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Public Service Commission

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COMMISSION CLERK

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090001

DATE: April 21, 2009
TO: Lisa Bennett, Attorney, Office of General Counsel
FROM: Division of Regulatory Compliance (Freeman, Vandiver)
RE: Docket 080001-EI, Recommendation concerning Tampa Electric Company's (TECO's) request for confidential classification concerning a portion of the staff audit report and working papers prepared during the "Tampa Electric Company 2008 Hedging Activities - Audit Period -- January 1, 2008 Through July 31, 2008", Audit Control No. 08-221-2-2, Documents Numbered 09714-08, 09715-08 and 10097-08

Recommendation concerning Tampa Electric Company's (TECO's) request for a temporary protective order concerning a portion of the staff audit report and working papers prepared during the "Tampa Electric Company 2008 Hedging Activities - Audit Period -- January 1, 2008 Through July 31, 2008", Audit Control No. 08-221-2-2, Documents Numbered 09714-08, 09715-08 and 10097-08

On October 13, 2008, when copies of certain portions of staff's audit report and working papers obtained or prepared during the "Tampa Electric Company 2008 Hedging Activities - Audit Period -- January 1, 2008 Through July 31, 2008", were delivered to TECO at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On October 13, 2008, staff filed documents numbered 09714-08 and 09715-08 consisting of those specified portions of the staff's audit report and working papers.

On October 24, 2008, TECO filed a request pursuant to Section 366.093, Florida Statutes (F.S) and Rule 25-22.006, FAC, that selected portions of the audit report and working papers prepared by the staff during the audit receive a confidential classification. Such a request must meet the requirements of Rule 25-22.006(4), FAC. TECO's request included public copies of the information with the sensitive portions redacted (Document No.10098-08) and the request also included copies of the material with the sensitive information fully identified and highlighted (Document No. 10097-08).

In addition, TECO motioned pursuant to Rule 25-22.006(6)(c), FAC, that the information contained in staff's audit report and working papers be granted a temporary protective order such that the information may be protected from public disclosure while copies of the audit materials are in the custody of the Office of Public Counsel.

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FPSC-COMMISSION CLERK

April 21, 2009
TECO Request

Documents numbered 09714-08, 09715-08 and 10097-08 are currently held by the Office of the Commission Clerk as confidential pending resolution of FPL's request for confidential classification. Also, the utility's request for a protective order for this information is also pending.

Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific items of a statutory provision. Subsections 366.093(3)(d) and (e), F.S., provide the following exemptions.

Subsection 366.093(3), F.S., provides; "*Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. 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 business interests, the disclosure of which would impair the competitive business of the provider of the information...."

According to Section 366.093, F.S., and Rule 25-22.006, FAC, the utility has the burden of demonstrating that materials qualify for confidential classification. According to Rule 25-22.006, FAC, the utility must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility, the provider of the information or the ratepayer harm.

Staff Analysis of the Request

Reading the filing reveals the sensitive material consists of:

- 1) Risk Exposures, Hedging and Purchasing Strategies, and the Manner and Timing of Planned Entry into the Market;
- (2) Contractual Terms Regarding Hedging Transactions; and
- (3) Credit Limits for Trading Companies

Staff found sensitive information disclosing risk, purchasing strategies and market entry information is reported within staff's working papers titled: "Audit Report Exhibit -- Projected Filing VS Actual Hedged within Limit", "Risk Management Activities", "(Hedging) Analytics", "Natural Gas Cost", "Review of Accounting Treatment for Hedging Activities", "Audit Requests 9, 11 and 13", "Natural Gas Risk Management Activities", "Fuel Expense Report", "Hedge Plan Limits", "RAC Approval Request", "Projected Filing vs Actual Hedged within Limit", and "Hedge Volume vs Hedge Plan Min-Max."

Staff found sensitive information disclosing contractual terms is reported within staff's working papers titled: "Transaction Cost Testing General Ledger", "General Ledger", "Transaction Cost Testing", "Cross Subsidy Testing", "Position Summary Detail Report", and "Swaps Invoice Summary."

Further, staff found sensitive information disclosing credit limits is reported within staff's working papers titled: "Transaction Credit Limit", "Review of Accounting Treatment for Hedge Activities", "Approved Hedge Counter Parties", "Mark to Market Position Report", and "Individual Authorized Limit."

Lastly, the following information was considered sensitive concerning both contractual terms and credit limits as found in staff's working papers titled: "Master Agreement" and "Contract Testing."

TECO asserts that if risk information, purchasing strategies and market timing were public it "would allow the opportunity for market manipulation through transactions made in anticipation of the company's entry into the market. Market manipulations based on the knowledge of the highlighted information would increase the price of fuel and purchased power paid by Tampa Electric's customers as well as the price paid by the company to hedge the customer's price of fuel. These effects of disclosure would impair the efforts of Tampa Electric to contract for goods and services on favorable terms for the benefit of its customers. The disclosure of this information would therefore be harmful to the ability of Tampa Electric to contract for goods and services on favorable terms...."

Also, TECO asserts release of sensitive contractual information would allow suppliers to use the information to help them negotiate on more favorable terms, to the detriment of Tampa Electric and its customers.

