

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of modifications to risk management plans by Duke Energy Florida, Florida Power & Light Company, Gulf Power Company and Tampa Electric Company.

DOCKET NO. 160096-EI  
ORDER NO. PSC-16-0171-CFO-EI  
ISSUED: April 28, 2016

ORDER GRANTING TAMPA ELECTRIC COMPANY'S REQUEST  
FOR CONFIDENTIAL CLASSIFICATION AND TEMPORARY  
PROTECTIVE ORDER (DOCUMENT NO. 02421-16)

On April 22, 2016, 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 (Request) of Exhibit No. 3 to the Joint Petition By Investor-Owned Utilities for Approval of Modifications to Risk Management Plans (Joint Petition) that commenced this docket (Document No. 02421-16). On April 25, 2016, TECO filed an amendment to its Request asking that a temporary protective order for this same material also be entered pursuant to Rule 25-22.006(6)(c), F.A.C.

Request for Confidential Classification

TECO contends that the information contained in Exhibit No. 3 constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. The information contained in Exhibit No. 3 consists of TECO's purchasing strategy and planned risk exposure for natural gas which if made public would allow suppliers to exact higher prices for its natural gas purchases to the detriment of its ratepayers. TECO affirms that the information has not been disclosed to the public and that TECO has treated and continues to treat the information at issue as confidential. TECO argues that such information is protected pursuant to Section 366.093(3)(d) and (e), F.S.

Ruling

Section 366.093(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary business information shall be kept confidential and shall be exempt from Chapter 119, F.S. 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. Section 366.093(3), F.S., provides that proprietary confidential business information includes, but is not limited to:

- (d) 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.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Upon review, it appears the above-referenced information satisfies the criteria set forth in Sections 366.093(3)(d) and (e), F.S., for classification as proprietary confidential business information. The information described above appears to be information concerning natural gas purchasing strategies, the disclosure of which would impair the efforts of TECO 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. Thus, the information identified in Document No. 02421-16 shall be granted confidential classification.

Pursuant to Section 366.093(4), F.S., the information for which confidential classification is granted is protected from disclosure for a period of up to 18 months from the date of issuance of this Order. TECO has requested that this information be granted confidentiality for a period of 36 months consistent with the ruling in Order No. PSC-15-0468-CFO-EI.<sup>1</sup> I find TECO's request for a confidentiality period of 36 months to be reasonable and grant it. At the conclusion of the 36-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.

#### 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.

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<sup>1</sup> Order No. PSC-15-0468-CFO-EI, issued on October 15, 2015, in Docket No. 150001-EI, In re: Fuel and purchased power cost recovery clause.

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 of TECO's assertions of the confidential nature of the information contained in Exhibit No. 3, TECO's request for a temporary protective order is hereby granted. As a result, this information shall be protected from disclosure pursuant to Rule 25-22.006(6)(c), F.A.C.

Based on the foregoing, it is hereby

ORDERED by Commissioner Art Graham, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document No. 02421-16 is granted. It is further

ORDERED that the information in Document No. 02421-16, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 36 months from the date of issuance of this Order. It is further

ORDERED that Tampa Electric Company's request for a temporary protective order is granted. 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 Commissioner Art Graham, as Prehearing Officer, this 28th day of April, 2016.



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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.

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.