BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause and generating performance incentive factor.	DOCKET NO. 980001-EI ORDER NO. PSC-98-1044-CFO-EI ISSUED: August 3, 1998

ORDER GRANTING CONFIDENTIAL CLASSIFICATION TO TAMPA ELECTRIC COMPANY'S 423 FORMS FOR MARCH, 1998 (DOCUMENT NO. 05445-98)

Pursuant to Rule 25-22.006, Florida Administrative Code, and Section 366.093, Florida Statutes, Tampa Electric Company (TECO) filed a request for confidential classification of portions of its 423 forms for March, 1998. TECO asserts that the information for which confidential classification is sought "is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed . . ." Section 366.093(3), Florida Statutes.

TECO requests that the information for which confidential classification is sought not be declassified until June 16, 2000. TECO contends that this time period is necessary to allow TECO's affiliated companies to negotiate future contracts without competitors or customers having access to information "which would adversely affect the ability of these affiliates to negotiate future contracts." TECO claims that the period of time requested will ultimately protect TECO and its ratepayers.

DISCUSSION OF CONFIDENTIAL MATERIAL

TECO requests confidential classification of the information contained in its Form 423-1(a) for March, 1998, as illustrated in the following table. This information relates to the price TECO paid for No. 2 fuel oil.

TABLE 1: NO. 2 FUEL OIL DATA

FORM	LINES	COLUMNS
423-1(a) page 1/2	1-26	H-O
423-1(a) page 2/2	27-47	H-O

TECO asserts that the information contained in Column H is contractual information which, if made public, "would impair the efforts of the public utility or its affiliates to contract for goods or service on favorable terms." Section 366.093(3)(d), Florida Statutes. This information shows the price which TECO has paid for No. 2 fuel oil per barrel from specific suppliers. If disclosed, TECO asserts that this information would allow suppliers to compare an individual supplier's price with the market price "for that date of delivery." TECO asserts that such a comparison could reveal the contract pricing formula between TECO and that supplier.

Disclosure of the invoice price, according to TECO, would allow suppliers to determine the contract price formula of their competitors. TECO asserts that this knowledge would give suppliers information with which to actually control the pricing of No. 2 oil by either all quoting a particular price or adhering to a price set by a major supplier. TECO maintains that this could reduce or eliminate any opportunity for a major buyer, like TECO to use its market presence to gain price concessions. The end result, according to TECO, is reasonably likely to be increased No. 2 fuel oil prices and, therefore, increased electric rates for TECO's customers.

TECO asserts that the contract data in Columns I through O are algebraic functions of Column H. TECO maintains that the publication these columns, together or independently, could allow a supplier to derive the invoice price of No. 2 oil paid by TECO.

According to TECO, Columns M and N are pricing terms which are as important as the price itself. TECO asserts that these columns show the price adjustments or discount adjustments applied by TECO to shipments of fuel which do not meet TECO's contract requirements. Because of the relatively few times that there are quality or discount adjustments, TECO contends that columns M and N will equal Column H most of the time, and are, therefore, entitled to confidential classification.

TECO requests confidential classification of the following information for each of its electro-coal transfer facilities:

TABLE 2: EFFECTIVE PURCHASE PRICE/SEGMENTED TRANSPORTATION COST

STATION	FORM	LINES	COLUMNS
BIG BEND	423-2	1-8	G, H
GANNON	423-2	1-7	G, H
POLK	423-2	1-2	G, H

TECO asserts that disclosure of the effective purchase price illustrated in these forms, lines and columns would "impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. TECO maintains that publishing the purchase price would enable an interested party to ascertain the total transportation charges by subtracting the effective purchase price from the delivered price at the transfer facility, shown in Column I. According to TECO, 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 Electro-Coal transfer facility to determine the segmented transportation costs. According to TECO, it is this segmented transportation cost data which is proprietary and confidential. TECO maintains that the disclosure of the segmented transportation cost would have a direct impact on TECO's future fuel and transportation contracts by informing potential bidders of current prices paid for these services provided. TECO asserts that this type of information was granted confidential classification by the Commission in Order No. 12645 issued in Docket No. 830001-EU on March 3, 1983.

TECO also asserts that disclosure of this information would inform other potential suppliers as to the price TECO is willing to pay for coal. This, according to TECO, would give present and potential coal suppliers information which could be harmful to TECO's interests in negotiating coal supply agreements.

