

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 110001-EI  
ORDER NO. PSC-11-0434-CFO-EI  
ISSUED: September 29, 2011

ORDER GRANTING CONFIDENTIAL CLASSIFICATION TO PORTIONS OF  
TAMPA ELECTRIC COMPANY'S 423 FORMS FOR JULY 2009  
(DOCUMENT NO. 09575-09)

On September 15, 2009 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 to portions of its Public Service Commission (PSC) Form 423 Fuel Report for the reporting month of July 2009 (the 423 Report), (Document No. 09575-09). This request was filed in Docket No. 090001-EI.

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. Paragraph (3)(d) of Section 366.093 F.S., provides 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."

TECO contends that designated portions of the information contained in the 423 Report, as more specifically described in the table in Attachment A, fall within these categories and, thus, constitute 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.

TECO provides, in Attachment A to this Order, a matrix providing justification and support for confidential classification of the information in each section of the 423 Report (Forms 423-1A, 2, 2A and 2B) on a line-by-line, column-by-column basis.

**Time Period For Confidential Classification**

TECO requests confidential classification for this information for a period exceeding 18 months. According to Section 366.093(4), F.S., 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 from disclosure shall be for a specified

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longer period,” under Section 366.093(4), F.S. TECO request that the information be treated as confidential for a period of two years from the date the information is classified confidential. TECO separately addresses the need for extending the 18 month period for fuel oil contract data, coal, and coal transportation data as follows.

TECO states that its ability to negotiate future contracts for No. 2 and No. 6 oil would reasonably likely be impaired if pricing information were disclosed during the contract period or prior to the negotiation of a new contract. TECO further states 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. TECO asserts that on occasion some contracts are renegotiated after the end of the current contract period. In this situation, TECO states, renegotiations are normally completed within six months. Therefore, TECO contends, it is necessary to maintain the confidentiality of the information identified in Attachment A to this Order on Form 423-1(a) for six months after the end of the individual contract period to which the information relates.

TECO also seeks protection of the coal and coal transportation contract information specified in Attachment A to this Order as confidential 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 explains that bidders for the sale of coal will always seek to optimize their profit margin, thus, 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 asserts 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 states that recent bids it received contained a \$4.17 per ton spread between the bids and the low bid undoubtedly would have been higher with full knowledge of prices paid by TECO. TECO asserts that bidders will always seek to optimize their profits by submitting bids that are as high as the market will bear. TECO states that, if market data is disclosed which discourages suppliers from bidding competitively, the suppliers will increase their bids to the level of past payments to other suppliers by the buyer.

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

TECO maintains that Gatliff Coal and TECO Transport & Trade sell coal and bulk commodity transportation services in the open non-regulated marketplace. It states that 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. TECO also maintains that 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, if the information is not deemed confidential, an analyst for an outside customer of Gatliff or TECO Transport who reads the written transcripts of public fuel hearings or reads the written orders of the PSC can easily discover the payments that TECO makes to Gatliff for coal and to TECO Transport for transportation. TECO states that as long as an outside customer does not know how an escalation clause in TECO's agreements with its suppliers change price, the cost cannot be calculated. TECO states that publicizing the price of coal or coal transportation services will tell an outside customer how much the escalation has been and make it easy for him to calculate cost and that, due to seasonality of costs in both businesses, a full year's cost data is necessary for an accurate cost measurement. TECO further states that a second year must pass before one full year can be compared with a second year to measure the escalation accurately, thus, a perceptive vendor seeks two years of data to make his cost estimates. However, TECO asserts, the competitive industries recognize that data beyond two years is not helpful to them, as enough factors may change in that time frame for costs to be much different from what was incurred. Any date less than two full years old is extremely valuable to outside customers in contracting for services with Gatliff or TECO Transport. The difference of small amounts per ton can mean millions of dollars' difference in cost.

Finally, TECO argues, a loss of outside business by Gatliff or TECO Transport will affect not only Gatliff or TECO Transport, but if large enough it could affect the credibility of the companies. TECO states that 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, thus, a significant loss of outside business could cause Gatliff or TECO Transport to fail, since under market pricing regulation TECO will not make up the difference to them in cost. TECO asserts that a failure of these vendors would leave TECO and its customers with only higher cost alternatives for Blue Gem coal and for coal transportation to Tampa, a higher cost that would be paid by TECO's ratepayers and that the continued credibility of Gatliff and TECO Transport is important to protect TECO's ratepayers from higher cost alternatives.

### Ruling

Upon review, it appears that TECO is entitled to confidential classification of the information contained in Document No. 09575-09. The information described above and in Attachment A to this Order 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." Section 366.093(3)(d), F.S. This information reveals invoice prices, transportation charges, and coal prices. The public disclosure of any of this information could reduce TECO's competitiveness in the marketplace. This, in turn, could result in higher prices for transportation and coal. Therefore, TECO's request for confidential classification of information contained in its Form 423 Fuel Reports for July 2009, Document No. 09575-09, is granted.

