

BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power	)	DOCKET NO.	900001-EI
Cost Recovery Clause and Generating	)	ORDER NO.	22596
Performance Incentive Factor.	)	ISSUED:	2-26-90
	)		

ORDER ON TAMPA ELECTRIC COMPANY'S REQUEST FOR CONFIDENTIAL TREATMENT

Tampa Electric Company (TECO) has requested specified confidential treatment of its FPSC forms 423-1(a), 423-2, 423-2(a), and 423-2(b) for the month of November, 1989.

TECO argues, pursuant to Section 366.093(3)(d), Florida Statutes, that lines 1-2 of column H, Invoice Price, on Form 423-1(a) contain contractual information which, if made public, would impair the efforts of TECO to contract for goods or services on favorable terms. The information indicates the price which TECO has paid for No. 2 fuel oil per barrel for specific shipments from specific suppliers. If disclosed, this information would allow suppliers to compare an individual supplier's price with the market for that date of delivery and thereby determine the contract pricing formula between TECO and that supplier. Disclosure of the Invoice Price would allow suppliers to determine the contract price formula of their competitors. Knowledge of each other's prices would give suppliers information with which to actually control the pricing in No. 2 oil by either all quoting a particular price or adhering to a price offered by a major supplier. This could reduce or eliminate any opportunity for a major buyer, like TECO, to use its market presence to gain price concessions from any individual supplier. The result of such disclosure, TECO argues, is reasonably likely to be increased No. 2 fuel oil prices and increased electric rates.

TECO argues that lines 1-2 of columns I, Invoice Amount; J, Discount; K, Net Amount; L, Net Price; M, Quality Adjustment; N, Effective Purchase Price; and O, Transport to Terminal, on Form 423-1(a) are entitled to confidential treatment because the contract information therein are algebraic functions of column H, Invoice Price. The publication of these columns together or independently, therefore, TECO argues, could allow a supplier to derive the Invoice Price of No. 2 oil paid by TECO. As to lines 1-2 of column M, TECO further argues that for fuel that does not meet contract requirements, TECO may reject the shipment, or accept the shipment and apply a quality adjustment. This, TECO

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argues, is a pricing term as important as the price itself rendering the rationale to classify relating to price concessions applicable. As to lines 1-2 of column N, TECO further argues that the information in this column is as entitled to confidential treatment as the invoice price due to the relatively few times quality or discount adjustments are applied. In other words, column N, Effective Purchase Price, will typically equal column H, Invoice Price. We find that lines 1-2 of columns H-O of Form 423-1(a) should not be classified because the Invoice Price and Invoice Amount in columns H through O can be determined by applying the portions found in columns G, Volume, and column R, Delivered Price, for which confidentiality was not sought.

TECO has requested confidential treatment of lines 1-9 of column G, Effective Purchase Price, on Form 423-2 relating to Big Bend Station (1), arguing disclosure would impair TECO's efforts to contract for goods or services on favorable terms. Additionally, one could ascertain the Total Transportation Charges by subtracting a disclosed Effective Purchase Price, column I, from the Delivered price at the Transfer Facility. A competitor with knowledge of the Total Transportation Charges could 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 breakdown of transportation charges for river barge transport and for deep water transportation across the Gulf of Mexico from the transfer facility to Tampa. TECO argues it is this segmented transportation cost data which is entitled to confidential treatment in that disclosure would adversely affect TECO's future fuel and transportation contracts by informing potential bidders of current prices paid for services provided. Disclosure of fuel oil prices would indirectly effect bidding suppliers. Suppliers would be reluctant to provide significant price concessions to an individual utility if prices were disclosed because other purchasers would seek similar concessions.

TECO further argues the information would inform other potential suppliers as to the price TECO is willing to pay for coal. This would provide present and potential coal suppliers information which could adversely affect TECO's ability to negotiate coal supply agreements.

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TECO requests confidential treatment of lines 1-9 of column H, Total Transport Charges, arguing that their disclosure would also impair its efforts to contract for goods or services on favorable terms because, as discussed above, both columns G and H, if disclosed, will enable competitors to determine segmented transportation charges. We find that columns G and H of Form 423-2 which reflect the F.O.B. Mine Prices resulting from negotiations with unaffiliated third-parties are entitled to confidential treatment.

TECO requests confidential treatment of lines 1-9 of column H, Original Invoice Price, on Form 423-2(a) relating to Big Bend Station (1), because disclosure would enable one to subtract that price from the publicly disclosed Delivered Price at the Electro-Coal Transfer Facility and thereby determine the segmented river transportation cost. Such disclosure, TECO argues, would impair its efforts to contract for goods or services on favorable terms due to rationale similar to that offered for confidential treatment of column A, Effective Purchase Price, of Form 423-2.

