BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.	DOCKET NO. 140001-EI ORDER NO. PSC-14-0164-CFO-EI ISSUED: April 8, 2014

ORDER GRANTING TAMPA ELECTRIC COMPANY'S REQUEST FOR CONFIDENTIAL CLASSIFICATION AND MOTION FOR TEMPORARY PROTECTIVE ORDER OF ITS FORM 423 REPORT (DOCUMENT NO. 07467-13)

On December 16, 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 Specified Confidential Treatment and Motion for Temporary Protective Order (Request) of portions of its Form 423 Fuel Report for October 2013 (Report) (Document No. 07467-13). This request was filed in Docket 130001-EI.

Request for Confidential Classification

TECO contends that designated portions of the information contained in its 423 Report for October 2013, as more specifically described in Exhibit A attached to its Request, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. Exhibit A attached to TECO's Request contains a detailed matrix providing justification and support for confidential classification of the information in each section of the 423 Reports (Forms 423-1A, 2, 2A, and 2B) on a line-by-line, column-by-column basis. TECO asserts that this information is intended to be and is treated by TECO as private and has not been publicly disclosed.

TECO requests confidential classification for this information for a period of two years. According to Section 366.093(4), F.S., confidential classification may only extend for up to 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 requests that the information be treated as confidential for a period of two years from the date the information is classified confidential. TECO separately addresses the need for extending the 18 month period for fuel oil contract data, coal, and coal transportation data as follows.

TECO seeks protection of the fuel oil contract data and the coal and coal transportation contract information specified in Exhibit A attached to its Request for a minimum period of two years. TECO contends that the need for two or more years of confidentiality is vital not only to TECO and its ratepayers, but to the vendors of coal and coal transportation services as well.

As specified in Exhibit B attached to its Request, TECO first argues that its ability to negotiate future contracts for No. 2 and No. 6 fuel oil would reasonably likely be impaired if the pricing information in the documents identified in Exhibit A attached to its Request were

disclosed during the contract period or prior to the negotiation of a new contract. TECO explains that it typically renegotiates its No. 2 and No. 6 fuel oil contracts and fuel related services contracts prior to the end of such contracts. On occasion, TECO asserts, some contracts are renegotiated after the end of the current contract period. In this situation, renegotiations are normally completed within six months. TECO contends that it is necessary to maintain the confidentiality of the information identified as confidential on Form 423-l(a) for six months after the end of the individual contract period the information relates to. TECO states that its No. 2 contract was renegotiated effective October 1, 1990, and its No. 6 contract was renegotiated effective September 1, 1990.

TECO explains that bidders for the sale of coal will always seek to optimize their profit margin, thus, full knowledge of the prices paid by the utility for coal enables the bidder to increase the price bid and thereby optimize the bid from the viewpoint of the seller and to the detriment of the ratepayer. TECO asserts that the disclosure of information on prices paid within the last two years will increase the price TECO will be required to pay for coal and will be detrimental to ratepayers.

TECO also explains that recent bids it received contained a $4.17 per ton spread between the bids and the low bid, undoubtedly, would have been higher with full knowledge of prices paid by TECO. TECO asserts that bidders will always seek to optimize their profits by submitting bids that are as high as the market will bear. TECO argues that, if market data is disclosed, which discourages suppliers from bidding competitively, the suppliers will increase their bids to the level of past payments to other suppliers by the buyer.

TECO further asserts that the disclosure of rail transportation rates will result in demands by shippers to lower any rates which are above the disclosed rates. It argues that the effect of disclosure will be to increase the lower rate as the transportation provided will seek to protect the rates charged on other routes. TECO avers that the delay of this disclosure for two years will be of direct benefit to ratepayers by delaying any increases that might occur as a result of such disclosure.

TECO maintains that Gatliff Coal and TECO Transport & Trade sell coal and bulk commodity transportation services in the open non-regulated marketplace. It asserts that the prices at which their goods and services are sold are not publicly disclosed anywhere by publication or voluntary dissemination because it would materially lessen their competitive posture with customers other than TECO. TECO also maintains that outside customers who negotiate for coal or coal transportation services are placed at a competitive advantage for these goods or services if they know the cost of the goods or services.

TECO contends that, if the information is not deemed confidential, an analyst for an outside customer of Gatliff or TECO Transport who reads the written transcripts of public fuel hearings or reads the written orders of the Florida Public Service Commission (Commission) can easily discover the payments that TECO makes to Gatliff for coal and to TECO Transport for transportation. TECO asserts that as long as an outside customer does not know how an escalation clause in TECO's agreements with its suppliers change price, the cost cannot be

calculated. TECO argues that publicizing the price of coal or coal transportation services will tell an outside customer how much the escalation has been and make it easy for him to calculate cost and that, due to seasonality of costs in both businesses, a full year's cost data is necessary for an accurate cost measurement. TECO further argues that a second year must pass before one full year can be compared with a second year to measure the escalation accurately, thus, a perceptive vendor seeks two years of data to make his cost estimates. However, TECO asserts, the competitive industries recognize that data beyond two years is not helpful to them, as enough factors may change in that time frame for costs to be much different from what was incurred. Any date less than two full years old is extremely valuable to outside customers in contracting for services with Gatliff or TECO Transport. The difference of small amounts per ton can mean millions of dollars' difference in cost.

Finally, TECO argues, a loss of outside business by Gatliff or TECO Transport will affect not only Gatliff or TECO Transport, but if large enough, it could affect the credibility of the companies. TECO avers that the prices negotiated with TECO by these vendors took into consideration their costs and revenues at the time of negotiation, including the revenues from outside customers, thus, a significant loss of outside business could cause Gatliff or TECO Transport to fail, since under market pricing regulation TECO will not make up the difference to them in cost. TECO asserts that a failure of these vendors would leave TECO and its customers with only higher cost alternatives for Blue Gem coal and for coal transportation to Tampa, a higher cost that would be paid by TECO's ratepayers and that the continued credibility of Gatliff and TECO Transport is important to protect TECO's ratepayers from higher cost alternatives.

Ruling

Section 366.093(1), F.S., provides that records the Commission has found to contain proprietary 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. Section 366.093(3)(d), F.S., provides that 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.

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3)(d), F.S., for classification as proprietary confidential business information. The information described above and in Exhibit A, attached to TECO's Request, appears to be 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. This information reveals invoice prices, transportation charges, and coal prices. The public disclosure of any of this information could reduce TECO's competitiveness in the marketplace. This, in turn, could result in higher prices for transportation and coal. Therefore, the information

contained in Document No. 07467-13, as more specifically described in TECO's Form 423 Fuel Reports for October 2013, 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. TECO appears to have provided sufficient information concerning the harm which could arise from not protecting this information for a minimum of two years. Accordingly, the information identified in Document No. 07467-13, shall be granted confidential classification for a period of 24 months from the issuance 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 of TECO's assertions of the confidential nature of the information contained in portions of its Form 423 Fuel Report for October 2013, Document No. 07467-13, TECO's Motion for Temporary Protective Order is hereby granted. As a result, this information shall be protected from disclosure pursuant to Rule 25-22.006(6), 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 treatment of portions of Document No. 07467-13 is granted, as set forth herein. It is further

ORDERED that the coal and coal transportation data referenced in Document No. 07467-13 shall be granted confidential classification for a period of two years from the date of the issuance of this Order. It is further

ORDERED that the fuel oil contract data referenced in Document No. 07467-13 shall be granted confidential classification for a period of two years from the date of the 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. It is further

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

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 8th day of April, 2014.

JULIE I. BROWN
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

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

JEG

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.