Section 366.093(4), F.S., provides that any finding by the Commission that records contain proprietary confidential business information shall be effective for a period not to exceed 18 months, absent good cause shown. TECO has shown good cause to extend the period of confidentiality to 24 months. Accordingly, the information identified in Document No. 09575-09, shall be granted confidential classification for a period of 24 months from the issuance of this Order.

Based on the foregoing, it is

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that TECO Company's request for confidential treatment of portions of Document No. 09575-09 is granted as set forth in the body of this Order. It is further

ORDERED that the coal and coal transportation data referenced in Document No. 09575-09 shall be granted confidential classification for a period of two years from the date of the issuance of this Order. It is further

ORDERED that the fuel oil contract data referenced in Document No. 09575-09 shall be granted confidential classification for a period of two years 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 Ronald A. Brisé, as Prehearing Officer, this 29<sup>th</sup> day of September, 2011.



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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.

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 25-22.060, 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.

**ATTACHMENT A****FORM 423-1(a)**

Plant Name Line(s)	Column(s)	Justification
TECO 1-28	H	(1) This information is contractual information which, if made public, "would impair TECO's efforts to contract for goods or services on favorable terms." Section 366.093(3)(d), Fla. Stat. The information shows the price which TECO has paid for No. 2 fuel oil per barrel for specific shipments from specific suppliers. This information would allow suppliers to compare an individual supplier's price with the market "for that date of delivery" and thereby determine the contract pricing formula between TECO and that supplier. Disclosure of the invoice price would allow suppliers to determine the contract price formula of their competitors. The knowledge of each other's prices would give suppliers information with which to actually control the pricing in No. 2 oil by either all quoting a particular price or adhering to a price offered by a major supplier. This could reduce or eliminate any opportunity for a major buyer, like TECO, to use its market presence to gain price concessions from any individual supplier. The end result is reasonably likely to be increased No. 2 fuel oil prices and, therefore, increased electric rates.
TECO 1-28	I	(2) The contract data found in Columns I through O are Company algebraic functions of Column H. Thus, the publication of these columns together, or independently, could allow a supplier to derive the invoice price of No. 2 oil paid by TECO.
TECO 1-28	J	(3) See item 2 above.
TECO 1-28	K	(4) See item 2 above.
TECO 1-28	L	(5) See item 2 above.
TECO 1-28	M	(6) See item 2 above. In addition, for the fuel that does not meet contract requirements, TECO may reject the shipment, or accept the shipment and apply a quality adjustment. This is, in effect, a pricing term which is as important as the price itself and is therefore confidential for the reasons stated in paragraph (1) relative to price concessions.
TECO 1-28	N	(7) See item (2) above. In addition, this column is as important as H from a confidentiality standpoint because of the relatively few times that there are quality or discount adjustments. That is, Column N will equal Column H most of the time. Consequently, it needs to be protected for the

		same reason as set forth in paragraph (1).
TECO 1-28	O	(8) See item (2) above.

**FORM 423-2**

Plant Name Line(s)	Column(s)	Justification
TECO United Maritime Group Big Bend Station (1) 1-8  Big Bend Station 1-2  Polk Station 1	G	<p>(9) Disclosure of the effective purchase price "would impair the efforts of TECO to contract for goods or services on favorable terms." Section 366.093(3)(d), Fla. Stat. Additionally, prohibiting the purchase price would enable one to ascertain the total transportation charges by subtracting the effective price from the delivered price at the transfer facility, shown in Column I. 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, i.e., the separate breakdown of transportation charges for river barge transport and for deep water transportation across the Gulf of Mexico from the transfer facility to Tampa. It is this segmented transportation cost data which is proprietary and confidential. The disclosure of the segmented transportation costs would have a direct impact on TECO's future fuel and transportation contracts by informing potential bidders of current prices paid for services provided. That harm, which would flow to TECO and its Customers from such disclosure, was the subject of Prepared Direct Testimony of Mr. John R. Rowe, Jr. on behalf of TECO in Docket No. 860001-EI-D. In the Commission's Order No. 12645 issued in Docket No. 830001-EU on November 3, 1983 (In re: Investigation of Fuel Adjustment Clauses of Electric Utilities), the Commission prescribed the current 423 Form filings. In so doing, the Commission observed:</p> <p>Next, we must determine whether any portion of the monthly reports should be accorded confidential treatment. We agree that certain portions of the confidential information. However, many portions of the monthly reports will not, The proprietary information for all types of fuel is transportation. Any breakout of transportation costs must be treated confidentially. In addition, F.O.B. mine prices for coal is proprietary in nature as is the price of fuel oil. Disclosure of separate transportation or F.O.B. mine prices would</p>



