

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

NOS.
DOCKET NO. 160001-EI *and 170001-EI*
ORDER NO. PSC-17-0045-CFO-EI
ISSUED: February 3, 2017

WJ 2-6-17

ORDER GRANTING TAMPA ELECTRIC COMPANY'S REQUEST
FOR CONFIDENTIAL CLASSIFICATION AND MOTION FOR TEMPORARY
PROTECTIVE ORDER (DOCUMENT NO. 08012-16, X-REF. 07578-16)

On October 4 2016, 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 and Motion for Temporary Protective Order (Request) of highlighted information contained in audit workpapers pursuant to Audit Control No. 16-068-2-2 (Document No. 08012-16, x-ref. 07578-16). This request was filed in Docket 160001-EI.

Request for Confidential Classification

TECO contends that designated portions of Audit No. 16-068-2-2 workpapers, as more specifically described in Exhibit A attached to its Request, constitute proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. Exhibit A attached to TECO's Request contains a detailed matrix providing justification and support for confidential classification of the information on a line-by-line, column-by-column basis. TECO asserts that this information is intended to be and is treated by TECO as private and has not been publicly disclosed.

The information contained in the Audit No. 16-068-2-2 workpapers are specific details about TECO's fuel hedging volume, pricing, percentages and/or counterparties. TECO argues that this type of information about a commodity has been previously recognized as proprietary business information which, if released, would allow the opportunity for market manipulation through transactions made in anticipation of the company's entry into the market. The net result being that TECO would pay higher prices for natural gas to the ratepayers' detriment. Therefore, TECO asserts that this information falls within the protection of Section 366.093(3)(e), F.S. TECO further argues that if this bid and contract information were disclosed it would impair the competitive business of both itself and its suppliers in violation of Section 366.093(3)(d), F.S. TECO requests confidential classification for this information for a period of 18 months.

Ruling

Section 366.093(1), F.S., provides that records the Commission has found to contain proprietary business information shall be kept confidential and shall be exempt from Chapter 119, F.S. 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

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not been voluntarily disclosed to the public. Sections 366.093(3)(d) and (e), F.S., provide that proprietary confidential business information includes, but is not limited to:

(d) 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.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Upon review, it appears the above-referenced information satisfies the criteria set forth in Sections 366.093(3)(d) and (e), F.S., for classification as proprietary confidential business information. The information described above and in Exhibit A, attached to TECO's Request, 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. This information reveals specific information about fuel hedging volume, pricing, percentages and counterparties. 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 natural gas. Therefore, the information contained in Document No. 08012-16, x-ref. 07578-16 and shall be granted confidential classification.

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. The information identified in Document No. 08012-16, x-ref. 07578-16, shall be granted confidential classification for a period of 18 months from the issuance of this Order.

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), F.A.C., 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.

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END 2.6.17

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 of TECO's assertions of the confidential nature of the information contained in Audit No. 16-068-2-2 work papers, Document No. 08012-16, x-ref. 07578-16, TECO's Motion for Temporary Protective Order is hereby granted. As a result, this information shall be protected from disclosure pursuant to Rule 25-22.006(6), F.A.C.

Based on the foregoing, it is

ORDERED by Chairman Art Graham, as Prehearing Officer, that Tampa Electric Company's request for confidential treatment of Document No. 08012-16, x-ref. 07578-16, is granted, as set forth herein. It is further

ORDERED that the information contained in Document No. 08012-16, x-ref. 07578-16, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. It is further

ORDERED that the Motion for Temporary Protective Order filed by Tampa Electric Company is granted. 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 Art Graham, as Prehearing Officer, this 3rd day of February, 2017.



ART GRAHAM
Commissioner and Prehearing Officer
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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.

DLH

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.