intervene, and that request was granted on April 18, 2000, in Order No. PSC-00-0762-PCO-EI.

On March 10, 2000, Tampa Electric Company (TECO) filed with the Commission a set of documents (Document Nos. 03140-00, 03141-00, 03142-00, 03143-00) related to CISR negotiations with Odyssey and Allied. These documents total 1800+ pages. TECO requested confidential classification of these documents pursuant to Rule 25-22.006, Florida Administrative Code, and Section 366.093, Florida Statutes of the information contained in the documents. The request did not comply with the requirements of Rule 25-22.006, Florida Administrative Code.

Order No. PSC-00-1171-CFO-EI, issued June 27, 2000, directed TECO to provide a confidentiality request in compliance with Rule 25-22.006, Florida Administrative Code. In response to the order,

DOCUMENT NUMBER-DATE

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TECO filed on July 7, 2000, a Supplemental Request of Tampa Electric Company for Confidential Classification of Documents. This request pertains to Document No. 03140-00. On August 10, 2000, TECO filed a "Request for Confidential Classification marked revised August 9, 2000." This request pertains to Document No. 03141-00. The revisions to the July 7 confidentiality request include miscellaneous corrections such as typographical errors and corrections suggested by staff.

Also included in TECO's July 7, 2000, filing was a request for confidential classification of Document No. 08254-00. This document pertains to CISR negotiations with Odyssey and Allied. Finally, on August 10, 2000, TECO submitted an additional confidential document (Document No. 09709-00) pertaining to its CISR negotiations.

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into a statutory exemption or that the information is proprietary confidential business information, the disclosure of which will cause the Company or its ratepayers harm.

Section 366.093, Florida Statutes, defines "proprietary confidential business information" as:

[I]nformation, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.

TECO asserts that the above referenced documents merit confidential classification since they contain non-public, CISR-related material. TECO asserts that CISR-related material, such as

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the Contract Service Agreement (CSA), pricing levels or procedures described within the CSA, information supplied by Odyssey or Allied in the course of CISR negotiations, or information developed by TECO in connection with CISR negotiations, is afforded confidential classification under the CISR tariff. In addition, TECO claims, the material satisfies the statutory test set forth in Section 366.093, Florida Statutes. TECO states that each of the documents is proprietary business information, the release of which would cause competitive harm to Odyssey and/or Allied, and reduce or eliminate TECO's ability to use the CISR tariff as a tool to benefit ratepayers.

Framework for analysis of TECO's confidentiality request

The issue of whether the CSA and CISR-related information is entitled to confidential classification was addressed in Order PSC-00-1530-PCO-EI, Order Denying Motions For Reconsideration, Declining to Rule on Requests for Oral Argument, and Clarifying Parts of Order No. PSC-00-1171-CFO-EI, issued August 23, 2000, in Docket No. 000061-EI (Reconsideration Order).

The Reconsideration Order states that the plain language of the CISR tariff does not obviate the need for a finding that the materials are confidential, if and when the materials are filed with the Commission. The order further states that the types of information which TECO must obtain during a CISR negotiation would appear to meet the definition of proprietary business information in Section 366.093(3), Florida Statutes.

Document Nos. 03140-00, 03141-00, 03142-00, 03143-00

TECO's August 10, 2000, request for confidentiality lists all the pages in Documents Nos. 03140-00, 03141-00, 03142-00, and 03143-00 for which TECO requests confidentiality. I find that all the pages TECO identified, except the pages listed in the table below, meet the confidentiality criteria of Section 366.093, Florida Statutes. In addition, I find that Bates Stamp pages 1361-O and 1362-O meet the confidentiality criteria. It appears that due to an oversight TECO did not include these pages in its August 10 revised request for confidentiality.

TECO's request for confidentiality for the Bates Stamp pages listed in the table below is denied. These pages contain information that does not meet the requirements of Section 366.093, Florida Statutes.

