

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for rate increase
by Gulf Power Company.

DOCKET NO. 010949-EI
ORDER NO. PSC-02-0108-PCO-EI
ISSUED: January 22, 2002

ORDER GRANTING IN PART AND DENYING IN PART
MOTION FOR PROTECTIVE ORDER

On July 6, 2001, Gulf Power Company (Gulf) filed notice of its intent to request a rate increase, pursuant to Rule 25-6.140, Florida Administrative Code. On September 10, 2001, Gulf filed its Petition for a rate increase. The matter has been set for hearing. The Office of Public Counsel, Federal Executive Agencies, Florida Cable Telecommunications Association, and Florida Industrial Power Users Group are parties in this proceeding.

Depositions of Gulf witnesses have been set for January 23, 24 and 31, 2002. On January 16, 2002, Gulf filed a Motion for Protective Order, pursuant to Rule 25-22.006, Florida Administrative Code, seeking confidential treatment of any potentially confidential information that may be discussed at the depositions.

To protect its potentially confidential information, Gulf requests the following in its Motion for Protective Order: (1) any question or response which Gulf claims would disclose confidential information, be sealed in a separate transcript which is to be kept confidential and not made available to the public; (2) only assigned staff, Public Counsel, and parties who have signed a non-disclosure agreement with Gulf be permitted to be present at the deposition and to possess or review the deposition transcripts; (3) if the confidential information is to be used at hearing, a request for confidential classification covering that confidential information will have to be filed within 21 days of the conclusion of the hearing.

With respect to item (2) of the Motion, Gulf clarified, through a telephone conversation, that its intent was to request that only those parts of the deposition proceedings where potentially confidential information is discussed be closed to the public, and to keep only the confidential parts of the deposition transcripts from public disclosure.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Given the short time between the filing of the Motion and the first deposition, staff faxed a copy of the Motion to each party and solicited their comments. In addition, Gulf contacted each party before filing the Motion and ascertained that there were no objections.

The Florida Cable Telecommunications Association responded to Gulf's Motion via electronic mail on January 18, 2002. The FCTA does not object to Gulf's Motion, subject to: (1) the FCTA's right to obtain the material for which confidential classification is sought through execution of a non-disclosure agreement with Gulf; and (2) the FCTA's right to challenge Gulf's "unilateral determination at the depositions as to the confidential character of the information."

The Office of Public Counsel responded via telephone on January 18, 2002, and confirmed that it had no objection to the Motion.

The Florida Industrial Power Users Group (FIPUG) filed a response to Gulf's Motion on January 18, 2002. FIPUG has no objection to allowing only parties who sign a non-disclosure agreement access to the depositions when confidential information is discussed or to the confidential portions of the deposition transcripts. FIPUG does object to Gulf's Motion to the extent Gulf intends to limit the public's access to the non-confidential portions of the depositions and deposition transcripts, as such limitations violate Chapter 119, Florida Statutes.

Gulf relies on Rule 25-22.006, Florida Administrative Code, as authority for its Motion. Although Gulf does not cite a specific part of the rule, I assume it relies on Subparts 25-22.006(6)(a) and (b), as these are the parts that pertain to protective orders issued during discovery.

Rule 25-22.006(6)(a) 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 in Rule 1.280, Florida Rules of Civil Procedure. The protective order shall specify how the confidential information is to be handled during the course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.

In this docket, a number of orders granting temporary protection to documents exchanged between Gulf and OPC have been issued. It is therefore possible that potentially confidential information will be discussed at the depositions. If this occurs Gulf should be able to assert confidentiality at the depositions. Without such protection, Gulf's commercial interests could be harmed.

Given the need to protect potentially confidential information, only assigned staff, Public Counsel, and parties who have signed a non-disclosure agreement with Gulf shall be permitted to be present at the depositions when confidential information is discussed, and to possess or review the confidential portion of the deposition transcripts. The depositions shall be open to the public at all times except when Gulf asserts that a deponent's response is confidential. That part of each transcript that does not contain confidential information shall be available to the public.

To facilitate this procedure, each party shall ask the questions that it believes will elicit confidential information consecutively.

In its Motion Gulf asks that the information over which it asserts confidentiality at the depositions, be treated as confidential by the Commission at least through the completion of the hearing. I find that information at this Commission should not be subject to confidential treatment for that length of time without some justification for such treatment. Gulf offers no such justification. Therefore, Gulf shall file a Request for Confidential Classification, in accordance with Rule 25-22.006(4), Florida Administrative Code, within 21 days of the completion of each deposition transcript for which Gulf asserts confidentiality.

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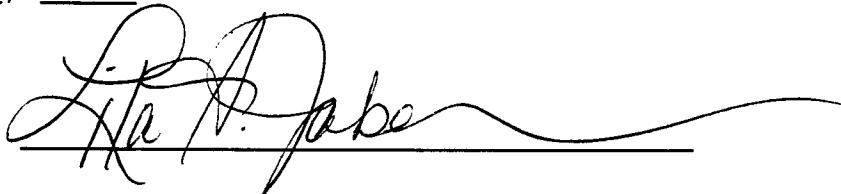
Based on the foregoing, it is

ORDERED by Chairman Lila A. Jaber, as Prehearing Officer, that the depositions of Gulf Power Company's witnesses in Docket No. 010949-EI, shall be open to the public except for those portions that Gulf asserts will reveal confidential information. When Gulf asserts confidentiality, anyone present who is not a party and has not signed a non-disclosure agreement with Gulf shall be asked to leave the deposition while confidential information is being discussed. It is further

ORDERED that only Commission staff and parties to the docket who signed a non-disclosure agreement with Gulf shall be allowed to possess or review the confidential portions of the deposition transcripts. It is further

ORDERED that Gulf shall file a Request for Confidential Classification, in accordance with Rule 25-22.006(4), Florida Administrative Code, within 21 days of the completion of each deposition transcript for which Gulf asserts confidentiality.

By ORDER of Chairman Lila A. Jaber, as Prehearing Officer, this 22nd day of January, 2002.

A handwritten signature in cursive script, reading "Lila A. Jaber", written over a horizontal line. The signature is fluid and extends to the right with a long, sweeping tail.

LILA A. JABER
Chairman and Prehearing Officer

(S E A L)

MKS

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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, 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.