

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20200001-EI
ORDER NO. PSC-2020-0428-CFO-EI
ISSUED: November 9, 2020

ORDER GRANTING TAMPA ELECTRIC COMPANY'S REQUEST FOR
SPECIFIED CONFIDENTIAL TREATMENT AND MOTION FOR
TEMPORARY PROTECTIVE ORDER (DOCUMENT NO. 02321-2020)

On January 31, 2020, 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 Reports for the month of December, 2019 (Document No. 02321-2020).

Request for Confidential Classification

TECO contends that designated portions of the information contained in its 423 Report for the month of November 2019, as more specifically described in the attachment to its Request, constitute proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. The Exhibit 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 423-2, 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 seeks protection of the information contained in the 423 Reports for a period of two years. TECO contends that the need for two years of confidentiality is vital not only to TECO and its ratepayers, but to the vendors of coal and coal transportation services as well.

TECO alleges disclosure of the effective purchase price "would impair the efforts of Tampa Electric to contract for goods or services on favorable terms" and should be protected under Subsection 366.093(3)(d), F.S. Additionally, disclosing the purchase price would enable one to ascertain the total transportation charges by subtracting the effective price from the delivered price at the transfer facility. Any competitor with knowledge of the total transportation charges would be able to use that information in conjunction with the published delivered price at the United Bulk Terminal Transfer Facility to determine the segmented transportation costs. The disclosure of the segmented transportation costs would have a direct impact on TECO's future fuel and transportation contracts by informing potential bidders of current prices paid for services provided.

TECO also contends disclosure of the rail rate per ton would adversely affect its ability to negotiate favorable rail rates. Disclosure of the rail rates paid would effectively eliminate any negotiating leverage and could lead to higher rail rates. This would work to the ultimate

detriment of TECO and its customers. Accordingly, TECO argues disclosure of this information "would impair the efforts of TECO to contract for goods or services on favorable terms" and should be protected by Subsection 366.093(3)(d), F.S.

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.

Ruling

Subsection 366.093(1), F.S., provides that the records the Commission has found to contain proprietary confidential business information shall be kept confidential and shall be exempt from Subsection 119.07(1) F.S. Subsection 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. Subsection 366.093(3), 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.

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

Upon review, it appears the information and data provided in this request satisfies the criteria set forth in Subsection 366.093(3), F.S., for classification as proprietary confidential business information. The transportation pricing data for coal 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" and "information 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. 02321-2020 shall be granted confidential classification.

Pursuant to Subsection 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 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. 02321-2020, shall be granted confidential classification for a period of two years from the issuance of this Order.

Motion for Temporary Protective Order

TECO also seeks protection of the documents as provided in Subsection 366.093(2), F.S., and Rule 25-22.006(6), F.A.C. Subsection 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. Subsection 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.

Upon consideration of TECO's assertions of the confidential nature of the information contained in portions of the 423 Reports, Document No. 02321-2020, 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 hereby

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document No. 02321-2020 is granted, as set forth herein. It is further

ORDERED that Tampa Electric Company's Motion for Temporary Protective Order of the information in Document No. 02321-2020 is granted. It is further

ORDERED that the information in Document No. 02321-2020, for which confidential classification is granted, shall remain protected from disclosure for a period of two years 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 Andrew Giles Fay, as Prehearing Officer, this 9th day of November, 2020.



ANDREW GILES FAY
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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.

SBr

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.