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-M-E-M-O-R-A-N-D-U-M-

DATE: May 29, 2008

TO: Lisa Bennett, Attorney, Office of General Counsel

FROM: Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver) ^{F W}

RE: Docket 080001-EI, Recommendation concerning Tampa Electric Company's (TECO's) request for confidential classification concerning a portion of the staff audit report and working papers prepared during the "Tampa Electric Company Fuel Price Hedging Cost Audit as of December 31, 2007", Audit Control No. 07-353-2-2, Documents Numbered 03075-08, 03076-08 and 03688-08, and

Recommendation concerning Tampa Electric Company's (TECO's) request for a temporary protective order concerning a portion of the staff audit report and working papers prepared during the "Tampa Electric Company Fuel Price Hedging Cost Audit as of December 31, 2007", Audit Control No. 07-353-2-2, Documents Numbered 03075-08 and 03076-08

On April 15, 2008, when copies of certain portions of staff's audit report and working papers obtained or prepared during the "Tampa Electric Company Fuel Price Hedging Cost Audit as of December 31, 2007", were delivered to TECO at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On April 18, 2008, staff filed documents numbered 03075-08 and 03076-08 consisting of those specified portions of the staff's audit report and working papers.

On May 5, 2008, TECO filed a request pursuant to Section 366.093, Florida Statutes (F.S) and Rule 25-22.006, FAC, that selected portions of the audit report and working papers prepared by the staff during the audit receive a confidential classification. Such a request must meet the requirements of Rule 25-22.006(4), FAC. TECO's request included public copies of the information with the sensitive portions redacted (Document No. 03687-08, Exhibit B) and the request also included copies of the material with the sensitive information fully identified and highlighted (Document No. 03688-08).

In addition, TECO motioned pursuant to Rule 25-22.006(6)(b), FAC, that the information contained in staff's audit report and working papers be granted a temporary protective order such that the information may be protected from public disclosure while copies of the audit materials are in the custody of the Office of Public Counsel.

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- GRA _____
- SEC _____
- OTH *Manuente*

Documents numbered 03075-08, 03076-08, and 03688-08 are currently held by the Office of the Commission Clerk as confidential pending resolution of FPL's request for confidential classification. Also, the utility's request for a protective order for this information is also pending.

Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific items of a statutory provision. Subsections 366.093(3)(d) and (e), F.S., provide the following exemptions.

Subsection 366.093, F.S., provides; *"Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes but is not limited to:*

(d) Information 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.

(e) Information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider of the information...."

According to Section 366.093, F.S., and Rule 25-22.006, FAC, the utility has the burden of demonstrating that materials qualify for confidential classification. According to Rule 25-22.006, FAC, the utility must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility, the provider of the information or the ratepayer harm.

Staff Analysis of the Request

Reading the filing reveals the sensitive material consists of:

1) Natural Gas Prices and Quantities by Supplier

TECO asserts that if prices paid for natural gas were released it would harm the ability of the utility and its affiliates to negotiate for purchases of natural gas in the future. TECO asserts: "...Commodity rates have been recognized by the Commission in numerous instances to constitute proprietary confidential business information and the disclosure of which would be harmful to Tampa Electric's ability to contract for goods and services on favorable terms and, likewise, harmful to the competitive interest of Tampa Electric and its affiliates...."

Section 366.093(3)(d), F.S., provides contractual information may be granted a confidential classification if release of the information would impair the ability of a utility or its affiliates ability to favorably contract. Section 366.093(3)(e), F.S., provides sensitive business information may be granted a confidential classification if its release would harm the competitive business of the provider of that information.

Reading the sensitive information, reveals that release of the identified natural gas prices and quantities by supplier would reasonably be expected to cause the contractual effects and competitive business harm that TECO suggests. Therefore, staff recommends that the material be granted a confidential classification.

2) Specific Fuel Hedging Strategy and Volume

TECO asserts that this type of hedging information which reveals hedging strategy for commodities has been recognized by the Commission as being eligible for a confidential classification on numerous occasions. Tampa Electric also points out revealing its hedging strategies would be harmful to the utility's ability to contract for goods and services and, likewise, would be harmful to the competitive interests of Tampa Electric and its affiliates.

