

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-04-1020-CFO-EI
ISSUED: October 20, 2004

ORDER GRANTING IN PART AND DENYING IN PART REQUESTS FOR
CONFIDENTIAL CLASSIFICATION

(DOCUMENT NOS. 05926-04, 06486-04, 06487-04, 06488-04,
06489-04, 06490-04, 06491-04, 06492-04)

On June 10, 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 certain information contained in the deposition transcripts and deposition exhibits of Dr. Robert L. Sansom, Dr. Anatoly Hochstein, Ms. Joann T. Wehle, Mr. Brent Dibner, Mr. Frederick J. Murrell, Ms. Paula M. Guletsky and Mr. Martin Duff (Document Nos. 06486-04, 06487-04, 06488-04, 06489-04, 06490-04, 06491-04, 06492-04). On June 14, 2004, Tampa Electric filed a request for confidential classification of portions of Late-Filed Deposition Exhibit No. 1 of Tampa Electric witness Mr. Brent Dibner (Document No. 05926-04). On June 17, 2004, Office of Public Counsel (OPC) and the Florida Industrial Power Users Group (FIPUG) filed a Joint Response in opposition to Tampa Electric's request pertaining to Ms. Wehle's and Mr. Dibner's deposition transcript and exhibits.

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 the deposition transcript and deposition exhibits of Dr. Robert L. Sansom, Dr. Anatoly Hochstein, Ms. Joann T. Wehle, Mr. Brent Dibner, Mr. Frederick J. Murrell, Ms. Paula M. Guletsky and Mr. Martin Duff 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

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states that portions of the deposition transcripts and exhibits contain information about the contract terms and rates that were paid for transportation services under Tampa Electric's contracts with TECO Transport during the period 1998-2003 or that will be paid for transportation services under Tampa Electric's contract with TECO Transport that took effect January 1, 2004. Tampa Electric asserts that this is competitive contractual information, the disclosure of which would be harmful to the position of TECO Transport in negotiating future contracts with other clients. Tampa Electric further asserts that disclosing this information would harm its position in determining rates for future transportation contracts since the providers' bid responses might be influenced if they had knowledge of the previous or current contract rates. Tampa Electric states that portions of the deposition transcripts and exhibits disclose confidential proprietary terms and conditions of its competitively negotiated existing or recently concluded contracts for goods or services. Tampa Electric contends that disclosure of this information would adversely affect Tampa Electric and the providers of goods and services to Tampa Electric under the existing contract in future contract negotiations, which would chill the market participation of future providers of goods and services to Tampa Electric. Tampa Electric notes that the portions of the deposition transcripts and exhibits that are not necessarily confidential by themselves would allow one to back into confidential proprietary business information if made public.

In addition, Tampa Electric states that portions of the deposition transcripts and exhibits contain a detailed description of Tampa Electric's expected coal needs by type and from different areas on the waterborne supply course during the RFP period of 2004-2008. Tampa Electric contends that disclosure of this information would harm its negotiating position in purchasing coal at the most economic rate. According to Tampa Electric, portions of the documents reveal the identity of bidders or describe terms of the proposals received in response to Tampa Electric's RFP to provide coal or coal transportation. Tampa Electric states that disclosing bidders' identities 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. Tampa Electric further states that disclosing this information would adversely affect the competitive interests of the bidders and the ability of Tampa Electric to contract for goods and services on favorable terms in the future. Tampa Electric states that portions of the deposition transcripts and exhibits contain bid information provided in response to its RFP or information contained in prior proposals relating to coal transportation. According to Tampa Electric, 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, which 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. Tampa Electric states that portions of the deposition transcripts and exhibits disclose in great detail its commodity contract rates and transportation rates, by contract on a projected basis going out a number of years into the future. Tampa Electric asserts that public disclosure of this information would provide the company's projected rates for all the detailed components of its projected fuel and fuel transportation costs.

