

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-04-0704-CFO-EI  
ISSUED: July 19, 2004

ORDER GRANTING REQUESTS FOR CONFIDENTIAL CLASSIFICATION  
(DOCUMENT NOS. 05237-04 AND 05239-04)

On May 24, 2004, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Tampa Electric Company (Tampa Electric) filed requests for confidential classification of portions of responses to Staff's Fifth Request for Production of Documents (Nos. 34-38) and Staff's Sixth Set of Interrogatories (Nos. 82-96) (Document Nos. 05237-04 and 05239-04).

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 responses to Staff's Fifth Request for Production of Documents and Staff's Sixth 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 all of the information on Bates Stamp Page Nos. 6-22 in its response to Request for Production No. 38. Tampa Electric contends that this information contains bid information provided in response to Tampa Electric's RFP and reveals the identity of bidders that submitted proposals in response to the RFP. According to Tampa Electric, disclosing bidders' identities and the information included in their confidential proposals would discourage those bidders from participation in future RFPs as they

DOCUMENT NUMBER-DATE

07840 JUL 19 04

FPSC-COMMISSION CLERK

do not desire for their competitors to have access to the terms and conditions under which they will bid on transportation services. According to Tampa Electric, public disclosure of this information 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.

Tampa Electric also requests confidential classification for portions of Bates Stamp Page No. 1 in its answer to Interrogatory No. 82, Bates Stamp Page No. 5 in its answer to Interrogatory No. 86, and Bates Stamp Page No. 6 in its answer to Interrogatory No. 87. Tampa Electric contends that the information contains 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. According to Tampa Electric, 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. Tampa Electric asserts that 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. Tampa Electric states that the disclosure of this information would be harmful to TECO Transport's competitive interests and to the ability of Tampa Electric to contract for goods and services on favorable terms.

Upon review, it appears that the above-referenced information contained in Tampa Electric's responses to Staff's Fifth Request for Production of Documents and Staff's Sixth Set of Interrogatories satisfies the criteria set forth in Section 366.093(3), Florida Statutes, for classification as proprietary confidential business information and, thus, shall be treated as confidential. The information constitutes "[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" and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Thus, this information is granted confidential classification.

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.

ORDER NO. PSC-04-0704-CFO-EI  
DOCKET NO. 031033-EI  
PAGE 3


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. 05237-04 and 05239-04 are granted. It is further

ORDERED that the information in Document Nos. 05237-04 and 05239-04 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 19<sup>th</sup> day of July, 2004.

  
BRAULIO L. BAEZ  
Chairman and Prehearing Officer

( S E A L )

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.

ORDER NO. PSC-04-0704-CFO-EI  
DOCKET NO. 031033-EI  
PAGE 4

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.