

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 160001-EI
ORDER NO. PSC-16-0375-CFO-EI
ISSUED: September 16, 2016

ORDER GRANTING TAMPA ELECTRIC COMPANY'S REQUEST FOR CONFIDENTIAL
CLASSIFICATION AND MOTION FOR PROTECTIVE ORDER
(DOCUMENT NO. 02603-16)

On April 29, 2016, 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 the months of December 2015, January 2016, and February 2016 (Report) (Document No. 02603-16). This request was filed in Docket 140001-EI.

Request for Confidential Classification

TECO contends that designated portions of the information contained in its 423 Report for December 2015, January 2016, and February 2016, 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 423-2, 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 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. TECO alleges that 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 which 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 contends that disclosure of this information would impair the efforts of TECO to contract for goods and services on favorable terms and is protected by Section 366.093(3)(d), F.S.

Ruling

Section 366.093(1), F.S., provides that records the Florida Public Service Commission (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.

(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 that the information described above satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. The information constitutes "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 "[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. 02603-16 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 up to 18 months from the date of issuance of this Order. Accordingly, the information identified in Document No. 02603-16 shall be granted confidential classification for a period of 18 months from the 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. 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.

Upon consideration of TECO's assertions of the confidential nature of portions of its Form 423 Fuel Report for the months of December 2015, January 2016, and February 2016, Document No. 02603-16, 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 Art Graham, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document No. 02603-16 is granted. It is further

ORDERED that Tampa Electric Company's Motion for Temporary Protective Order of the information in Document No. 02603-16 is granted. It is further

ORDERED that the information referenced in Document No. 02603-16 shall be granted confidential classification for a period of 18 months 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.

By ORDER of Commissioner Art Graham, as Prehearing Officer, this 16th day of September, 2016.


ART GRAHAM
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.

WDT

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.