

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Tampa
Electric Company.

DOCKET NO. 080317-EI
ORDER NO. PSC-09-0045-CFO-EI
ISSUED: January 20, 2009

ORDER GRANTING TAMPA ELECTRIC COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION AND MOTION FOR TEMPORARY
PROTECTIVE ORDER FILED IN DOCKET NO. 080317-EI
(DOCUMENT NO. 11945-08)

On January 8, 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 confidential classification of certain highlighted information contained in TECO's Responses to Staff's Request for Production of Documents Nos. 2 and 15 and Office of Public Counsel's (OPC) Request for Production of Documents Nos. 46 and 69 (Document No. 11945-08). This request was filed in Docket No. 080317-EI.

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. Section 366.093(3)(e), F.S., provides that proprietary confidential business information includes, but is not limited to "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

TECO contends that the highlighted information contained in its Responses to Staff's Request for Production of Documents Nos. 2 and 15 and OPC's Request for Production of Documents Nos. 46 and 69, as more specifically described in the table in Attachment A, falls within this category 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.

TECO claims that its Responses to Staff's Request for Production of Documents Nos. 2 and 15 and OPC's Request for Production of Documents Nos. 46 and 69 include research documents prepared by an investment bank or similar financial institution, which TECO receives as a result of being a paying subscriber for such information. TECO contends that this information is copyrighted, proprietary confidential business information which the preparer of

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the information expends great effort and expense to research, prepare and provide to paying subscribers, such that public disclosure of the documents in question would compromise the business interests of the providers of the information and adversely affect their ability to attract or retain subscribers for the information in question. TECO asserts that any person wishing to have access to the information contained in the documents in question is free to subscribe for that information from the entities that prepare and disseminate the information to their subscribers. According to TECO, the information in question is proprietary confidential business information, work product of the provider and information the public disclosure of which would adversely affect the competitive interests of the provider.

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3)(e), F.S., for classification as proprietary confidential business information. The information constitutes “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Thus, the information identified in Document No. 11945-08 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.”

Upon consideration, TECO's Motion for Temporary Protective Order is granted. TECO has demonstrated that the material is proprietary confidential business information. Accordingly, this information will be protected from disclosure pursuant to Rule 25-22.006(6), F.A.C.

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. 11945-08 is granted. It is further

ORDERED that the information in Document No. 11945-08 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.

ORDERED that the Motion for Temporary Protective Order filed by Tampa Electric Company is granted.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 20th day of January, 2009.



NATHAN A. SKOP
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.

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

DOCUMENT DESCRIPTION	PAGE	LINE
TECO's Response to Staff's Request for Production of Documents No. 2	54, 65-66, 68-71, 104, 106-107, 111, 204, 332, 336, 338, 403, 414, 581, 637, 690, 750, 752-753, 796-797, 827, 837, 863-870, 912, 922, 958, 1120, 1178, 1228-1236, 1266-1275, 1301-1317, 1326, 1427-1440, 1485, 1490, 1536-1537, 1541, 1543-1546, 1568-1569, 1570-1571, 1581-1585, 1601, 1907-1962, 2015-2036 and 2119-2145	The highlighted information
TECO's Response to Staff's Request for Production of Documents No. 15	All pages	The highlighted information
TECO's Response to OPC's Request for Production of Documents No. 46	63,784 – 63,785 63,792 – 63,799	The highlighted information
TECO's Response to OPC's Request for Production of Documents No. 69	359-379, 380-419, 420-428, 532-574, 604-646	The highlighted information