

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Gulf Power) DOCKET NO. 881167-EI
 Company for an Increase in Rate) ORDER NO. 21156
 and Charges) ISSUED: 5-3-89

ORDER ON CONFIDENTIALITY REGARDING CITIZENS' SIXTH
 REQUEST FOR PRODUCTION OF DOCUMENTS AND
 SIXTH SET OF INTERROGATORIES

On November 14, 1988, Gulf Power Company (Gulf) petitioned the Commission for a rate increase. The Citizens, through Public Counsel, intervened and served on Gulf a Sixth Request for Production of Documents on February 9, 1989, and a Sixth Set of Interrogatories on February 10, 1989.

I. Sixth Request for Production of Documents

On March 17, 1989, Gulf, relying on Rules 1.280 and 1.351, Florida Rules of Civil Procedure, Rule 25.006[sic], Florida Administrative Code, and Section 366.093, Florida Statutes, filed an Objection, Motion for Protective Order and Request for Confidentiality as to Portions of Citizens' Sixth Request for Production of Documents. Gulf objects to or requests specified confidential classification of Requests Nos. 51, 52, 53, 55, 58, 59, 60, 62, 63, 64, 65, 66, 67, and 68.

Request No. 53 asks Gulf to:

Please provide the portion of the system-wide (see definition) outside independent auditor's workpapers (including "review points") and internal audit workpapers for all periods including any part of calendar year 1987 and 1988 which pertain to Gulf. To the extent these workpapers reflect allocations among the various system-wide (see definition) affiliates, please also provide the workpapers pertaining to each affiliate during any part of calendar years 1987 and 1988.

Request No 55 asks Gulf to:

Please provide all documents (see definition) in your possession, custody or control, including but not necessarily limited to, audits, or inventories, reconciling Gulf's Continuing Property Records (CPR) to any inventory of actual plant in service.

Requests Nos. 58, 59, and 60 ask Gulf to:

Please provide a copy of the workpapers supporting the audit requested in staff interrogatory no. 162 [Audit Report 84-07]. Please provide a copy of the workpapers supporting the audit requested in staff interrogatory no. 164 [Audit Report 87-33].

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Please provide a copy of the workpapers supporting the internal audit report requested in staff interrogatory no. 176.

Requests Nos. 65 and 66 ask Gulf to:

Please provide a copy of the physical inventory or audit and workpapers supporting the audit of the transmission and distribution materials at the Gulf Power general warehouse conducted in 1980.

Please provide a copy of the audit, and workpapers supporting the audit, of the Gulf Power general warehouse inventory conducted in October of 1981.

Gulf requests specified confidential classification pursuant to Section 266.093(3)(b), Florida Statutes, for its responses to Requests Nos. 53, 55, 58, 59, 65, and 66. Gulf argues that not only are the internal audits entitled to confidentiality, the workpapers supporting them are similarly entitled. To find otherwise, Gulf argues, would circumvent the intent of the exemption and possibly constitute a waiver of Gulf's rights to obtain specified confidential treatment as to the audit itself. We agree. We find that "audits of Gulf's CPR/Physical assets and other Miscellaneous Information;" "Work Papers, Pictures, Etc. for Physical Inventories/Reconciliation of Gulf's Assets with CPR Records"; Audit Report 84-07, Audit Report 87-33; "Audit No. 340, Stores Material and Transformed Audit" dated October 23, 1980; and "Audit No. 412, Merchandise Audit" conducted on October 16, 1981, and related workpapers fell within the provisions of Section 366.093(3)(b), Florida Statutes.

Request No. 62 asks Gulf to:

Please provide a copy of each document listing or cataloging internal audit reports performed by you and relating to Gulf Power Company, since January 1, 1980.

Gulf argues that exemption (b) should be expanded to include its 16-page "Audit Index Listing," which includes a catalogue of audits performed since January 1, 1980, by audit number and title. While exemption (b) exempts the audits themselves, it does not address lists of such audits. We find that such construction of exemption (b) is not contemplated and is not necessary to protect Gulf's interests.

Request No. 64 asks Gulf to:

Please provide a copy of all documents in your possession, custody, or control relating to the purchase or acquisition of all land associated with or adjacent to the property site for the new Gulf Power building on Bayshore Parkway in Pensacola. These documents should include, but not be limited to, documents listing or describing all persons or entities conveying property to you for the purpose of building the new headquarters building.

