

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-04-0542-CFO-EI
ISSUED: May 26, 2004

ORDER GRANTING IN PART AND DENYING IN PART
REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 03706-04)

On April 9, 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 of portions of its answers to CSX Transportation's (CSX) First Set of Interrogatories (Nos. 1-4) (Document No. 03706-04).

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 its answers to CSX's First Set of Interrogatories 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

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FPSC-COMMISSION CLERK

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Upon review, I find that the information in Tampa Electric's request is confidential for the reasons identified by the company, with the exception of portions of Tampa Electric's answer to Interrogatory No. 4. The information on Bates Stamp Page 1,193 is available to the public in the FERC 423 Forms and thus is not confidential. Therefore, confidential classification is denied for the above mentioned portions of Tampa Electric's answer to Interrogatory No. 4.

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.

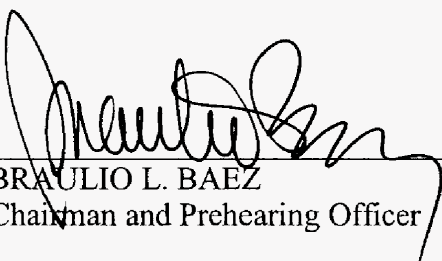
Based on the foregoing, it is

ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document No. 03706-04 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. 03706-04 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

(SEAL)

JAR

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 HIGHLIGHTED
PORTIONS OF TAMPA ELECTRIC'S RESPONSES TO CSXT'S FIRST
SET OF INTERROGATORIES (FILED MARCH 19, 2004)**

<u>Bates Stamp Page No.</u>	<u>Interrogatory No.</u>	<u>Detailed Description</u>	<u>Rationale</u>
916-917, 919-925, 929-937, 942-943, 945-962, 967-973, 977-985, 990-991, 993-1,010, 1,017-1,019, 1,021-1,026, 1,030-1,038, 1,044-1,046, 1,048-1,065, 1,071-1,079, 1,083-1,091, 1,097-1,099, 1,101-1,106, 1,110-1,118, 1,123-1,124, 1,126-1,128, 1,135-1,143, 1,147, 1,149-1,151, 1,155-1,166, 1,171-1,172, 1,174-1,176, 1,180-1,191	3	All Yellow Highlighted Information	(1)
1,193	4	All Yellow Highlighted Information	(2)

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- (1) The response is a copy of confidential Form 423 filings, with yellow highlighting. These filings reveal the contract rates that were paid for transportation services, or, together with public information the confidential highlighted data would allow competitors to calculate the contract rates, under Tampa Electric's contracts with TECO Transport during 2002, 2003 and 2004. These filings also contain information about the

commodity pricing of Tampa Electric's coal procurement contracts. 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 or coal commodity purchases since the providers' bid responses might be influenced if they had knowledge of the contract rates for these recent years. These types of rates on a commodity and segmented transportation basis have been recognized by the Commission on numerous occasions to constitute proprietary confidential business information the disclosure of which would be harmful to Tampa Electric's ability to contract for goods and services on favorable terms and, likewise, harmful to the competitive interests of Tampa Electric and its affiliate, TECO Transport Corporation. This is the specific type of information described in Section 366.093(3)(d) and (e) as being entitled to confidential protection and exemption from the Public Records Law.

- (2) The information contained on the listed pages contains a description of Tampa Electric's actual and expected coal purchases from different mines during 2002, 2003 and 2004. Inasmuch as the company has not already contracted for all of its expected coal needs in 2004 and beyond, public disclosure of this information would harm the company's negotiating position in its attempts to purchase coal at the most economic rate. Consequently, this information is entitled to protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code.