Section 366.093(3)(d), F.S., provides contractual information may be granted a confidential classification if release of the information would impair the ability of a utility, or its affiliates, to favorably contract. Section 366.093(3)(e), F.S., provides sensitive business information may be granted a confidential classification if its release would harm the competitive business of the provider of that information.

Reading the sensitive information reveals that its release would reasonably be expected to cause the contractual effects and competitive business harm that TECO suggests. Therefore, staff recommends that this material be granted a confidential classification.

3) Commodity Rates

TECO asserts that revealing specific contractual rates, or releasing information which would allow the calculation of commodity rates, would impair the ability of Tampa Electric to contract for goods and services in the future. The utility also asserts release of this information would also harm the competitive businesses of the utility and its affiliates. Further, Tampa Electric reports this type of commodity information has been granted a confidential classification on numerous occasions.

Section 366.093(3)(d), F.S., provides contractual information may be granted a confidential classification if release of the information would impair the ability of a utility or its affiliates ability to favorably contract. Section 366.093(3)(e), F.S., provides sensitive business information may be granted a confidential classification if its release would harm the competitive business of the provider of that information.

Reading the sensitive information reveals that its release would reasonably be expected to cause the contractual effects and competitive business harm that TECO suggests. Therefore, staff recommends that this material be granted a confidential classification.

Information Held as Confidential

To qualify as proprietary confidential business information, the material must also be held as private and not released to the public. TECO asserts: "The material for which confidential classification is sought is intended to be and is treated by Tampa Electric as private and has not been disclosed."

Duration of the Confidential Classification Period

TECO did not specify the length for the confidential classification within its request.

According to the provisions set out in Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. We therefore recommend that the Commission limit the confidential classification period to 18 months. TECO may request an extension of this classification period before it tolls.

Staff Recommendation

Based upon reading the filing, and for the reasons presented above, we recommend the utility's request be granted and that the identified material be granted a confidential classification for 18 months.

Further, we recommend that a temporary protective order be prepared to maintain confidentiality of this sensitive information during the confidential classification period while the material is in the possession of the Office of Public Counsel.

A detailed recommendation follows:

Detailed Recommendation

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents Numbered 03076-08 and 03688-08					
Audit Report	Commodity Prices Exhibit	5	All	Grant	Sensitive Contractual and Competitive Business Information
Audit Report	Commodity Prices Exhibit	6	All	Grant	Sensitive Contractual and Competitive Business Information
Documents Numbered 03075-08 and 03688-08					
45	Contractual Commodity Rates	1	All		Sensitive Contractual and Competitive Business Information
45-4	Natural Gas Prices and Quantities by Supplier	1-9	All	Grant	Sensitive Contractual and Competitive Business Information
45-5	Natural Gas Prices and Quantities by Supplier	1-3	All	Grant	Sensitive Contractual and Competitive Business Information
47-1	Natural Gas Prices and Quantities by Supplier	1	All	Grant	Sensitive Contractual and Competitive Business Information
47-2	Natural Gas Prices and Quantities by Supplier	1	All	Grant	Sensitive Contractual and Competitive Business Information
62-1	Contractual Commodity Rates	1	All	Grant	Sensitive Contractual and Competitive Business Information
62-2	Fuel hedging Strategy and Volume	1-4	All	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents Numbered 03075-08 and 03688-08					
62-3, Page 1	Fuel hedging Strategy and Volume	1	All	Grant	Sensitive Contractual and Competitive Business Information
62-3, Page 2	Fuel hedging Strategy and Volume	1	Entire Graph	Grant	Sensitive Contractual and Competitive Business Information
62-4	Fuel hedging Strategy and Volume	1-2	All	Grant	Sensitive Contractual and Competitive Business Information

A temporary copy of this recommendation will be held at I:03688-08 TECO 2007 hedging raf.doc for a short period.

CC: Division of Regulatory Compliance and Consumer Assistance (Welch)
Office of the Commission Clerk (Cole, Mclean)