

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's
2004-2008 waterborne transportation contract
with TECo Transport and associated benchmark.

Docket No.: 031033-EI
Filed: June 21, 2004

**REVISED¹ JOINT RESPONSE IN OPPOSITION TO TAMPA ELECTRIC COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION FILED JUNE 10, 2004.**

The Citizens of the State of Florida (Public Counsel) and the Florida Industrial Power Users Group (FIPUG) (collectively, Intervenors), pursuant to rules 25-22.006 and 28-106.204, Florida Administrative Code, respond in opposition to Tampa Electric Company's (TECo) Request for Confidential Classification filed June 10, 2004. Public Counsel and FIPUG request that the Commission deny TECo's motion to shield from public review the information listed below. As grounds therefore, Public Counsel and FIPUG state:

1. As Intervenors have previously noted, the policy of the State of Florida is that all public records be open to review:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.01(1), Florida Statutes. The Commission has recognized that:

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into a statutory exemption or that the information is proprietary confidential business information, the disclosure of which will cause the Company or its ratepayers harm.

¹ This revised response is being filed to correct a scrivener's error in paragraphs 5 and 7 of the original response filed on June 17, 2004. The revisions are underlined and bolded. The revised response is otherwise the same as the original.

Order No. PSC-01-2252-CFO-EI at 2, Docket No. 000061-EI (November 16, 2001). Shielding information from public view is the exception, not the rule, and requires the party seeking to withhold information to justify how the information qualifies for one of the narrow statutory exceptions which would keep the information confidential. The information identified below fails to qualify for any of the narrow exceptions that would keep the information confidential.

Deposition of Joann T. Wehle

2. TECo alleges that the information on page 46, line 11, of Ms. Wehle's deposition, which concerns the cost of terminalling services, is confidential and asks to shield the information from disclosure because: 1) the information contains terms and conditions of Tampa Electric's competitively negotiated existing or recently concluded contracts for goods or services; and 2) the information, though not necessarily confidential,² could be used to "back into" confidential information. Similar information is discussed in the prefiled testimony of Michael J. Majoros, Jr. at page 28, lines 5-8. Prior to filing Mr. Majoros' testimony, TECo reviewed Mr. Majoros' testimony for confidential information and did not identify the information appearing therein as confidential. Further, the information on page 46 of Ms. Wehle's deposition does not contain a numerical value that would allow a reader to "back into" confidential rates or otherwise ascertain competitive information. Therefore, the information must be made public.

3. Intervenors also object to TECo's request for confidential treatment of the information appearing at page 61, line 7, of Ms. Wehle's deposition. This information was discussed on the record, without objection by TECo, during a non-confidential deposition taken in Docket 030001-EI³ and at the hearing in this case.⁴ The information must be made public.

² It is telling that one of TECo's justifications claim that the information it seeks to shield is confidential while the other justification claims it is not. The information cannot be in both categories.

³ See page 7 of the Panel Deposition of Joann T. Wehle and Brent Dibner, Docket No. 030001-EI, October 20, 2003.

Deposition and Exhibits of Brent Dibner

4. TECo requests confidential classification for the debt/equity ratio used by Mr. Dibner, which appears on the following pages of Mr. Dibner's deposition: page 30, line 4; page 31, lines 3, 4 and 11; page 49, lines 15 and 23; and page 50, lines 12 and 18. TECo claims that the information is the proprietary work product of Dibner Maritime Associates. However, Mr. Dibner disclosed the information on the record at the hearing in this case.⁵ Therefore, confidentiality was waived and the information must be made public.

5. Intervenors also object to TECo's request for confidential treatment for the information appearing at page 70, line **24** of Mr. Dibner's deposition (evening session). The information is non-confidential and appears both on the Commission's website⁶ and in a non-confidential exhibit to the hearing in this case.⁷ The information must be made public.

6. Intervenors also object to TECo's request for confidential treatment for Deposition Exhibit Nos. 2-8. Information contained in these exhibits was discussed during Mr. Dibner's deposition at pages 172 – 187 of the deposition transcript and page 59 of the transcript of the evening deposition session, yet TECo did not request confidential classification for these pages of the deposition transcript. Further, during the deposition the information contained in Exhibit Nos. 2-8 was cross-referenced with public information contained in Exhibit No. MJM-2 to the prefiled testimony of Mr. Majoros. Thus, the information must be made public.

7. Therefore, Intervenors request that the information listed below be made public:

- Wehle deposition, page 46, line 11;
- Wehle deposition, page 61, line 7;
- Dibner Deposition, page 30, line 4;
- Dibner deposition, page 31, lines 3, 4 and 11;
- Dibner deposition, page 49, lines 15 and 23;
- Dibner deposition, page 50, lines 12 and 18;

⁴ See transcript, pages 170 and 173.

⁵ See transcript, pages 329-30.

⁶ See Docket No. 031057-EI, Document No. 04471-04, page 7 of 7.

⁷ See Exhibit No. 65.

- Dibner deposition, page 70, line 24 (evening session); and
- Dibner deposition, Exhibit Nos. 2-8.

WHEREFORE, Public Counsel and FIPUG request that the Commission deny TECo's Request for Confidential Classification as described above.

Harold McLean
Public Counsel
Robert D. Vandiver
Associate Public Counsel

Office of Public Counsel
c/o the Florida Legislature
111 W. Madison Street
Room 812
Tallahassee, Florida 32399-1400
(850) 488-9330

Attorneys for the Citizens of
the State of Florida

s/ Timothy J. Perry
John W. McWhirter, Jr.
McWhirter, Reeves, McGlothlin,
Davidson, Kaufman, & Arnold, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33602

Vicki Gordon Kaufman
Timothy J. Perry
McWhirter, Reeves, McGlothlin
Davidson, Kaufman, & Arnold, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
(850) 222-2525

Attorneys for the Florida Industrial
Power Users Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Revised Joint Response in Opposition to Tampa Electric Company's Request for Confidential Classification Filed June 10, 2004, has been furnished by (*) e-mail and U.S. Mail this 21st day of June 2004 to the following:

(*) Wm. Cochran Keating IV
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

(*) Lee L. Willis
James D. Beasley
Ausley & McMullen
227 S. Calhoun Street
Tallahassee, Florida 32302

(*) R. Sheffel Wright
Landers & Parsons
301 West College Avenue
Tallahassee, Florida 32301

(*) Mike Twomey
Post Office Box 5256
Tallahassee, Florida 32314-5256

s/ Timothy J. Perry
Timothy J. Perry