

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power) DOCKET NO. 940001-EI
Cost Recovery Factor and) ORDER NO. PSC-94-0129-CFO-EI
Generating Performance Incentive) ISSUED: February 3, 1994
Factor.)
_____)

ORDER GRANTING REQUEST FOR CONFIDENTIAL TREATMENT
BY TAMPA ELECTRIC COMPANY

BY THE COMMISSION:

Tampa Electric Company (Tampa Electric or TECO) filed a request for confidential treatment of portions of the exhibit of Mr. William N. Cantrell. The confidential material is found in Document No. 7225-93. Specifically, TECO requests confidential treatment of the highlighted information of certain documents contained in Mr. Cantrell's Exhibit____(WNC-1), Document No. 1, Page 2 of 2.

Tampa Electric asserts that the material for which classification is sought is intended to be and is treated by Tampa Electric and its affiliates as confidential private information and has not been disclosed.

Florida law provides, in Section 119.01, Florida Statutes, that documents submitted to governmental agencies shall be public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This law derives from the concept that government should operate in the "sunshine." In the instant matter, the value that all parties would receive by examining and using the information contained in testimony and exhibits must be weighed against the legitimate concerns of TECO regarding disclosure of business information which it considers proprietary. It is my view that parties must meet a very high burden when requesting confidential classification of documents.

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, TECO has the burden to show that the material submitted is qualified for confidential classification. Rule 25-22.006, Florida Administrative Code, provides that the company may fulfill its burden by demonstrating the information falls under one of the statutory examples set out in Section 366.093, Florida Statutes, or by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the company or its ratepayers harm.

DOCUMENT NUMBER-DATE

01104 FEB-3

FPSC-RECORDS/REPORTING

To establish that material is proprietary confidential business information under Section 366.093(3)(d), Florida Statutes, a utility must demonstrate (1) that the information is contractual data, and (2) that the disclosure of the data would impair the efforts of the utility to contract for goods or services on favorable terms. Likewise, Section 366.093(3), Florida Statutes, provides that a utility must demonstrate that (1) the information relates to competitive interests and (2) the disclosure of the data would impair the efforts of the utility to contract for goods or services on favorable terms. The Commission has previously recognized that this latter requirement does not necessitate the showing of actual impairment or the more demanding standard of actual adverse results; instead, it must simply be shown that disclosure is "reasonably likely" to impair the company's contracting for goods or services on favorable terms.

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Tampa Electric asserts that the total price and the weighted average per ton water transportation price from all Tampa Electric coal sources shown on line 1 are entitled to confidential classification under Section 366.093(3)(d) and (e), Florida Statutes. Disclosure of this information would impair its efforts to contract for goods and services on favorable terms. In addition, it would harm the competitive interests of Tampa Electric's transportation affiliates and thereby ultimately harm Tampa Electric and its customers. TECO also argues that the prices shown on line 1 can be used with other publicly available data to determine the segmented transportation prices for river barge transportation services as well as ocean barge transportation services. TECO adds that vigorous competition exists among suppliers of these transportation services, and any public disclosure of prices charged by its affiliates would eliminate any negotiating leverage which the affiliates have in marketing their services to others.

The market for bulk commodity transportation is very competitive. Aside from the coal transportation services performed for Tampa Electric, the TECO Transport and Trade affiliates currently transport coal and other bulk commodities for other customers as well. The affiliates anticipate that additional markets for coal will soon develop in Florida for both industrial and electric power generation purposes and hope to capture a portion of the transportation demand created by those competitive markets.

TECO maintains that its transportation affiliates are not engaged solely in the one-way transportation of coal, however. Mid-South Towing Company provides, both upstream and downstream transportation services for other bulk commodities, including grain and phosphate products. Electro-Coal Transfer Corporation is involved in the direct vessel-to-vessel transfer of grain and other bulk commodities in addition to the transfer of coal and coke on diverse routes, including phosphates from Florida to New Orleans, and grain from New Orleans to international markets.

TECO asserts that as commercial enterprises, the affiliates face significant competition for each of the other transportation, transfer and storage services that they perform. Operators on the inland waterways include approximately 2,000 individual carriers. In size these carriers range from operators of single towboats to those operating large fleets of vessels and barges. Only a very small percentage of inland waterway traffic is subject to regulation. Exempt carriers are not required to publish revenues, operating data rates or financial information.

With reference to the river transportation of coal and other bulk commodities, Mid-South Towing Company's principal competitors include, among others: the Ohio River Company; American Commercial Barge Line Company; Dravo Mechling Corporation; and the Valley Line Company. Mid-South Towing also faces internodal competition from the railroads.

TECO also states that Electro-Coal Transfer Corporation competes with others for the performance of transfer and storage services. Electro-Coal's principal competitors with both shoreside transfer and ground storage capabilities are International Marine Terminal, Burnside Terminals, Inc., and New Orleans Bulk Terminal. A portion of the transfer market is also served by companies whose operations are mid-stream in the Mississippi river. Principal among these is Cooper-Smith Company.

Finally, TECO adds, Gulfcoast Transit Company competes with many other companies to provide ocean-going tug and barge transportation service. Principal among those competitors are Dixie Carriers, Inc., Sheridan Towing Company, Red Circle Transport Company, and Beker Industries, Inc.

TECO asserts that disclosing the amounts charged by these affiliates to Tampa Electric would permit the affiliates' other customers, who may be paying higher prices for similar services, to bargain for more favorable terms from the affiliates.

