

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-09-0446-CFO-EI
ISSUED: June 19, 2009

ORDER GRANTING TAMPA ELECTRIC COMPANY'S
REQUESTS FOR CONFIDENTIAL CLASSIFICATION AND MOTIONS FOR
TEMPORARY PROTECTIVE ORDERS FILED IN DOCKET NO. 080001-EI
(DOCUMENT NOS. 05965-08, 09993-08, AND 10112-08)

On July 10, October 20, and November 14, 2008, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Tampa Electric Company (TECO) filed requests for confidential classification and motions for temporary protective orders for Document Nos. 05965-08, 09993-08, and 10112-08. Specifically, on July 10, 2008, TECO requested confidential classification of certain highlighted information contained in portions of TECO's answer to Staff's Second Set of Interrogatories No. 13 (Document No. 05965-08). On October 20, 2008, TECO requested confidential classification of certain highlighted information contained in portions of TECO's answer to Staff's Fourth Set of Interrogatories Nos. 61, 81, 86, 91, 92 and 93 (Document No. 09993-08). On November 14, 2008, TECO requested confidential classification of certain documents requested by staff consisting of contracts and solid fuel transportation Request For Proposals (RFP) (Document No. 10112-08). These requests were filed in Docket No. 080001-EI.

Requests for Confidential Classification

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 (d) and (e) of Section 366.093(3), F.S., provide 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 for which confidential classification is sought, as more specifically described in the table in Attachment A, falls within these categories and, thus, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. TECO states that this information is intended to be and is treated by TECO as private and has not been publicly disclosed.

DOCUMENT NUMBER-DATE

06133 JUN 19 8

FPSC-COMMISSION CLERK

Document No. 05965-08

TECO claims that its answer to Staff's Second Set of Interrogatories No. 13 discloses actual fuel prices per ton negotiated by TECO on a competitive basis with fuel suppliers, or information that can be used in conjunction with other publicly available information to derive negotiated per ton fuel prices, such that public disclosure of the information would reveal to competitive fuel suppliers the price TECO is willing to pay for fuel purchased in a competitive market. TECO asserts that this information could be used by fuel suppliers who currently are, or soon may be, bidding to supply TECO with similar fuel supplies, giving the current or potential bidders a competitive advantage over TECO in the bidding process by arming them with information that enables them to bid a higher per ton fuel price than they might otherwise bid without this information. TECO contends that disclosure of the information could also chill the willingness of competitive fuel suppliers to bid on supplying fuel to TECO, for fear that their negotiated price per ton might be made public. TECO insists that this would negatively impact TECO's competitive interests and its ability to negotiate for needed fuel supplies on favorable terms.

Document No. 09993-08

TECO contends that its answer to Staff's Fourth Set of Interrogatories No. 61 reveals the identity of bidders that submitted proposals in response to TECO's coal transportation RFP. TECO insists that the disclosure of this information would be harmful to competitive interests. According to TECO, its answer to Staff's Fourth Set of Interrogatories Nos. 81 and 86 reveals TECO's risk exposure, hedging and purchasing strategies, and the manner and timing of its planned entry into the market. TECO claims that release of this information would allow for market manipulation through transactions made in anticipation of TECO's entry into the market, which, in turn, would increase the price of fuel and purchased power paid by TECO's customers as well as the price paid by TECO to hedge the customers' price of fuel. TECO asserts that disclosure would impair TECO's efforts to contract for goods and services on favorable terms for the benefit of its customers.

Document No. 10112-08

TECO insists that portions of its answer to Staff's Fourth Set of Interrogatories Nos. 91 and 92 consist of the contractual rates that were paid for transportation services. TECO argues that disclosure of this information would harm TECO's position in determining rates for future transportation contracts since the providers' bid responses might be influenced if they had knowledge of previous or current contract rates. Similarly, TECO contends that its answer to Staff's Fourth Set of Interrogatories No. 93 contains specific fuel and purchased power hedging strategy, pricing and volume. TECO claims that this type of commodity information constitutes proprietary confidential business information, the disclosure of which would be harmful to TECO's ability to contract for goods and services on favorable terms and, thus, harmful to the competitive interests of TECO and its affiliates.

According to TECO, the documents containing contracts and solid fuel transportation RFPs that it produced in response to staff's request contain proprietary, confidential bid information furnished by would-be suppliers of solid fuel transportation, transloading and storage services for TECO, as well as a memorandum dated July 21, 2008 from Karen Bramley to Joann Wehle that evaluates the various bids submitted in response to TECO's transportation RFP. TECO claims that the providers of the information in question compete against one another and others to provide these types of services. TECO argues that disclosure of details regarding their bids would harm their competitive interests and would likely discourage them from submitting bids for similar work for TECO in the future, thereby adversely affecting TECO's ability to contract for goods and services on favorable terms. TECO insists that these documents also consist of negotiated contracts, or drafts thereof, for the provision of solid fuel transportation, transloading and/or storage services for TECO. TECO asserts that the terms and conditions of these contracts and draft contracts, if made public, would disclose contractual information that would be harmful to the counter-parties who would provide these services to TECO and would likely discourage them from negotiating future contracts for the provision of such services to TECO.

