

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-03-0041-CFO-EI
ISSUED: January 6, 2003

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 11421-02)

On November 8, 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. 49, 58, 63, 69, and 79 (Document No. 11421-02). Tampa Electric's responses to Interrogatory Nos. 63, 69, and 79 were reviewed by the Commission Staff and returned to the company. Thus, only the confidential nature of Tampa Electric's responses to Interrogatory Nos. 49 and 58 remains for resolution.

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."

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Tampa Electric contends that the highlighted information provided in its responses to Interrogatory Nos. 49 and 58 falls within these categories and thus constitutes proprietary confidential business information entitled to protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Tampa Electric states that this information is intended to be and is treated by Tampa Electric 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. 49 and 58 is stated below.

Interrogatory No. 49

Tampa Electric states that the highlighted amounts shown in Interrogatory No. 49, page 1 of 1, disclose the average price per ton for ocean delivery of coal supplied to Tampa Electric. Further, this is a segmented transportation cost of the type the Commission traditionally has recognized as constituting proprietary confidential business information. The affiliated entities supplying Tampa Electric with coal transportation services are engaged in a highly competitive waterborne transportation industry. Tampa Electric states that the disclosure of the transportation rate would enable a competitor of these entities to determine the per unit transportation cost of its affiliate and thereby better compete with the affiliate for business hauling coal and other commodities. This would severely disadvantage Tampa Electric's affiliated transportation companies and ultimately work to the detriment of Tampa Electric and its ratepayers. Tampa Electric further states that to the extent a Tampa Electric affiliate is weakened by its competitors, Tampa Electric's ability to secure transportation services from its affiliated transportation company on favorable terms will, likewise, be adversely affected. Consequently, Tampa Electric states that this information is entitled to confidential treatment pursuant to Section 366.093(3)(d) and (e), Florida Statutes.

Interrogatory No. 58

Tampa Electric states that the highlighted amounts shown on its answer to Interrogatory No. 58, pages 9 through 11 of 11, if made public would disclose or could be used to determine Tampa Electric's recent weighted average per ton waterborne

transportation prices. Thus, disclosing these details would hamper Tampa Electric's ability to negotiate coal transportation services in the future. Further, the information would provide a roadmap to other coal transportation suppliers as to the amounts Tampa Electric is willing to pay for 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 in its Form 423 filings. Tampa Electric further states that disclosure of this information would harm its competitive interests and adversely impact the company's ability to secure coal transportation services on favorable terms. Disclosure of this information would also harm Tampa Electric's affiliated coal transportation supplier by disclosing to their competitors and to their potential shippers competitive rate information for waterborne transportation. As such, Tampa Electric states that this information is entitled to confidential protection under Section 366.093(3)(d) and (e), Florida Statutes.

Ruling

Upon review, it appears that the specified information provided in Tampa Electric's responses to Interrogatory Nos. 49 and 58 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

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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. 11421-02 is granted as set forth in the body of this Order. It is further

ORDERED that the information in Document No. 11421-02 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.

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 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.