TECO similarly requests confidential treatment of lines 1-9 of column J, Base Price, on Form 423-2(a) in that disclosure would enable a competitor to "back-into" the segmented transportation cost using the publicly disclosed Delivered Price at the transfer facility; one could subtract column J, Base Price Per Ton, from the Delivered Price at the transfer facility, to obtain the River Barge Rate.

TECO also contends that lines 1-9 of column L, Effective Purchase Price, of Form 423-2(a) are entitled to confidentiality since, if disclosed, they would enable a competitor to back into the segmented waterborne transportation costs using the already disclosed Delivered Price of coal at the transfer facility. Such disclosure, TECO argues, would impair its efforts to contract for goods or services on favorable forms for the reasons discussed in relation to column G, Form 423-2. We agree that the numbers in lines 1-9 of columns H, J, and L, reflect actual costs negotiated and obtained in arms-length transactions with unaffiliated third parties which, if disclosed, could cause harm to TECO's customers.

TECO requests confidential treatment of lines 1-9 of columns G, Effective Purchase Price; I, Rail Rate; K, River

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Barge Rate; L, Transloading Rate; M, Ocean Barge Rate; N, Other Water Charges; O, Other Related Charges; and P, Total Transportation Charges of Form 423-2(b) relating to Big Bend Station (1). TECO argues that disclosure of the Effective Purchase Price per ton would impair its ability to contract for goods or services on favorable terms by enabling a competitor to back into the segmented transportation costs by using the publicly disclosed Delivered Price for coal at the transfer facility; one could obtain the River Barge Rate by subtracting the Effective Purchase Price per ton from the price per ton delivered at Electro-Coal. We find that the waterborne costs contained in columns G, I, K, L, M, N, O, and P involve transfer pricing arrangements between TECO and its unregulated waterborne affiliates, Mid-South Towing, Electro-Coal Transfer, and Gulf Coast Transit, and, as such, are not inherently entitled to confidentiality. See discussion below relating to Commission Order No. 20298. Because their disclosure, however, would enable an interested party to obtain the Effective Purchase Price by subtracting them from column Q, Delivered Price, for which confidentiality was not requested, we find that the waterborne costs should be confidential.

TECO requests confidential treatment of lines 1-3 of columns G, Effective Purchase Price; and H, Total Transportation Charges, on Form 423-2 relating to Gannon Station (1). TECO argues that both columns require confidential treatment to prevent a competition from backing into the segmented transportation charges for reasons identical to those offered in relation to Form 423-2 relating to the Big Bend Station. TECO specifically argues that disclosure would impair its efforts to contract for goods or services on favorable terms.

TECO similarly requests confidential treatment of lines 1-3 of columns H, Original Invoice Price; J, Base Price, and L, Effective Purchase Price, on Form 423-2(a) relating to Gannon Station (1), and lines 1-3 of columns G, Effective Purchase Price; I, Rail Rate; K, River Barge Rate; L, Transloading Rate; M, Ocean Barge Rate; N, Other Water Charges; O, Other Related Charges; and P, Total Transportation Charges, on Form 423-2(b) relating to the Gannon Station (1). TECO offers rationale identical to that offered in relation to those columns on Forms 423-2(a) and (b) relating to the Big Bend Station transfer facility.

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We find that the coal price information contained in Forms 423 relating to Gannon Station (1) can be distinguished from that in Forms 423 relating to Big Bend Station. The former, unlike the latter, involve transactions between TECO and a controlled affiliate, Gatliff Coal, and not arms-length transactions with independent third party suppliers. Agreements between controlled affiliates must be closely scrutinized to determine whether the information contained there is proprietary and entitled to confidential treatment since, in our opinion, these agreements represent the implementation of an administrative decision rather than the results obtained by a utility through negotiations with an independent third party supplier. Such coal data directly results from Commission Order No. 20298, issued November 10, 1988, which limits recovery through a utility's fuel cost recovery clause by replacing the cost-plus standard with a market price standard. The market-based benchmarks for coal "produced" by Gatliff Coal, and for waterborne transportation services provided by Mid-South Towing, Electro-Coal Transfer, and Gulf Coast Transit, all controlled affiliates, are set by a stipulated formula included in that Order. On October 14, 1988, subsequent to the creation of that formula, TECO rescinded its active contracts with its unregulated affiliates and executed new ones. TECO, however, in these contract rescissions, did not treat its affiliates as IOU's, including itself, had typically treated independent third party suppliers in previous contract revisions. Prior to the issuance of the Order, for instance, TECO had negotiated a buy-out of an unaffiliated third party coal contract with Pyramid Mining for \$49,000,000. Similarly, in 1986, Mississippi Power Company, acting as agent for Gulf Power Company, negotiated a buy-out of the coal supply agreements with Arco Coal and Powerhorn Coal Companies for a combined cost of \$121,325,000. Neither coal company is affiliated with Gulf Power. In 1988, Gulf Power negotiated a coal buy-out with Peabody Coal for \$60,000,000. Peabody is not affiliated with Gulf Power. Conversely, TECO, in dealing with its affiliates, neither participated in negotiations with nor received consideration from its affiliates for contract buy-outs. For instance, the expiration date of its "rescinded" coal contract with its affiliate, Gatliff Coal, was apparently simply extended from December 31, 1996 to December 31, 1998. The expiration dates of TECO's rescinded contracts with its transportation affiliates were accordingly extended as follows: Mid-South Towing, from December 15, 1996 to December 31, 1998; Electro-Coal Transfer, from December 31, 1993 to December 31, 1998; and Gulf Coast,