Tampa Electric also argues that the total and per ton prices shown on line 1 are also entitled to confidential protection because of the short period of time which has transpired since Tampa Electric converted from a cost-based transportation arrangement to a market-based approach. TECO asserts that disclosure of the market-based price would enable a competitor to more closely approximate the transportation affiliates' cost-based rates under the old arrangement and that over time this effect will lessen. However, TECO maintains that the recent conversion necessitates protecting this information from public disclosure.

TECO states that the (over/under) benchmark shown on line 3 requires confidential protection for the same reasons as the total price and weighted average per ton water transportation price shown on line 1, because the information on line 3 is an arithmetic function of lines 1 and 2. Further, disclosure of the amount on line 3 would enable competitors to determine the value of line 1. Therefore, the figure on line 3 is entitled to confidential protection for the same reasons as the amounts shown on line 1.

Also, TECO argues that the total transportation cost, which is shown on line 5 and in the description of the line 1 amount, is entitled to confidential protection because it, too, is an arithmetic function of the total tons transported shown in line 4 and the weighted average water transportation price shown in line 1. Therefore, the total transportation cost is entitled to confidential protection for the same reasons referred to above with respect to the line 1 amount.

Also, the total cost (over/under) benchmark amount shown on line 7 is also an arithmetic function of the preceding lines which can be used to calculate the weighted average water transportation cost shown on line 1. Therefore, TECO asserts, that line 7 amount is entitled to confidential protection for the same reasons cited above with respect to the amount shown on line 1.

TECO also maintains that the prior years' cumulative benefit shown on line 8 is, likewise, entitled to confidential protection. This number is an arithmetic function of the prior years' weighted average price for transportation services and its disclosure would enable a competitor to determine that weighted average price from the total tons transported.

In addition, TECO adds, the net benefit for 1988-1990 shown on line 9 is, likewise, entitled to confidential protection. This number is an arithmetic calculation of lines 7 and 8, disclosure of which would allow a competitor to calculate those amounts.

Therefore, line 9 is entitled to confidential protection for the same reasons as the amounts on lines 7 and 8.

Based on the foregoing discussion, I agree with the position of Tampa Electric that the information on the specified lines of Document No. 1, page 2 of 2 is proprietary confidential business information and as such shall be treated as confidential.

DECLASSIFICATION

TECO further requests the following proposed declassification date:

<u>DOCUMENT NO.</u>	<u>LINE NO.</u>	<u>DATE</u>
Document No. 1 (Page 2 of 2)	1,3,5,7,8,9	July 30, 1995

Prior to October 1, 1989, Section 366.093, Florida Statutes, governing the confidential treatment of utility records, was silent as to the period of time for which a finding of confidentiality was effective. Rule 25-22.006(4)(a), Florida Administrative Code, simply provided that the justification shall include a date after which the material is no longer proprietary confidential business information or a statement that such a date cannot be determined and the reasons therefore. Effective October 1, 1989, subsection 366.093(4), Florida Statutes, was enacted to provide that:

[a]ny finding by the commission that records contain proprietary confidential business information is effective for a period set by the commission not to exceed 18 months, unless the commission finds, for good cause, that the protection from disclosure shall be for a specified longer period.

As to the coal and coal transportation information contained in DN-7225-93, TECO explains that the disclosure of that information before the passage of two years could affect the viability of its affiliates which provide those services to TECO and to outside non-regulated customers, which in turn could affect the price TECO ultimately pays for those services. TECO further explains this potential effect as follows:

An analyst for an outside customer of TECO Transport who reads the written transcripts of public fuel hearings or reads the written orders of the FPSC can easily discover that until November 1, 1988, Tampa Electric paid cost for

coal transportation from TECO Transport. Further, the publication of the stipulation agreement between the parties in 1988 indicated that the initial benchmark price was close to cost and subsequent testimony indicates the revised contract escalates from cost.

As long as an outside customer does not know how such an escalation clause changes price, the cost cannot be calculated. However, 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. Because of the seasonality of costs in both businesses, a full year's cost data is necessary for an accurate cost measurement.

A second year must pass before one full year can be compared with a second year to measure the escalation accurately. So a perceptive vendor seeks two years of data to make his cost estimates. 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 data 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.

A loss of outside business by TECO Transport will affect not only TECO Transport, but, if large enough, it could affect the credibility of the company. The prices negotiated with Tampa Electric by this vendor took into consideration its costs and revenues at the time of negotiation, including the revenues from outside customers. A significant loss of outside business could cause TECO Transport to fail, since under market pricing regulation Tampa Electric will not make up the difference to them in cost. In turn, a failure of this vendor would leave Tampa Electric and its customers with only higher cost alternatives for coal transportation to Tampa, a higher cost that would be paid by Tampa Electric's ratepayers. So the continued credibility of TECO Transport is important to protect Tampa Electric's ratepayers from higher cost alternatives.

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I find that TECO has shown good cause for an extended period of classification. The material in DN-7225-93 as discussed above, will remain classified until two years from the date of the request for classification.

In consideration of the foregoing, it is

ORDERED by Chairman J. Terry Deason, as Prehearing Officer, that Tampa Electric Company's request for confidential treatment of the above specified proprietary confidential business information found in Document No. 7225-93 is granted as discussed within the body of this Order. It is further

ORDERED that Tampa Electric Company's request for the declassification date included in the text of this Order is granted.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer, this 3rd day of February, 1994.


J. TERRY DEASON, Chairman and
Prehearing Officer

(S E A L)
DLC: bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial

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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 Director, Division of Records and Reporting, 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.