Bates Stamp	Description	Justification
143-0 1104-0 1105-0 1122-0	Legal description of property	public document, recorded in Hillsborough County
279-0 280-0	Memorandum dated September 10, 1998	public document (previously given to staff by TECO)
284-0 285-0	CISR Project Review and Approval Checklist	public document (previously given to staff by TECO)
423-0 1829-A	Transmission Loss Multiplier	public information
424-0 through 437-0	TECO's 1998 Projected Coincident and Non-coincident Peaks	similar information provided to the Commission in load research data
484-0 through 491-0	Revenue Budget 1998-2010	data for 1998, 1999, and 2000 are not confidential, remaining columns shall be confidential
957-0 958-0	TECO Transmission Circuit Outage Listing	public information
963-0 through 967-0	TECO distribution maps	public information
1266-0	Biographical Data Sheet	public document except numerical values referring to annual sales and gallons delivered in first paragraph. Those values shall be confidential
1267-0 1268-0 1269-0	Biographical Data Sheets, Sentry Industries Personnel	public documents

1318-O 1319-O 1320-O	Company Profile - Sentry Industries	only numbers representing monetary values and paragraph titled "Financial Data" shall be confidential; remaining information can be found on Sentry's web page and is therefore public.
1372-O through 1375-O	Special Warranty Deed between Berry Packaging and Odyssey	public document

Document No. 08254-00

Document No. 08254-00 contains Bates Stamp page numbers 1606-A, 1606a-A, 1934, and 1935-O through 2000-O. All pages in document No. 08254-0 meet the confidentiality criteria except for page 1934. Page 1934 is TECO's CISR Report for the Quarter ended March 31, 2000. TECO filed the same report with the Commission on June 9, 2000. In its June 9 Request for Confidential Classification for the report, TECO only requested confidentiality for the values of the rate, revenues, and escalation rate. I find that these values do meet the confidentiality criteria but that the remaining information on page 1934 is public and not confidential.

Document No. 09709-00

Document No. 09709-00 contains Bates Stamp page numbers 2001, 2002-O through 2015-O, and 2016. TECO's confidentiality request for Document No. 09709-00 except for pages 2001, and 2002-O through 2014-O is denied. Page 2001 contains TECO's CISR Report for the Quarter ended March 31, 2000. Pages 2002-O through 2014-O contain the Easement Agreement signed by TECO and Odyssey. The Easement Agreement is a public document and therefore can not be confidential. All other pages in Document No. 09709-00 meet the confidentiality criteria of 366.093, Florida Statutes.

The documents and pages, described above, which meet the confidentiality criteria of Section 366.093(3), Florida Statutes,

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and Rule 25-22.006, Florida Administrative Code, shall be treated as proprietary confidential business information. Pursuant to Section 366.093(4), Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the confidentiality granted to this material expires in eighteen months, unless a renewed request for confidentiality is filed.

Based on the foregoing, it is therefore

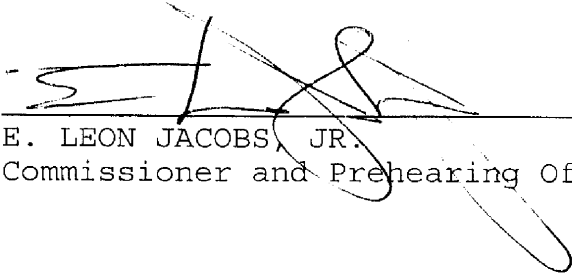
ORDERED by E. Leon Jacobs, Jr., as Prehearing Officer, that the request by Tampa Electric Company for confidential treatment of information in Document Nos. 03140-00, 03141-00, 03142-00, 03143-00, 08254-00 and 09709-00 is granted in part and denied in part, as described in the body of this Order. It is further

ORDERED that pursuant to Section 366.093(4), Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the material specified herein shall expire eighteen (18) months from the date of the issuance of this Order, unless of a renewed request for confidentiality is filed in accordance with Section 366.093(4), Florida Statutes. 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 E. Leon Jacobs, Jr. as Prehearing Officer, this 16th day of October, 2000.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

MKS

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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Director, Division of

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Records and Reporting, in the form prescribed by Rule 25-22.060, 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.