

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased)	DOCKET NO. 910001-EI
Power Cost Recovery Clause and)	ORDER NO. 24950
Generating Performance)	ISSUED: 8/21/91
Incentive Factor)	
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ORDER ON CONFIDENTIALITY

BEFORE THE COMMISSION:

On July 12, 1991, Tampa Electric Company (TECO) filed a Request for Confidential Classification (Document No. 7074-91) of certain portions of the exhibits filed in conjunction with the testimony of William N. Cantrell. This testimony is to be used during the August 1991 fuel adjustment hearing. On August 20, 1991, TECO filed a revised request for confidentiality (Document No. 8388-91) concerning portions of the same exhibits.

Florida law provides, in Section 119.01, Florida Statutes, that documents submitted to governmental agencies shall be public records. The only exceptions to this law are specific statutory exemptions, and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This law derives from the concept that government should operate in the "sunshine." In the instant matter, the value that all parties would receive by examining and utilizing the information contained in this document must be weighed against the legitimate concerns of TECO regarding disclosure of business information which it considers proprietary. It is our view that parties must meet a very high burden when requesting confidential classification of documents.

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, TECO has the burden to show that the material submitted is qualified for confidential classification. Rule 25-22.006, Florida Statutes, provides that the Company may fulfill its burden by demonstrating that the information falls under one of the statutory examples set out in Section 366.093, Florida Statutes, or by demonstrating that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm.

DOCUMENT NUMBER-DATE

08409 AUG 21 1991

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Section 366.093(3)(d), Florida Statutes, provides several examples of proprietary confidential business information. Included in this list is "[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." To establish that material is proprietary confidential business information under Section 366.093(d), Florida Statutes, a utility must demonstrate (1) that the information is contractual data, and (2) that the disclosure of the data would impair the efforts of the utility to contract for goods or services on favorable terms. We have previously recognized that this latter requirement does not necessitate the showing of actual impairment, or the more demanding standard of actual adverse results; instead, it must simply be shown that disclosure is "reasonably likely" to impair the company's contracting for goods or services on favorable terms.

TECO requests confidential classification for lines 1, 3, 5, 7, 8, and 9 of column (a) on Document No. 2, page 2 of 2 of Cantrell's exhibit. TECO argues that this is contractual information, the disclosure of which could impair TECO's ability to contract for goods and services on favorable terms. We agree. The figure in line one delineates the "Average per Ton Price of Coal Purchased" which is the Gatliff Weighted Average F.O.B. Mine Price. If the contractual price charged by Gatliff Coal Company (Gatliff), a TECO affiliate, under the parties' current contract is made public, it would adversely affect Gatliff's ability to negotiate higher prices with other purchasers. If other potential purchasers knew how low Gatliff was willing to price coal sold to TECO, those other potential purchasers may view this low price as a ceiling on the amount they would be willing to pay for Gatliff coal. This would place Gatliff coal at a competitive disadvantage in the negotiating process. Also, the price per ton is sensitive because it provides a general approximation of Gatliff's costs, given the short duration of time the pricing formula has been in effect. Although this effect will lessen over time, with only one year having elapsed under the new pricing methodology, confidential protection is still essential. The amount in line 3, The "Over/Under Benchmark," is entitled to confidential classification because it can be used in conjunction with the coal price benchmark on line 2 to determine the weighted average price of coal purchased by TECO on line 1. The total cost shown on line 5 is entitled to confidential classification because it too is a function of the average price of coal purchased times the total tons purchased. Disclosure of this total cost would reveal the weighted average

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price of coal shown on line 1. The "Total Cost Over/(Under) Benchmark shown on line 7 is, likewise, entitled to confidential classification. This number is an arithmetic function of the weighted average price of coal purchased, and its disclosure would enable a competitor to determine that weighted average price. The "Prior Year's Cumulative Benefit" on line 8 is, likewise, entitled to confidential protection. This number is an arithmetic function of the prior years' weighted average price for transportation services and its disclosure would enable a competitor to determine that weighted average price from the total tons transported. The "Net Benefit for 1988-1990" on line 9 is an arithmetic calculation of lines 7 and 8, disclosure of which would allow a competitor to calculate those amounts. Therefore, line 9 is entitled to confidential protection for the same reasons as the amounts on lines 7 and 8. We note that although costs for a specific shipment of coal cannot be calculated from this annual amount, this annual amount is an average Gatliff coal F.O.B. Mine Price, which has previously been afforded confidential treatment in TECO's Form 423 filings. We find the above information on Document No. 2 to be proprietary confidential business information.

TECO also requests confidential classification of line 4 of columns a-e of Document No. 3, page 1 of 1, of the Cantrell Exhibit, and line 7 of columns a-d of Document No. 4, page 1 of 1, also of the Cantrell Exhibit. TECO argues that disclosure of this contractual information could impair the ability of TECO and its affiliates to contract for goods and services on favorable terms in the future. We agree. TECO states that these escalation factors shown on line 4 of Document No. 3 and line 7 of Document No. 4 could be used in conjunction with the base price of \$39.44 disclosed in Order No. 20298, issued November 10, 1988, to calculate Gatliff's actual contract prices during 1988-1990. TECO further states that these escalation factors could be applied to the 1988 cost-based amounts to derive an approximation of current rates. We find these escalation factors to be proprietary confidential business information.

