

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery  
clause with generating performance incentive  
factor.

DOCKET NO. 050001-EI  
ORDER NO. PSC-05-1013-CFO-EI  
ISSUED: October 19, 2005

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION  
AND MOTION FOR TEMPORARY PROTECTIVE ORDER  
(DOCUMENT NOS. 08412-05 AND 08413-05)

On September 21, 2005, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Tampa Electric Company (TECO) filed a request for confidential classification of portions of its responses to Staff's Second Set of Interrogatories (Document No. 08412-05) and Staff's First Request for Production of Documents (Document No. 08413-05). By the same filing, TECO also requested a Temporary Protective Order, pursuant to Rule 25-22.006(6), Florida Administrative Code, covering the above-referenced responses to Staff's discovery that have been requested by the Office of Public Counsel (OPC).

Request for Confidential Classification

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 "[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).

TECO contends that portions of its responses to Interrogatory Nos. 2, 6, 9, and 13 in Staff's Second Set of Interrogatories and portions of its responses to Request Nos. 1 and 2 in Staff's First Request for Production of Documents 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. TECO states that this information is intended to be and is treated by TECO as private and has not been publicly disclosed.

TECO contends that the information contained in portions of its responses to Interrogatory Nos. 2, 6, 9, and 13 in Staff's Second Set of Interrogatories and portions of its responses to Request Nos. 1 and 2 in Staff's First Request for Production of Documents consists

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of coal and/or coal transportation prices contained in bids presented to TECO, or information that can be used in conjunction with other publicly available data to derive confidential coal and/or coal transportation pricing. TECO asserts that public disclosure of this information would adversely affect its ability to contract for goods and services on favorable terms. TECO states that disclosing private bid prices would adversely affect its ability to secure the lowest possible bid prices in future coal procurement efforts.

Upon review, it appears that the above-referenced information contained in portions of TECO's responses to Staff's Second Set of Interrogatories and Staff's First Request for Production of Documents 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 TECO or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

#### Motion for Temporary Protective Order

TECO also seeks protection of the documents as provided in Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code. Section 366.093(2), Florida Statutes, directs that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by any party subject to public records law as confidential and exempt from the public records law, Section 119.07(1), Florida Statutes. Rule 25-22.006(6), Florida Administrative Code, codifies the Commission's policy protecting confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006, in pertinent part, states:

(6)(a) In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure. The protective order shall specify how the confidential information is to be handled during the course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.

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In addition, Rule 25-22.006(6)(c), Florida Administrative Code, states that if a party allows OPC to inspect or take possession of utility information, then that "utility may request a temporary protective order exempting the information from section 119.07(1), F.S."

Upon consideration, TECO's Motion for Temporary Protective Order of certain responses to Staff's discovery, is granted. I find that TECO has demonstrated that the material requested by OPC appears to be proprietary confidential business information. Accordingly, this information will be protected from disclosure pursuant to Rule 25-22.006(6), Florida Administrative Code. As provided in Order No. PSC-05-0281-PCO-EI, issued March 15, 2005, the Order Establishing Procedure for this docket, OPC is required to provide TECO and all other parties seven days notice of its intent to use any confidential information at the hearing.

Based on the foregoing, it is


ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document Nos. 08412-05 and 08413-05 is granted. It is further

ORDERED that the information in Document Nos. 08412-05 and 08413-05 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. It is further

ORDERED that the Motion for Temporary Protective Order filed by Tampa Electric Company is granted.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this  
19th day of October, 2005.

  
RUDOLPH "RUDY" BRADLEY  
Commissioner 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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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.