

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-03-1278-CFO-EI
ISSUED: November 10, 2003

ORDER GRANTING REQUESTS FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NOS. 08652-03, 09543-03, 09563-03, 09566-03)

On September 12, 2003, 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 portions of pages 17, 18, 19, 29, and 30 of the testimony of Tampa Electric witness Joann T. Wehle; Document No. 1, Page 2 of 2, of Ms. Wehle's Exhibit JTW-2; and pages 4 and 8 of the testimony of Tampa Electric witness Benjamin F. Smith, all filed in this docket on September 12, 2003 (Document No. 08652-03). The specific information in this document for which Tampa Electric requests confidential classification is identified in Attachment A to this Order.

On October 23, 2003, Tampa Electric filed a request for confidential classification of certain information contained in the testimony and exhibits of Florida Industrial Power Users Group (FIPUG) witness Sheree L. Brown (Document No. 09566-03) and the testimony and exhibits of Office of Public Counsel (OPC) witnesses Michael J. Majoros, Jr., (Document No. 09543-03) and William M. Zaetz (Document No. 09563-03), all filed in this docket on October 2, 2003. The specific information in these three documents for which Tampa Electric requests confidential classification is identified in Attachment B to this Order.

On October 29, 2003, Tampa Electric filed a supplemental request for confidential classification of information contained in Exhibit MJM-4 to the testimony of OPC witness Majoros (Document No. 09543-03). The specific information in this document for which Tampa Electric requests confidential classification is identified in Attachment C to this Order.

DOCUMENT NUMBER-DATE

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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), 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" (subsection d) and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information" (subsection e).

Tampa Electric asserts that the information in the above-referenced documents for which it seeks confidential classification falls within these categories and thus constitutes proprietary confidential business information entitled to protection under Section 366.093(d) and (e), Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Tampa Electric's justification for confidential classification of certain information in Document No. 08652-03 is set forth in Attachment A to this Order, which is incorporated herein by reference. Tampa Electric's justification for confidential classification of certain information in Document Nos. 09543-03, 09563-03, and 09566-03 is set forth in Attachments B and C to this Order, which are incorporated herein by reference. Tampa Electric states that this information is intended to be and is treated by Tampa Electric as private and has not been publicly disclosed.

Upon review, it appears that the information in Document Nos. 08652-03, 09543-03, 09563-03, and 09566-03 for which Tampa Electric seeks confidential classification, as identified in Attachments A, B, and C to this Order, 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. 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 for Document Nos. 09543-03, 09563-03, and 09566-03 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.

Tampa Electric has requested that the information contained in the testimony and exhibit of its witness Joann T. Wehle, included as part of Document No. 08652-03, remain protected from disclosure until September 12, 2005, 24 months from the date of its request. Further, Tampa Electric has requested that the information contained in the testimony of its witness Benjamin F. Smith, included as part of Document No. 08652-03, remain protected from disclosure until September 12, 2006, 36 months from the date of its request. The basis for these requests is set forth in Attachment A to this Order. Upon review, Tampa Electric has shown good cause to protect these documents for the requested time frames. Therefore, Tampa Electric's requests are granted.

Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that Tampa Electric Company's Requests for Confidential Classification of Document Nos. 08652-03, 09543-03, 09563-03, and 09566-03 are granted. It is further

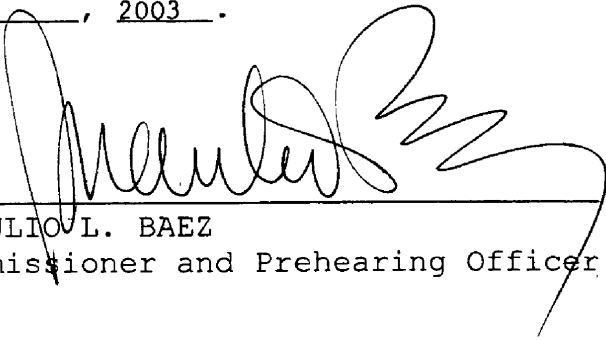
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ORDERED that the information in Document Nos. 09543-03, 09563-03, and 09566-03 for which confidential classification has been granted shall remain protected from disclosure for a period of 18 months from the date of issuance of this order. It is further

ORDERED that the information in Document No. 08652-03 for which confidential classification has been granted shall remain protected from disclosure for the periods set forth in the body 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 Braulio L. Baez, as Prehearing Officer, this 10th day of November, 2003.