TECO argues that lines 2-5 of column a on Document No. 5 is contractual information, the disclosure of which would impair the ability of TECO to contract for goods and services on favorable terms. We agree. The rail cost on line 2, the dock transfer cost on line 3, the river cost on line 4, and the ECT/Gulfcoast Transit cost on line 5 are negotiated contract rates. Public disclosure of these amounts could be harmful because it could adversely affect TECO's ability to negotiate better rates with competitors. These

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segmented transportation costs represent amounts from specific suppliers' contracts or commitment letters indicating specific rates for specific legs in a movement of coal. The source references on Document No. 5 indicate that these are segmented transportation rates. In addition, the amounts shown here could be subtracted from the Form 423 Ziegler amounts to calculate the F.O.B. Mine Price from Ziegler coal. Disclosure of these F.O.B. Mine Prices would have a direct impact on the utility's future fuel contracts, by informing potential bidders of current prices paid for fuel. Confidential protection of the Electrocoal and Gulf Coast Transit rate is necessary to prevent competitors of TECO's affiliates in the barge transportation and transloading business from obtaining an unfair advantage over these affiliates, and thereby driving up the cost of coal transportation to TECO. We find this data to be proprietary confidential business information.

TECO also requests confidential classification of lines 1, 2, and 3 of columns a and b on Document No. 6, page 1 of 1 of the Cantrell Exhibit. TECO asserts that this is contractual information, the disclosure of which could impair the ability of TECO to contract for goods and services on favorable terms. We agree. These highlighted figures show the annual benefit and cumulative benefit for 1988, 1989, and 1990. The amounts are an arithmetic calculation of the amounts shown on Document Nos. 1 and 2, and if these amounts on Document No. 6 were publicly disclosed, they could be used in conjunction with the information publicly disclosed on Document Nos. 1 and 2 to back into the Gatliff Weighted Average F.O.B. Mine Price. We afforded this Gatliff F.O.B. Mine Price confidential treatment in the above discussion relating to Document No. 2. We find these cumulative and annual benefits to be proprietary confidential business information.

We find that this proprietary confidential business information is intended to be and is treated by TECO as private, and that it has not been publicly disclosed.

DECLASSIFICATION:

TECO seeks protection of the coal and coal transportation contract information specified as confidential for a minimum period of two years. The need for two or more years of confidentiality is vital not only to TECO and its ratepayers, but to the vendors of coal and coal transportation services as well.

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Bidders for the sale of coal seek to optimize their profit margin. Disclosure of the prices paid by a utility for coal enables bidders to increase price bids, which would ultimately bring detriment to the ratepayers. TECO firmly believes that the disclosure of information concerning prices paid within the last two years will increase the price TECO must pay for coal, which would be detrimental to its ratepayers.

Recent bids received by TECO contained a \$4.17 per ton spread between the bids. The low bid undoubtedly would have been higher with full knowledge of prices paid by TECO. Bidders will always seek to optimize their profits by submitting bids that are as high as the market will bear. If market data is disclosed, this would discourage suppliers from bidding competitively because the suppliers would increase their bids to the level of past payments made by TECO to its suppliers.

The disclosure of rail transportation rates would result in demands by other shippers to lower any rates which are above the disclosed rates. The effect of disclosure would be to increase the lower rate because the transportation provider would seek to protect the rates charged on other routes. The delay of this disclosure for two years would directly benefit TECO's ratepayers by delaying any increases that might occur as a result of such disclosure.

Gatliff Coal and TECO Transport & Trade sell coal and bulk commodity transportation services in the open non-regulated marketplace. The prices at which their goods and services are sold are not publicly disclosed anywhere, by publication or by voluntary dissemination, because it would materially lessen their competitive posture with customers other than TECO. Outside customers who negotiate for coal or coal transportation services are placed at a competitive advantage for these goods and services if they know the cost of the goods or services.

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 that the revised contract escalates from costs.

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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. 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 the time frame for costs to be much different from what was incurred. Any date 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 would 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 TECO 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 TECO's ratepayers. Therefore, the continued credibility of Gatliff and TECO Transport is important to protect Tampa Electric's ratepayers from higher cost alternatives.

Accordingly, we find that the proprietary confidential business information listed above shall be confidential for a period of two years. This information shall be declassified on July 12, 1993.

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It is, therefore,

ORDERED by the Florida Public Service Commission that the highlighted portions of William Cantrell's Exhibit (Document No. 8389-91), filed by Tampa Electric Company, and discussed in the body of this Order is proprietary confidential business information pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. It is further

ORDERED that this proprietary confidential business information shall be afforded confidential treatment until July 12, 1993.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 21st day of AUGUST, 1991.



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 within 10 days pursuant to Rule 25-22.038(2),

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Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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.