

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power)	DOCKET NO. 900001-EI
Cost Recovery Clause and)	ORDER NO. 23469
Generating Performance Incentive))	ISSUED: 9-11-90
Factor.)	
_____)	

FINAL ORDER ON TECO'S PROTEST TO ORDER NO. 22596

On February 26, 1990, Tampa Electric Company (TECO) received an adverse tentative ruling in Commission Order No. 22596 on the company's request for specific confidential treatment of portions of the Company's 423 Forms for the month of November, 1989 relating to fuel and transportation contracts. On March 12, 1990, TECO protested that tentative ruling on requested hearing. On August 17, 1990, CSX Transportation, Inc., moved to intervene in support of TECO's request for specified confidential treatment and for reconsideration of Order No. 22596. The Commission included the issue in its fuel adjustment docket scheduled for hearing in August 22, 1990. At hearing, CSX's motions to intervene and for reconsideration were granted and TECO's protest was heard.

TECO argues that the rates it pays its affiliate, Gatliff, for coal are entitled to confidential treatment because disclosure would harm such affiliates' negotiations with third parties made aware of prices paid by TECO to Gatliff. Such disclosure, TECO continues, would result in increased coal costs to TECO for which the ratepayer is ultimately is liable. We agree.

CSX argued that the rail rates for the transportation of coal from Gatliff in eastern Kentucky to Gannon Station in Tampa have been accorded confidential treatment pursuant to the Staggers Rail Act of 1980 which permits rail carriers to enter into confidential transportation rate contracts with purchasers of rail service, 49 U.S.C. Section 10713. By forcing TECO to publicly disclose such rail rates from Gatliff to Gannon, CSX argues, the Commission would be acting in a manner inconsistent with the mandate of the Staggers Rail Act. We agree.

Subsequent to the adverse ruling on the November, 1989 Forms TECO has been submitting monthly filings of its Forms 423. These monthly filings contain justifications identical to those contained in TECO's November, 1989, request. On May 31, 1990, TECO moved to defer rulings on the subsequent filings pending the outcome of the protest. In support of its motion, TECO stated that because any

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tentative ruling regarding these subsequent filings would presumably be similar to the tentative ruling which is the subject of TECO's protest and request for hearing, TECO would consent to a deferral of any further rulings pending the outcome of the disposition of the Company's protest to its November 1989 request. TECO stated that the above procedure will save time and avoid expense for all affected persons. On June 12, 1990, the Commission issued an order deferring ruling on TECO's subsequent filings pending the outcome of their protest. TO date, TECO has filed requests for specified confidential treatment of portions of its 423 Forms through June, 1990.

TECO further argued that the identified information be afforded confidential treatment for 2 years from the date of the filing of the protest, March 12, 1990, to the Commission ruling on its November 1989 request. A lesser period, TECO argues, would result in harm to TECO's fuel and transportation affiliates and ultimately TECO's ratepayers. We agree.


In consideration of the foregoing, it is

ORDERED that the information contained in Form 423-1(a), relating to Gatliff coal is entitled to confidential treatment. It is further

ORDERED that information relating to rail rates paid by TECO to CSX are entitled to confidential treatment. It is further

ORDERED that the information discussed in the text of this order is entitled to confidential treatment until March 12, 1992.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this ~~11th~~ day of SEPTEMBER, 1990.



BETTY EASLEY, Commissioner
and Prehearing Officer

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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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.