

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 090001-EI
ORDER NO. PSC-09-0327-CFO-EI
ISSUED: May 8, 2009

ORDER GRANTING CONFIDENTIAL CLASSIFICATION TO PORTIONS OF
TAMPA ELECTRIC COMPANY'S 423 FORMS FOR DECEMBER 2007
(DOCUMENT NO. 01203-08)

Pursuant to Rule 25-22.006, Florida Administrative Code (F.A.C.), and Section 366.093, Florida Statutes (F.S.), Tampa Electric Company (TECO) requests confidential classification of portions of its Form 423 Fuel Reports for December 2007. The information is filed with the Commission as Document No. 01203-08. This request was filed on February 15, 2008, in Docket No. 080001-EI.

TECO represents that the information for which confidential classification is sought is intended to be and is treated by TECO as confidential and, to the best of TECO's knowledge and belief, has not been publicly disclosed. TECO asserts that this information relates to sensitive pricing and contractual information for the purchase of fuel and transportation services. TECO asserts that Section 366.093(1), F.S., 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 Section 119.07(1) [the Public Records Act]." Section 366.093(3), F.S., 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. Paragraphs (3)(d) and (e) of Section 366.093(3), F.S., 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;" and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." TECO contends that the information contained in its December 2007, 423 Forms constitutes "proprietary confidential business information" entitled to protection from disclosure pursuant to Section 366.093, F.S.

Information For Which Confidential Classification Is Sought

TECO requests confidential classification of the information contained in its Form 423-1A for December 2007, as illustrated by the following table. This information relates to the price TECO paid for No. 2 fuel oil.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

TABLE 1: FORM 423-1A

LINE(S)	COLUMN(S)
1-2	H-O

TECO asserts that the information contained in Column H is contractual information which, if made public, “would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms,” under Section 366.093(3)(d), F.S. According to TECO, this information shows the price which TECO has paid for No. 2 fuel oil per barrel from specific suppliers. TECO alleges that if this information is disclosed it would allow suppliers to compare an individual supplier’s price with the market price for that date of delivery. TECO concludes that such a comparison could reveal the contract pricing formula between TECO and that supplier.

Disclosure of the invoice price, according to TECO, would allow suppliers to determine the contract price formula of their competitors. TECO asserts that this knowledge would give suppliers information with which the suppliers could actually control the pricing of No. 2 oil by either quoting a particular price or adhering to a price set by a major supplier. TECO maintains that this could reduce or eliminate any opportunity for a major buyer, like TECO, to use its market presence to gain price concessions. TECO concludes that the end result is reasonably likely to be increased No. 2 fuel oil prices and, therefore, increased electric rates for TECO’s customers.

TECO asserts that the contract data in Columns I through O are algebraic functions of Column H. TECO maintains that the publication of these columns, together or independently, could allow a supplier to derive the invoice price of No. 2 oil paid by TECO.

According to TECO, Columns M and N are pricing terms which are as important as the price itself. TECO asserts that these columns show the price adjustments or discount adjustments applied by TECO to shipments of fuel which do not meet TECO’s contract requirements. TECO contends that, because of the relatively few times that there are quality or discount adjustments, Columns M and N will equal Column H most of the time, and are, therefore, entitled to confidential classification.

TECO also requests confidential classification for portions of its December 2007 Form 423-2, as set forth in the table below. The information relates to TECO’s Bulk Terminal Transfer Facilities and Stations.

TABLE 2: FORM 423-2

STATION	LINE(S)	COLUMN(S)
BULK TERMINAL TRANSFER FACILITY BIG BEND STATION(1)	1-9	G, H
BULK TERMINAL TRANSFER FACILITY POLK STATION (1)	None	N/A
BIG BEND STATION	1	G, H
POLK STATION	1-2	G, H

TECO asserts that disclosure of the effective purchase price illustrated in these forms, lines and columns would “impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms,” under Section 366.093(3)(d), F.S. TECO maintains that publishing the purchase price would enable an interested party to ascertain the total transportation charges by subtracting the effective purchase price from the delivered price at the transfer facility, shown in Column I in Table 4 below. According to TECO, any competitor with knowledge of the total transportation charges would be able to use that information in conjunction with the published delivered price at the Electro-Coal transfer facility to determine the segmented transportation costs (i.e., the separate breakdown of transportation charges for river barge and deep water transportation across the Gulf of Mexico from the transfer facility to Tampa). According to TECO, it is this segmented transportation cost data which is proprietary and confidential. TECO maintains that the disclosure of the segmented transportation cost would have a direct impact on TECO’s future fuel and transportation contracts by informing potential bidders of current prices paid for these services provided. TECO asserts that this type of information should be treated as confidential, and concludes that this is the type of information which the Commission referred to in Order No. 12645, issued December 3, 1983, in Docket No. 830001-EU.

TECO also asserts that disclosure of this information would inform other potential suppliers as to the price TECO is willing to pay for coal. This, according to TECO, would give present and potential coal suppliers information which could be harmful to TECO’s interests in negotiating coal supply agreements.