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

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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.

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DETAILED JUSTIFICATION FOR CONFIDENTIAL CLASSIFICATION

Prepared Direct Testimony of Witness Joann T. Wehle (Highlighted Information on pages 17, 18, 19, 29 and 30)

All of the highlighted information on the referenced pages discloses confidential terms and conditions under an existing contract between Tampa Electric and TECO Transport. Disclosure of this information would not only impair the efforts of Tampa Electric to contract for goods and services on favorable terms, but would also harm the competitive interests of Tampa Electric's transportation affiliates by disclosing to their competitors and would-be customers information useful to them in negotiations with Tampa Electric's affiliates. Section 366.093, Florida Statutes, at subsections (3)(d) and (e) specifically state that proprietary confidential business information includes information concerning contractual data, the disclosure of which would impair the efforts of a public utility or its affiliates to contract for goods and services on favorable terms as well as information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Specific terms and conditions of coal and coal transportation contracts between public utilities and the providers of those goods and services has been recognized on numerous occasions by the Commission to constitute proprietary confidential business information qualifying for confidential treatment under Section 366.093, Florida Statutes.

Exhibit (JTW-2). Document 1, Page 2 of 2

The total price and the weighted average per ton water transportation price from all Tampa Electric coal sources shown on line 1 is entitled to confidential classification under Section

Exhibit "A"

366.093(3)(d) and (e). Fla. Stat. Disclosure of this information would impair the efforts of Tampa Electric to contract for goods and services on favorable terms. In addition, it would harm the competitive interests of Tampa Electric's transportation affiliates and thereby ultimately harm Tampa Electric and its customers. The prices shown on line 1 can be used with other publicly available data to determine the segmented transportation prices for river barge transportation services as well as ocean barge transportation services. There exists vigorous competition among suppliers of these transportation services and any public disclosure of prices charged by Tampa Electric's affiliates would eliminate any negotiating leverage which the affiliates have in marketing their services to others.

The market for bulk commodity transportation is very competitive. Aside from the coal transportation services performed for Tampa Electric, the TECO Transport and Trade affiliates currently transport coal and other bulk commodities for other customers as well. The affiliates anticipate that additional markets for coal will soon develop in Florida for both industrial and electric power generation purposes, and hope to capture a portion of the transportation demand created by those markets. This market is very competitive.

Tampa Electric's transportation affiliates are not engaged solely in the one-way transportation of coal, however, Mid-South Towing Company has provided, and continues to provide, both upstream and downstream transportation services for other bulk commodities, including grain and phosphate products. Electro-Coal Transfer Corporation is involved in the direct vessel-to-vessel transfer of grain and other bulk commodities in addition to the transfer of coal and coke on diverse routes, including phosphates from Florida to New Orleans, and grain from New Orleans to international markets.

As commercial enterprises, the affiliates face significant competition for each of the other transportation, transfer and storage services that they perform. Operators on the inland waterways include approximately 2,000 individual carriers. In size these carriers range from operators of single towboats to those operating large fleets of vessels and barges. Only a very small percentage of inland waterway traffic is subject to regulation. Exempt carriers are not required to publish revenues, operating data rates or financial information.

With reference to the river transportation of coal and other bulk commodities, Mid-South Towing Company's principal competitors include, among others: the Ohio River Company; American Commercial Barge Line Company; Dravo Mechling Corporation; and The Valley Line Company. Mid-South Towing also faces intermodal competition from the railroads.

Electro-Coal Transfer Corporation competes with others for the performance of transfer and storage services. Electro-Coal's principal competitors with both shoreside transfer and ground storage capabilities are: International Marine Terminal; Burnside Terminals, Inc.; and New Orleans Bulk Terminal. A portion of the transfer market is also served by companies whose operations are mid-stream in the Mississippi River. Principal among these is Cooper-Smith Company.

