

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's
2004-2008 waterborne transportation contract
with TECO Transport and associated
benchmark.

DOCKET NO. 031033-EI
ORDER NO. PSC-04-0543-CFO-EI
ISSUED: May 26, 2004

ORDER GRANTING IN PART AND DENYING IN PART REQUEST
FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 00096-04)

On January 26, 2004, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Tampa Electric Company (Tampa Electric) filed a request for confidential classification of portions of its answers to the Florida Industrial Power Users Group's (FIPUG) First Set of Interrogatories (Nos. 1-34) (Document No. 00096-04). On February 9, 2004, The Florida Industrial Power Users Group (FIPUG) filed a Response in opposition to Tampa Electric's request.

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 [the Public Records Act]." Section 366.093(3), Florida Statutes, 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), Florida Statutes, provides that proprietary confidential business information includes, but is not limited to "[t]rade secrets" (subsection a), "[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" (subsection d) and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information" (subsection e).

Tampa Electric contends that portions of its answers to FIPUG's First Set of Interrogatories fall within these categories and thus constitutes proprietary confidential business information entitled to protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Tampa Electric states that this information is intended to be and is treated by Tampa Electric as private and has not been publicly disclosed.

Tampa Electric requests confidential classification for the specific data listed in Attachment A to this order, which is incorporated herein by reference. The justification for Tampa Electric's request for confidential classification of this specific data is also set forth in Attachment A.

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In its response, FIPUG argues that Tampa Electric states in the non-confidential portion of its answer to Interrogatory No. 4 that the information contained in the confidential portion (Bates Stamp Page Nos. 5-10) “does not represent Mr. Dibner’s model, which is much more detailed, but it presents, in a straightforward manner, a market price calculation for the movement of coal from a location on the Ohio River to Davant, Louisiana.” FIPUG states that to the extent that the calculation described in the confidential portion of Tampa Electric’s answer to Interrogatory No. 4 is a matter of common practice in the industry, and hence in the public domain, the Commission should deny Tampa Electric’s request. In addition, FIPUG states that Tampa Electric’s requested confidential classification of its answer to Interrogatory Nos. 26-27 (Bates Stamp Page Nos. 34-35) fails to demonstrate how disclosure of the information could harm TECO Transport.

Upon review, I find that the information Tampa Electric included in its request is confidential for the reasons identified by the company, with the exception of portions of its answer to Interrogatory No. 4. The last line of the table on Bates Stamp Page 10 and the accompanying footnote show the results of the Dibner Maritime Associates (DMA) model and thus are confidential. However, the information on Bates Stamp Pages 5-10, with the exception of the last line of the table on Bates Stamp Page 10 and accompanying footnote, is an inland barge transportation rate analysis which Tampa Electric acknowledges is not the methodology, structure or model used by DMA and is further described as a simplified approach. Since the analysis is not based upon the DMA model or methodology, it is not proprietary confidential business information. Therefore, confidential classification is denied for the above mentioned portions of Tampa Electric’s answer to Interrogatory No. 4 (Bates Stamp Page Nos. 5-10).

Pursuant to Section 366.093(4), Florida Statutes, the information for which confidential classification is granted herein shall 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), Florida Statutes, unless Tampa Electric or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is

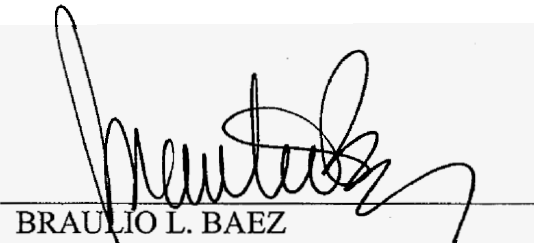
ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that Tampa Electric Company’s Request for Confidential Classification of Document No. 00096-04 is granted in part and denied in part, as set forth in the body of this order. It is further

ORDERED that the information in Document No. 00096-04 for which confidential classification has been granted shall remain protected from disclosure for a period of 18 months from the date of issuance of this order. It is further

ORDER NO. PSC-04-0543-CFO-EI
DOCKET NO. 031033-EI
PAGE 3

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 ⁵ORDER of Chairman Braulio L. Baez, as Prehearing Officer, this 26th day of May, 2004



BRAULIO L. BAEZ
Chairman and Prehearing Officer

(S E A L)

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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.

