

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-04-0534-PCO-EI ISSUED: May 25, 2004
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ORDER GRANTING MOTION FOR PROTECTIVE ORDER

On January 28, 2004, Tampa Electric Company (Tampa Electric) filed a motion for protective order concerning information provided by its expert witness, Brent Dibner, in an educational session with staff and the parties to this docket concerning the use, operation, and workings of two computer models utilized by Mr. Dibner in preparing his testimony in this proceeding. This educational session was held January 29, 2004. In its motion, Tampa Electric asserted that representatives of the parties (other than staff and the Office of Public Counsel) had executed non-disclosure agreements, and the information supplied during the educational session and during any follow-up meeting for purposes of utilizing the models would be tendered as confidential proprietary business information. Tampa Electric stated that, as such, the parties are obligated by the non-disclosure agreements not to disclose that information.

Tampa Electric asserted that the information imparted by Mr. Dibner during the educational session, the workings of his two computer models, including inputs used by Mr. Dibner and the outputs of the models, all constitute proprietary confidential business information the public disclosure of which would be very harmful to the livelihood of Mr. Dibner and the competitive position of Tampa Electric and its affiliate, TECO Transport. Tampa Electric claims that Mr. Dibner's models are the essence of proprietary confidential business information in that they contain many details of Mr. Dibner's knowledge and expertise developed throughout his career. Attached to Tampa Electric's motion is an Affidavit in which Mr. Dibner explains the need to protect these models from disclosure to any person. In addition, Tampa Electric states that public disclosure of information or data contained in or utilized by the model, the results or output of the model, or the final report of Tampa Electric's waterborne transportation consultant, Mr. Dibner, would provide company and industry specific information that would reveal competitive bid information provided in response to Tampa Electric's RFP and compromise the competitive interests of the companies analyzed by Mr. Dibner.

Tampa Electric requests that the Commission enter a protective order requiring that each and every participant in the training session conducted January 29, 2004, by Tampa Electric and Mr. Dibner refrain from disclosing to any other person any information derived from the training session, including information concerning Mr. Dibner's models, how they operate, any information concerning the inputs to the models utilized by Mr. Dibner or the outputs derived therefrom, and any information concerning bids evaluated by Mr. Dibner or cost estimates made by Mr. Dibner in his use and operation of the models. Tampa Electric further requests that the

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protective order should apply not only to information supplied during the January 29 training session, but also to any information supplied during any follow-up meetings where participants are allowed to utilize the models for testing purposes.

Section 366.093, Florida Statutes, provides that upon a showing by a utility or other person and a finding by the Commission that discovery will require the disclosure of proprietary confidential business information, the Commission shall issue appropriate protective orders designating the manner for handling such information during the course of the proceeding and for protecting such information from disclosure outside the proceeding. Similarly, Rule 25-22.006(6)(a), Florida Administrative Code, provides that in any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure. Further, the 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 1.280, Florida Rules of Civil Procedure, provides that, for good cause shown, a protective order may be entered which either prevents disclosure of trade secret or confidential commercial information or requires such information be disclosed only in a designated way.

While the information provided in Mr. Dibner's January 29, 2004, tutorial session was not provided in response to a formal discovery request, it is discovery-type information provided for purposes of allowing staff and the parties to this proceeding the opportunity to understand how Mr. Dibner's computer models operate. Based on the arguments in Tampa Electric's motion and the Affidavit of Mr. Dibner, I find that the information provided in the January 29, 2004, tutorial session appears to be proprietary confidential business information to be protected from disclosure to persons not present at the tutorial session who are not otherwise covered by non-disclosure agreements with Tampa Electric. Further, as with other information provided as confidential in Commission dockets, disclosure among Commission staff should be limited to those staff persons assigned to this docket and should not be disclosed to other persons. Where Tampa Electric has a non-disclosure agreement with a particular party, this information shall be protected from disclosure pursuant to the terms of each such non-disclosure agreement.

Finally, I note that there are pending requests for confidential classification of Mr. Dibner's prefiled testimony and exhibits and related responses to discovery concerning Mr. Dibner's computer models. To the extent that (1) any specified portion of these materials is not granted confidential classification and (2) the information contained in that portion of these materials was discussed at the January 29, 2004, tutorial session and is protected from disclosure by this Order, this Order shall be superseded by any order denying confidential classification for that portion of the materials.

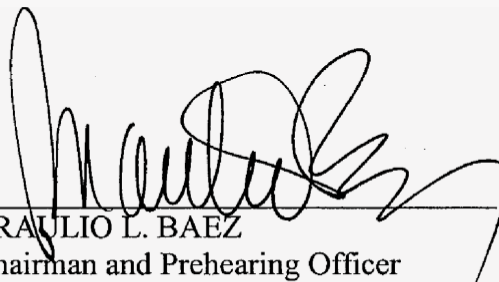
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Based on the foregoing, Tampa Electric's motion for protective order is granted as set forth in the body of this Order.

It is therefore,

ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that Tampa Electric Company's motion for protective order is granted as set forth in the body of this Order.

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

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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.