

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Tampa  
Electric Company.

DOCKET NO. 130040-EI  
ORDER NO. PSC-13-0394-CFO-EI  
ISSUED: August 27, 2013

ORDER GRANTING TAMPA ELECTRIC COMPANY'S  
REQUEST FOR CONFIDENTIAL CLASSIFICATION AND MOTION  
FOR TEMPORARY PROTECTIVE ORDER (DOCUMENT NOS.  
02520-13, 02522-13, 02537-13, 03035-13 AND 03856-13)

On May 6, 2013, 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 of its responses to the Office of Public Counsel's (OPC) First Set of Interrogatories, Nos. 7, 11, and 14 (Document No. 02520-13). On May 6, 2013, TECO also filed a request for confidential classification of its responses to OPC's First Request for Production of Documents, Nos. 1, 3, 10, 11, and 12, (Document No. 02522-13). On May 7, 2013, TECO filed pages that were inadvertently omitted from TECO's responses to OPC's First Set of Interrogatories, Nos. 7 and 11 and OPC's First Set of Production of Documents, No. 3 (Document No. 02537-13). On June 3, 2013, TECO filed a revised response to OPC's First Request for Production of Documents, No. 3 (Document 03035-13). On July 8, 2013, TECO filed a second revision to OPC's First Request for Production of Documents, No. 3 (Document No. 03856-13).

Request for Confidential Classification

Section 366.093(1), F.S., provides that records that the Commission has found to contain proprietary confidential business information shall be kept confidential and shall be exempt from Chapter 119, F.S. 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. Sections 366.093(3)(a), (d) and (e), F.S., provide that proprietary confidential business information includes, but is not limited to:

- (a) Trade secrets.
- (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 interests, the disclosure of which would impair the competitive business of the provider of the information.

Pursuant to Section 366.093, F.S., and Rule 25-22.006(4)(c), F.A.C., the utility has the burden of demonstrating that materials qualify for confidential classification. The utility must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which would impair or harm the competitive business of the utility or the provider of the information.

TECO contends that information contained in its responses to OPC's First Set of Interrogatories, Nos. 7, 11, and 14 (Document No. 02520-13), portions of its responses to OPC's First Production of Documents Request, Nos. 1, 3, 10, 11, and 12 (Document No. 02522-13), supplemental responses to OPC's First Set of Interrogatories, Nos. 7 and 11 (Document No. 02537-13), and two revisions to OPC's First Request for Production of Documents, No. 3 (Document Nos. 03035-13 and 03856-13), as specifically detailed in Attachment A, fall within these categories and, thus, constitute 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.

Specifically with regard to Document No. 02520-13, TECO claims that its answer to OPC's First Set of Interrogatories, No. 7, contains TECO's proprietary financial incentive goals and benchmarks with regard to TECO's union labor force, the disclosure of which could adversely impact its ability to negotiate future labor agreements at the lowest cost. TECO further contends that the answers to OPC's First Set of Interrogatories, Nos. 11 and 14, contain sensitive benefit and pension plan information associated with TECO's union labor force, the disclosure of which could impact TECO's ability to attract new union employees and retain existing union employees.

Specifically with regard to Document No. 02522-13, TECO claims that portions of its answer to OPC's First Request for Production of Documents, No. 1, contain TECO's tax obligations and tax positions regarding timing differences and deductions. TECO states that the responses to OPC's First Request for Production of Documents, No. 3, contain specific customer account information which, if disclosed, could adversely affect the competitive interests of those customers and their ability to contract for goods and services on favorable terms. Further, information contained in its response to OPC's First Request for Production of Documents, No. 3, reference the contractual proprietary work product of TECO's consultant, Moody's Analytics (Moody's), which is a trade secret, the disclosure of which would diminish the demand for Moody's proprietary work product. Information responsive to OPC's First Request for Production of Documents, Nos. 3 and 10, also contains proprietary compensation agreements and incentive plans for TECO's employees, the disclosure of which would impair its ability to negotiate future labor agreements on favorable terms. Finally, information responsive to OPC's First Request for Production of Documents, Nos. 11 and 12, contains the proprietary work product of TECO's actuary, Mercer, which is a trade secret, the disclosure of which would decrease the demand for Mercer's proprietary work product. For these reasons, TECO asserts that disclosure of the information listed above would be harmful to its own competitive interests, its customers, and the competitive interests of Moody's and Mercer.

