

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-04-0540-CFO-EI  
ISSUED: May 26, 2004

ORDER GRANTING IN PART AND DENYING IN PART REQUEST  
FOR CONFIDENTIAL CLASSIFICATION  
(DOCUMENT NO. 04830-04, 04877-04, 04878-04)

On May 14, 2004, 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 for portions of the Deposition Transcript and Deposition Exhibits of William B. McNulty (Document Nos. 04830-04, 04877-04, 04778-04).

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 "[t]rade secrets" (subsection a), "[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 contends that portions of the Deposition Transcript and Deposition Exhibits of William B. McNulty fall 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.

Tampa Electric requests confidential classification for the specific data listed in Attachment A to this order, which is incorporated herein by reference. The justification for Tampa Electric's request for confidential classification of this specific data is also set forth in Attachment A.

DOCUMENT NUMBER-DATE  
06021 MAY 26 04  
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Upon review, I find that the information Tampa Electric included in its request is confidential for the reasons identified by the company, with the exception of Deposition Exhibit No. 10. Deposition Exhibit No. 10 consists of an e-mail correspondence between two employees of this Commission and does not otherwise disclose confidential information. Since this correspondence is public record, confidential classification is denied for the above mentioned portion of the Deposition Exhibits of William B. McNulty.

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.

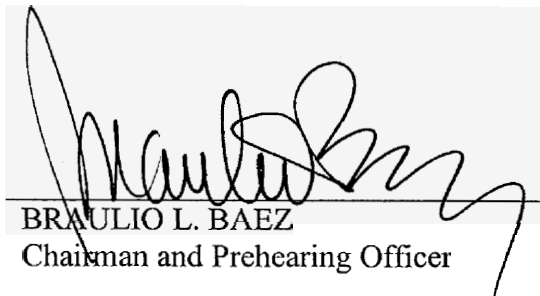
Based on the foregoing, it is

ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document Nos. 04830-04, 04877-04, and 04878-04 is granted in part and denied in part, as set forth in the body of this order. It is further

ORDERED that the information in Document No. 04830-04, 04877-04, and 04878-04 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 Chairman Braulio L. Baez, as Prehearing Officer, this 26th day of  
May, 2004.



BRAULIO L. BAEZ  
Chairman 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; 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.

**JUSTIFICATION FOR CONFIDENTIAL TREATMENT OF CONFIDENTIAL  
INFORMATION CONTAINED IN THE DEPOSITION TRANSCRIPT  
AND DEPOSITION EXHIBITS OF WILLIAM B. MCNULTY (FILED APRIL 23, 2004)**

<b><u>Transcript Page No. &amp; Line No.</u></b>	<b><u>Description</u></b>	<b><u>Rationale</u></b>
Page 84, lines 14 and 15	The Yellow Highlighted Information	(1)
Page 85, lines, 1, 21 and 23	The Yellow Highlighted Information	(1)
Page 86, lines 13, 14, 15, 20, 21, 22, 23 and 25	The Yellow Highlighted Information	(1)
Page 87, lines 3, 15, 23 and 24	The Yellow Highlighted Information	(1)
Page 88, line 15	The Yellow Highlighted Information	(1)
Page 89, lines 8, 9 and 10	The Yellow Highlighted Information	(1)
Page 90, lines 2, 3 and 14	The Yellow Highlighted Information	(1)
Page 91, lines 4 and 5	The Yellow Highlighted Information	(1)
Page 93, line 1	The Yellow Highlighted Information	(1)
Page 96, lines 4, 5, 6, 7, 8, 11 and 22	The Yellow Highlighted Information	(1)
Page 97, lines 5, 6 and 8	The Yellow Highlighted Information	(1)
Page 98, lines 6, 7, 11 and 12	The Yellow Highlighted Information	(1)
Page 99, line 10	The Yellow Highlighted Information	(1)
Page 100, lines 6, 7, 8, 11 and 16	The Yellow Highlighted Information	(1)
Page 101, line 25	The Yellow Highlighted Information	(3)
Page 102, lines 4-5 and 9-17	The Yellow Highlighted Information	(4)
Page 103, line 1 and 25	The Yellow Highlighted Information	(2)
Page 103, lines 3-5 17 and 19	The Yellow Highlighted Information	(4)

