

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power)	DOCKET NO. 900001-EI
Cost Recovery Clause and Generating)	ORDER NO. 23943
Performance Incentive Factor.)	ISSUED: 12-28-90
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ORDER GRANTING CONFIDENTIALITY TO TAMPA ELECTRIC COMPANY'S
DOCUMENTS RELATING TO THE SIX-MONTH FUEL AUDIT
AND ACKNOWLEDGING CONFIDENTIALITY OF
RELATED STAFF WORKPAPERS

Pursuant to Rule 25-22.006(4), Florida Administrative Code, Tampa Electric Company (TECO) has requested specified confidential treatment of several documents provided to Commission Staff in connection with Staff's on-going fuel audit of TECO's fuel expenses for each of the following six month periods ending on the date noted. Also listed below are Staff's working papers derived from its audits of these documents which, pursuant to Rule 25-22.006(3)(d), Florida Administrative Code, are entitled to confidential treatment if TECO's documents are found to be entitled to confidential treatment.

<u>Six Month</u> <u>Period Ending</u>	<u>Date Filed</u>	<u>Document No.</u>	<u>Staff</u> <u>Workpapers</u>
1) March 31, 1988	1/24/89	868-89	5829-88
2) Sept. 30, 1988	2/23/89	2040-89	13092-88
3) March 31, 1989	6/19/89	6058-89	5809-89
4) Sept. 30, 1989	1/2/90	61-90	12060-89
5) March 31, 1990	6/22/90	5521-90	5494-90

TECO argues that the documents submitted to the Commission in connection with the fuel audits of TECO's fuel expenses contain proprietary confidential business information and are, accordingly, entitled to confidential classification. I agree.

Section 366.093(1), Florida Statutes, provides, in pertinent part:

Upon request of the public utility, . . . 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 s. 119.07(1).

DOCUMENT NUMBER-DATE

11390 DEC 28 1990

FPSC-RECORDS/REPORTING

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Subsection 366.093(3)(c), Florida Statutes, defines proprietary confidential business information as, among other things, information concerning bids or other contractual data, the disclosure of which would impair the efforts of the utility to contract for services on favorable terms.

Rule 25-22.006(4)(c), Florida Administrative Code, provides that classification of material as proprietary confidential business information can be justified by demonstrating how the information it contains falls under one or more of the statutory examples.

An examination of the involved documents indicates that they include monthly transportation costs, transportation vouchers disclosing segmented transportation costs on a monthly basis, and coal and oil contracts. These documents contain either the actual costs, or components of costs, of transportation of coal which, if disclosed, would impair TECO's ability to negotiate for such goods or services on favorable terms in the future. Such transportation costs include costs associated with waterborne transportation services such as river barge rates, and ocean-haul rates, as well as rail rates. Such coal costs include costs associated with base coal, supplemental coal, spot coal, FOB mine price, and delivered price.

The five Staff workpapers identified above as DN-5829-88, 13092-88, 5809-89, 12060-89, and 5494-90, derived from TECO's identified documents, are entitled to confidential classification concomitant with that of the documents from which they are derived, pursuant to Rule 25-22.006(3)(d), Florida Administrative Code.

DECLASSIFICATION

Prior to October 1, 1989, Section 366.093, Florida Statutes, governing the confidential treatment of utility records, was silent as to the period of time for which a finding of confidentiality was effective. Rule 25-22.006(4)(a), Florida Administrative Code, simply provided that the justification shall include a date after which the material is no longer proprietary confidential business information or a statement that such a date cannot be determined and the reasons therefore. Effective October 1, 1989, subsection 366.093(4), Florida Statutes, was enacted to provide that:

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[a]ny finding by the commission that records contain proprietary confidential business information is effective for a period set by the commission not to exceed 18 months, unless the commission finds, for good cause, that the protection from disclosure shall be for a specified longer period.