Tampa Electric states that portions of the deposition transcripts and exhibits contain the proprietary work product of its consultants, Dibner Maritime Associates (DMA) and Sargent and Lundy (S&L). According to Tampa Electric, disclosure of this information could allow duplication of the consultants' work without compensation. Tampa Electric contends that this information is a trade secret owned by DMA and S&L and that this information relates to competitive interests, the disclosure of which would impair DMA's and S&L's competitive business interests by diminishing the demand for their proprietary work product. Tampa Electric states that portions of the deposition transcripts and exhibits contain detailed information regarding its coal requirements, TECO Transport's waterborne coal transportation operations, the identity and production output of TECO Transport's backhaul customers and the destination of their shipments. Tampa Electric asserts that this information is proprietary business information, the disclosure of which would jeopardize the competitive interests of all of the entities involved. Tampa Electric states that portions of the deposition transcripts and exhibits contain information about the terms or price of one of Tampa Electric's confidential fuel purchase contracts. According to Tampa Electric, this information, either on its own or in conjunction with publicly available information, reveals competitive, contractual information, the disclosure of which would be harmful to the competitive interests of Tampa Electric and the other party to the contract in negotiating future contracts on favorable terms. Tampa Electric states that portions of the deposition transcripts and exhibits contain the outcome of a bid solicitation which has not yet closed. Tampa Electric asserts that disclosing the results prior to completing negotiation of a contract could be harmful to the ability of Tampa Electric to contract for goods and services on favorable terms. Tampa Electric states that this information is intended to be and is treated by Tampa Electric as private and has not been publicly disclosed.

In their Joint Response, OPC and FIPUG argue that the information on page 46, line 11 of Joann T. Wehle's deposition transcript should not be granted confidential classification. OPC and FIPUG contend that similar information is discussed in the prefiled testimony of Michael J. Majoros, Jr. and that the information does not contain a numerical value that would allow a reader to back into confidential rates or otherwise ascertain competitive information. OPC and FIPUG also assert that the information on page 61, line 7, of Ms. Wehle's deposition transcript is not confidential. According to OPC and FIPUG, this information was discussed on the record, without objection by Tampa Electric, during a non-confidential deposition taken in Docket No. 030001-EI and at the hearing in this docket. OPC and FIPUG state that information on page 30, line 4; page 31, lines 3, 4, and 11; page 49, lines 15 and 23; and page 50, lines 12 and 18 of Brent Dibner's deposition transcript should not be granted confidential classification. OPC and FIPUG assert that this information concerning the debt/equity ratio used by Mr. Dibner was disclosed on the record at the hearing in this docket. OPC and FIPUG further state that the information on page 70, line 24 of Mr. Dibner's deposition transcript (evening session) is not confidential and appears on the Commission website in a filing in Docket No. 031057-EI and in Exhibit No. 65, a non-confidential exhibit to the hearing in this docket. OPC and FIPUG contend that Mr. Dibner's Deposition Exhibit Nos. 2-8 are not confidential. According to OPC and FIPUG, information contained in these exhibits appears unredacted in Mr. Dibner's deposition transcript.

OPC and FIPUG further contend that during Mr. Dibner's deposition, the information in these exhibits was cross-referenced with public information contained in Exhibit MJM-2 to the prefiled testimony of Mr. Majoros.

Upon review, I find that the information for which Tampa Electric requests confidential classification is confidential for the reasons identified by the company, with the exception of certain information in Ms. Wehle's and Mr. Dibner's deposition transcript and exhibits, as indicated in the chart below. The information contained on page 46, line 11, of Ms. Wehle's deposition transcript details the relative level of a bid for terminal service to the prior contract rates without referencing specific numbers. Since the relationship of these two numbers has been revealed to the public in the testimony of Mr. Majoros and Tampa Electric did not seek confidential classification of that portion of Mr. Majoros' testimony, this information is already public, and confidential classification is denied. The information contained on page 61, line 7, of Ms. Wehle's deposition transcript details the location of a particular terminal. However, the geographic relationship of terminals was revealed to the public during the hearing in this docket and therefore, confidential classification is denied. The information contained in Mr. Dibner's deposition transcript on page 30, line 4; page 31, lines 3, 4, and 11; page 49, lines 15 and 23; and page 50, lines 12 and 18 reveal the debt/equity ratio used by Mr. Dibner in his model. Although this is an input to his confidential model, Mr. Dibner did reveal this information on the record at the hearing in this docket. Confidential classification is denied since this information is public. Further, the information on page 70, line 24 (evening session) was made public in Mr. Dibner's Deposition Exhibit No. 10 and is therefore not confidential. Finally, Deposition Exhibit Nos. 2-8 contain shipping and backhaul information concerning Tampa Electric's coal procurement. The content and selected specific entries of these documents were discussed in Mr. Dibner's deposition. In addition, backhaul information is publicly available through the Port of Tampa. Disclosure of this information would not jeopardize the competitive interests of any entity involved and therefore confidential classification is denied. The information for which Tampa Electric requests confidential classification and the ruling on each item is set forth below:

