

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-04-0545-CFO-EI  
ISSUED: May 26, 2004

ORDER GRANTING IN PART AND DENYING IN PART REQUESTS FOR  
CONFIDENTIAL CLASSIFICATION  
(DOCUMENT NOS. 03137-04, 03183-04, 03668-04, 04194-04, 04196-04, 04417-04)

On March 24, 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 Responses to Staff's First Request for Production of Documents (Nos. 1-15) (Document No. 03137-04) and Staff's Second Set of Interrogatories (Nos. 8-42) (Document No. 03183-04). On April 8, 2004, Tampa Electric Company (Tampa Electric) filed a request for confidential classification of portions of its answers to Staff's Third Set of Interrogatories (Nos. 43-52) (Document No. 03668-04). On April 15, 2004, Tampa Electric filed a request for confidential classification of portions of its Responses to Staff's Third Request for Production of Documents (Nos. 19-27) (Document No. 04194-04). On April 15, 2004, Tampa Electric filed a request for confidential classification of portions of its answers to Staff's Fourth Set of Interrogatories (Nos. 53-73) (Document No. 04196-04). On April 15, 2004, Tampa Electric filed a request for confidential classification of portions of its Responses to Staff's Fourth Request for Production of Documents (Nos. 28-33) (Document No. 04417-04).

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 Staff's Second, Third, and Fourth Set of Interrogatories and Responses to Staff's First, Third, and Fourth Request for Production of Documents fall within these categories and thus constitutes proprietary confidential business

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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 Attachments A through F of 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 Attachments A through F. Upon review, I find that this information is confidential for the reasons identified by the company, with the exception of portions of Tampa Electric's Response to Request for Production No. 10 in Staff's First Request for Production of Documents, portions of Tampa Electric's Response to Request for Production Nos. 19 and 24 in Staff's Third Request for Production of Documents, Tampa Electric's answer to Interrogatory No. 28 in Staff's Second Set of Interrogatories, and Tampa Electric's answer to Interrogatory No. 30 in Staff's Second Set of Interrogatories.

With regard to Request For Production No. 10, the rates presented on Bates Stamp Page Nos. 20-21 are for the period April, 1994, through February, 2002. Rates prior to January, 2002 are not confidential based on the age of this information. Therefore, confidential classification is denied for Tampa Electric's Response to Staff's Request for Production No. 10, Bates Stamp Page No. 20 and the portions of Bates Stamp Page No. 21 containing rates prior to January, 2002.

With regard to Request for Production No. 19, the correspondence contained on Bates Stamp Page Nos. 3-11 are general in nature and contain information already revealed by the utility. With regard to Request for Production No. 24, the data contained on Bates Stamp Page Nos. 37-108 is information available to the general public. Therefore, confidential classification is denied for the above-referenced portions Tampa Electric's Response to Request for Production Nos. 19 and 24.

Interrogatory No. 28 in Staff's Second Set of Interrogatories contains Terminal Capacity Needs. Monthly fuel inventory levels, total number of tons of coal received at Tampa Bay, and number of tons burned at Tampa Bay are contained in Tampa Electric's monthly fuel adjustment filings in Schedule A-5. Number of tons burned by generating units are contained in the monthly filings in Schedule A-4. Number of tons of coal received at the Transfer Facility and at each of the plants at Tampa Bay are contained in Tampa Electric's monthly FPSC 423 Forms. Tampa Electric states in its request for confidential classification that these details would allow suppliers and potential suppliers a negotiation advantage in emergency conditions. However, Tampa Electric's burn rates, coal supply needs, and supplies in store can be approximated by using data that is already publicly available. Therefore, confidential classification is denied for Tampa Electric's answer to Interrogatory No. 28 in Staff's Second Set of Interrogatories.

Interrogatory No. 30 in Staff's Second Set of Interrogatories contains the 2001, 2002, and 2003 supplier names, number of tons, and the river terminals through which the coal is moved on Bates Stamp Page No. 23. Sources of coal purchased by electric utilities have never been classified as confidential information. Tampa Electric reports data similar to this on the FERC Form 423 and the FPSC 423-2 Form for every coal purchase it makes. River terminals, mine names, or company names are listed as sources on the FERC Form 423. Company names of coal suppliers and intended generating stations are reported on the FPSC 423-2 Form. Location of mines, by state and country, are reported publicly for domestic purchases on both FERC and FPSC 423 Forms. Tampa Electric states in its request for confidential classification that public disclosure of its coal needs and suppliers by contract and from different area on the waterborne supply course would harm the company's negotiating position in its attempts to purchase coal at the most economic rate by providing insight into locations where the company might expect to take coal deliveries in the future. Due to the availability of information regarding sources of coal historically purchased by Tampa Electric, confidential classification is denied for Bates Stamp Page No. 23 of Tampa Electric's answer to Interrogatory No. 30 in Staff's Second Set of Interrogatories.