TECO also requests confidential classification for the following information:

TABLE 3: INVOICE PRICE/SEGMENTED WATERBORNE TRANSPORTATION COST

STATION	FORM	LINES	COLUMNS
BIG BEND	423-2(a)	1-8	H, J, L
GANNON	423-2(a)	1-7	H, J, L
POLK	423-2(a)	1-2	H, J, L

TECO contends that these original invoice prices are entitled to confidential classification because "if the original invoice price is made public, one can subtract the original invoice price from the publicly disclosed delivered price at the Electro-Coal Transfer Facility and thereby determine the segmented river transportation cost." TECO maintains that disclosure of this information would "impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes.

Disclosure of the information contained in column H of these forms would, according to TECO, enable a competitor to back into the segmented transportation cost using the publicly disclosed delivered price at the Electro-Coal Transfer Facility. TECO illustrates how this could be done by subtracting the base price per ton from the delivered price at the Electro-Coal facility, thereby revealing the river barge rate. Such disclosure would "impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes.

TECO asserts that the information contained in column L of this form, if disclosed, would enable a competitor to back into the segmented waterborne transportation costs using the already publicly disclosed delivered price of coal at the Electro-Coal Transfer Facilities. TECO contends that such disclosure would "impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes.

TECO requests confidential classification for the following form for its Electro-Coal Transfer Facilities:

TABLE 4: EFFECTIVE PURCHASE PRICE/DELIVERED PRICE PER TON/SEGMENTED RIVER BARGE AND RAIL RATE

STATION	FORM	LINES	COLUMNS
BIG BEND	423-2(b)	1-8	G, I, K-P
GANNON	423-2(b)	1-7	G, I, K-P
POLK	423-2(b)	1-2	G, I, K-P
ALL	423-2(c) 1/2	16	J, K

Disclosure of the effective purchase price in Column G would "impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. TECO asserts that such disclosure would enable a competitor to back into the segmented transportation cost by using the publicly disclosed delivered price at the Electro-Coal Transfer Facilities. TECO asserts that this could be done by subtracting the base price per ton from the delivered price at Electro-Coal, thereby revealing the river barge rate. Such disclosure would "impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes.

TECO asserts that the disclosure of the rail rate per ton in Column I would adversely affect the ability of TECO affiliate Gatliff Coal, to negotiate favorable rail rates. TECO maintains that disclosure of the rail rates paid would effectively eliminate any negotiating leverage and could lead to higher rail rates. According to TECO, this would work to the ultimate detriment of TECO and its customers. TECO maintains that disclosure of this information would "impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes.

TECO also contends that Columns K, L, M, N, O and P contain information the disclosure of which would "impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. TECO asserts each column provides specific information on segmented transportation costs. Likewise, Form 423-2(c), line

16 columns J and K, also represent actual rates paid for river barge transportation. TECO asserts that this information, if disclosed, "would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes.

TECO requests confidential classification for the following information related to its stations:

TABLE 5: EFFECTIVE PURCHASE PRICE/SEGMENTED TRANSPORTATION/OCEAN BARGING AND TRANSLOADING

STATION	FORM	LINES	COLUMNS
BIG BEND	423-2	1-7	G, H
GANNON	423-2	1-2	G, H
POLK	423-2	1-2	G, H

TECO asserts that these lines and columns of Form 423-2 are entitled to confidential classification because disclosure of the effective purchase price in Column G would "impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. TECO maintains that an interested party could subtract the information in this column from the figure in Column I to obtain the segmented transportation cost including transloading and ocean barging.

TECO contends that the information contained in Column H would, if disclosed, allow competitors to back into the segmented transportation costs. Competitors could do this, according to TECO, by subtracting this information from the figure in Column I to obtain segmented transportation cost including transloading and ocean barging. TECO asserts that both Columns G and H are entitled to confidential classification in order to prevent competitors from determining the segmented transportation charges.