Gulf requests specified confidential treatment pursuant to Section 366.093(3)(d) for information contained in agreements and contracts for sale, closing statements, title work, and curative title information relating to terms and conditions of Gulf's purchase of property at the Bayfront Parkway Site from individual property owners. Gulf argues that disclosure of such information would prejudice Gulf's ability to bargain on favorable terms, in its current negotiations with property owners in the area.

Sometime between January 1, 1989 and March 31, 1989, Donald R. Schofield of Gulf provided W. J. Davis, a PSC engineer, with a map depicting the location of Gulf's new buildings and surrounding areas. He also received a list of Gulf land purchases dated December 30, 1986, signed by Charles Jordan of Gulf, relating to the new office building site which included the name of the seller, the price paid by Gulf, the area purchased in square feet, the date purchased, and the deed book reference. On April 19, 1989, W. J. Davis also received from Gulf a plot drawing of all land parcels which have been purchased or are still being purchased by Gulf on the office site. None of these documents were stamped confidential. We find that Gulf has already disclosed information for which it now requests confidentiality.

Request No. 68 asks Gulf to:

Please provide a copy of the complete contract(s) (including all amendments thereto), agreement(s), letter(s) of engagements between you and Arthur Anderson and Company, governing the provision of all accounting services by Arthur Anderson to the Southern Company and each of its subsidiaries and affiliates, including Gulf Power Company.

Gulf argues that the letter agreement from Arthur Anderson & Co., dated January 5, 1989, containing the terms of the contract between Gulf and Arthur Anderson & Co. for auditing services is entitled to confidentiality pursuant to Section 366.093(3)(d), Florida Statutes. We agree.

Gulf also objects to Requests Nos. 51, 52, 53, 63, and 67 because they ask for material not relevant to the jurisdiction of the Commission and because they are overly broad and burdensome.

Request No. 51 asks Gulf to:

Please provide the audit report and related correspondence and documents (see definition) of the "most recent Gulf" IRS audit. In addition provide the audit report and related correspondence and documents (see definition) of the "most recent system-wide" (see definition) IRS audit. Further provide the "same information for the IRS audit prior" to the most recent IRS audit.

Request No. 52 asks Gulf to:

Please provide a copy of Gulf's 1987 and 1988 federal income tax return (including all schedules) and the supporting documents (see definition) workpapers and correspondence showing how the federal income tax expense and accounts payable amounts were accrued. Further provide the "same information for the system-wide (see definition) consolidated tax return". In addition provide the "same information" for Gulf's state income tax.

Gulf objects to producing that portion of the consolidated audit report and the consolidated federal income tax returns that contain proprietary business information provided to Southern Company Services, Inc. and Arthur Anderson & Co. in confidence by affiliated companies not under the jurisdiction of the Commission. That Gulf and its affiliates have agreed not to disclose the disputed information does not render the information privileged.

Rule 1.280, Florida Rules of Civil Procedure, provides that parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action or appears reasonably calculated to lead to the discovery of admissible evidence. Gulf has requested a rate increase. Public counsel, as intervenor, has inquired into system-wide information which could lead to relevant information or admissible evidence that could aid in the determination of the validity of the Gulf's request, for instance, whether utility ratepayers are subsidizing nonutility affiliates. We find the requested information relevant to Gulf's request for a rate increase. Gulf alternatively requests that the Commission provide for review of the consolidated information so as to prevent disclosure of proprietary information belonging to its affiliates. We find that Gulf has demonstrated that it is contractually prohibited from disclosing the information, pursuant to Rule 25-22.006(5), Florida Administrative Code.

Gulf additionally objects to Request No. 53 as overly broad and burdensome. Gulf supports its objection with Exhibit "A", a letter dated February 27, 1989, on Arthur Anderson & Co. letterhead to Gulf Power "Gentlemen," signed by "Mark R. Bell," indicating the volume of the documents, the cost of reviewing them, and that the involved files are "currently under subpoena in connection with the on-going grand jury investigation of The Southern Company and its subsidiaries," requiring consultation with house counsel as to release of them. Gulf also indicated it would make its files available in their offices to the Public Counsel. We agree that it would be unduly burdensome to require Gulf to copy all of the requested documents. However, we find that this material is relevant and properly discoverable and that Public Counsel must be given the opportunity to review and copy these documents at Gulf's offices. Such materials would be entitled to specified confidential classification upon the appropriate request by Gulf.