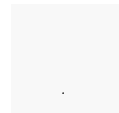
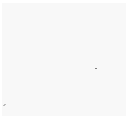
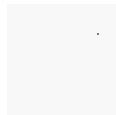
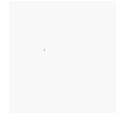
Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 Director, Division of the Commission Clerk and Administrative Services, 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

ORDER NO. PSC-04-0543-CFO-EI
DOCKET NO. 031033-EI
PAGE 4

remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

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**JUSTIFICATION FOR CONFIDENTIAL TREATMENT OF HIGHLIGHTED
PORTIONS OF TAMPA ELECTRIC'S RESPONSES TO FIPUG'S FIRST
SET OF INTERROGATORIES (FILED JANUARY 5, 2004)**

<u>Bates Stamp Page No.</u>	<u>Interrogatory No.</u>	<u>Detailed Description</u>	<u>Rationale</u>
5-10	4	All of the Information on the Listed Pages	(1)
11	5	All Yellow Highlighted Information in The Column Titled "River Bid"	(2)
11	5	All Yellow Highlighted Information in The Column Titled "DMA Model"	(1), (3)
12	6	All Yellow Highlighted Information	(1)
13	7	All Yellow Highlighted Information	(1)
22	14	All Yellow Highlighted Information	(4), (5)
24	16	All Yellow Highlighted Information	(4), (5)
28	20	All Yellow Highlighted Information	(4), (5)
34	26	All Yellow Highlighted Information	(3)
35	27	All Yellow Highlighted Information	(3)

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- (1) The information contained on the listed pages contains the proprietary work product of Tampa Electric's consultant, Dibner Maritime Associates LLC or "DMA". The disclosure of this information could allow duplication of the consultant's work without compensation for the consultant's efforts to gather and update the information and develop methods of analysis. This information is in the nature of a trade secret owned by DMA. It is also in the nature of information relating to competitive interests, the disclosure of which would impair DMA's competitive business interests by diminishing the demand for DMA's proprietary work product. As such, the information in question is entitled to confidential treatment pursuant to Section 366.093 (3)(a) and (e), Florida Statutes.
- (2) The information contained on the listed pages contains bid information provided in response to Tampa Electric's RFP. Disclosing bidders identities and the information included in their confidential proposals would discourage those bidders from

participation in future RFPs as they do not desire for their competitors to have access to the terms and conditions under which they will bid on transportation services. This information, in conjunction with publicly disclosed information, would allow a competitor to back into the contract rates established for Tampa Electric's contract with TECO Transport. As such public disclosure of the information contained on these pages would adversely affect the competitive interests of TECO Transport and the bidders and the ability of Tampa Electric to contract for goods and services on favorable terms. The disclosure of this information would therefore be harmful to competitive interests, and as such, the information is entitled to confidential treatment pursuant to Section 366.093(d) and (e), Florida Statutes.

- (3) The information contained on the listed pages contains information about the contract terms and rates that will be paid for transportation services under Tampa Electric's contract with TECO Transport that took effect January 1, 2004. This information is competitive contractual information, the disclosure of which would be harmful to the position of TECO Transport in negotiating future contracts with other clients. The disclosure of this information would therefore be harmful to TECO Transport's competitive interests, and as such, the information is entitled to confidential treatment pursuant to Section 366.093(d) and (e), Florida Statutes.
- (4) The information contained on the listed pages contains bid information provided in response to Tampa Electric's RFP. Disclosing bidders identities and the information included in their confidential proposals would discourage those bidders from participation in future RFPs as they do not desire for their competitors to have access to the terms and conditions under which they will bid on transportation services. As such public disclosure of the information contained on these pages would adversely affect the competitive interests of the bidders and the ability of Tampa Electric to contract for goods and services on favorable terms. The disclosure of this information would therefore be harmful to competitive interests, and as such, the information is entitled to confidential treatment pursuant to Section 366.093(d) and (e), Florida Statutes.
- (5) The information contained on the listed pages contains the proprietary work product of Tampa Electric's consultant, Sargent and Lundy or "S&L". The disclosure of this information could allow duplication of the consultant's work without compensation for the consultant's efforts to gather and update the information and develop methods of analysis. This information is in the nature of a trade secret owned by S&L. It is also in the nature of information relating to competitive interests, the disclosure of which would impair S&L's competitive business interests by diminishing the demand for S&L's proprietary work product. As such, the information in question is entitled to confidential treatment pursuant to Section 366.093 (3)(a) and (e), Florida Statutes.