Lastly, TECO asserts release of credit terms could cause other trading partners to modify existing or potential terms of future agreements. As such, public disclosure of this information would be harmful to TECO's contractual interests and competitive interests of the provider of the information, and as such all three types of hedging information identified by TECO would qualify for a confidential classification pursuant to Sections 366.093(3)(d) and (e), F. S.

Section 366.093(3)(d), F.S., provides that contractual information may be granted a confidential classification if release of the information would impair the ability of a utility or its affiliates to favorably contract. Section 366.093(3)(e), F.S., provides that sensitive business information may be granted a confidential classification if its release would harm the competitive business of the provider of that information.

The sensitive material reveals TECO's risk exposures, hedging and purchasing strategies, market timing, sensitive contractual information and credit terms, and the release of this information would cause the contractual and competitive harm the company suggests. Therefore, staff recommends that the material be granted a confidential classification.

Information Held as Confidential

To qualify as proprietary confidential business information, the material must also be held as private and not released to the public. TECO asserts: "The material for which confidential classification is sought is intended to be and is treated by Tampa Electric as private and has not been disclosed."

Duration of the Confidential Classification Period

TECO requests that this information be held in a confidential classification for at least 18 months as prescribed by Rule 25-22.006(9)(a), Florida Administrative Code.

According to the provisions set out in Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. We therefore recommend that the Commission limit the confidential classification period to 18 months. TECO may request an extension of this classification period before it tolls.

Staff Recommendations

Recommendation Concerning a Protective Order

The responsibility for providing a recommendation for a protective order to the Commission rests with the Office of the General Counsel. Technical staff's review of the Commission Clerk's files and Bureau of Audit files and contact with the Office of the Public Counsel indicates that copies of the sensitive TECO hedging audit materials for 2008 have not been provided by the to the Office of Public Counsel.

Recommendation Concerning the Request for Confidential Protection

Based upon reading TECO's request that certain information be granted a confidential classification, and for the reasons presented above, we recommend the utility's request be granted and that the identified material be granted a confidential classification for 18 months.

A detailed recommendation follows:

Detailed Recommendation

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents Numbered 09715-08 and 10097-08					
Audit Report Exhibit	Projected Filing VS Actual Hedged Within Limit	5	6 Columns	Grant	Sensitive Contractual and Competitive Business Information
1	Projected Filing VS Actual Hedged Within Limit	7	6 Columns	Grant	Sensitive Contractual and Competitive Business Information
Documents Numbered 09714-08 and 10097-08					
2	Risk Management Activities	1	5 Columns	Grant	Sensitive Contractual and Competitive Business Information
7	(Hedging) Analytics	1	4 Columns	Grant	Sensitive Contractual and Competitive Business Information
7-1	Natural Gas Cost	1	3 Columns	Grant	Sensitive Contractual and Competitive Business Information
7-1	Natural Gas Cost	2	3 Columns	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents Numbered 09714-08 and 10097-08					
7-2	Review of Accounting Treatment for Hedging Activities	1	4 Columns	Grant	Sensitive Contractual and Competitive Business Information
10-9	Audit Request 9	1-2	1 Column	Grant	Sensitive Contractual and Competitive Business Information
10-11	Audit Request 11	1	4 Columns	Grant	Sensitive Contractual and Competitive Business Information
10-13	Audit Request 13	1	9 Columns	Grant	Sensitive Contractual and Competitive Business Information
45	Natural Gas Risk Management Activities	1	5 Columns	Grant	Sensitive Contractual and Competitive Business Information
45-1	Transaction Cost Testing General Ledger	1	10 Columns	Grant	Sensitive Contractual and Competitive Business Information
45-1/1	General Ledger	1	9 columns	Grant	Sensitive Contractual and Competitive Business Information
45-2	Transaction Cost Testing	1	10 Columns	Grant	Sensitive Contractual and Competitive Business Information
45-2/1	General Ledger	1	9 Columns	Grant	Sensitive Contractual and Competitive Business Information
45-3	Transaction Cost Testing	1	10 Columns	Grant	Sensitive Contractual and Competitive Business Information
45-3/1	General Ledger	1	9 Columns	Grant	Sensitive Contractual and Competitive Business Information
45-4	Transaction Cost Testing	1	8 Columns	Grant	Sensitive Contractual and Competitive Business Information
45-4/1	General Ledger	1	9 Columns	Grant	Sensitive Contractual and Competitive Business Information
45-5	Transaction Cost Testing	1	8 Columns	Grant	Sensitive Contractual and Competitive Business Information
45-5/1	General Ledger	1	9 Columns	Grant	Sensitive Contractual and Competitive Business Information
45-6	Transaction Cost Testing	1	8 columns	Grant	Sensitive Contractual and Competitive Business Information
45-6/1	General Ledger	1	9 Columns	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents Numbered 09714-08 and 10097-08					
45-7	Transaction Cost Testing	1	8 Columns	Grant	Sensitive Contractual and Competitive Business Information
45-7/1	General Ledger	1	8 Columns	Grant	Sensitive Contractual and Competitive Business Information
45-8	Fuel Expense Report	1	8 Columns	Grant	Sensitive Contractual and Competitive Business Information
45-8/1 through 45-8//6	Fuel Expense Report	1-6	8 Columns	Grant	Sensitive Contractual and Competitive Business Information
61	Hedge Plan Limits	1	8 Columns	Grant	Sensitive Contractual and Competitive Business Information
61-1	RAC Approval Request	1	19 Lines	Grant	Sensitive Contractual and Competitive Business Information
62	Transaction Credit Limit	1	13 Columns	Grant	Sensitive Contractual and Competitive Business Information
62/1	Review of Accounting Treatment for Hedge Activities	1	9 Columns	Grant	Sensitive Contractual and Competitive Business Information
62-1	Approved Hedge Counter Parties	1	2 Columns	Grant	Sensitive Contractual and Competitive Business Information
62-2	Mark to Market Position Report	1	13 Columns	Grant	Sensitive Contractual and Competitive Business Information
62-2/1 through 62-2/3	Mark to Market Position Report	1-3	16 columns	Grant	Sensitive Contractual and Competitive Business Information
62-2/4	Mark to Market Position Report	1	15 Columns	Grant	Sensitive Contractual and Competitive Business Information
62-2/5 through 62-2/6	Mark to Market Position Report	1-2	16 columns	Grant	Sensitive Contractual and Competitive Business Information
62-3	Individual Authorized Limit	1	13 Columns	Grant	Sensitive Contractual and Competitive Business Information
62-5	Projected Filing v s Actual Hedged Within Limit	1	4 Columns	Grant	Sensitive Contractual and Competitive Business Information
62-5/1	Projected Filing v s Actual Hedged Within Limit	1	6 columns	Grant	Sensitive Contractual and Competitive Business Information
62-7	Hedge Volume vs Hedge Plan Min-Max	1	3 Columns	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents Numbered 09714-08 and 10097-08					
62-8	Hedge Volume vs Hedge Plan Min-Max	1	3 Columns	Grant	Sensitive Contractual and Competitive Business Information
62-9	Hedge Volume vs Hedge Plan Min-Max	1	3 columns	Grant	Sensitive Contractual and Competitive Business Information
62-10	Hedge Volume vs Hedge Plan Min-Max	1	3 Columns	Grant	Sensitive Contractual and Competitive Business Information
62-11	Hedge Volume vs Hedge Plan Min-Max	1	3 Columns	Grant	Sensitive Contractual and Competitive Business Information
62-12	Hedge Volume vs Hedge Plan Min-Max	1	3 Columns	Grant	Sensitive Contractual and Competitive Business Information
62-13	Hedge Volume vs Hedge Plan Min-Max	1	3 Columns	Grant	Sensitive Contractual and Competitive Business Information
64-14	Master Agreement	1-56	All Lines	Grant	Sensitive Contractual and Competitive Business Information
65	Cross Subsidy Testing	1	9 Columns	Grant	Sensitive Contractual and Competitive Business Information
65/1	Position Summary Detail Report	1	15 Columns	Grant	Sensitive Contractual and Competitive Business Information
65/2	Position Summary Detail Report	1	15 Columns	Grant	Sensitive Contractual and Competitive Business Information
65/3	Swaps Invoice Summary	1	6 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-1	Cross Subsidy Testing	1	9 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-1/1	Swaps Invoice Summary	1	5 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-1/2	Position Summary Detail Report	1	15 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-1/3	Position Summary Detail Report	1	15 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-2	Cross Subsidy Testing	1	9 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-2/1	Swaps Invoice Summary	1	5 Columns	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents Numbered 09714-08 and 10097-08					
65-2/2	Position Summary Detail Report	1	15 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-2/3	Position Summary Detail Report	1	15 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-3	Cross Subsidy Testing	1	9 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-3/1	Swaps Invoice Summary	1	6 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-3/2	Position Summary Detail Report	1	15 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-3/3	Position Summary Detail Report	1	15 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-4	Cross Subsidy Testing	1	9 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-4/1	Swaps Invoice Summary	1	7 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-4/2	Position Summary Detail Report	1	15 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-4/3	Position Summary Detail Report	1	15 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-5	Cross Subsidy Testing	1	9 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-5/1	Swaps Invoice Summary	1	7 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-5/2	Position Summary Detail Report	1	15 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-5/3	Position Summary Detail Report	1	15 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-6	Cross Subsidy Testing	1	9 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-6/1	Swaps Invoice Summary	1	7 Columns	Grant	Sensitive Contractual and Competitive Business Information
65-6/2	Position Summary Detail Report	1	15 Columns	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents Numbered 09714-08 and 10097-08					
65-6/3	Position Summary Detail Report	1	15 Columns	Grant	Sensitive Contractual and Competitive Business Information
67	Contract Testing	1	15 Columns	Grant	Sensitive Contractual and Competitive Business Information

A temporary copy of this recommendation will be held at I:10097-08 TECO 2008 jan-july hedging raf.doc for a short period.

CC: Division of Regulatory Compliance (Rohrbacher)
Office of the Commission Clerk (Cole, Mclean)