Page 104, line 19	The Yellow Highlighted Information	(4)
Page 105, lines 3, 6 and 15	The Yellow Highlighted Information	(2)
Page 106, line 2	The Yellow Highlighted Information	(2)
Page 106, lines 13, 17 and 18	The Yellow Highlighted Information	(2)
Page 108, lines 2, 11, 19, 20, 21, 22 and 25	The Yellow Highlighted Information	(2)
Page 108, lines 9 and 10	The Yellow Highlighted Information	(2)
Page 110, lines 11 and 19	The Yellow Highlighted Information	(2)
Page 110, lines 24 and 25	The Yellow Highlighted Information	(5)
Page 111, lines 18, 20 and 22	The Yellow Highlighted Information	(2)
Page 113, line 3	The Yellow Highlighted Information	(2)
Page 113, line 5	The Yellow Highlighted Information	(2)
Page 113, lines 12, 18, 19, 20, 21, 22 and 23	The Yellow Highlighted Information	(5)
Page 113, lines 13 and 16	The Yellow Highlighted Information	(5)
Page 114, line 7	The Yellow Highlighted Information	(5)
Page 114, line 11	The Yellow Highlighted Information	(5)
Page 115, lines 9 and 10	The Yellow Highlighted Information	(2)
Page 116, lines 21, 22 and 25	The Yellow Highlighted Information	(2)
Page 117, lines 8-9	The Yellow Highlighted Information	(4)
Page 117, lines 19 and 21	The Yellow Highlighted Information	(2)
Page 128, line 21	The Yellow Highlighted Information	(1)
Page 142, line 18	The Yellow Highlighted Information	(2)
Page 147, lines 1, 3, 10, 13, 18, 19 and 21	The Yellow Highlighted Information	(2)

Page 148, lines 1, 4, 11, 12 and 17	The Yellow Highlighted Dollar Amounts	(2)
Page 148, line 9 and 17	The Yellow Highlighted Percentage	(2)
<b><u>Deposition Exhibits</u></b>		
Deposition Exhibit 3	All Information on the Page	(1)
Deposition Exhibit 4	All Information on the Page	(1)
Deposition Exhibit 5	All Information on the Page	(1)
Deposition Exhibit 6	All Information on the Page	(1)
Deposition Exhibit 7	All Information on the Page	(1)
Deposition Exhibit 8	All Information on the Page	(1)
Deposition Exhibit 9	All Information on the Page	(1)
Deposition Exhibit 10	All Information on the Page	(1)
Deposition Exhibit 12 (Bates stamp pages 37 and 38)	All Information on the Page	(2), (5)

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- (1) The information in question reveals the identity of bidders that submitted proposals in response to Tampa Electric's RFP. Disclosing bidders identifies and the information included in their confidential proposals would discourage those bidders from participation in future RFPs as they do not desire for their competitors to have access to the terms and conditions under which they will bid on transportation services. As such public disclosure of this information would adversely affect the competitive interests of the bidders and the ability of Tampa Electric to contract for goods and services on favorable terms. The disclosure of this information would therefore be harmful to competitive interests, and as such, the information is entitled to confidential treatment pursuant to Section 366.093(d) and (e), Florida Statutes.
  - (2) The information in question contains bid information provided in response to Tampa Electric's RFP or information contained in prior proposals relating to coal transportation. Disclosing bidders' identities and the information included in their confidential proposals would discourage those bidders from participation in future RFPs as they do not desire to their competitors to have access to the terms and conditions under which they will bid on transportation services. This information, in conjunction with publicly disclosed information, would allow a competitor to back into the contract rates established for Tampa Electric's contract with TECO transport. As such public disclosure of the information in question would adversely affect the competitive interests of TECO

Transport and the bidders and the ability of Tampa Electric to contract for goods and services on favorable terms. The disclosure of this information would therefore be harmful to competitive interests, and as such, the information is entitled to confidential treatment pursuant to Section 366.093(d) and (e), Florida Statutes.

- (3) This information discloses a specific and significant component of a bid proposal received by TECO Transport. Public disclosure of this information would harm the competitive interests of TECO Transport and would also compromise Tampa Electric's competitive position in future efforts to negotiate waterborne transportation services. Consequently, the information in question is entitled to confidential treatment under Section 366.093(d) and (e), Florida Statutes.
- (4) The information is requested by CSXT's counsel to be treated confidentially as it relates either to CSXT's bid(s) or some other information for which CSXT claims the need for confidential treatment.
- (5) The information in question contains information about the contract terms and rates that were paid for transportation services under Tampa Electric's contracts with TECO Transport during the period 1998 through 2003 or that will be paid for transportation services under Tampa Electric's contract with TECO Transport that took effect January 1, 2004. This information is competitive contractual information, the disclosure of which would be harmful to the position of TECO Transport in negotiating future contracts with other clients. Disclosing this information would also harm Tampa Electric's position in determining rates for future transportation contracts since the providers bid responses might be influenced if they had knowledge of the previous or current contract rates. The disclosure of this information would therefore be harmful to TECO Transport's competitive interests and to the ability of Tampa Electric to contract for goods and services of favorable terms, and as such, the information is entitled to confidential treatment pursuant to Section 366.093(d) and (e), Florida Statutes.