TECO asserts that the information contained in its December 2007 Form 423-2A, as set forth in the table below, is entitled to confidential treatment. The information relates to TECO’s Bulk Terminal Transfer Facilities and Stations.

TABLE 3: FORM 423-2A

STATION	LINE(S)	COLUMN(S)
BULK TERMINAL TRANSFER FACILITY BIG BEND STATION(1)	1-9	H, J, L
BULK TERMINAL TRANSFER FACILITY POLK STATION (1)	None	N/A
BIG BEND STATION	1	H, J, L
POLK STATION	1-2	H, J, L

TECO contends that the original invoice prices contained in Column H are entitled to confidential classification because, if the original invoice price is made public, one can subtract the original invoice price from the publicly disclosed delivered price at the Electro-Coal Transfer Facility and thereby determine the segmented river transportation cost. TECO maintains that disclosure of this information would “impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms,” under Section 366.093(3)(d), F.S. TECO also asserts that the justification for confidential treatment of Column G of Form 423-2 applies to Column H as well.

Disclosure of the information contained in Column J of these forms would, according to TECO, enable a competitor to back into the segmented transportation cost using the publicly disclosed delivered price at the Electro-Coal Transfer Facility. TECO illustrates how this could be done by subtracting the base price per ton from the delivered price at the Electro-Coal facility, thereby revealing the river barge rate. Such disclosure would “impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms,” under Section 366.093(3)(d), F.S. TECO also asserts that the justification for confidential treatment of Column G of Form 423-2 applies to Column H as well.

TECO asserts that the information contained in Column L of this form, if disclosed, would enable a competitor to back into the segmented waterborne transportation costs using the already publicly disclosed delivered price of coal at the Electro-Coal Transfer Facilities. TECO contends that such disclosure would “impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms,” under Section 366.093(3)(d), F.S. TECO also asserts that the justification for confidential treatment of Column G of Form 423-2 applies to Column H as well.

TECO also requests confidential classification for the information contained in its December 2007 Form 423-2B, as set forth in the table below. The information relates to TECO’s Bulk Terminal Transfer Facilities and Stations.

TABLE 4: FORM 423-2B

STATION	LINE(S)	COLUMN(S)
BULK TERMINAL TRANSFER FACILITY BIG BEND STATION(1)	1-9	G, I, K - P
BULK TERMINAL TRANSFER FACILITY POLK STATION (1)	None	N/A
BIG BEND STATION	1	G, I, K - P
POLK STATION	1-2	G, I, K - P

TECO alleges that disclosure of the effective purchase price in Column G would “impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms,” under Section 366.093(3)(d), F.S. TECO asserts that such disclosure would enable a competitor to back into the segmented transportation cost by using the publicly disclosed delivered price at the Electro-Coal Transfer Facilities. TECO asserts that this could be done by subtracting the base price per ton from the delivered price at Electro-Coal, thereby revealing the river barge rate. TECO also asserts that the justification for confidential treatment of Column G of Form 423-2 applies to Column H in Table 3 above as well. TECO alleges that the disclosure would also adversely affect its ability to negotiate future coal supply contracts.

TECO asserts that the disclosure of the rail rate per ton in Column I would adversely affect the ability of TECO affiliate Gatliff Coal to negotiate favorable rail rates. TECO maintains that disclosure of the rail rates paid would effectively eliminate any negotiating leverage and could lead to higher rail rates. According to TECO, this would work to the ultimate detriment of TECO and its customers. TECO maintains that disclosure of this information would “impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms,” under Section 366.093(3)(d), F.S.

TECO also contends that Columns K, L, M, N, O and P contain information, if disclosed, would “impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms,” under Section 366.093(3)(d), F.S. TECO asserts each column provides specific information on segmented transportation costs. TECO also asserts that the justification for confidential treatment of Column G of Form 423-2 applies to Column H in Table 3 above as well.

Time Period for Confidential Classification

TECO requests confidential classification for this information for a period exceeding 18 months. According to Section 366.093(4), F.S., 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," under Section 366.093(4), F.S. TECO requests that the information be treated as confidential for a period of two years. TECO separately addresses the need for extending the 18-month period for fuel oil contract data, coal, and coal transportation data as follows.

TECO requests that the fuel oil contract data be granted confidential classification for two years from the issuance of this Order. TECO asserts that its ability to negotiate future contracts for No. 2 and No. 6 oil would probably be impaired if pricing information, as described in the body of this Order, were disclosed during the contract period or prior to the negotiation of a new contract.

TECO affirms that it typically renegotiates its No. 2 and No. 6 fuel oil contracts and fuel related services contracts prior to the end of such contracts. On occasion, according to TECO, some contracts are renegotiated after the end of the current contract period. TECO states that in this situation, renegotiations are normally completed within six months. Therefore, TECO concludes that it is necessary to maintain the confidentiality of the information identified as confidential on Form 423-1(a) for six months after the end of the individual contract period to which the information relates. TECO affirms that in many instances the declassification date proposed above would be beyond two years from the date that the information is classified. Therefore, TECO states that to simplify the determination of a date of declassification, it is willing to settle for a declassification date which is two years from the date that the material in question is initially classified. TECO reasons that this will avoid having to refer to contract expiration dates which vary from contract to contract. At the same time, TECO states that it will afford some minimum period of protection from having this sensitive information disclosed publicly.

