

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor. DOCKET NO. 040001-EI
ORDER NO. PSC-04-1007-CFO-EI
ISSUED: October 18, 2004

ORDER GRANTING IN PART AND DENYING IN PART REQUEST
FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 04198-04)

On April 1, 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 Pages 1, 2, and 3 of its Annual Risk Management Plan ("the Plan") (Document No. 04198-04).

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 Pages 1-3 of the Plan fall within these categories and thus constitute 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 it seeks confidential classification for portions of the Plan because disclosure would reveal Tampa Electric's purchasing strategy for fuel and purchased power and the company's planned risk exposure. According to Tampa Electric, those who have an interest in supplying Tampa Electric's fuel and purchased power needs could use this information to help them force more favorable terms to the detriment of Tampa Electric and its ratepayers. Tampa Electric contends that disclosing its risk exposure levels on a monthly basis would provide an indicator of vulnerability to market price. Tampa Electric states that potential suppliers of fuel and purchased power could simply withhold supply and price their fuel and purchase power offerings at a higher level than they would otherwise. Tampa Electric asserts that power suppliers could perform maintenance on their units during months when Tampa Electric's exposure is low so that they would have their power to sell at high prices during months that

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Tampa Electric’s exposure is high. Tampa Electric further asserts that disclosure of certain information in the Plan would provide highly sensitive information to recipients regarding the manner and timing of Tampa Electric’s entry into the fuel and purchased power markets. According to Tampa Electric, knowledge of this information would allow the opportunity for market manipulation through transactions made in anticipation of the company’s entry into the market. Tampa Electric contends that market manipulations based on knowledge of certain information in the Plan would increase the price of fuel and purchased power paid by Tampa Electric’s customers as well as the price paid by the company to hedge the customers’ price of fuel and purchased power. Tampa Electric asserts that these effects of disclosure would impair the efforts of Tampa Electric to contract for goods and services on favorable terms for the benefit of its customers. Tampa Electric states that this information is intended to be and is treated by Tampa Electric as private and has not been publicly disclosed.

Upon review, I find that the requested information is **not** confidential, with the exception of certain information as indicated in the chart below. The information for which confidential classification is denied shows annual results of risk management activities and the impact upon ratepayers. This non-confidential information does not reveal any information regarding individual transactions, strategy, manner, or timing of entry into the market. Tampa Electric has not shown how it or its customers would be adversely impacted by disclosure of this information. In addition, the information in columns 5 and 9 of the chart on Page 3 is already in the public domain and therefore not confidential. Consumption in MMBTUs is available in Tampa Electric’s A Schedules filed with the Commission and settle prices can be found in the Wall Street Journal and trade publications. The information for which Tampa Electric requests confidential classification and the ruling on each item is set forth below:

Page No.	Ruling
Page 1	Deny
Page 2	Deny
Page 3 (chart)	Deny “Total” in Column 3 (“Mark-to-Market Savings/(Loss)” Deny Columns 5, 9 (“Consumption,” “Settle Price”)
Page 3 (text)	Deny

Tampa Electric requests confidential classification for this information for a period exceeding 18 months. According to Section 366.093(4), Florida Statutes, confidential classification may only extend for 18 months from the issuance of an Order granting confidential classification unless “the Commission finds, for good cause, that the protection from disclosure shall be for a specified longer period.” Section 366.093(4), Florida Statutes. Tampa Electric addresses the need for extending the 18 month period to three years by asserting that the Plan provides detailed strategies of a continuing nature that could still be in place beyond the standard

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18 month period of confidential classification. Tampa Electric further asserts that the various risk management strategy components build upon each other and disclosing the basic plan less than three years after it is submitted would arm potential suppliers of goods and services, as well as competitors, with the bulk of the Plan's components. Tampa Electric contends that three years is essential to prevent those entities in the fuel and purchased power markets from having access to information they could use to the competitive disadvantage of Tampa Electric, which would increase the fuel and purchased power costs borne by customers.

Tampa Electric appears to have provided sufficient information concerning the harm which could arise from not protecting the confidential information for a minimum of three years. Accordingly, good cause having been shown, the information granted confidential classification shall be held as confidential for three years from the date of the issuance of this Order.

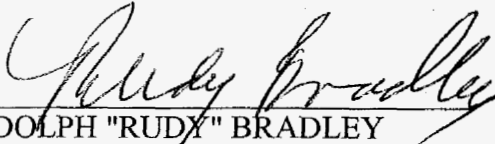
Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Tampa Electric's Request for Confidential Classification of Document No. 04198-04 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. 04198-04 for which confidential classification has been granted shall remain protected from disclosure for a period of three years 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 Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 18th day of October, 2004.


RUDOLPH "RUDY" BRADLEY
Commissioner 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.