

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-09-0450-CFO-EI
ISSUED: June 19, 2009

ORDER GRANTING TAMPA ELECTRIC COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION AND
MOTION FOR A TEMPORARY PROTECTIVE ORDER
FILED IN DOCKET NO. 070001-EI
(DOCUMENT NO. 10146-07)

On November 7, 2007, 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 a request for confidential classification of certain highlighted information contained in Late-Filed Exhibit 51 of witness Joann T. Wehle (Document No. 10146-07). This request was filed in Docket No. 070001-EI.

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 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 contained in certain highlighted information contained in Late-Filed Exhibit 51 of witness Joann T. Wehle 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.

TECO states that disclosure of the highlighted information in Late-Filed Exhibit 51 would reveal TECO's planned risk exposure by divulging the extent to which the company hedges natural gas purchases. According to TECO, those who have an interest in supplying TECO's fuel and purchased power needs could use this information to help them force more favorable terms to the detriment of TECO and its ratepayers. TECO argues that if suppliers learned of TECO's plans and needs, those suppliers could use that information to exact better

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prices for meeting those needs. TECO contends that disclosing its risk exposure levels would provide an indicator of vulnerability to market price, thus allowing those with the information the opportunity for market manipulation through transactions made in anticipation of the company's entry into the market. TECO concludes that such market manipulations would increase the price of fuel and purchased power paid by TECO's customers.

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." TECO requests that the information be treated as confidential for a period of three years.

In support of its request for extended confidential treatment, TECO asserts that the highlighted information contained in Late-Filed Exhibit 51 of witness Joann T. Wehle provides details of its hedging policy which are of a continuing nature and which could be in place beyond the eighteen month period. According to TECO, the Commission previously granted a request by TECO for a three year confidential classification for information similar to that contained in Exhibit 51. See Order No. PSC-06-0831-CFO-EI, issued October 6, 2006, in Docket No. 060001-EI.

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 No. 10146-07 shall be granted confidential classification.

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 three years. The request for confidential classification was filed November 7, 2007. Accordingly, the information identified in Document No. 10146-07 shall be granted confidential classification for a period of three years from the request for confidential classification, November 7, 2007.

Motion for Temporary Protective Order

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), F.A.C., 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 Motion for Temporary Protective Order is 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 Request for Confidential Classification of Document No. 10146-07 is granted. It is further

ORDERED that the information in Document No. 10146-07 for which confidential classification has been granted shall remain protected from disclosure for a period of three years from the request for confidential classification, November 7, 2007. 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 Katrina J. McMurrian, as Prehearing Officer, this 19th
day of June, 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.