Page and Line No.	Ruling
Dr. Robert L. Sansom	
Page 17, Lines 14-17, 23	Grant
Page 18, Lines 23-24	Grant
Page 19, Lines 4-5	Grant
Page 44, Lines 8, 22	Grant
Page 45, Line 7	Grant
Page 53, Line 10	Grant
Page 55, Lines 10-12, 20	Grant
Page 56, Line 16	Grant
Page 58, Lines 17-18	Grant
Page 63, Lines 13, 16, 24	Grant
Page 64, Lines 3, 9, 19, 20, 25	Grant

Page 65, Lines 4, 12-14, 17, 21, 24	Grant
Page 100, Line 19, 21	Grant
Page 101, Lines 1, 19	Grant
Page 118, Lines 11, 19	Grant
Page 120, Lines 2, 3, 14	Grant
Page 122, Lines 1, 11, 14, 20, 23, 24	Grant
Page 123, Line 19	Grant
Page 124, Lines 15, 16, 23	Grant
Page 125, Lines 1, 7, 8	Grant
Page 130, Lines 8-9	Grant
Page 132, Lines 6-8	Grant
Page 134, Lines 8-9	Grant
Page 135, Lines 8-9, 10-11	Grant
Page 136, Line 4	Grant
Page 144, Line 4	Grant
Late Filed Deposition Exhibit No. 3, Page 352, Columns (g) and (h)	Grant
Dr. Anatoly Hochstein	
Page 33, Lines 5-6	Grant
Page 94, Lines 5, 18, 23	Grant
Page 102, Line 23	Grant
Page 103, Lines 10, 12, 14, 25	Grant
Page 104, Lines 1, 4, 5, 24	Grant
Page 130, Line 23	Grant
Page 142, Lines 10-13, 15	Grant
Page 192, Lines 13, 14, 23	Grant
Page 206, Line 17	Grant
Page 210, Line 8	Grant
Exhibit No. 2	Grant
Exhibit No. 9	Grant
Exhibit No. 16	Grant
Joann T. Wehle	
Page 41, Lines 2, 7, 8, 11	Grant
Page 45, Lines 3, 8, 12, 13, 14, 20, 25	Grant
Page 46, Line 4	Grant
Page 46, Line 11	Deny
Page 61, Line 3	Grant

Page 61, Line 5	Grant
Page 61, Line 7	Deny
Page 61, Line 11	Grant
Page 75, Line 23	Grant
Page 76, Line 5	Grant
Page 154, Lines 4, 18, 19	Grant
Page 169, Lines 13, 19, 21, 25	Grant
Page 170, Lines 6, 7, 13	Grant
Page 172, Lines 2, 10	Grant
Page 181, Lines 5, 20, 21	Grant
Page 182, Line 1	Grant
Page 183, Lines 19, 23	Grant
Page 198, Lines 3, 6, 7	Grant
Page 199, Lines 21-25	Grant
Page 200, Lines 1-3, 5-7, 9-10, 12, 17-19	Grant
Page 201, Lines 11, 18, 19	Grant
Page 202, Lines 9, 11, 13-16, 18	Grant
Page 207, Lines 5, 7, 8, 18	Grant
Page 213, Lines 19, 20, 22, 23	Grant
Page 219, Lines 13-15	Grant
Page 229, Lines 18, 22	Grant
Page 230, Lines 3-5, 8-12, 22, 24	Grant
Page 231, Line 20	Grant
Page 250, Lines 18, 25	Grant
Exhibit No. 6	Grant
Brent Dibner	
Page 10, Lines 6, 15, 17-19, 24	Grant
Page 30, Line 4	Deny
Page 30, Lines 6-7	Grant
Page 31, Lines 3, 4, 11	Deny
Page 31, Line 18	Grant
Page 32, Lines 6, 9, 11, 13	Grant
Page 49, Lines 15, 23	Deny
Page 50, Line 8	Grant
Page 50, Lines 12, 18	Deny
Page 71, Line 15	Grant
Page 75, Lines 9, 23	Grant

