

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-05-0638-CFO-EI
ISSUED: June 14, 2005

ORDER GRANTING IN PART AND DENYING IN PART REQUEST
FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NOS. 05111-04, 05112-04, 05113-04, 05114-04)

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 a request for confidential classification of portions of the prepared rebuttal testimony and exhibits of Tampa Electric witnesses in this proceeding (Document Nos. 05111-04, 05112-04, 05113-04, 05114-04). On June 7, 2004, Office of Public Counsel (OPC) and the Florida Industrial Power Users Group (FIPUG) filed a joint response in opposition to Tampa Electric's request pertaining to portions of the rebuttal testimony and exhibits of witnesses Joann T. Wehle and Brent Dibner (Document Nos. 05111-04 and 05112-04).

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).

In its request, Tampa Electric contends that portions of the prepared rebuttal testimony and exhibits of its witnesses in this proceeding fall within these categories and thus constitute proprietary confidential business information entitled to protection under Section 366.093, Florida Statutes. Specifically, Tampa Electric requests confidential classification for the 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 data is also set forth in Attachment A. Tampa Electric states that the information for which it seeks confidential

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classification is intended to be and is treated by Tampa Electric as private and has not been publicly disclosed.

In their joint response, OPC and FIPUG state that although Tampa Electric requests confidential classification for the entirety of pages 94 and 95 of Exhibit JTW-2 to the rebuttal testimony of Joann T. Wehle, portions of the text on those pages appear unredacted in Ms. Wehle's testimony. OPC and FIPUG assert that these portions of the exhibit contain titles, headings, and text that are not confidential. OPC and FIPUG also assert that page 97 of Exhibit JTW-2 contains information that appears unredacted in Ms. Wehle's testimony. Further, OPC and FIPUG assert that page 101 of Exhibit JTW-2 contains titles, headings, and text that are not confidential.

With regard to the rebuttal testimony and exhibits of Brent Dibner, OPC and FIPUG state that Tampa Electric did not demonstrate how the redacted number on page 29, line 9 of Mr. Dibner's rebuttal testimony relates to contract rates that were paid or will be paid to TECO Transport or how the number could be used to back into confidential information. OPC and FIPUG assert that it is unclear how Mr. Dibner's consulting business, Dibner Maritime Associates LLC, could be harmed by disclosure of the number. In addition, OPC and FIPUG state that pages 46 and 47 of Exhibit BD-2 to Mr. Dibner's rebuttal testimony contain titles, headings, and text that are not confidential.

Upon review, I find that the information for which Tampa Electric requests confidential classification, with the exceptions noted below, satisfies the criteria set forth in Section 366.093(3), Florida Statutes, for classification as proprietary confidential business information for the reasons identified by Tampa Electric and, thus, shall be treated as confidential.

I find that the information on pages 46 and 47 of Exhibit BD-2 to Mr. Dibner's rebuttal testimony, with exception of the fourth column of the graph on page 46 which shows the Dibner proposed rate relative to rates proposed by witness Anatoly Hochstein, does not satisfy the criteria for confidential classification. Page 46 of Exhibit BD-2 is a graphical representation of the results of a comparison of a model offered by Dr. Hochstein with an adjusted version of his model. Page 47 shows the inputs and calculations of the results. Tampa Electric states that this information concerns contract rates and terms, is a trade secret of Dibner Maritime Associates LLC, and allows one to back into confidential information. However, Dr. Hochstein's calculations are not confidential, and Mr. Dibner references the calculations only as a hypothetical example. Therefore, adjustments to Dr. Hochstein's calculations are not confidential. Accordingly, only the information in the fourth column of the graph on page 46 shall be afforded confidential treatment.