Document No. 02537-13 contains information which supplements TECO's responses to OPC's First Request for Production of Documents, No. 3, contained in Document No. 02522-13 and OPC's First Set of Interrogatories, Nos. 7 and 11, contained in Document No. 02520-13. Document Nos. 03035-13 and 03856-13 contain revisions to OPC's First Request for Production of Documents No. 3, Bates stamp page 5873. TECO asserts the same rationales for confidentiality for these supplemental and revised documents as it originally stated in its May 6, 2013, filings discussed above.

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3)(a), (d), and (e), F.S., for classification as proprietary confidential business information. The information at issue concerns trade secrets, bids or other contractual data, the disclosure of which would impair the efforts of TECO or its affiliates to contract for goods and services on favorable terms, and information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information. Thus, the information contained in Document Nos. 02520-13, 02522-13, 02537-13, 03035-13, and 03856-13, as more specifically described in Attachment A, 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.

#### 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 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 of TECO's assertions of the confidential nature of the information contained in TECO's responses to OPC's First Set of Interrogatories, Nos. 7, 11, and 14 (Document No. 02520-13); First Request for Production of Documents, Nos. 1, 3, 10, 11, and 12 (Document No. 02522-13), supplemental responses to this discovery provided in Document No. 02537-13, and revisions to OPC's First Request for Production of Documents, No.3 (Document Nos. 03035-13 and 03856-13), as described in Attachment A, TECO's Motion for Temporary Protective Order of these materials is hereby granted. As a result, this information shall be protected from disclosure pursuant to Rule 25-22.006(6)(c), F.A.C.

Based on the foregoing, it is

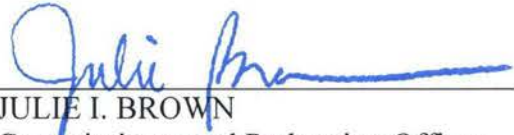
ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that Tampa Electric Company's Requests for Confidential Classification of Document Nos. 02520-13, 02522-13, 02537-13, 03035-13, and 03856-13, as detailed in Attachment A, are granted as set forth herein. It is further

ORDERED that the information in Document Nos. 02520-13, 02522-13, 02537-13, 03035-13 and 03856-13 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. It is further

ORDERED that the Motions for Temporary Protective Order filed by Tampa Electric Company are granted.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 27th day of August, 2013.



JULIE I. BROWN

Commissioner and Prehearing Officer  
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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.

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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; 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.

## Attachment A

<b>DOCUMENT NO.</b>	<b>RESPONSES</b>	<b>BATES PAGE NOS.</b>
<b>02520-13</b>	Response to OPC's First Set of Interrogatories, No. 7	19
	Response to OPC's First Set of Interrogatories, No. 11	27
	Response to OPC's First Set of Interrogatories, No. 14	32-49
<b>02522-13</b>	Response to OPC's First Request for Production of Documents, No. 1	1660-85
	Response to OPC's First Request for Production of Documents, No.3	5816, 5835, 5847, 5873-5874
	Response to OPC's First Request for Production of Documents, No. 10	7633-7668
	Response to OPC's First Request for Production of Documents, No. 11	7674-7774
	Response to OPC's First Request for Production of Documents, No. 12	7776-7797
<b>02537-13</b>	Revision to response to OPC's First Set of Interrogatories, No. 7	19
	Revision to response to OPC's First Set of Interrogatories, No.11	27
	Revision to response to OPC's First Request for Production of Documents, No.3	5816, 5835, 5847
<b>03035-13</b>	Revision to response to OPC's First Request for Production of Documents, No.3	5873
<b>03856-13</b>	Revision to response to OPC's First Request for Production of Documents, No.3	5873