Page 76, Lines 1, 8, 9	Grant
Page 77, Line 17	Grant
Page 84, Lines 1, 2	Grant
Page 92, Line 25	Grant
Page 93, Line 6	Grant
Page 100, Line 8	Grant
Page 110, Line 7	Grant
Page 144, Line 13	Grant
Page 166, Lines 19-22	Grant
Page 167, Lines 7- 8	Grant
Page 170, Lines 18, 22	Grant
Page 171, Line 6	Grant
Brent Dibner Deposition Evening Session	
Page 13, Lines 22-24	Grant
Page 65, Line 4	Grant
Page 68, Line 10, 14	Grant
Page 70, Lines 4, 12, 13, 17	Grant
Page 70, Line 24	Deny
Page 72, Line 7	Grant
Page 75, Line 7, 15	Grant
Exhibit No. 1, Page 2 of 2	Grant
Exhibit No. 2, Pages 281-287	Deny
Exhibit No. 3, Pages 7047, 7606, 7608, 7610, 7612, 7614, 7616, 7618	Deny
Exhibit No. 4, Pages 7081, 7689, 7690, 7693, 7695, 7697, 7699	Deny
Exhibit No. 5, Pages 7031, 7569, 7571, 7572	Deny
Exhibit No. 6, Pages 7091, 7719, 7721, 7723, 7725	Deny
Exhibit No. 7, Pages 7027, 7533, 7543	Deny
Exhibit No. 8, Page 7027	Deny
Exhibit No. 9	Grant
Page 73, Line 6	Grant
Page 74, Line 12	Grant
Page 89, Lines 1, 4	Grant

Page 57, Lines 18, 20	Grant
Page 64, Lines 2, 17	Grant
Page 65, Lines 10-11	Grant
Page 66, Lines 3, 12	Grant
Page 67, Lines 7-8	Grant
Page 69, Lines 8-9	Grant
Page 85, Line 4	Grant
Page 88, Lines 15-16	Grant
Page 102, Lines 19, 20, 22	Grant
Page 103, Line 24	Grant
Page 104, Lines 3, 4, 17, 19	Grant
Page 106, Lines 20-21	Grant
Page 107, Line 16	Grant
Page 110, Line 15	Grant
Page 124, Line 25	Grant
Page 148, Line 18	Grant
Martin Duff	
Page 40, Lines 10, 13, 17, 18	Grant
Page 41, Lines 9, 10, 14, 20, 21	Grant
Page 42, Lines 3-6, 9-10, 13-14, 19, 25	Grant
Page 43, Lines 1, 3, 8, 9, 13, 19, 20, 23, 24	Grant
Page 44, Lines 5-7, 10-12, 19	Grant
Page 50, Line 1	Grant
Page 71, Line 25	Grant
Page 72, Line 3	Grant
Page 84, Line 4	Grant

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 Requests for Confidential Classification of Document Nos. 05926-04, 06486-04,

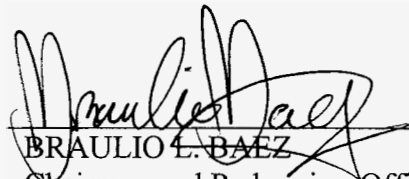
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06487-04, 06488-04, 06489-04, 06490-04, 06491-04, 06492-04 are granted in part and denied in part, as set forth in the body of this order. It is further

ORDERED that the information in Document Nos. 05926-04, 06486-04, 06487-04, 06488-04, 06489-04, 06490-04, 06491-04, 06492-04 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

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 ORDER of Chairman Braulio L. Baez, as Prehearing Officer, this 20th day of October, 2004.


BRAULIO L. BAEZ
Chairman and Prehearing Officer

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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, 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

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