Finally, Gulfcoast Transit Company competes with many other companies to provide ocean-going tug and barge transportation service. Principal among those competitors are: Dixie Carriers, Inc.; Sheridan Towing Company; Red Circle Transport Company; and Beker Industries, Inc.

Disclosing the amounts charged by these affiliates to Tampa Electric would permit the affiliates' other customers, who may be paying higher prices for similar services, to bargain for more favorable terms from the affiliates.

The (over/under) benchmark shown on line 3 requires confidential protection for the same reasons as the total price and weighted average per ton water transportation price shown on line 1,

because the information on line 3 is an arithmetic function of lines 1 and 2. Disclosure of the amount on line 3 would enable competitors to determine the value of line 1. Therefore, the line 2 figure is entitled to confidential protection for the same reasons as the amounts shown on line 1.

The total transportation cost shown on line 5 and in the description of the line 1 amount is entitled to confidential protection because it, too, is an arithmetic function of the total tons transported shown in line 4 and the weighted average water transportation price shown in line 1. Therefore, the total transportation cost is entitled to confidential protection for the same reasons referred to above with respect to the line 1 amount.

The total cost (over/under) benchmark amount shown on line 7 is also an arithmetic function of the preceding lines which can be used to calculate the weighted average water transportation cost shown on line 1. Therefore, the line 7 amount is entitled to confidential protection for the same reasons cited above with respect to the amount shown on line 1.

The prior years' cumulative benefit shown on line 8 is, likewise, entitled to confidential protection. This number is an arithmetic function of the prior years' weighted average price for transportation services and its disclosure would enable a competitor to determine that weighted average price from the total tons transported.

The net benefit of 1988-2001 shown on line 9 is, likewise, entitled to confidential protection. This number is an arithmetic calculation of lines 7 and 8, disclosure of which would allow a competitor to calculate those amounts. Therefore, line 9 is entitled to confidential protection for the same reasons as the amounts on lines 7 and 8.

Prepared Direct Testimony of Benjamin F. Smith

The values highlighted in yellow on page 4, lines 3 and 5, and on page 8, line 16, of Mr. Smith's testimony disclose Tampa Electric's purchased power strategy in terms of the company's mix of long-term contracts and short-term market purchases. This is information relating to competitive interests, the disclosure of which would impair the competitive business of Tampa Electric. Such information is specifically included in the definition of proprietary confidential business information in Section 366.093(3), Florida Statutes. As such, this information is entitled to confidential protection and exemption from the Public Records Law.

Disclosure of the highlighted information in Mr. Smith's testimony would disclose not only the company's purchasing strategy with respect to purchased power, but also the company's planned risk exposure. Those who have an interest in supplying Tampa Electric's purchased power needs could use this valuable information to help them force more favorable terms, to the detriment of Tampa Electric and its ratepayers, than would otherwise be the case. They could learn of the company's plans and needs and use that information in exacting better prices for meeting those needs.

The need for confidential protection of the information highlighted on pages 4 and 8 of Mr. Smith's Prepared Direct Testimony is very similar to the need for confidential classification of highlighted portions of the company's risk management plan which have been deemed by the Commission to be entitled to protection under Section 366.093, Florida Statutes.

Date of Declassification:

<u>DOCUMENT</u>	<u>PAGE NO.</u>	<u>LINE NO.</u>	<u>DATE</u>
Prepared Direct Testimony of Joann T. Wehle	17	16-22	September 12, 2005
	18	9-25	September 12, 2005
	19	1-9	September 12, 2005
	29	2-25	September 12, 2005
	30	1-4	September 12, 2005
Exhibit (JTW-2) (Document No. 1, Page 2 of 2)	34	4,6,8,12,13,14	September 12, 2005
Prepared Direct Testimony of Benjamin f. Smith	4	3 and 5	September 12, 2006
	8	16	September 12, 2006

Rationale:

Coal Transportation Contract Information

1. Tampa Electric seeks protection of the coal transportation contract information specified as confidential for a minimum period of two years.
2. The need for two or more years of confidentiality is vital not only to Tampa Electric and its ratepayers, but to the vendors of coal transportation services as well.
3. TECO Transport & Trade markets bulk commodity transportation services in the open non-regulated marketplace. The prices at which its services are sold are not publicly disclosed anywhere by publication or voluntary dissemination because it would materially lessen their competitive posture with customers other than Tampa Electric. Outside customers who negotiate for coal transportation services are placed at a competitive advantage for these goods or services if they know the cost of the services.
4. An analyst for an outside customer of 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 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.
5. 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 transportation

services will tell an outside customer how much the escalation has been and make it easy for him to calculate cost. Because of seasonality of costs in this business, a full year's cost data is necessary for an accurate cost measurement.

6. 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 date less than two full years old is extremely valuable to outside customers in contracting for services with TECO Transport. The difference of small amounts per ton can mean millions of dollars' difference in cost.

7. A loss of outside business by TECO Transport will affect not only TECO Transport, but if large enough it could affect the credibility of the company. The prices negotiated with Tampa Electric by this vendor took into consideration its costs and revenues at the time of negotiation, including the revenues from outside customers. A significant loss of outside business could cause TECO Transport to fail, since under market pricing regulation Tampa Electric will not make up the difference to it in cost. In turn, a failure of this vendor would leave Tampa Electric and its customers with only higher cost alternatives for coal transportation to Tampa, a higher cost that would be paid by Tampa Electric's ratepayers. So the continued credibility of TECO Transport is important to protect Tampa Electric's ratepayers from higher cost alternatives.

8. The above rationale for a two-year confidential protection of the coal transportation contract information has been approved by the Commission in this docket. (See, e.g., Order No. PSC-96-0995-CFO-EI, issued August 5, 1996.)

Purchased Power Strategy

9. Tampa Electric requests that the purchased power strategy information set forth in highlighted form in Mr. Smith's direct testimony, at page 4, lines 3 and 5, and page 8, line 16, be treated confidentially for a minimum of three years. This information is derived from the company's risk management plan which provides detailed strategies many of which are of a continuing nature and which could well be in place beyond the standard eighteen month period that confidential information is treated by the Commission as such. The various risk management strategy components build upon each other and disclosing the company's basic plan sooner than three years after it is submitted would arm would-be suppliers of goods and services, as well as competitors of Tampa Electric, with the bulk of the plan's components. A minimum of three years is essential to prevent those entities in the fuel and purchased power markets from having access to information they could use to the competitive disadvantage of Tampa Electric, which would increase the purchases power costs borne by Tampa Electric's customers. The same applies to the highlighted information on pages 4 and 8 of Mr. Smith's testimony as this information constitutes key components of the plan.

**JUSTIFICATION FOR CONFIDENTIAL TREATMENT OF CERTAIN
INFORMATION CONTAINED IN THE PREPARED DIRECT TESTIMONY
AND EXHIBITS OF FIPUG'S WITNESS SHEREE L. BROWN AND
TESTIMONY AND EXHIBITS OF OPC'S WITNESSES
MICHAEL MAJOROS AND WILLIAM ZAETZ**

Testimony of FIPUG Witness Sheree Brown

<u>Testimony/Exhibit Page No.</u>	<u>Description</u>	<u>Rationale</u>
Testimony, page 16, lines 12-18	2003 and 2004 O&M budget amounts	(1)
Testimony, page 16, line 21	Scenario descriptions	(2)
Testimony, pages 1-6	Scenario descriptions	(2)
Testimony, page 17, lines 7-8 and 16-17	2003 O&M budget amount	(3)
Testimony, page 18, lines 11-12 and 14-18	Dollar amounts shown on lines 11, 12, 15, 17 and 18	(1)
Testimony, page 19, line 1 Testimony, page 24, line 12 Testimony, page 25, line 17	\$63.7 million dollar total period O&M savings calculated by Sheree Brown	(2)
Testimony, page 19, lines 2 and 12	O&M savings amounts calculated by Sheree Brown That, if disclosed, would allow A person to back into the Tampa Electric O&M budget amounts	(1)
Testimony, page 19, line 13 Testimony, page 24, line 13	Tampa Electric O&M budget amounts	(1)
Testimony, page 19, lines 16-19 Testimony, page 20, lines 8-9	The dollar amounts	(1)
Testimony, page 20, line 10	Dollar amount of calculated fuel cost impact	(2)
Testimony, page 26, line 0	(Table)	(2)

