

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's
2004-2008 waterborne transportation contract
with TECO Transport and associated
benchmark.

DOCKET NO. 031033-EI
ORDER NO. PSC-04-0533-PCO-EI
ISSUED: May 25, 2004

ORDER GRANTING MOTIONS FOR TEMPORARY PROTECTIVE ORDERS

Rule 25-22.006(6)(a), Florida Administrative Code, provides that “[i]n any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery.” The rule goes on to state that “[t]he protective order shall specify how the confidential information is to be handled during the course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.”

Rule 25-22.006(6)(c), Florida Administrative Code, provides:

When a utility or other person agrees to allow Public Counsel to inspect or take possession of utility information for the purpose of determining what information is to be used in a proceeding before the Commission, the utility may request a temporary protective order exempting the information from section 119.07(1), F.S. If the information is to be used in a proceeding before the Commission, then the utility must file a specific request for a protective order under paragraph [6](a) above. If the information is not to be used in a proceeding before the Commission, then Public Counsel shall return the information to the utility in accordance with the record retention requirements of the Department of State.

In this proceeding, Tampa Electric Company (Tampa Electric) has filed motions for temporary protective orders to protect the following information and documents provided to Public Counsel that Tampa Electric believes are proprietary confidential business information:

- Portions of Tampa Electric’s responses to Document Requests 1-9 and 10 from Public Counsels First and Second Requests for Productions of Documents (January 5, 2004)
- Portions of Tampa Electric’s responses to Interrogatories 4 and 5 from Public Counsel’s First Set of Interrogatories (January 5, 2004)
- Portions of Tampa Electric’s responses to Interrogatories 4-7, 14, 16, 20, and 26-27 from the Florida Industrial Power Users Group’s (FIPUG) First Set of Interrogatories (January 5, 2004)
- Portions of the Direct Testimony and Exhibits of Tampa Electric witnesses Brent Dibner and Joann T. Wehle (January 5, 2004)

DOCUMENT NUMBER-DATE

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- Portions of Tampa Electric's responses to Document Requests 30-76 from Public Counsel's Fourth Request for Production of Documents (January 28, 2004)
- Portions of Tampa Electric's responses to Interrogatories 25, 28, 34, 37, 39, 41, and 47 of Public Counsel's Second Set of Interrogatories (February 2, 2004)
- Portions of Tampa Electric's responses to Document Request 77 from Public Counsel's Fifth Request for Production of Documents (March 4, 2004)
- Portions of Tampa Electric's responses to Interrogatories 57 and 58 from Public Counsel's Third Set of Interrogatories (March 15, 2004)
- Portions of Tampa Electric's responses to Interrogatories 43 and 45 from Commission Staff's (Staff) Third Set of Interrogatories (March 18, 2004)
- Portions of Tampa Electric's responses to Interrogatories 3 and 4 from CSX Transportation's (CSXT) First Set of Interrogatories (March 19, 2004)
- Portions of Tampa Electric's responses to Interrogatories 57 and 60 from Staff's Fourth Set of Interrogatories (April 1, 2004)
- Portions of the testimony of Intervenor witnesses Majoros, Wells, White, Sansom, Stamberg, and Hochstein (March 30, 2004)
- Portions of the deposition transcript and exhibits of Michael J. Majoros, Jr. (April 23, 2004)
- Portions of the deposition transcript and exhibits of William B. McNulty (April 23, 2004)
- Portions of the Rebuttal Testimony and Exhibits of Tampa Electric witnesses Brent Dibner, Joann T. Wehle, Paula Guletsky, and Frederick J. Murrell (May 3, 2004)

In this proceeding, CSXT has filed motions for temporary protective orders to protect the following information and documents provided to Public Counsel that CSXT believes are proprietary confidential business information:

- Portions of CSXT's responses to Interrogatories 3, 6-9, 11, 18, 23, 29, 31, 34, 36-39, 41-43, 54, and 55 from Tampa Electric's First Set of Interrogatories (March 12, 2004)
- CSXT's response to Interrogatory 47 from Tampa Electric's First Set of Interrogatories (March 15, 2004)
- Portions of the Direct Testimony and Exhibits of CSXT witness Robert F. White (March 29, 2004)
- Portions of the Revised Direct Testimony and Exhibits of CSXT witness Robert L. Sansom

On April 6, 2004, Public Counsel and FIPUG filed a joint response in opposition to Tampa Electric's March 30, 2004, motion for temporary protective order concerning portions of the prefiled Intervenor testimony. Public Counsel and FIPUG argued that Tampa Electric's motion did not conform to the requirements for a request for confidential treatment of the information it wished to protect from disclosure and that portions of the testimony of Michael J. Majoros, Jr. did not represent proprietary confidential business information.

On May 5, 2004, Public Counsel and FIPUG filed a joint response in opposition to Tampa Electric's April 23, 2004, motion for temporary protective order concerning portions of the deposition transcript and exhibits of Michael J. Majoros, Jr. In their joint response, Public Counsel and FIPUG identify portions of the deposition transcript and exhibits that they believe should not be protected from disclosure.

On May 6, 2004, Catherine L. Claypool, Helen Fisher, William Page, Edward A. Wilson, Sue E. Strohm, Mary Jane Williamson, Betty J. Wise, Carlos Lissabet, and Lesly A. Diaz (Residential Customers) filed a joint response in opposition to Tampa Electric's May 3, 2004, motion for temporary protective order for portions of Tampa Electric's prefiled rebuttal testimony. In their response, the Residential Customers identify portions of Tampa Electric's prefiled rebuttal testimony that they believe should not be protected from disclosure.

The procedure for temporary protective orders set forth in Rule 25-22.006(6)(c), Florida Administrative Code, as set forth above, does not provide for a finding that the information or documents in question are indeed proprietary confidential business information based on a line-by-line justification by the utility. Rather, the procedure allows a mechanism by which Public Counsel can quickly and easily gather information and documents asserted to be confidential by the utility for purposes of allowing Public Counsel to determine whether it intends to use the information at hearing. If Public Counsel chooses to use the materials at hearing, then a detailed request for confidential classification of the materials is required by the utility. At that point, the Commission will determine whether the information is proprietary confidential business information and may consider the objections of other parties to such a request.

Each of the above Tampa Electric motions that have been opposed involve information provided not just to Public Counsel but also to the Commission pursuant to a request for confidential classification. In ruling on those requests for confidential classification, the Commission will determine whether Tampa Electric has complied with the provisions of Rule 25-22.006, Florida Administrative Code, and whether the materials in question meet the statutory criteria for confidential classification. The Commission will consider any responses provided to such requests in making its rulings. Until such time, these materials shall be protected from disclosure.

In addition, if the materials identified in the unopposed Tampa Electric and CSXT motions are identified later for use at hearing and become subject to a request for confidential classification, the Commission will determine whether Tampa Electric or CSXT has complied with the provisions of Rule 25-22.006, Florida Administrative Code, and whether the materials in question meet the statutory criteria for confidential classification.

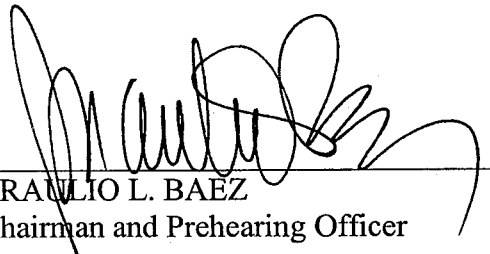
Based on the foregoing, the motions for temporary protective orders filed by Tampa Electric and CSXT in this proceeding, as outlined above, are granted.

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It is therefore,

ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that the motions for temporary protective orders filed by Tampa Electric and CSXT in this proceeding, as outlined in the body of this order, are granted.

By ORDER of Chairman Braulio L. Baez, as Prehearing Officer, this 25th day of May, 2004.


BRAULIO L. BAEZ
Chairman and Prehearing Officer

(SEAL)

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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; or (2) 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.