TECO requests confidential classification for the following information for each of its stations:

TABLE 6: ORIGINAL INVOICE PRICE/SEGMENTED TERMINALLING AND OCEAN BARGE TRANSPORTATION RATE

STATION	FORM	LINES	COLUMNS
BIG BEND	423-2(a)	1-7	H, J, L
GANNON	423-2(a)	1-2	H, J, L
POLK	423-2(a)	1-2	H, J, L

TECO asserts that this information contains the original invoice price. If this price is made public, according to TECO, an interested party could subtract the original invoice price from the publicly disclosed F.O.B. plant price at the Electro-Coal Transfer Facility and thereby determine the segmented terminalling and ocean barge transportation cost. TECO contends that disclosure of the terminalling and ocean barge transportation costs would "impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes.

TECO asserts that the information contained in Column J, like that contained in Column H, would enable an interested party to back into the segmented transportation cost using the publicly disclosed F.O.B. plant price. According to TECO, this could be done by subtracting the base price per ton from the F.O.B. plant price at the stations. According to TECO, this would reveal the terminalling and ocean barge rate. TECO maintains that such disclosure would "impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes.

TECO maintains that the information contained in column L, if publicly disclosed, would enable a competitor to back into the segmented terminalling and ocean barge transportation costs using the already publicly disclosed F.O.B. plant price at the various stations. TECO asserts that such disclosure would "impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes.

TECO also requests that the following information be granted confidential classification:

TABLE 7: EFFECTIVE PURCHASE PRICE PER TON/SEGMENTED TRANSPORTATION COST/TERMINALLING/OCEAN BARGING RATE

STATION	FORM	LINES	COLUMNS
BIG BEND	423-2(b)	1-7	G, I, K-P
GANNON	423-2(b)	1-2	G, I, K-P
POLK	423-2(b)	1-2	G, I, K-P

TECO asserts that the disclosure of the effective purchase price in Column G would "impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. TECO maintains that disclosure of the effective purchase price per ton would enable a competitor to back into the segmented transportation cost using the publicly disclosed F.O.B. plant price for coal. This would be done by subtracting the effective purchase price per ton from the F.O.B. plant price per ton at the various stations. This, according to TECO, would reveal the terminalling and ocean barge rate.

TECO maintains that disclosure of the information in Column I, rail rate per ton, would adversely affect the ability of TECO and its affiliates to negotiate favorable rail rates with the various railroads serving areas in the vicinity of TECO's coal suppliers. TECO claims that disclosure of the rail rates paid would effectively eliminate any leverage and lead to higher rail rates. According to TECO, this would work to the ultimate detriment of TECO and its customers. Accordingly, TECO maintains that disclosure of this information would "impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes.

TECO asserts that Columns K, L, M, N, O and P contain information the disclosure of which would "impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. TECO maintains that each of these columns provides specific information on segmented transportation costs.

REQUESTED DATE OF DECLASSIFICATION

TECO requests confidential classification for this information for a period exceeding 18 months. According to Section 366.093(4), Florida Statutes, confidential classification may only extend for 18 months from the issuance of an Order granting confidential classification unless "the Commission finds, for good cause, that the protection form disclosure shall be for a specified longer period." Section 366.093(4), Florida Statutes. TECO asserts that the information contained in this request is entitled to a longer period of protection as illustrated below:

TABLE 8: FUEL OIL CONTRACT, COAL AND COAL TRANSPORTATION DATA/DECLASSIFICATION DATE

FORM	LINES	COLUMNS	DE-CLASSIFICATION
423-1(a) P. 1/2	1-26	H-O	05/15/00
423-1(a) P. 2/2	27-47	H-O	05/15/00
423-2	1-8	G-H	05/15/00
423-2(a)	1-8	H, J, L	05/15/00
423-2(b)	1-8	G, I, K, L, M, N, O, P	05/15/00
423-2(c) 1/2	16	J, K	5/15/00

TECO requests that the fuel oil contract data be granted confidential classification for two years from the initial date of classification. TECO asserts that its ability to negotiate future contracts for No. 2 and No. 6 oil would probably be impaired if pricing information as described in the body of this Order were disclosed during the contract period or prior to the negotiation of a new contract.

FUEL OIL INFORMATION

TECO affirms that it typically renegotiates its No. 2 and No. 6 fuel oil contracts and fuel related services contracts prior to the end of such contracts. On occasion, according to TECO, some

contracts are renegotiated after the end of the current contract period. In this situation, renegotiations are normally completed within six months. Therefore, according to TECO, it is necessary to maintain the confidentiality of the information identified as confidential on Form 423-1(a) for six months after the end of the individual contract period to which the information relates. TECO affirms that in many instances, the declassification date proposed above would be beyond two years from the date that the information is classified. Therefore, and in order to simplify the determination of a date of declassification, TECO is willing to settle for a declassification date which is two years from the date that the material in question is initially classified. This will avoid having to refer to contract expiration dates which vary from contract to contract. At the same time, it will afford TECO some minimum period of protection from having this sensitive information disclosed publicly.