Testimony and Exhibit of OPC Witness Michael Majoros

Testimony, page 8, line 4	Tampa Electric O&M budget target amount	(1)
Testimony, page 12, lines 4-5, 7 and 9-10	Fuel clause and O&M projected impact amounts	(1)
Testimony exhibit, MJM-2. Page 1 of 1	Bates stamped page 1186	(1)
Testimony exhibit, MJM-5 Page 1 of 1	Bates stamped page 1187	(4)

Testimony of OPC Witness William Zaetz

Testimony, page 10, lines 6-10		(5)
Testimony exhibit WMZ-1 Pages 1-45 of 45	Bates stamped pages 1,815-1,859	(6)

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- (1) This information consists of 2003 and 2004 O&M budget amounts. Only the dollar amounts shown on lines 13 and 14 are confidential. Such amounts are confidential because they reveal details of the very recent daily operation of Tampa Electric's business and its strategic planning. Disclosure of this information could impact agreements or contract negotiations that Tampa Electric attempts to enter into in the future. An example of how this could negatively impact the company is that of contractors viewing the budgeted amounts for a particular project or station and, because they are now aware of the funds Tampa Electric allocated for that particular project, bidding higher than they would have without that knowledge. This would increase Tampa Electric's overall cost. As such, the information is entitled to confidential treatment under Section 366.093(3)(d) and (e), Florida Statutes.
 - (2) Does not need confidential treatment.
 - (3) This information is the 2003 O&M budget amount; fuel clause and O&M projected impact amounts for Scenario 5, all from Tampa Electric's planning documents. These dollar amounts are confidential for the same reason described in Rationale No. (1) above.
 - (4) This information shows projected clause and operating income impact amounts. As such, it is entitled to confidential protection for the same reasons set forth in Rationale No. (1).

- (5) This information discloses Tampa Electric Company's capital investment information which is confidential for the same reasons that the O&M budget is confidential. As such, this information is entitled to confidential protection for the same reasons as stated in Rationale No. (1).
- (6) This document is a recently prepared strategic document which outlines Tampa Electric's strategies and plans for operating Gannon Station. The information contained in that document is transferable in most respects to the operation and maintenance of another Tampa Electric coal-fired station. For this reason it should continue to be protected even though Gannon Station will cease to operate soon. In addition, the document contains sensitive budget information, which is confidential for the reason set forth in Rationale No. (1).

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**SUPPLEMENTAL JUSTIFICATION FOR CONFIDENTIAL TREATMENT
OF CERTAIN INFORMATION CONTAINED IN THE PREPARED DIRECT
TESTIMONY AND EXHIBIT OF OPC'S WITNESS MICHAEL MAJOROS**

Testimony and Exhibit of OPC Witness Michael Majoros

<u>Testimony/Exhibit Page No.</u>	<u>Description</u>	<u>Rationale</u>
Testimony exhibit, MJM-4, Pages 1 and 2 of 2	Bates stamped page 1184-1185	(1)

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- (1) This information is a Tampa Electric strategic planning document. The information is confidential because it reveals details of the very recent daily operation of Tampa Electric's business and its strategic planning. Disclosure of this information could impact agreements or contract negotiations that Tampa Electric attempts to enter into in the future. An example of how this could negatively impact the company is that of contractors viewing the budgeted amounts for a particular project or station and, because they are now aware of the funds Tampa Electric allocated for that particular project, bidding higher than they would have without that knowledge. This would increase Tampa Electric's overall cost. As such, the information is entitled to confidential treatment under Section 366.093(3)(d) and (e), Florida Statutes.