

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 120001-EI
ORDER NO. PSC-12-0275-CFO-EI
ISSUED: May 31, 2012

ORDER GRANTING TAMPA ELECTRIC COMPANY'S REQUEST FOR CONFIDENTIAL
CLASSIFICATION (DOCUMENT NO. 01989-12)

On April 2, 2012, 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 (Request) of certain highlighted information contained in pages 12 and 14 of the company's 2011 Hedging Activity True-Up, (the Report) identified as Exhibit - (JBC-1) of witness J. Brent Caldwell (Document No. 01989-12). This Request was filed in Docket No. 120001-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. Section (3)(d) and (e) 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," 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 the information for which confidential classification is sought falls within the above statutory 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. Specifically, TECO contends that disclosure of the highlighted information on pages 12 and 14 of the Report would disclose its current purchasing strategy (both with respect to fuel and purchased power) and risk exposure. TECO states that those who have an interest in supplying TECO's fuel and purchased power needs could use this valuable information to help them negotiate more favorable terms, to TECO's detriment and that of its ratepayers, than would otherwise be the case. TECO asserts that the suppliers could learn of the company's plans and needs and use that information in exacting better prices for meeting those needs. TECO further contends that disclosing the company's risk exposure levels on a monthly basis would provide an indicator of vulnerability to market price, and the would-be suppliers of both fuel and purchased power could simply withhold supply and price their fuel and purchase power offerings at a higher level than they would otherwise. TECO states that power suppliers could perform

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maintenance on their units during months when TECO's exposure is low, so that they would have their power to sell through at high prices during months that TECO's exposure is high.

TECO further contends that disclosure of the highlighted information in the Report would also provide highly sensitive information to recipients regarding the manner and timing of TECO's entry into the fuel and purchased power markets. TECO states that knowledge of this information would allow the opportunity for market manipulation through transactions made in anticipation of the company's entry into the market. TECO asserts that market manipulations based on knowledge of the highlighted information would increase the price of fuel and purchased power paid by TECO's customers as well as the price paid by the company to hedge the customers' price of fuel and purchased power. TECO contends that these effects of disclosure would impair its efforts to contract for goods and services on favorable terms for the benefit of its customers.

Finally, TECO states that the highlighted contractual fuel price information shown in the Report represents contract prices that are less than two years old, within the period of time that contract prices are typically protected to preserve the company's competitive position in negotiating fuel supply contracts. TECO states that any contract price shown in the Report without highlighting represents an older, and therefore no longer competitively sensitive, price. TECO contends that disclosing its highlighted actual contractual fuel prices and the market indexes upon which fuel contract prices are based would impair TECO's future efforts to contract for goods and services on favorable terms. TECO states that the information could be used by suppliers to affect the price of fuel that TECO will need to purchase in the future since the provider's bids might be influenced if they had knowledge of existing contract rates. TECO asserts that knowledge of this information would allow fuel suppliers to use this valuable information to help them negotiate more favorable terms, to the detriment of Tampa Electric and its ratepayers, than would otherwise be the case. TECO states that the highlighted information contained in TECO's Report for which confidential classification is sought is intended to be and is treated by TECO as private and has not been publicly disclosed.

Time Period For Confidential Classification

TECO requests confidential classification for this information for a period of three years. 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 longer period." As grounds for its request, TECO asserts that the Report provides detailed strategies many of which are of a continuing nature and which could well be in place beyond the standard eighteen-month period. TECO explains that the various risk management strategy components build upon each other and disclosing the company's basic plan sooner than three years after it is submitted would arm would-be suppliers of goods and services, as well as TECO's competitors, with the bulk of the company's risk management strategies. TECO contends that a minimum of three years is essential to prevent those entities in the fuel and purchased power markets from having access to information they could use to TECO's competitive disadvantage, which would increase the fuel and purchased power costs borne by its customers.

Ruling

Upon review, it appears that TECO is entitled to confidential classification of the information contained in Document No. 09189-12. The information described above 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,” and “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Sections 366.093(3)(d) and (e), F.S. The public disclosure of any of this information could reduce TECO’s competitiveness in the marketplace. Therefore, TECO’s request for confidential classification of the highlighted information contained in pages 12 and 14 of the company’s 2011 Hedging Activity True-Up, identified as Exhibit - (JBC-1) of witness I. Brent Caldwell is granted.

Pursuant to Section 366.093(4), F.S., TECO has demonstrated good cause for the information for which confidential classification is granted herein to remain protected from disclosure for a period of three years from the date of issuance of this Order. Accordingly, the information identified in Document No. 01989-12 shall be granted confidential classification for a period of 18 months from the 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.

Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that Tampa Electric Company’s requests for confidential treatment of portions of Document No. 01989-12 is granted as set forth in the body of this Order. It is further

ORDERED that the information referenced in Document No. 01981-12 shall be granted confidential classification for a period of three 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 Eduardo E. Balbis, as Prehearing Officer, this 31st day of May, 2012.



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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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 25-22.0376, 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.