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from December 31, 1988 to December 31, 1998. No negotiations took place between TECO and its various affiliates, nor did consideration change hands from the affiliates to TECO for harm incurred due to the contract buy-outs. The dichotomy between TECO's conduct in relation to affiliates and non-affiliates in these post-market price formula transactions, therefore, strongly suggests that coal and transportation contracts between TECO and its unregulated affiliates are not arms-length legally binding negotiated agreements, but, instead, more closely resemble a written transfer pricing arrangement. As such, we find the referenced information in Forms 423-2, 2(a), and 2(b) relating to Gannon Station (1) is not entitled to confidential treatment.

TECO requests confidential treatment of line 1 of columns G, Effective purchase Price; and H, Total Transportation Charges on Form 423-2 relating to the Big Bend Station transfer facility and lines 1-2 of the same columns on the same form relating to the Gannon Station transfer facility. TECO contends that disclosure of the Effective Purchase Price in both cases would impair its efforts to contract for goods and services on favorable terms because, if one subtracts the information in this column from that in column I, F.O.B. Plant Price, one can obtain the segmented transportation cost, including transloading and ocean barging. TECO also argues that disclosure of the Total Transport Charges would similarly impair its contracting ability by enabling a competitor to determine segmented transportation charges.

TECO similarly argues that line 1 of columns H, Original Invoice Price; J, Base Price; and L, Effective Purchase price of Forms 423-2(a) relating to the Big Bend Station and lines 1-2 of the same columns of the same form relating to Gannon Station are entitled to confidential treatment in that disclosure would allow a competitor to deduce the segmented terminating and ocean barge transportation cost and terminating and ocean barge rate on rail rate, respectively.

TECO similarly requests confidential treatment of line 1 of columns G, Effective Purchase Price; I, Rail Rate; K, River Barge Rate; L, Transloading Rate; M, Ocean Barge Rate; N, Other Water Charges; O, Other Related Charges; and P, Total Transportation Charges, of Form 423-2(b), relating to Big Bend Station, and lines 1-2 of the same columns for the same form relating to Gannon Station. TECO argues that disclosure of

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either Effective Purchase Price per ton would enable a competitor to back into the segmented transportation cost of termination and Ocean Barge Rates by subtracting that price per ton from the F.O.B. Plant Price per ton. We find shipments from the respective plants are combined together into one lot at the transfer facility whereby the original products lose their identity rendering the original costs associated with the diverse products untraceable. We find, therefore, that the information contained in these columns on Forms 423-2, 2(a), and 2(b), relating to both Big Bend and Gannon Stations, are not entitled to confidential treatment. Further, line 2 of these same columns on these same forms relating to Gannon Station involve, in our opinion, a transfer pricing arrangement between TECO and a controlled affiliate, Gatliff Coal, and not an arms-length, transaction negotiated with an independent third party supplier, as discussed above. We find, therefore, disclosure of line 1 of columns G and H of Form 423-2 relating to Big Bend Station, and lines 1-2 of the same columns of the same form relating to Gannon Station; line 1 of columns H, J, and L of Form 423-2(a) relating to Big Bend Station and lines 1-2 of the same columns of the same form relating to Gannon Station; and line 1 of columns G, I, K, L, M, N, O, and P of Form 423-2(b) relating to Big Bend Station and lines 1-2 of the same columns of the same form relating to Gannon Station, would not impair TECO's ability to contract for similar goods or services on favorable terms and the information is not entitled to confidential treatment. To the extent the railroads on the form relate to Gannon Station, refer to the following paragraph.

