

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 100001-EI
ORDER NO. PSC-10-0065-CFO-EI
ISSUED: January 28, 2010

ORDER GRANTING TAMPA ELECTRIC COMPANY'S
AMENDED REQUEST FOR CONFIDENTIAL CLASSIFICATION AND
MOTION FOR PROTECTIVE ORDER (DOCUMENT NO. 00660-09
(X-REF. DOCUMENT NOS. 02651-08, 02652-08, AND 02666-08))

On April 25, 2008, pursuant to Section 366.093(3), 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 for certain information contained in documents related to TECO's Fuel Adjustment Clause Audit for the Historical Year Ended December 31, 2007, Audit Control No. 08-003-2-2 (Document Nos. 02561-08, 02652-08, and 02666-08). On May 9, 2008, TECO filed a Motion for Temporary Protective Order, requesting the documents be protected from public disclosure while in the possession of the Office of Public Counsel. These requests were filed in Docket No. 080001-EI. On January 27, 2009, in Docket Number 090001-EI, TECO filed an Amended Request for Confidential Classification, which reduced the amount of information for which TECO sought confidential classification (Document No. 00660-09).

Request for Confidential Classification

Section 366.093(1), F.S., provides that "any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from Section 119.07(1) [the Public Records Act]." 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. Paragraphs (d) and (e) of Section 366.093(3), F.S., provide that proprietary confidential business information includes, but is not limited to "[i]nformation 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."

TECO contends that certain information contained in its Fuel Adjustment Clause Audit for the Historical Year Ended December 31, 2007, as more specifically described in the table in Attachment A, falls within these categories and, thus, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. TECO states that this information is intended to be and is treated by TECO as private and has not been publicly disclosed.

DOCUMENT NUMBER-DATE

00651 JAN 28 09

FPSC-COMMISSION CLERK

TECO claims that the information in question consists of contracted fuel prices by supplier, planned operations and existing contractual data (including trucking rates), and competitively sensitive account numbers and wiring information. TECO insists that disclosure of this information would be harmful to its competitive interests and impair its future efforts to contract for goods and services on favorable terms.

Ruling

Upon review, it appears 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 constitutes “[i]nformation 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.” Moreover, none of the documentation discussed herein contains any information regarding the compensation of TECO executives. Thus, the information contained in Document No. 00660-09 (x-ref. Document Nos. 02651-08, 02652-08, and 02666-08), as more specifically described in Attachment A, 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 18 months from the date of 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., while the material is in the possession of the Office of Public Counsel (OPC). 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), 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.

In addition, Rule 25-22.006(6)(c), F.A.C., states that if a party allows OPC to inspect or take possession of utility information, then that "utility may request a temporary protective order exempting the information from section 119.07(1), F.S." The Rule further requires the utility to file a specific request for a protective order under paragraph (a) of the Rule if the information is to be used in the proceeding before the Commission.

TECO is seeking protection of certain information contained in audit documents related to TECO's Fuel Adjustment Clause Audit for the Historical Year Ended December 31, 2007. TECO has demonstrated that the material is proprietary confidential business information. Furthermore, this information was used during the annual fuel adjustment proceeding. Accordingly, it is appropriate in this instance to grant a protective order pursuant to paragraph (a) of Rule 25-22.006(6), F.A.C., rather than a temporary protective order under paragraph (c) of the Rule, as was requested by TECO.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document No. 00660-09 (x-ref. Document Nos. 02651-08, 02652-08, and 02666-08) as detailed in Attachment A, is granted. It is further

ORDERED that the information in Document No. 00660-09 (x-ref. Document Nos. 02651-08, 02652-08, and 02666-08) for which confidential classification has been granted shall remain protected from disclosure for a period of 18 months from the date of issuance of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein. It is further

ORDERED that the Motion for Temporary Protective Order filed by Tampa Electric Company is granted as a Protective Order, as explained herein.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 28th day of January, 2010.



NATHAN A. SKOP

Commissioner and Prehearing Officer

(SEAL)

LCB

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.

ATTACHMENT A

DOCUMENT DESCRIPTION	WORK PAPER NO.	NUMBER OF PAGES	LINE
Documents contained in TECO's Fuel Adjustment Clause Audit for the Historical Year Ended December 31, 2007, Audit Control No. 08-003-2-2 (Document No. 00660-09 (x-ref. Document Nos. 02561-08, 02652-08, and 02666-08))	10-2/1	17	The highlighted columns
	10-9/1-1	37	Highlighted information on page 34
	10-19/1-1	47	Highlighted information on pages 20-25
	10-19/2-1	41	Highlighted information on pages 23-26
	10-31/1-1	1	The highlighted information
	25-3/2	8	The highlighted columns
	25-6/1	33	The highlighted information on pages 1, 3, 5-9, 11, 13-15, 22, 26, 28, and 32
	25-7/1	4	The highlighted information on pages 1-3
	25-8/1	42	The highlighted information on pages 4, 7, 13, 15-17, 20, 22, 25, 26, 28, 29, and 35-37
	25-9/1	2	The highlighted information
	25-10/1	7	The highlighted information on pages 1, 2 and 5
	25-11/2-1	2	The highlighted information on page 2
	25-11/2-2	2	The highlighted information on page 1
	26-6	1	The highlighted information in columns (h) through (o)
	26-6/1-1	2	The highlighted information
	26-6/2-1	1	The highlighted information
	43-5/2	1	The highlighted information
	43-5/2-1	6	The highlighted information on pages 1-4
	43-5/2-2	12	The highlighted information on pages 1-9
	43-5/2-3	2	The highlighted information on page 1
43-5/3	1	The highlighted information	
43-5/3-1	25	The highlighted information	