TECO also seeks to protect coal and coal transportation information from disclosure for two years from the issuance of this Order. TECO claims that this time period is necessary to protect TECO, its ratepayers, and its vendors and affiliates as contemplated by Section 366.093(3)(d), F.S. TECO asserts that bidders for the sale of coal will always seek to optimize their profit margin. According to TECO, full knowledge of the prices paid by the utility for coal enables the bidder to increase the price bid and thereby optimize the bid from the viewpoint of the seller and to the detriment of the ratepayer. TECO maintains that the disclosure of information on prices paid within the last two years will increase the price TECO will be required to pay for coal and will be detrimental to ratepayers. TECO asserts that if market information is disclosed which discourages suppliers from bidding competitively, they will increase their bids to the level of past payments to other suppliers by the buyer.

TECO also maintains that the disclosure of rail transportation rates will result in demands by other shippers to lower any rates which are above the disclosed rates. According to TECO, the effect of disclosure will be to increase the lower rate as the transportation provider will seek to protect the rates charged on other routes. TECO maintains that the delay of this disclosure for two years will be of direct benefit to ratepayers by delaying any rate increases that might occur as a result of such disclosure.

TECO asserts that Gatliff Coal and TECO Transport & Trade sell coal and bulk commodity transportation services in the open non-regulated marketplace. According to TECO, the prices at which their goods and services are sold are not publicly disclosed anywhere by publication or voluntary dissemination because it would materially lessen their competitive posture with customers other than TECO. TECO asserts that outside customers who negotiate for coal or coal transportation services are placed at a competitive advantage for these goods or services if they know the cost of the goods or services.

TECO contends that, as long as an outside customer does not know how the escalation clause in the revised contract between TECO and its transportation affiliates changes price, the cost cannot be calculated. TECO cautions, however, that publicizing the price of coal or coal transportation services will inform an outside customer how much the escalation has been and will make it easy to calculate the cost. According to TECO, because of the seasonality of costs in both businesses, a full year's cost data is necessary for an accurate cost measurement. TECO asserts that a second year must pass before one full year can be compared with a second year to measure the escalation accurately. TECO reasons that a perceptive vendor seeks two years of data to make effective cost estimates. TECO believes that competitive industries recognize that data beyond two years is not helpful to them because enough factors may change in that time for costs to be much different from what was incurred. Therefore, according to TECO, any date less than two full years is extremely valuable to outside customers in contracting for services with Gatliff or TECO Transport & Trade. TECO concludes that the difference of small amounts per ton can mean millions of dollars difference in cost.

Finally, TECO asserts that a loss of outside business by Gatliff or TECO Transport & Trade will affect not only Gatliff or TECO Transport & Trade, but, if large enough, it could affect the credibility of these two companies. TECO alleges that the prices negotiated with TECO by these vendors took into consideration their costs and revenues at the time of negotiation, including the revenues from outside customers. TECO argues that a significant loss of outside business could cause Gatliff or TECO Transport & Trade to fail because, under market pricing regulation, TECO will not make up the difference to them in cost. TECO concludes that, in turn, a failure of these vendors would leave TECO and its customer with only higher cost alternatives for Blue Gem coal and for coal transportation to Tampa. According to TECO, this higher cost would have to be paid by TECO's ratepayers.

Ruling

Upon review, it appears that TECO is entitled to confidential classification of the information contained in Document No. 01203-08. The information described above appears to be "information 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." Section 366.093(3)(d), F.S. This information also appears to be "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Section 366.093(3)(e), F.S. This information reveals invoice prices, transportation charges, and coal prices. The public disclosure of any of this information could reduce TECO's competitiveness in the marketplace. This, in turn, could result in higher

prices for transportation and coal. Therefore, TECO's request for confidential classification of information contained in its Form 423 Fuel Reports for December 2007, Document No. 01203-08, is granted.

Section 366.093(4), F.S., provides that any finding by the Commission that records contain proprietary confidential business information shall be effective for a period not to exceed 18 months, absent good cause shown. TECO has shown good cause to extend the period of confidentiality to 24 months. The request was filed February 15, 2008. Accordingly, the information identified in Document No. 01203-08, shall be granted confidential classification for a period of 24 months from February 15, 2008.

Based on the foregoing, it is


ORDERED by Commissioner Katrina J. McMurrian, as Prehearing Officer, that Tampa Electric Company's request for confidential treatment of portions of Document No. 01203-08 is granted as set forth in the body of this Order. It is further

ORDERED that the coal and coal transportation data referenced in Document No. 01203-08 shall be granted confidential classification for a period of two years from the date of the request for confidential classification, February 15, 2008. It is further

ORDERED that the fuel oil contract data referenced in Document No. 01203-08 shall be granted confidential classification for a period of two years from the date of the request for confidential classification, February 15, 2008. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 8th day of May, 2009.


KATRINA J. McMURRIAN
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; 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 Office of Commission Clerk, 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.