

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy conservation cost recovery
clause.

DOCKET NO. 20190002-EG
ORDER NO. PSC-2019-0482-CFO-EG
ISSUED: November 18, 2019

ORDER GRANTING TAMPA ELECTRIC COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION AND
MOTION FOR TEMPORARY PROTECTIVE ORDER (DOCUMENT NO. 07533-2019)

On August 12, 2019, 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 certain material contained in its responses to the Office of Public Counsel's First Request for Production of Documents, specifically Nos. 11, 12, 14, and 15 (discovery responses) (Document No. 07533-2019). This request was filed in Docket No. 20190002-EG.

Request for Confidential Classification

TECO contends that the information contained in the above-referenced discovery responses, identified as Bates Stamp 82, 87, 88, 89, 90, 91, 98, 99, and 107, constitutes proprietary and confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. TECO asserts that this information is intended to be and is treated by TECO as confidential and has not been publicly disclosed.

TECO contends that its discovery responses contain information about contract terms and rates paid for demand side management services, the disclosure of which would harm TECO's competitive interests and its ability to contract for goods and services on favorable terms. As such, TECO argues that the information contained in the discovery responses should be protected pursuant to Section 366.093(3)(d) and (e), F.S.

Motion for Temporary Protective Order

TECO also seeks a Temporary Protective Order for its Request. 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 Section 119.07(1), F.S., the public records law. 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 any party. 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.

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 not been voluntarily disclosed to the public. Section 366.093(3), F.S., provides 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 Section 366.093(3), F.S., for classification as proprietary confidential business information. The information described above and in TECO's Request appears to constitute "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 "information 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. 07533-2019 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 up to 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.

Further, upon consideration of TECO's assertions of the confidential nature of the information contained in its discovery responses, 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 hereby

ORDERED by Commissioner Gary F. Clark, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of Document No. 07533-2019 is granted. It is further

ORDERED that the information in Document No. 07533-2019, 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. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless Tampa Electric Company or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information. 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.

By ORDER of Commissioner Gary F. Clark, as Prehearing Officer, this 18th day of November, 2019.



GARY F. CLARK

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.

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.