

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of new
environmental program for cost recovery
through Environmental Cost Recovery Clause,
by Tampa Electric Company.

DOCKET NO. 110262-EI
ORDER NO. PSC-12-0418-CFO-EI
ISSUED: August 14, 2012

ORDER GRANTING TAMPA ELECTRIC COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION
AND
MOTION FOR TEMPORARY PROTECTIVE ORDER
FOR
DOCUMENT NO. 05211-12

On August 1, 2012, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Tampa Electric Company ("Tampa Electric" or "Company") filed a Request for Confidential Classification and Motion for Temporary Protective Order ("Request and Motion") for portions of Tampa Electric's Response to Staff's Fourth Data Request dated August 1, 2012. ("Response"). The Company asserts that the confidential information in the documents is intended to be private, is treated as private, and has not been publicly disclosed. Tampa Electric asks that the Commission grant confidential classification for the information for a period of at least 18 months. The Company also asks that we issue a temporary protective order pursuant to Rule 25-22.006(6)(c), Florida Administrative Code.

Request and Motion

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 Section 119.07(1) [the Public Records Act]." Pursuant to Section 366.093(3), Florida Statutes, proprietary confidential business information includes 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. Confidential business information includes, but is not limited to, the following:

- "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" and
- "Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." *Id* at (d)-(e).

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Rule 25-22.006(6)(c), Florida Administrative Code, permits a utility to request a temporary protective order for information that is provided to the Office of Public Counsel (“OPC”).

The Company argues that the highlighted information contained in its Response at Bates pages 2, 3, 4, 14 and 15 reveals a term or condition of the Company’s competitively negotiated contract with National Gypsum. The Company incorporates its July 25, 2012, argument for confidential treatment of its contract with National Gypsum. In that pleading, the Company argued that the document is a negotiated business arrangement and that its disclosure would 1) provide potential gypsum purchasers with a stronger bargaining position and 2) provide gypsum producers with information that might permit them to negotiate a more favorable agreement with National Gypsum than its current agreement with Tampa Electric. The Company concludes that “[g]iven the sensitive competitively negotiated nature of the Tampa Electric/National Gypsum Agreement, it is precisely the type of information Section 366.093, Florida Statutes, is designed to protect from public disclosure.”

With respect to Bates pages 7-11, the Company argues that the information consists of proposals submitted to Tampa Electric in response to the Company’s solicitation of potential additional off-takers. The Company asserts that 1) it committed to maintain the confidentiality of the proposals, and 2) disclosure would contravene that commitment and discourage potential off-takers from sending proposals for fear that they will be made public. The Company concludes that such competitive proposals are entitled to confidential treatment pursuant to Section 366.093(3)(d) and (e), Florida Statutes.

Ruling

Upon review, I find that the information in Document No. 05211-12, described in the Request and Motion, is treated by the Company as private, has not otherwise been disclosed, and is information concerning bids and contractual data, the disclosure of which would impair the efforts of the Company to contract for goods or services on favorable terms, and relates to competitive interests, the disclosure of which would impair the competitive business of the provider of the information. I find that disclosure of the identified information would cause harm to Tampa Electric’s ratepayers or to its business operations. Thus, the information shall be granted confidential classification pursuant to Section 366.093(3), Florida Statutes, and a temporary protective order pursuant to Rule 25-22.006(6)(c), Florida Administrative Code.

Based on the foregoing, it is

ORDERED by Chairman Brisé, as Prehearing Officer, that Tampa Electric Company’s Request for Confidential Classification of information in Document No. 05211-12, described in the Company’s Request and Motion, is granted. It is further

ORDERED that Tampa Electric Company’s Motion for a Temporary Protective Order for such information contained in Document No. 05211-12 is granted. It is further

ORDERED that the information in Document No. 05211-12 for which confidential classification and a temporary protective order has been granted shall, subject to the requirements of Rule 25-22.006(6)(c), Florida Administrative Code, 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 Tampa Electric Company or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information. 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.

By ORDER of Chairman Ronald A. Brisé, as Prehearing Officer, this 14th day of August, 2012.



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Chairman and Prehearing Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

CWM

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.