I find that the following information from Exhibit JTW-2 to Ms. Wehle's rebuttal testimony does not satisfy the criteria for confidential classification:

- 1) Bates Stamp page 94. This page contains an evaluation of rail vs. water delivery economics for Western Kentucky coal, including prices. Tampa Electric requests confidential classification for the entire page; however, justification was not given for titles, headings, and text on this page. Therefore, all titles, headings, and text on this page shall not be classified as confidential. However, the prices appearing on this page are confidential.
- 2) Bates Stamp page 97. This page contains a letter from Petroleum Coke Management Company to Ms. Wehle. Tampa Electric requests confidential classification for the entire page, stating that its contents would allow one to back into confidential information. The letter contains general business information that is not confidential with the exception of the short ton rate, which is the only portion of the letter that would allow one to back into confidential information. Therefore, confidential classification is denied for this page, with the exception of the referenced short ton rate.
- 3) Bates Stamp page 101. This page contains a graph showing a comparison of the TECO Transport rate relative to the waterborne coal transportation benchmark established by the Commission. The benchmark is available to the public through Commission orders and the TECO Transport rate for years prior to 2001 is no longer confidential and is available on FPSC Form 423. Therefore, confidential classification is denied for page 101, with the exception of the 2001 and 2002 TECO Transport rates.

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

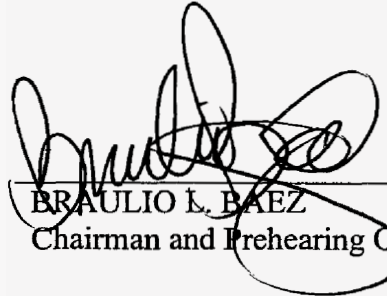
ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document Nos. 05111-04, 05112-04, 05113-04, and 05114-04 is granted in part and denied in part, as set forth in the body of this order. It is further

ORDERED that the information in Document Nos. 05111-04, 05112-04, 05113-04, and 05114-04 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 14th day of
June, 2005.


BRAULIO L. BAEZ
Chairman and Prehearing Officer

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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 REBUTTAL TESTIMONY AND EXHIBITS

Joann T. Wehle – May 3, 2004

<u>Page No.</u>	<u>Line No.</u>	<u>Detailed Description</u>	<u>Rationale</u>
16	5	The Yellow Highlighted Information	(1)
22	22	The Yellow Highlighted Information	(2)
32	9, 23	The Yellow Highlighted Information	(2)
37	11	The Yellow Highlighted Information	(1)
45	5	The Yellow Highlighted Information	(2), (3), (4)
55	7	The Yellow Highlighted Information	(4)
55	19	The Yellow Highlighted Information	(5)
55	20	The Yellow Highlighted Information	(4), (6)
63	2	The Yellow Highlighted Information	(2), (6)
64	10, 11, 13, 17	The Yellow Highlighted Information	(4), (6)

Exhibit of Joann T. Wehle

<u>Page No.</u>	<u>Ex. No.</u>	<u>Detailed Description</u>	<u>Rationale</u>
Bates Stamp Page 94	(JTW-2)	All Information on the Listed Page	(2), (3), (4), (6)
Bates Stamp Page 95	(JTW-2)	All Information on the Listed Page	(2), (3), (4), (6)
Bates Stamp Page 97	(JTW-2)	All Information on the Listed Page	(6)
Bates Stamp Page 101	(JTW-2)	All Information on the Listed Page	(4)

Brent Dibner – May 3, 2004

<u>Page No.</u>	<u>Line No.</u>	<u>Detailed Description</u>	<u>Rationale</u>
20	9	The Yellow Highlighted Information	(1)
21	9	The Yellow Highlighted Information	(4), (7)
29	9	The Yellow Highlighted Information	(4), (6), (8)
42	2	The Yellow Highlighted Information	(4), (8)
44	6	The Yellow Highlighted Information	(1)

Exhibit of Brent Dibner

<u>Page No.</u>	<u>Ex. No.</u>	<u>Detailed Description</u>	<u>Rationale</u>
46	(BD-2)	All Information on the Listed Page	(4), (6), (8)
47	(BD-2)	All Information on the Listed Page	(4), (6), (8)

