

ORIGINAL

Timolyn Henry

From: Tim Perry [tperry@mac-law.com]
Sent: Monday, June 07, 2004 3:31 PM
To: Filings@psc.state.fl.us
Cc: Lee L. Willis (E-mail); James D. Beasley (E-mail); Mike Twomey; Cochran Keating; Scheff Wright (E-mail)
Subject: Docket 031033-EI

In compliance with the Commission's procedures on e-filing, Public Counsel and FIPUG state as follows:

A: The person responsible for this filing is:
 Timothy J. Perry, Esq.
 McWhirter Reeves
 117 S. Gadsden St.
 Tallahassee, FL 32301
 (850) 222-2525
 (850) 222-5606 - Fax
 tperry@mac-law.com

RECEIVED-FPSC
 JUN - 7 PM 3:32
 COMMISSION
 CLERK

B: The document is filed in Docket 031033-EI, Review of Tampa Electric Company's 2004-2008 waterborne transportation contract with TECO Transport and associated benchmark.

C: The document is filed on behalf of Public Counsel and FIPUG.

D: The document is 5 pages long.

E: The attached file contains the Joint Response in Opposition to Tampa Electric Company's Request for Confidential Classification of Portions of its Rebuttal Testimony and Exhibits.

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH _____

DOCUMENT NUMBER-DATE

06364 JUN-7 8

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA 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
Filed: June 7, 2004

JOINT RESPONSE IN OPPOSITION TO TAMPA ELECTRIC COMPANY'S REQUEST FOR CONFIDENTIAL CLASSIFICATION OF PORTIONS OF ITS REBUTTAL TESTIMONY AND EXHIBITS

The Citizens of the State of Florida (Public Counsel) and the Florida Industrial Power Users Group (FIPUG)(collectively, Intervenors), pursuant to rules 25-22.006 and 28-106.204, Florida Administrative Code, respond in opposition to Tampa Electric Company's (TECo) Request for Confidential Classification of Portions of its Rebuttal Testimony and Exhibits filed May 24, 2004. Public Counsel and FIPUG request that the Commission enter an order denying TECo's requests to shield from public review the information described below. As grounds therefore, Public Counsel and FIPUG state:

1. As Intervenors have previously noted, the policy of the State of Florida is that all public records be open to review:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.01(1), Florida Statutes. The Commission has recognized that:

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into a statutory exemption or that the information is proprietary confidential business information, the disclosure of which will cause the Company or its ratepayers harm.

Order No. PSC-01-2252-CFO-EI at 2, Docket No. 000061-EI (November 16, 2001). Shielding information from public view is the exception, not the rule, and requires the party seeking to withhold information to justify how the information qualifies for one of the narrow statutory exceptions which would keep the information confidential.

Rebuttal Exhibit of Joann T. Wehle

2. TECo alleges that Exhibit No. JTW-2, pages 94 and 95, is confidential and asks to shield the entire document from disclosure because: 1) the pages contain bid information provided in response to TECo's RFP or prior transportation proposals; 2) the pages reveal TECo's bid evaluation assumptions that divulge planned operations and existing contractual data; 3) the pages contain "information about the contract terms and rates" that were paid or will be paid to TECo Transport; and 4) the information, though not confidential,¹ could be used to "back into" confidential information. Some of the text in the exhibit appears unredacted in Ms. Wehle's testimony, yet TECo inexplicably seeks confidential classification for the entire document. Further, the exhibit contains titles, headings, and text that are not confidential. The Commission should make public the non-confidential information appearing on pages 94 and 95.

3. TECo alleges that Exhibit No. JTW-2, page 97, is confidential and asks to shield the entire letter from disclosure because information in the letter, though not confidential, could be used to "back into" confidential information. Again, much of the information in the letter appears unredacted in Ms. Wehle's testimony, yet TECo inexplicably seeks confidential classification for the entire document. The Commission should make public the information in the letter that appears unredacted in Ms. Wehle's testimony.

4. TECo alleges that Exhibit No. JTW-2, page 101, is confidential and asks to shield the entire document from disclosure because the document contains "information about the

¹ It is telling that two of TECo's justifications claim that the information it seeks to shield is confidential while the third justification claims it is not. The information cannot be in both categories.

contract terms and rates” that were paid or will be paid to TECo Transport. The Commission should make public all non-confidential titles, headings and text in the document.

Rebuttal Testimony and Exhibit of Brent Dibner

5. TECo alleges that the highlighted number on page 29, line 9, of Mr. Dibner’s rebuttal testimony contains confidential information, such as: 1) “information about the contract terms and rates” that were paid or will be paid to TECo Transport; 2) information, though not confidential, that could be used to “back into” confidential information; and 3) the proprietary work product of Dibner Maritime Associates LLC (DMA). TECo did not demonstrate in its request how the number relates to contract rates that were paid or will be paid to TECo Transport, nor did it explained how the number could be used to back into confidential information. Further, Intervenors are at a loss to comprehend how DMA could be harmed by the disclosure of the number. The number appears to be benign and it should be made public.

6. TECo alleges that Exhibit No. BD-2, pages 46 and 47, are confidential and asks to shield both pages from disclosure. **The Commission** should make public all non-confidential titles, headings and text appearing on those pages.

7. In summary, Intervenors request that the information appearing at the pages referenced below should be made public:

- Exhibit JTW-2, pages 94 and 95, all non-confidential titles, headings and text;
- Exhibit JTW-2, page 97, all non-confidential information;
- Exhibit JTW-2, page 101, all non-confidential titles, headings and text;
- Dibner rebuttal, page 29, line 9;
- Exhibit BD-2, pages 46 and 47, all non-confidential titles, headings and text.

WHEREFORE, Public Counsel and FIPUG request that the Commission enter an order denying TECo’s Request for Confidential Classification as described above.

Harold McLean
Public Counsel
Robert D. Vandiver
Associate Public Counsel

Office of Public Counsel
c/o the Florida Legislature
111 W. Madison Street
Room 812
Tallahassee, Florida 32399-1400
(850) 488-9330

Attorneys for Florida's Citizens

s/ Timothy J. Perry
John W. McWhirter, Jr.
McWhirter, Reeves, McGlothlin,
Davidson, Kaufman, & Arnold, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33602

Vicki Gordon Kaufman
Timothy J. Perry
McWhirter, Reeves, McGlothlin
Davidson, Kaufman, & Arnold, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
(850) 222-2525

Attorneys for the Florida Industrial
Power Users Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Response in Opposition to Tampa Electric Company's Request for Confidential Classification of Portions of its Rebuttal Testimony and Exhibits has been furnished by (*) e-mail and U.S. Mail this 7th day of June 2004, to the following:

(*) Wm. Cochran Keating IV
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

(*) Lee L. Willis
James D. Beasley
Ausley & McMullen
227 S. Calhoun Street
Tallahassee, Florida 32302

(*) R. Sheffel Wright
Landers & Parsons
301 West College Avenue
Tallahassee, Florida 32301

(*) Mike Twomey
Post Office Box 5256
Tallahassee, Florida 32314-5256

s/ Timothy J. Perry