

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-04-0548-CFO-EI ISSUED: May 26, 2004
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ORDER GRANTING IN PART AND DENYING IN PART REQUEST
FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NOS. 00091-04 and 00092-04)

On January 26, 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 the Prepared Direct Testimonies of Tampa Electric witnesses Brent Dibner and Joann T. Wehle and accompanying Exhibits BD-1 and JTW-1 (Document Nos. 00091-04 and 00092-04). On February 9, 2004, The Florida Industrial Power Users Group (FIPUG) filed a Response in opposition to Tampa Electric requests.

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 testimony and exhibits of Mr. Dibner and Ms. Wehle 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

In its response, FIPUG argues that much of the information contained in Exhibit BD-1 does not appear to meet the description of the information provided in Tampa Electric's confidentiality request. FIPUG states that much of Exhibit BD-1 contains information either compiled from public sources or of such general nature as to not be proprietary.

Upon review, I find that the information pertaining to Joann T. Wehle's prepared direct testimony and accompanying exhibit is confidential for the reasons identified by the company. I find that the information pertaining to Brent Dibner's prepared direct testimony is confidential for the reasons identified by the company. However, I find that not all portions of Exhibit BD-1 to the prepared direct testimony of Brent Dibner are confidential. The information on Bates Stamp Page Nos. 53-58, 59, 60-69, 70, 71, 74, 76, 78, 79, 82, 98, 103-105, 108, 114, 119, and 121-125 represents input from public sources or general information which reveal no trade secrets of Mr. Dibner's model. Therefore, confidential classification is denied for the above mentioned portions of Exhibit BD-1 to the prepared direct testimony of Brent Dibner.

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

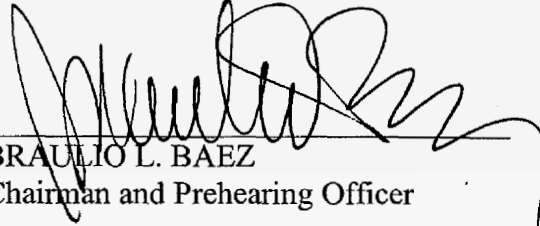
ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document Nos. 00091-04 and 00092-04 is granted in part and denied in part, as set forth in the body of this order. It is further

ORDERED that the information in Document Nos. 00091-04 and 00092-04 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 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 HIGHLIGHTED
PORTIONS OF TAMPA ELECTRIC WITNESS DIBNER'S
PREPARED TESTIMONY (FILED JANUARY 5, 2004) AND
ACCOMPANYING EXHIBIT (BD-1)**

<u>Page</u>	<u>Line No.</u>	<u>Detailed Description</u>	<u>Rationale</u>
<u>Testimony of Brent Dibner</u>			
34	2	All Yellow Highlighted Information	(1)
43	5	All Yellow Highlighted Information	(2)
46	19, 20	All Yellow Highlighted Information	(2)
47	1, 4, 5, 7, 8	All Yellow Highlighted Information	(2)
<u>Exhibit (BD-1)</u>			
<u>Dibner Maritime Associates LLC Final Report</u>			
Bates Stamp Page No. 53-130		All of the Information on the Listed Pages	(1)
<u>Revised Pages of Dibner Maritime Associates LLC Final Report</u>			
Bates Stamp Page No. 132-138		All of the Information on the Listed Pages	(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.
- (2) The information contained on the listed pages contains information about the contract 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. The disclosure of this

information would therefore be harmful to TECO Transport's 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 CONFIDENTIAL INFORMATION CONTAINED IN THE
PREPARED TESTIMONY OF JOANN T. WEHLE
(FILED JANUARY 5, 2004) AND ACCOMPANYING EXHIBIT (JTW-1)**

<u>Testimony Page No.</u>	<u>Description</u>	<u>Rationale</u>
Page 36, line 16	All Yellow Highlighted Information	(1)
Page 37, line 3	All Yellow Highlighted Information	(2)

Exhibit (JTW-1)

Bates Stamp Page No.

72	Columns B-J, All Yellow Highlighted Information	(2)
72	Columns K-N, All Yellow Highlighted Information	(3)
72	Notes 1-3, All Yellow Highlighted Information	(2)
73	Notes 4 and 5, All Yellow Highlighted Information	(3)

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- (1) The figure reflected shows the comparison of a new TECO Transport contract rate to the existing contract rate. This information should be treated confidentially in order to protect the competitive interests of TECO Transport. This contract information could harm TECO Transport's competitive position in the waterborne transportation industry. Affording TECO Transport's competitors information concerning the extent to which rates are moving in a particular direction would enhance the ability of those competitors to compete with TECO Transport for services provided to other shippers. As a result, the information in question is entitled to confidential protection under Section 366.093(3)(d) and (e), Florida Statutes.
- (2) The information on these pages shows the rates of Tampa Electric's transportation contract with TECO Transport and the comparison of the TECO Transport contract rate to rates taken from the rail bidder's proposal. It also reveals rail bidders identity and

information included in their confidential proposals. 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. 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 ability of Tampa Electric to contract for goods and services on favorable terms. In addition, this information includes Tampa Electric's bid evaluation assumption that reveal planned operations and existing contractual data (trucking rate). This adds to the need for confidential protection from both a competitive and contractual standpoint. Consequently, the information in question is entitled to confidential protection under Section 366.093(d) and (e), Florida Statutes.

- (3) This page reveals expected locations from which Tampa Electric would take coal deliveries on the river system. Disclosure of this information would adversely affect Tampa Electric's position in future coal supply negotiations as well as TECO Transport's competitive position for negotiating contracts for transportation for other clients. As such, this information in question is entitled to confidential treatment under Section 366.093(3)(d) and (e), Florida Statutes.