

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-16-0487-CFO-EI
ISSUED: October 25, 2016

ORDER GRANTING TAMPA ELECTRIC COMPANY'S REQUEST FOR CONFIDENTIAL
CLASSIFICATION AND MOTION FOR TEMPORARY PROTECTIVE ORDER
(DOCUMENT NO. 06818-16)

On August 18, 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 Confidential Classification and Motion for Temporary Protective Order (Request) of certain information provided in TECO's Fuel Hedging Activity Report (Report), identified as Exhibit JBC-3, attached to the direct testimony of J. Brent Caldwell (Document No. 06818-16). This request was filed in Docket 160001-EI.

Request for Confidential Classification

TECO contends that designated portions of the information contained in its Report, as more specifically described in Exhibit A of 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 the justification and support for confidential classification of the information. 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 hedged fuel prices and hedged volumes of natural gas and hedging volume percentages information specified in Exhibit A of its Request for a minimum period of three years. TECO contends that the need for three or more years of confidentiality is essential to prevent potential suppliers and competitors from accessing information that could be used to the competitive disadvantage of TECO, which would increase the fuel and purchased power costs borne by TECO's customers.

TECO alleges disclosure of the aforementioned information "would be harmful to [TECO's] ability to contract for goods and services on favorable terms and, likewise, the disclosure of which would be harmful to competitive interests of [TECO]" and should be protected under Sections 366.093(3)(d) and 366.093(3)(e), F.S.

Ruling

Section 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 Section 119.07(1) 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), 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 above-referenced information satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. The information described above 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. 06818-16 shall be granted confidential classification.

Pursuant 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 appears to have provided sufficient information concerning the harm which could arise from not protecting this information for a minimum of three years. Accordingly, the information identified in Document No. 06818-16, shall be granted confidential classification for a period of three years 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. 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 the designated portions of the information contained in its Report, Document No. 06818-16, 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 hereby

ORDERED by Commissioner Art Graham, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document No. 06818-16 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. 06818-16 is granted. It is further

ORDERED that the information in Document No. 06818-16, for which confidential classification is granted, shall remain protected from disclosure for a period of up to three 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 Art Graham, as Prehearing Officer, this 25th day of October, 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.

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.