Prior to October 1, 1989, TECO routinely requested that the discussed documents should be classified confidential for a period of five years. Therefore, DN-868-89, 2040-89, and 6058-89, filed before October 1, 1989, should be classified confidential for five years from the date of this Order. Subsequent to October 1, 1989, TECO requested a two year confidential classification period. Initially, TECO simply stated as justification for a period of classification exceeding 18 months that "these documents should be classified for a period of two years." While that statement was insufficient to show good cause, TECO subsequently supplemented its justification for a period of classification of two years. As to the coal and coal transportation information contained in both DN-61-90 and DN-5521-90, TECO explains that the disclosure of that information before the passage of two years could affect the viability of its affiliates which provide those services to TECO and to outside non-regulated customers, which in turn could affect the price TECO ultimately pays for those services. TECO further explains this potential effect as follows:

An analyst for an outside customer of Gatliff or TECO Transport who reads the written transcripts of public fuel hearings or reads the written orders of the FPSC can easily discover that until November 1, 1988, Tampa Electric paid cost for coal from Gatliff and for coal transportation from TECO Transport. Further, the publication of the stipulation agreement between the parties in 1988 indicated that the initial benchmark price was close to cost and subsequent testimony indicates the revised contract escalates from cost.

As long as an outside customer does not know how such an escalation clause changes price, the cost cannot be calculated. However, publicizing the price of coal or coal transportation services will tell an outside customer how much the escalation has been and make it easy for him to calculate cost.

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Because of the seasonality of costs in both businesses, a full year's cost data is necessary for an accurate cost measurement. A second year must pass before one full year can be compared with a second year to measure the escalation accurately. So a perceptive vendor seeks two years of data to make his cost estimates. The competitive industries recognize that data beyond two years is not helpful to them, as enough factors may change in that time frame for costs to be much different from what was incurred. Any data less than two full years old is extremely valuable to outside customers in contracting for services with Gatliff or TECO Transport. The difference of small amounts per ton can mean millions of dollars' difference in cost.

A loss of outside business by Gatliff or TECO Transport will affect not only Gatliff or TECO Transport, but, if large enough, it could affect the credibility of the companies. The prices negotiated with Tampa Electric by these vendors took into consideration their costs and revenues at the time of negotiation, including the revenues from outside customers. A significant loss of outside business could cause Gatliff or TECO Transport to fail, since under market pricing regulation Tampa Electric will not make up the difference to them in cost. In turn, a failure of these vendors would leave Tampa Electric and its customers with only higher cost alternatives for Blue Gem coal and for coal transportation to Tampa, a higher cost that would be paid by Tampa Electric's ratepayers. So the continued credibility of Gatliff and TECO Transport is important to protect Tampa Electric's ratepayers from higher cost alternatives.

As to the fuel oil contract data in DN-5521-90, TECO explains that its interests would be best protected by classifying the material until at least six months after the contracts expire, because future contract negotiations would be impaired if such material, which contains pricing information, were disclosed prior to the negotiation of a new contract. TECO states negotiations are normally completed within six months. TECO further indicates that a two year classification period generally will account for this six month negotiation period.

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I find that TECO has shown good cause for an extended period of classification. The material in DN-61-90 and DN-5521-90, as discussed above, will remain classified until two years from the dates of the respective requests for classification.

In consideration of the foregoing, it is

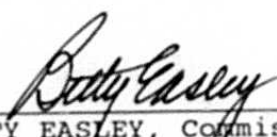
ORDERED that Tampa Electric Company's requests for specified confidential treatment of its responses to Staff's Document/Record Requests, identified in this docket as DN-868-89, 2040-89, 6058-89, 61-90 and 5521-90, are granted. It is further

ACKNOWLEDGED that the Staff workpapers identified as DN-5829-88, 13092-88, 5809-89, 12060-89 and 5494-90 are entitled to confidential classification, identical to that of the documents from which they are derived. It is further

ORDERED that the declassification dates set forth in the body of this Order are approved. It is further

ORDERED that if, pursuant to Rule 25-22.006(3)(b), Florida Administrative Code, a protest is filed within 14 days of the date of this Order, it will be resolved by the appropriate Commission panel pursuant to Rule 25-22.006(3)(c), Florida Administrative Code.

By ORDER of Commissioner Betty Easley, as Prehearing Officer,
this 28th day of DECEMBER, 1990.



BETTY EASLEY, Commissioner
and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(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 requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration from the full Commission within 14 days pursuant to Rule 25-22.006(3), Florida Administrative Code, for rulings on confidentiality issued by a Prehearing Officer; 2) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, for any rulings on issues other than confidentiality if issued by a Prehearing Officer; 3) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 4) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, 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.