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 Requests for Confidential Classification of Document Nos. 03137-04, 03183-04, 03668-04, 04194-04, 04196-04, and 04417-04 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 Nos. 03137-04, 03183-04, 03668-04, 04194-04, 04196-04, and 04417-04 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.

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By ORDER of Chairman Braulio L. Baez, as Prehearing Officer, this 26<sup>th</sup> day of  
May, 2004.



BR AULIO 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 PORTIONS OF  
TAMPA ELECTRIC'S RESPONSES TO STAFF'S FIRST  
REQUEST FOR PRODUCTION OF DOCUMENTS (FILED MARCH 3, 2004)**

<b><u>Bates Stamp Page No.</u></b>	<b><u>POD No.</u></b>	<b><u>Detailed Description</u></b>	<b><u>Rationale</u></b>
19-24	10	All of the Information on the Listed Pages	(1)
26-29	11	All of the Information on the Listed Pages	(1)
32-47	13	All of the Information on the Listed Pages	(2)

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- (1) The information contained on the listed pages contains the proprietary work product of Tampa Electric's consultant, Dibner Maritime Associates LLC or "DMA". The disclosure of this information could allow duplication of the consultant's work without compensation for the consultant's efforts to gather and update the information and develop methods of analysis. This information is in the nature of a trade secret owned by DMA. It is also in the nature of information relating to competitive interests, the disclosure of which would impair DMA's competitive business interests by diminishing the demand for DMA's proprietary work product. As such, the information in question is entitled to confidential treatment pursuant to Section 366.093 (3)(a) and (e), Florida Statutes.
- (2) The information contained on the listed pages contains Tampa Electric's evaluation of bid information provided in response to Tampa Electric's currently active solicitation to purchase coal. 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 for their competitors to have access to the terms and conditions under which they will bid. The contract rates that will be paid for transportation services under Tampa Electric's contract with TECO Transport that took effect January 1 are also shown on these pages. 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. As such public disclosure of the information contained on these pages would adversely affect the competitive interests of TECO Transport, 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.

**JUSTIFICATION FOR CONFIDENTIAL TREATMENT OF  
PORTIONS OF TAMPA ELECTRIC'S RESPONSES TO  
STAFF'S SECOND SET OF INTERROGATORIES (FILED MARCH 3, 2004)**

<b><u>Bates Stamp Page No.</u></b>	<b><u>Interrogatory No.</u></b>	<b><u>Detailed Description</u></b>	<b><u>Rationale</u></b>
18	25	All Yellow Highlighted Information	(1)
21	28	All Yellow Highlighted Information	(2)
23	30	All Yellow Highlighted Information	(3)
28	35	All Yellow Highlighted Information	(4)
29	36	All Yellow Highlighted Information	(4)
30	37	All Yellow Highlighted Information	(4)
31	38	All Yellow Highlighted Information	(4)

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- (1) The information contained on the listed pages reveals results of Tampa Electric's evaluation of bid information provided in response to Tampa Electric's currently active solicitation to purchase coal. The coal purchases that result from this solicitation must still be negotiated. Therefore, disclosing the information before the solicitation has closed would be harmful to Tampa Electric's ability 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 contained on the listed pages reveals Tampa Electric's strategic planning for fuel supply maintenance and detailed information about the company's inventory and in transit levels. Knowledge of these details would allow suppliers and potential suppliers a negotiation advantage in the event that the company needed to purchase coal during a fuel supply emergency, miner's strike or elevated terror alert level. 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) The information contained on the listed pages contains discloses a detailed description of Tampa Electric's coal needs and suppliers by contract and from different areas on the waterborne supply course. Public disclosure of this information would harm the company's negotiating position in its attempts to purchase coal at the most economic rate.

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.

- (4) The information contained on the listed pages contains the proprietary work product of Tampa Electric's consultant, Dibner Maritime Associates LLC or "DMA". The disclosure of this information could allow duplication of the consultant's work without compensation for the consultant's efforts to gather and update the information and develop methods of analysis. This information is in the nature of a trade secret owned by DMA. It is also in the nature of information relating to competitive interests, the disclosure of which would impair DMA's competitive business interests by diminishing the demand for DMA's proprietary work product. As such, the information in question is entitled to confidential treatment pursuant to Section 366.093 (3)(a) and (e), Florida Statutes.