Request No. 63 asks Gulf to:

Please provide a copy of Gulf Power Company's vendor list for each year since January 1, 1980. The list should be your standard vendor list with vendor identification numbers included.

Gulf objects arguing that the request is overly broad and burdensome. Gulf explains that before 1987, it had no standard vendor list, only a paid vendor detail listing within 2,000 - 3,000 pages of accounts payable, and would agree either to produce listings for specific vendors or to produce accounts payable as kept at Gulf for inspection. We find Gulf's objection and suggested alternative reasonable.

Request No. 67.

Please provide a copy of Arthur Anderson's audit report and supporting workpapers for their audit of Gulf Power Company's balance sheet as of December 31, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, and 1988, and the relating statement of income, and retained earnings and sources of funds for the same years.

Gulf objects arguing that the request is overly broad and burdensome and seeks relief from producing the information "at this time." The rules of discovery are to be liberally construed to accomplish their purpose. We find Gulf's objection insufficient to defeat that purpose.

II. Citizens' Sixth Set of Interrogatories

On March 20, 1989, Gulf filed an Objection, Motion for Protective Order, and Request for Confidentiality, in Connection with Portions of Public Counsel's Sixth Set of Interrogatories. Relying on Rule 1.280 Florida Rules of Civil Procedure, Rule 25-22.006, Florida Administrative Code, and section 366.093, Florida Statutes, Gulf moves for protective order and requests specified confidential classification as to its response to Interrogatory Nos. 115(a) and (b):

Interrogatories Nos. 115(a) and (b) state:

115. The following inquiries relate to the new Corporate Headquarters.

- a. Please provide the name(s) and amounts paid to the previous owner(s) of the Bayfront property on which the new Corporate headquarters is located. Also provide the date of the purchase(s).

b. For any other properties owned by you (or your affiliates) in the general area of the new headquarters, please provide a description of the property, name of previous owner(s), date of the purchase and affiliation with you or your employees or officers (or Southern Company employees or officers), amount paid for the property and planned use for the property.

Gulf argues that the requested information is information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility to contract for services on favorable terms. Section 366.093(3)(d), Florida Statutes.

Sometime between January 1, 1989 and March 31, 1989, Donald R. Schofield of Gulf provided W. J. Davis, a PSC engineer, with a map depicting the location of Gulf's new buildings and surrounding areas. He also received a list of Gulf land purchases dated December 30, 1986, signed by Charles Jordan of Gulf, relating to the new office building site which included the name of the seller, the price paid by Gulf, the area purchased in square feet, the date purchased, and the deed book reference. On April 19, 1989, W. J. Davis also received from Gulf a plot drawing of all land parcels which have been purchased or are still being purchased by Gulf on the office site. None of these documents were stamped confidential. We find that Gulf has already disclosed information for which it now requests confidentiality.

Based upon the foregoing it is

ORDERED that Gulf's responses to Interrogatory Nos. 53, 55, 58, 59, 60, 65, and 66 are entitled to specified confidential classification. It is further

ORDERED that Gulf's request for specified confidential classification as to Interrogatory No. 62 is denied. It is further

ORDERED that Gulf's request for specified confidential classification as to Interrogatory No. 64 is denied. It is further

ORDERED that Gulf's request for specified confidential classification as to Interrogatory No. 68 is granted. It is further

ORDERED that Gulf's objections to producing as to Request Nos. 51 and 52 are denied. It is further

ORDERED that Gulf's request not to produce Requests Nos. 51 and 52 is denied as described in the body of the order. further

ORDERED that Gulf's objection as to Request No. 63 is sustained. It is further

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ORDERED that Gulf's objection to Request No. 67 is denied. It is further

ORDERED that Gulf's request for specified confidential classification as to Interrogatories Nos. 115(a) and (b) is denied. It is further

ORDERED that if a protest is filed within 14 days of the date of this order it will be resolved by the appropriate Commission panel pursuant to Rule 25-22.006(3)(d), Florida Administrative Code.

By ORDER of Commissioner Thomas M. Beard, as Prehearing Officer, this 3rd day of MAY, 1989



THOMAS M. BEARD, Commissioner
and Prehearing Officer

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