

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 090001-EI
ORDER NO. PSC-09-0822-CFO-EI
ISSUED: December 15, 2009

ORDER GRANTING TAMPA ELECTRIC COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION AND
MOTION FOR A TEMPORARY PROTECTIVE ORDER
(DOCUMENT NO. 11050-09)

On November 2, 2009, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006(3), Florida Administrative Code (F.A.C.), Tampa Electric Company (TECO) filed a Request for Confidential Classification and Motion for Temporary Protective Order (the "Request") of certain information contained in Exhibit JTW-1 to the pre-filed direct testimony of TECO witness Joann T. Wehle (Document No. 11050-09). On December 7, 2009, TECO filed a Partial Withdrawal of the Request, removing two lines which were included in the original Request.¹ Both documents were filed in Docket No. 090001-EI.

Section 366.093(1), F.S., 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 Section 119.07(1) [the Public Records Act]." Section 366.093(3), F.S., 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. Paragraphs (3)(d), and (e) of Section 366.093 F.S., provide that proprietary confidential business information includes, but is not limited to "[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;" and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

TECO contends that certain highlighted information contained in Exhibit JTW-1 to the pre-filed direct testimony of witness Joann T. Wehle falls within these categories and, thus, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. Specifically, TECO requests that the entirety of Columns A, B, C and D, excepting the lines "Ocean – Coal" and "Ocean - Petcoke from Texas" be granted confidential classification and exemption from public disclosure. TECO states that the information in these Columns is intended to be and is treated by TECO as private and has not been publicly disclosed.

¹ In the original Request, TECO requested the lines "Ocean – Coal" and "Ocean - Petcoke from Texas" be granted confidential classification. The December 7, 2009, Partial Withdrawal removed these two lines from the Request, but reaffirmed all other portions of TECO's Request.

DOCUMENT NUMBER-DATE

11943 DEC 15 8

FPSC-COMMISSION CLERK

TECO specifically alleges exhibit JTW-1 to the testimony of witness Joann Wehle contains TECO's Waterborne Transportation Costs Disallowance from January through December, 2008. TECO further alleges disclosure of the information contained in Columns A – D of Exhibit JTW-1 would impair the efforts of TECO to contract for goods and services on favorable terms. TECO also avers disclosure of the information would harm the competitive interests of TECO's transportation supplier which could ultimately harm TECO and its customers. TECO states vigorous competition exists among suppliers of waterborne transportation services and therefore, any public disclosure of prices charged by TECO's transportation supplier would eliminate any negotiating leverage which the suppliers have in marketing their services to others, thereby weakening the supplier and perhaps its ability to continue meeting TECO's needs.

Ruling

Upon review, it appears the information contained in the entirety of Columns A, B, C and D, excepting the lines "Ocean – Coal" and "Ocean – Petcoke from Texas," satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. This information constitutes "[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;" and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Moreover, none of the documentation discussed herein contains information regarding the compensation of TECO executives. Thus, the information identified in Document No. 11050-09, as more fully described above, shall be granted confidential classification.

Section 366.093(4), F.S., provides that any finding by the Commission that records contain proprietary confidential business information shall be effective for a period not to exceed 18 months, absent good cause shown. Accordingly, the information identified in Document No. 11050-09 shall be granted confidential classification for a period of 18 months from the date of this Order.

Motion for Temporary Protective Order

TECO also seeks protection of the documents as provided in Section 366.093(2), F.S., and Rule 25-22.006(6), F.A.C., while the material is in the possession of the Office of Public Counsel (OPC). Section 366.093(2), F.S., directs that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by any party subject to the public records law as confidential and exempt from the public records law. Section 119.07(1), F.S. Rule 25-22.006(6), F.A.C., codifies the Commission's policy regarding the protection of confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006(6)(a), F.A.C., in pertinent part, states:

In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information

from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure.

In addition, Rule 25-22.006(6)(c), F.A.C., states that if a party allows OPC to inspect or take possession of utility information, then that "utility may request a temporary protective order exempting the information from section 119.07(1), F.S."

Upon consideration, TECO's Motion for Temporary Protective Order is granted. TECO has demonstrated that the material is proprietary confidential business information. Accordingly, this information will be protected from disclosure pursuant to Rule 25-22.006(6), F.A.C.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document No. 11050-09, specifically the entirety of Columns A, B, C and D, excepting the lines "Ocean - Coal" and "Ocean - Petcoke from Texas," is granted. It is further

ORDERED that the information in Document No. 11050-09 for which confidential classification has been granted shall remain protected from disclosure for a period of 18 months from the date 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. It is further

ORDERED that the Motion for Temporary Protective Order filed by Tampa Electric Company is granted.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 15th day of December, 2009.



NATHAN A. SKOP
Commissioner and Prehearing Officer

(S E A L)

LCB

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 Office of Commission Clerk, 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.