**JUSTIFICATION FOR CONFIDENTIAL TREATMENT OF HIGHLIGHTED  
PORTIONS OF TAMPA ELECTRIC'S RESPONSES TO STAFF'S THIRD  
SET OF INTERROGATORIES (FILED MARCH 18, 2004)**

<u>Bates Stamp Page No.</u>	<u>Interrogatory No.</u>	<u>Detailed Description</u>	<u>Rationale</u>
1	43	All Yellow Highlighted Information	(1)
2	44	All Yellow Highlighted Information	(1)
3	45	All Yellow Highlighted Information	(1)

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- (1) The information contained on the listed pages contains information about the contract amounts that were paid for transportation services, and together with public information would allow competitors to calculate the contract rates, under Tampa Electric's contracts with TECO Transport during 2002 and 2003. 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 contract rates for these recent years. 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 on favorable terms, and as such, the information is entitled to confidential treatment pursuant to Section 366.093(d) and (e), Florida Statutes.



**JUSTIFICATION FOR CONFIDENTIAL TREATMENT OF HIGHLIGHTED PORTIONS OF TAMPA ELECTRIC'S RESPONSES TO STAFF'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS (FILED APRIL 1, 2004)**

<b><u>Bates Stamp Page No.</u></b>	<b><u>POD No.</u></b>	<b><u>Detailed Description</u></b>	<b><u>Rationale</u></b>
3-11	19	All of the Information on the Listed Pages	(1), (3), (4)
21	19	All of the Information on the Listed Pages	(1), (2), (3)
30-114	24	All of the Information on the Listed Pages	(2)

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- (1) The information contained on the listed pages contains bid information provided in response to Tampa Electric's RFP. 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 for their competitors to have access to the terms and conditions under which they will bid on transportation services. As such public disclosure of the information contained on these pages 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.
  - (2) The information contained on the listed pages contains the proprietary work product of Tampa Electric's consultant, Dibner Maritime Associates LLC or "DMA". The disclosure of this information could allow duplication of the consultant's work without compensation for the consultant's efforts to gather and update the information and develop methods of analysis. This information is in the nature of a trade secret owned by DMA. It is also in the nature of information relating to competitive interests, the disclosure of which would impair DMA's competitive business interests by diminishing the demand for DMA's proprietary work product. As such, the information in question is entitled to confidential treatment pursuant to Section 366.093 (3)(a) and (e), Florida Statutes.
  - (3) The information contained on the listed pages contains information about the contract terms and rates 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

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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 on favorable terms, and as such, the information is entitled to confidential treatment pursuant to Section 366.093(d) and (e), Florida Statutes.

- (4) The information contained on the listed pages contains contractual negotiations between Tampa Electric and TECO Transport. Public disclosure of this information would harm the company's negotiating position in any future attempts to purchase coal at the most economic rate. Consequently, this information, as well, is entitled to protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code.

**JUSTIFICATION FOR CONFIDENTIAL TREATMENT OF HIGHLIGHTED  
PORTIONS OF TAMPA ELECTRIC'S RESPONSES TO STAFF'S FOURTH  
SET OF INTERROGATORIES (FILED APRIL 1, 2004)**

<u>Bates Stamp Page No.</u>	<u>Interrogatory No.</u>	<u>Detailed Description</u>	<u>Rationale</u>
5	57	All Yellow Highlighted Information	(1)
8	60	All Yellow Highlighted Information	(1)

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- (1) The information contained on the listed pages contains information about the terms of Tampa Electric's contract for transportation services 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 negotiating future transportation contracts since the providers bid responses might be influenced if they had knowledge of the current contract terms. 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 on favorable terms, and as such, the information is entitled to confidential treatment pursuant to Section 366.093(d) and (e), Florida Statutes.

**JUSTIFICATION FOR CONFIDENTIAL TREATMENT OF HIGHLIGHTED PORTIONS OF TAMPA ELECTRIC'S RESPONSES TO STAFF'S FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS (FILED APRIL 8, 2004)**

<b><u>Bates Stamp Page No.</u></b>	<b><u>POD No.</u></b>	<b><u>Detailed Description</u></b>	<b><u>Rationale</u></b>
4, 6-7	31	All Yellow Highlighted Information	(1)

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- (1) The information contained on the listed pages contains the proprietary work product of Tampa Electric's consultant, Dibner Maritime Associates LLC or "DMA". The disclosure of this information could allow duplication of the consultant's work without compensation for the consultant's efforts to gather and update the information and develop methods of analysis. This information is in the nature of a trade secret owned by DMA. It is also in the nature of information relating to competitive interests, the disclosure of which would impair DMA's competitive business interests by diminishing the demand for DMA's proprietary work product. As such, the information in question is entitled to confidential treatment pursuant to Section 366.093 (3)(a) and (e), Florida Statutes.