COAL AND COAL TRANSPORTATION INFORMATION

TECO also seeks to protect coal and coal transportation information from disclosure for two years from the date of this Order. TECO claims that this time period is necessary to protect TECO, its ratepayers and its vendors and affiliates as contemplated by Section 366.093(3)(d), Florida Statutes. TECO asserts that bidders for the sale of coal will always seek to optimize their profit margin. Full knowledge of the prices paid by the utility for coal enables the bidder to increase the price bid and thereby optimize the bid from the viewpoint of the seller and to the detriment of the ratepayer. TECO maintains that the disclosure of information on prices paid within the last two years will increase the price TECO will be required to pay for coal and will be detrimental to ratepayers. TECO asserts that if market information is disclosed which discourages suppliers from biding competitively, they will increase their bids to the level of past payments to other supplies by the buyer.

TECO also maintains that the disclosure of rail transport rates will result in demands by other shippers to lower any rates which are above the disclosed rates. The effect of disclosure will be to increase the lower rate as the transportation provider will seek to protect the rates charged on other routes. TECO maintains that the delay of this disclosure for two years will be of direct benefit to ratepayers by delaying any rate increases that might occur as a result of such disclosure.

TECO asserts that Gatliff Coal and TECO Transport & Trade sell coal and bulk commodity transportation services in the open non-regulated marketplace. The prices at which their goods and services are sold are not publicly disclosed anywhere by publication or voluntary dissemination because it would materially lessen their competitive posture with customers other than TECO. Outside customers who negotiate for coal or coal transportation services are placed at a competitive advantage for these goods or services if they know the cost of the goods or services.

TECO contends that as long as an outside customer does not know how the escalation clause in the revised contract between TECO and its transportation affiliates changes price, the cost cannot be calculated. TECO cautions, however, that publicizing the price of coal or coal transportation services will tell an outside customer how much the escalation has been and will make it easy to calculate the cost. Because of the seasonality of costs in both businesses, a full year's cost data is necessary for an accurate cost measurement. According to TECO, 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 effective cost estimates. Competitive industries recognize that data beyond two years is not helpful to them, because enough factors may change in that time for costs to be much different from what was incurred. Any date less than two full years, however, according to TECO, is extremely valuable to outside customers in contracting for services with Gatliff or TECO Transport & Trade. The difference of small amounts per ton can mean millions of dollars' difference in cost.

A loss of outside business by Gatliff or TECO Transport & Trade will affect not only Gatliff or TECO Transport & Trade, but, if large enough, it could affect the credibility of these two companies. The prices negotiated with TECO by these vendors took into consideration their costs and revenues at the time of negotiation, including the revenues from outside customers. A significant loss of outside business could cause Gatliff or TECO Transport & Trade to fail, because under market pricing regulation TECO will not make up the difference to them in cost. In turn, a failure of these vendors would leave TECO and its customer with only higher cost alternatives for Blue Gem coal and for coal transportation to Tampa. According to TECO, this higher cost would have to be paid by TECO's ratepayers.

CONCLUSION

Upon review, it appears as if the foregoing information is "proprietary confidential business 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." Section 366.093(3)(d), Florida Statutes. This information also appears to be "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Section 366.093(3)(e), Florida Statutes. Accordingly, it is granted confidential classification.

TECO appears to have provided enough information concerning the harm which could arise from not protecting this information for a minimum of two years. All other information for which confidential classification is sought shall be granted confidential classification until May 15, 2000.

It is therefore

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the information described within the body of this Order and contained in Document No. 05445-98, is granted confidential classification. It is further

ORDERED that the fuel oil, coal and coal transportation information referenced in Document No. 05445-98 is granted confidential classification for a period of two years from the date of this Order. It is further

ORDERED that all other information described within the body of this Order and contained in Document No. 05445-98 is granted confidential classification until May 15, 2000. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the declassification date of this material.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 3rd Day of August, 1998.

Susan F Clark

SUSAN F. CLARK
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(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.

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 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.