

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 120001-EI  
ORDER NO. PSC-12-0160-CFO-EI  
ISSUED: March 29, 2012

ORDER GRANTING TAMPA ELECTRIC COMPANY'S REQUEST FOR CONFIDENTIAL  
CLASSIFICATION AND MOTION FOR TEMPORARY PROTECTIVE ORDER  
(DOCUMENT NO. 08361-10 X-REF. DOCUMENT NO. 07982-10)

On October 6, 2010, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Tampa Electric Company (TECO) filed a request for confidential classification (Request) of certain information submitted by TECO pursuant to Audit Control No. 10-130-2-2 (the Audit). (Document No. 08361-10 x-ref. Document No. 07982-10). This Request was filed in Docket No. 100001-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 the designated portions of the information contained in its responses to the Audits, as more specifically described in the line-by-line/field-by-field justification attached as Exhibit A to the Request, fall 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. TECO states that this information is intended to be and is treated by TECO as private and has not been publicly disclosed.

TECO asserts that certain of the information contains specific details about fuel hedging volume, pricing, percentages and/or counterparties. According to TECO, this type of information on a commodity has been recognized by the Commission on numerous occasions to constitute proprietary confidential business information. TECO states that knowledge of this information would allow the opportunity for market manipulation through transactions made in anticipation of the company's entry into the market. TECO states that market manipulations based on knowledge of the confidential information would increase the price of fuel paid by

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TECO's customers as well as the price paid by the company to hedge the customers' price of fuel. TECO concludes that this is the specific type of information described in Section 366.093(3)(d) and (e), F.S. as being entitled to confidential protection from the Public Records Law.

TECO states that some of the information concerns the contract rates paid for coal. TECO states that the disclosure of this information would be harmful to competitive interest, and as such, the information is entitled to confidential treatment pursuant to Section 366.093(d) and (e), F.S.

TECO contends that portions of the information contain specific fuel hedging details. TECO asserts that the data for 2007 and 2008 can be used to calculate current commodity hedge pricing therefore the knowledge of this information would allow the opportunity for market manipulation through transactions made in anticipation of the company's entry into the market. TECO argues that this type of information on a commodity has been recognized the Commission on numerous occasions to constitute proprietary confidential business information and the knowledge of this information would increase the price of fuel paid by its customers as well as the price paid by the company to hedging the customers' price of fuel.

TECO asserts that some of the information contained in the Audit response includes TECO's extended credit limits for trading companies. TECO asserts that the disclosure of the counterparties and credit terms could cause other trading entities to modify existing or potential future terms of any agreements. TECO concludes that such public disclosure of the information would adversely affect the competitive interest of TECO and its ability to contract for goods and services on favorable terms. TECO concludes, therefore, that this information should be protected pursuant top Section 366.093(3)(d) and (e), F.S.

### **Time Period For Confidential Classification**

According to Section 366.093(4), F.S., confidential classification may only extend for 18 months from the issuance of an Order granting confidential classification unless "the Commission finds, for good cause, that the protection from disclosure shall be for a specified longer period." TECO has not requested a period longer than the 18 months.

### **Ruling**

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. The 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;" or "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Thus, the information identified in Document No. 08361-10 x-ref. Document No. 07982-10 shall be granted confidential classification.

Pursuant to Section 366.093(4), F.S., 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), F.S., unless TECO 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 Commissioner Eduardo E. Balbis, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document No. 08361-10 x-ref. Document No. 07982-10 is granted. It is further

ORDERED that the information in Document No. 08361-10 x-ref. Document No. 07982-10 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 will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 29<sup>th</sup> day of March, 2012.



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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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 25-22.0376, 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.