Ruling

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. 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, the information identified in Document Nos. 05965-08, 09993-08, and 10112-08 shall be granted confidential classification.

Pursuant to Section 366.093(4), F.S., 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), F.S., unless TECO or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Motions for Temporary Protective Orders

TECO also seeks protection of the documents as provided in Section 366.093(2), F.S., and Rule 25-22.006(6), F.A.C., while the material is in the possession of the Office of Public Counsel (OPC). Section 366.093(2), F.S., 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 the public records law as confidential and exempt from the public records law. Section 119.07(1), F.S. Rule 25-22.006(6), F.A.C., codifies the Commission's policy regarding the protection of confidential information from public disclosure during the discovery process in

a manner that is not overly burdensome to both parties. Rule 25-22.006(6)(a), in pertinent part, states:

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.

In addition, Rule 25-22.006(6)(c), F.A.C., 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 Motions for Temporary Protective Orders are granted. TECO has demonstrated that the material is proprietary confidential business information. Accordingly, this information will be protected from disclosure pursuant to Rule 25-22.006(6), F.A.C.

Based on the foregoing, it is

ORDERED by Commissioner Katrina J. McMurrin, as Prehearing Officer, that Tampa Electric Company's Requests for Confidential Classification of Document Nos. 05965-08, 09993-08, and 10112-08 are granted.. It is further

ORDERED that the information in Document Nos. 05965-08, 09993-08, and 10112-08 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 Motions for Temporary Protective Orders filed by Tampa Electric Company are granted.

ORDER NO. PSC-09-0446-CF0-EI

DOCKET NO. 090001-EI

PAGE 5

By ORDER of Commissioner Katrina J. McMurrin, as Prehearing Officer, this 19th
day of June, 2009.



KATRINA J. McMURRIAN

Commissioner and Prehearing Officer

(SEAL)

ARW

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 25-22.0376, 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.

Attachment A

DOCUMENT DESCRIPTION	INTERROGATORY NO. (if applicable)	PAGE	LINE
TECO's Response to Staff's Second Set of Interrogatories (No. 11-13) filed June 10, 2008	13	5-6	All highlighted information
TECO's Responses to Staff's Fourth Set of Interrogatories filed October 20, 2008	61	1	The highlighted information
	81	21	The highlighted information
	86	26	The highlighted information
	91	31	The highlighted information
	92	32	The highlighted information
	93	36-39, 41, 42	All information on the listed pages
Solid Fuel Transportation Contract between TECO and CSX Transportation, Inc. (Oct.1, 2008)		All 56 pages	All information printed on the pages
AEP MEMCO LLC Contract (Draft)		All 67 pages	All information printed on the pages
CSX Transportation Contract (Draft)		All 54 pages	All information printed on the pages
Coal Purchase Agreement Contract No. Warrior-O6LTI-09		All 43 pages	All information printed on the pages
TECO Transportation Bid Evaluation Memo		All 8 pages	All information printed on the pages
MT 4.0 Solid Fuel Transportation RFP – 2009, TBS North America Liner (Ocean Services)		All 8 pages	All information printed on the pages
MT 4.0 Solid Fuel Transportation RFP – 2009, CSX Transportation (Railroads)		All 90 pages	All information printed on the pages
MT 4.0 Solid Fuel		All 12 pages	All information

DOCUMENT DESCRIPTION	INTERROGATORY NO. (if applicable)	PAGE	LINE
Transportation RFP – 2009, American Commercial Lines (ACL) (River Barge)			printed on the pages
Coal Purchase Agreement Contract No. Knight Hawk – 2009 LT2-09		All 24 pages	All information printed on the pages
Coal Purchase Agreement Contract No. Knight Hawk 2009 LTI-09		All 25 pages	All information printed on the pages
MT 4.0 Solid Fuel Transportation RFP – 2009, Moran Towing (Ocean Services)		All 2 pages	All information printed on the pages
MT 4.0 Solid Fuel Transportation RFP – 2009, Express Marine (Ocean Services)		All 1 page	All information printed on the page
MT 4.0 Solid Fuel Transportation RFP – 2009, Kinder Morgan Bulk Terminal (Terminals/Midstreaming)		All 28 pages	All information printed on the pages
MT 4.0 Solid Fuel Transportation RFP – 2009, St. James Stevedoring Company LLC (Terminals/Midstreaming)		All 24 pages	All information printed on the pages
MT 4.0 Solid Fuel Transportation RFP – 2009, BNSF Railway (Railroads)		All 2 pages	All information printed on the pages
MT 4.0 Solid Fuel Transportation RFP – 2009, AEP Memco (River Barge)		All 26 pages	All information printed on the pages
MT 4.0 Solid Fuel Transportation RFP – 2009, United Maritime (Integrated)		All 37 pages	All information printed on the pages
MT 4.0 Solid Fuel		All 5 pages	All information

DOCUMENT DESCRIPTION	INTERROGATORY NO. (if applicable)	PAGE	LINE
Transportation RFP – 2009, Ingram Barge (River Barge)			printed on the pages
United Maritime Group Contract		All 167 pages	All information printed on the pages
MT 4.0 Solid Fuel Transportation RFP – 2009, Enterprise Ship Co. (Ocean Services)		All 76 pages	All information printed on the pages