		<p>have a direct impact on a utility's future fuel and transportation contracts by informing potential bidders of current prices paid for services. Disclosure of fuel oil prices would have an indirect effect upon bidding suppliers. Suppliers would be reluctant to provide significant price concessions to an individual utility if prices were disclosed because other purchasers would seek similar concessions.</p> <p>The vigorous competition discussed in Mr. Rowe's earlier testimony, as recognized by the Commission, justifies proprietary confidential treatment of the information in Column G. Disclosure of this information "would impair the efforts of TECO to contract for goods and services on favorable terms." Section 366.093(3)(d), Fla. Stat. This information would inform other potential suppliers as to the price TECO is willing to pay for coal. This would give present and potential coal suppliers information which could be harmful to TECO's interests in negotiating coal supply agreements. This is much the same as paragraph (1) under Form 423-1(a) regarding No. 2 oil suppliers.</p>
<p>TECO United Maritime Group Big Bend Station (1) 1-8</p> <p>Big Bend Station 1-2</p> <p>Polk Station 1</p>	<p>H</p>	<p>(10) The disclosure of this information "would impair the efforts of TECO to contract for goods or services on favorable terms." Section 366.093(3)(d), Fla. Stat. As was stated in (I), Columns G and H both need confidential protection because disclosure of either column will enable competitors to determine the segmented transportation charges. Accordingly, the same reasons discussed in (1) likewise apply with regard to Column H.</p>

**FORM 423-2(a)**

Plant Name Line(s)	Column	Justification
TECO United Maritime Group Big Bend Station (1) 1-8  Big Bend Station 1-2  Polk Station 1	H	(11) 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. Disclosure of the river transportation cost "would impair the efforts of TECO to contract for goods or services on favorable terms." Section 366.093(3)(d), Fla. Stat. Additional justification appears in paragraph (1) of the rationale for confidentiality of Column G of Form 423-2 (Electro-Coal Transfer Facility - Big Bend Station).
TECO United Maritime Group Big Bend Station (1) 1-8  Big Bend Station 1-2  Polk Station 1	J	(12) This information, like that contained in Column H, would enable a competitor to "back into" the segmented transportation cost using the publicly disclosed delivered price at the Electro-Coal Transfer Facility. This would 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 TECO to contract for goods or services on favorable terms." Section 366.093(3)(d), Fla. Stat. Additional justification appears in paragraph (1) of the rationale for confidentiality of Column G of Form 423-2 (Electro-Coal Transfer Facility - Big Bend Station).
TECO United Maritime Group Big Bend Station (1) 1-8  Big Bend Station 1-2  Polk Station 1	L	(13) This information, if publicly 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 Facility. Such disclosure "would impair the efforts of TECO to contract for goods or services on favorable terms." Section 366.093(3)(d), Fla. Stat. Additional justification appears in paragraph (1) of the rationale for confidentiality of Column G of Form 423-2 (Electro-Coal Transfer Facility - Big Bend Station).

**FORM423-2(b)**

Plant Name Line(s)	Column	Justification
TECO United Maritime Group Big Bend Station (1) 1-8  Big Bend Station 1-2  Polk Station 1	G	(14) Disclosure of the effective purchase price in Column G "would impair the efforts of TECO to contract for goods or services on favorable terms." Section 366.093(3)(d), Fla. Stat. Such disclosure would enable a competitor to "back into" the segmented transportation cost using the publicly disclosed delivered price for coal at the Electro-Coal Transfer Facility. This would be done by subtracting the effective purchase price per ton from the price per ton delivered at Electro-Coal, thereby revealing the river barge rate. Such disclosure would also adversely affect TECO's ability to negotiate future coal supply contracts.
TECO United Maritime Group Big Bend Station (1) 1-8  Big Bend Station 1-2  Polk Station 1	I	(15) These columns contain information the disclosure of which "would impair the efforts of TECO to contract for goods or services on favorable terms." Section 366.093(3)(d), Fla. Stat. Each of these columns provides specific information on segmented transportation costs which are the primary objects of this request. Additional justification appears in paragraph (1) of the rationale for confidentiality for Column G on 423-2 (Electro- Coal Transfer Facility - Big Bend Station).
TECO United Maritime Group Big Bend Station (1) 1-8  Big Bend Station 1-2  Polk Station 1	K	(16) These columns contain information the disclosure of which "would impair the efforts of TECO to contract for goods or services on favorable terms." Section 366.093(3)(d), Fla. Stat. Each of these columns provides specific information on segmented transportation costs which are the primary objects of this request. Additional justification appears in paragraph (1) of the rationale for confidentiality for Column G on 423-2 (Electro-Coal Transfer Facility - Big Bend Station).
TECO United Maritime Group Big Bend Station (1) 1-8  Big Bend Station 1-2  Polk Station	L	(17) See item (16) above.

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TECO United Maritime Group Big Bend Station (1) 1-8  Big Bend Station 1-2  Polk Station 1	M	(18) See item (16) above.
TECO United Maritime Group Big Bend Station (1) 1-8  Big Bend Station 1-2  Polk Station 1	N	(19) See item (16) above.
TECO United Maritime Group Big Bend Station (1) 1-8  Big Bend Station 1-2  Polk Station 1	O	(20) See item (16) above.
TECO United Maritime Group Big Bend Station (1) 1-8  Big Bend Station 1-2  Polk Station 1	P	(21) See item (16) above.