TECO further argues that disclosure of its Rail Rate per ton in column I of all its Forms 423-2(b) would impair the ability of TECO and its affiliate to negotiate favorable rail rates with the various railroads serving areas in the vicinity of TECO's coal suppliers. We find that Big Bend Station has no railroad capability; there are no rail unloading facilities at Big Bend. Any request for confidential treatment of column I relating to Rail Rates to Big Bend Station, therefore, appears nonsensical. We further find that only CSX Railroad, and no competing railway alternative, hence no multiple carrier situation, exists between Gatliff in Eastern Kentucky and Gannon Station in Tampa. While Gatliff may have other coal buying customers with other railway options, we are not concerned with customers other than those of TECO and, therefore, find the argument that disclosure of its railrates would impair TECO's contracting ability as to TECO customers implausible. Further, we have found the balance of the

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columns, relating to segmented transportation costs, to be, as discussed, transfer pricing. In any event, we have been advised that Staff received public documents in October of 1986 which disclose the railroad's charges on the Gatliff to Gannon move. Staff further advises us that the rail contract between TECO and the CSX railroad was effective on August 28, 1985, for a period of five (5) years. Because Big Bend Station has no railway capability, and no multiple carrier situation exists between Gatliff and Gannon Station, and the Rail Rates from Gatliff to Gannon have been previously disclosed, we find that the request for classification of such Rail Rates should be denied.

In its request for confidential classification, TECO has included the following proposed declassification dates:

<u>FORM</u>	<u>LINE(S)</u>	<u>COLUMN(S)</u>	<u>DATE</u>
423-1(a)	1 - 2	H - N	02/01/92
423-2	1 - 9	G - H	02/01/92
423-2(a)	1 - 9	H, J, L	02/01/92
423-2(b)	1 - 9	G, I, K, L, M, N, O, P	02/01/92

Tampa Electric Company calculated that two years from the date of this filing is the minimum period of time needed to protect its affiliates and, ultimately, TECO and its customers from the harms which would occur if competitors or present or potential customers of TECO's affiliates are made aware of the information which is the subject of this request. Information of recent vintage, TECO contends, would give a competitor or a present or potential customer a strategic advantage in the negotiating process. Tampa Electric Company contends that if the information is at least two years old, this advantage can be reduced to an acceptable level which is less likely to harm TECO's affiliates or customers.

Section 366.093(4), Florida Statutes, provides that any finding that records contain proprietary confidential business information is effective for a period not to exceed 18 months, unless the Commission finds, for good cause, that the protection from disclosure shall be for a specified longer period. We find that TECO, having shown no good cause, is entitled to protection of that information for which



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confidential treatment has been granted for the statutory period of 18 months.

In consideration of the foregoing, it is

ORDERED that Tampa Electric Company's request for confidential treatment of lines 1-2 of columns H through O on Form 423-1(a) is denied. It is further

ORDERED that Tampa Electric Company's request for confidential treatment of lines 1-9 of columns G and H on Form 423-2 relating to Big Bend Station (1) is granted. It is further

ORDERED that Tampa Electric Company's requests for confidential treatment of lines 1-9 of columns H, J, and L on Form 423-2(a) relating to Big Bend Station (1) is granted. It is further

ORDERED that Tampa Electric Company's request for confidential treatment of lines 1-9 of columns G, I, K, L, M, N, O, and P on Form 423-2(b) relating to Big Bend Station (1) is granted. It is further

ORDERED that Tampa Electric Company's request for confidential treatment of lines 1-3 of columns G and H on Form 423-2 relating to Gannon Station (1) is denied. It is further

ORDERED that Tampa Electric Company's request for confidential treatment of lines 1-3 of columns H, J, and L on Form 423-2(a) relating to Gannon Station (1) is denied. It is further

ORDERED that Tampa Electric Company's request for confidential treatment of lines 1-3 of columns G, I, K, L, M, N, O, and P on Form 423-2(b) relating to Gannon Station (1) is denied. It is further

ORDERED that Tampa Electric Company's request for confidential treatment of line 1 of columns G and H on Forms 423-2 relating to Big Bend Station and lines 1-2 of the same columns on the same forms relating to Gannon Station is denied. It is further

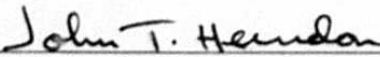
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ORDERED that Tampa Electric Company's request for confidential treatment of line 1 of columns H, J, and L on Form 423-2(a) relating to Big Bend Station and lines 1-2 of the same columns on the same form relating to Gannon Station is denied. It is further

ORDERED that Tampa Electric Company's request for confidential treatment of line 1 of columns G, I, K, L, M, N, O, and P of Forms 423-2(b) relating to Big Bend Station and lines 1-2 of the same columns on the same form relating to Gannon Station is denied. It is further

ORDERED that Tampa Electric Company's request for approval of its proposed declassification dates is denied as to the proposed declassification dates. Confidential classification, however, shall be effective as granted for the statutory period of 18 months.

By ORDER of Commissioner John T. Herndon, as Prehearing Officer, this 26th day of FEBRUARY, 1990.

  
JOHN T. HERNDON, Commissioner  
and Prehearing Officer

( S E A L )

BAB/sj/5987L

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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

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requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.