Paula Guletsky – May 3, 2004

<u>Page No.</u>	<u>Line No.</u>	<u>Detailed Description</u>	<u>Rationale</u>
11	2,3,4,5,6	All Yellow Highlighted Information	(2), (9)

Exhibit of Paula Guletsky

<u>Page No.</u>	<u>Ex. No.</u>	<u>Detailed Description</u>	<u>Rationale</u>
Bates Stamp	(PMG-1)	All Information on the Listed Page	(2), (9)

Frederick J. Murrell – May 3, 2004

<u>Page No.</u>	<u>Line No.</u>	<u>Detailed Description</u>	<u>Rationale</u>
16	12	The Yellow Highlighted Information	(1)
17	14	The Yellow Highlighted Information	(1)

ATTACHMENT A

<u>Page No.</u>	<u>Line No.</u>	<u>Detailed Description</u>	<u>Rationale</u>
24	12, 13, 14, 15, 16	The Yellow Highlighted Information	(2), (6)
25	12	The Yellow Highlighted Information	(2)
28	17	The Yellow Highlighted Information	(2)
30	19	The Yellow Highlighted Information	(2), (3)
36	15	The Yellow Highlighted Information	(4), (7)
36	16	The Yellow Highlighted Information	(4), (6), (7)

Exhibit of Frederick J. Murrell

<u>Page No.</u>	<u>Ex. No.</u>	<u>Detailed Description</u>	<u>Rationale</u>
Bates Stamp Page 54	(FJM-1)	The Yellow Highlighted Information on line 5	(4)
Bates Stamp Page 54	(FJM-1)	The Yellow Highlighted Information on line 6	(4)
Bates Stamp Page 54	(FJM-1)	The First and Third Yellow Highlighted Information on line 7	(4)
Bates Stamp Page 54	(FJM-1)	The Second Yellow Highlighted Information on line 7	(2), (4), (6)
Bates Stamp Page 54	(FJM-1)	The Yellow Highlighted Information on line 9	(4)
Bates Stamp Page 54	(FJM-1)	The Yellow Highlighted Information on line 10	(2), (4), (6)
Bates Stamp Page 54	(FJM-1)	All Yellow Highlighted Information on lines 12, 14, 15, 16, 17	(4)

(1) The information in question reveals the identity of bidders that submitted proposals in response to Tampa Electric's RFP. Disclosing bidders identities and the information included in their confidential proposals would discourage those bidders from

ATTACHMENT A

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 this information would adversely affect the competitive interests of 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 in question contains bid information provided in response to Tampa Electric's RFP or information contained in prior proposals relating to coal transportation. 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. This information, in conjunction with publicly disclosed information, would allow a competitor to back into the contract rates established for Tampa Electric's contract with TECO Transport. As such public disclosure of the information in question 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.
- (3) The information in question includes Tampa Electric's bid evaluation assumptions that reveal planned operations and existing contractual data. As such public disclosure of the information contained on these pages would adversely affect the competitive interests of Tampa Electric and its 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.
- (4) The information in question contains information about the 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. 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. 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.

- (5) This information is a proprietary transportation rate quoted by TECO Ocean Shipping on a confidential basis. Public Disclosure of this information would severely harm TECO Ocean Shipping's competitive interests.
- (6) This information, although not necessarily confidential in and of itself, if made public would allow one to "back into" confidential proprietary business information. As such this information needs to be protected in order to not disclose other information that is confidential.
- (7) The information discloses in great detail Tampa Electric Company's commodity contract rates and transportation rates, by contract on a projected basis going out a number of years into the future. Public disclosure of this information would provide in minute detail the company's projected rates for all of the detailed components of the company's projected fuel and fuel transportation costs. As such, this information is entitled to confidential protection pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. 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.
- (8) The information in question 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.
- (9) The information in question contains the proprietary work product of Tampa Electric's consultant, Sargent and Lundy or "S&L". 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 S&L. It is also in the nature of information relating to competitive interests, the disclosure of which would impair S&L's competitive business interests by diminishing the demand for S&L'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.