

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power
cost recovery clause with
generating performance incentive
factor.

DOCKET NO. 030001-EI
ORDER NO. PSC-03-0040-CFO-EI
ISSUED: January 6, 2003

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 11107-02)

On October 22, 2002, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Tampa Electric Company (Tampa Electric) filed a request for confidential classification of specified portions of its responses to Commission Staff's Interrogatory Nos. 31, 35, 43, and 44 (Document No. 11107-02).

Section 366.093(1), Florida Statutes, provides that "any records received by the Commission which are shown and found by the Commission to be proprietary confidential business information shall be kept confidential and shall be exempt from [the Public Records Act]." Section 366.093(3), Florida Statutes, 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. Section 366.093(3)(d), Florida Statutes, provides that proprietary confidential business information includes, but is not limited to, "[i]nformation 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." Further, Section 366.093(3)(e), Florida Statutes, provides that proprietary confidential business information includes "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

Tampa Electric contends that the highlighted portions of information provided in its responses to Interrogatory Nos. 31, 35, 43, and 44 fall within these categories and thus constitute proprietary confidential business information entitled to

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protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Tampa Electric further states that this information is intended to be and is treated as private and has not been publicly disclosed. The specific justification for confidential treatment of the highlighted portions of Tampa Electric's answers to Interrogatory Nos. 31, 35, 43, and 44 is stated below.

Interrogatory No. 31

Tampa Electric states that the four highlighted numbers on its answer to Staff's Interrogatory No. 31 are entitled to confidential treatment pursuant to Section 366.093, Florida Statutes, in order to protect from public disclosure the amounts paid by Tampa Electric for coal and natural gas transportation services. Tampa Electric further states that its river and coal barge systems are utilized in the transportation of coal to Tampa Electric. Thus, those entities compete in a highly competitive waterborne transportation industry. Therefore, disclosure of the transportation amount would enable a competitor of these entities to determine the per unit transportation costs of Tampa Electric's coal transportation affiliates and thereby better compete with those affiliates for business hauling other commodities. This would severely disadvantage Tampa Electric's affiliated transportation companies and ultimately work to the detriment of Tampa Electric and its ratepayers. Further, Tampa Electric states that to the extent the affiliated companies are weakened by their competitors, Tampa Electric's ability to secure services from its affiliated transportation companies will, likewise, be adversely affected. Consequently, Tampa Electric states that the information in question is entitled to confidential treatment pursuant to Section 366.093(3)(d) and (e), Florida Statutes.

Similarly, Tampa Electric states that the natural gas transportation rate shown in its answer to Staff's Interrogatory No. 31 is entitled to confidential treatment. Tampa Electric states that this transportation amount, coupled with other publicly available information regarding the units of natural gas purchased by Tampa Electric can be used to determine the per unit cost of pipeline transportation. This is a competitively negotiated rate set forth in confidential pipeline service agreements. Thus, public disclosure of this information would be harmful to Tampa

Electric's ability to negotiate new natural gas transportation agreements in the future. Thus, Tampa Electric states that the coal and natural gas commodity prices reflected in its answer to Staff's Interrogatory No. 31 are in need of confidential protection in order to preclude a would-be supplier or competitor of transportation services from using the total amount shown at the bottom of the answer with the commodity amount to arithmetically determine the transportation amount shown in the second line of Tampa Electric's answer.

Interrogatory No. 35

Tampa Electric states that the highlighted information set forth in its answers to Staff's Interrogatory No. 35, if made public, would disclose details regarding its negotiated coal and coal transportation commitments going out into the future. Further, Tampa Electric states that disclosing these details would hamper its ability to negotiate new coal and coal transportation contracts in the future by providing a road map to other coal suppliers as to the amounts Tampa Electric is willing to pay for coal and coal transportation services. Tampa Electric states that this is exactly the type of information the Commission traditionally has deemed to be entitled to confidential treatment with respect to its Form 423 filings. Further, Tampa Electric states that disclosure of this information would harm its competitive interests and adversely impact its ability to secure coal and coal transportation services on favorable terms. As such, Tampa Electric states that this specified information is entitled to protection under Sections 366.093(3)(d) and (e), Florida Statutes. In addition, Tampa Electric states that the disclosure of open amounts would, likewise, adversely impact its ability to cover the open amounts by disclosing to potential suppliers the extent of its price vulnerability in negotiations to satisfy Tampa Electric's open requirement.

Interrogatory No. 43

Tampa Electric states that the information set forth in its answer to Staff's Interrogatory No. 43, if made public, would disclose its negotiated transportation rates, thereby adversely affecting the its ability to negotiate favorable rates in the future and adversely affecting Tampa Electric's affiliated

transportation suppliers. As such, Tampa Electric states that this information is entitled to confidential protection pursuant to Section 366.093(3)(d) and (e), Florida Statutes, as set forth above with respect to earlier references to transportation rates.

In addition, Tampa Electric states that the coal tonnage amounts for 2001 and 2002 are also entitled to confidential treatment because they provide the amounts of coal shipped to Tampa Electric's stations by different methods such as rail transportation or waterborne transportation. Tampa Electric states that this information provides knowledge of its existing contracts and operations that could damage its position in negotiations for future favorably priced supply and transportation agreements. In addition, Tampa Electric states that disclosure of this information would give competitors of Tampa Electric's affiliated transportation company insight into the operations of that company and could damage the affiliate's position in competitive negotiations. As such, Tampa Electric states that this information is entitled to confidential protection pursuant to Section 366.093(3)(d) and (e), Florida Statutes, as set forth above with respect to earlier references to transportation rates.

Interrogatory No. 44

Tampa Electric states that the highlighted portion of its answers to Staff's Interrogatory No. 44 is entitled to confidential treatment since it discloses various negotiated terms and conditions of its coal transportation contract. Tampa Electric states that disclosure of this information would provide other potential coal transportation suppliers with information regarding negotiated price components of its existing contracts thereby enabling the other potential suppliers to negotiate a higher transportation rate with Tampa Electric than might otherwise be offered in the absence of such knowledge. As such, Tampa Electric states that this information is entitled to confidential treatment pursuant to Sections 366.093(3)(d) and (e), Florida Statutes, and as described above in connection with the earlier interrogatory.

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Ruling

Upon review, it appears that the information provided in Tampa Electric's responses to Interrogatory Nos. 31, 35, 43, and 44 satisfies the criteria set forth in Section 366.093(3), Florida Statutes, for classification as proprietary confidential business information and, thus, shall be treated as confidential. Specifically, this information constitutes "[i]nformation 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" and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Thus, this information is granted confidential classification.

Pursuant to Section 366.093(4), Florida Statutes, 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), Florida Statutes, unless Tampa Electric or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is

ORDERED by Commissioner Michael A. Palecki, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document No. 11107-02 is granted. It is further

ORDERED that the information in Document No. 11107-02 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.

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By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 6th day of January, 2003.



MICHAEL A. PALECKI

Commissioner and Prehearing Officer

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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, 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 the

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Commission Clerk and Administrative Services, 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.