

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating, performance incentive factor.      DOCKET NO. 040001-EI  
ORDER NO. PSC-04-1214-CFO-EI  
ISSUED: December 8, 2004

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION  
(DOCUMENT NO. 11815-04)

On November 3, 2004, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Gulf Power Company (Gulf) filed a request for confidential classification of its response to Interrogatory No. 5 of Staff's Second Set of Interrogatories (Nos. 5-10) (Document No. 11815-04).

Section 366.093(1), Florida Statutes, provides that "any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from [the Public Records Act]." Section 366.093(3), Florida Statutes, 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), Florida Statutes, provides that proprietary confidential business information includes, but is not limited to "[t]rade secrets" (subsection a); "[i]nformation 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" (subsection d); and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information" (subsection e).

Gulf contends that its response to Interrogatory No. 5 falls within these categories and thus constitutes proprietary confidential business information entitled to protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Gulf states that this information is intended to be and is treated by Gulf as private and has not been publicly disclosed.

Gulf requests confidential classification for Page 1 of 1, Lines 3-12, of its response to Interrogatory No. 5. Gulf contends that this information concerns contractual matters and competitive interests of Gulf, which would cause irreparable harm to the company and the entities with whom it has entered into contracts if such information were disclosed to the general public. Gulf states that its response to Interrogatory No. 5 contains specific contract terms of one or more gas supply contracts, the terms of which are regarded by both Gulf and the party with whom it has contracted as confidential. Gulf asserts that the gas supply contract(s) in question were a result of negotiations between Gulf and one or more suppliers. Gulf further asserts that the terms resulting from the negotiations are specific to the contract(s) and are not publicly known. Gulf contends that disclosure of this information would negatively impact its ability to

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negotiate terms favorable to its customers in future gas supply contracts because possible counterparties may refuse to contract with Gulf if it is unable to keep the contract terms confidential. According to Gulf, its response to Interrogatory No. 5 also contains information relating to competitive interests in fuel markets which would cause irreparable harm to Gulf and the entity with whom it has contracted if such information is disclosed to the general public. Gulf states that the specific volumes of fuel and the contract term are competitively sensitive information.

Upon review, it appears that the above-referenced information contained in Gulf's response to Interrogatory No. 5 of Staff's Second Set of Interrogatories (Nos. 5-10) satisfies the criteria set forth in Section 366.093(3), Florida Statutes, for classification as proprietary confidential business information and, thus, shall be treated as confidential. The information constitutes "[i]nformation 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 "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Thus, this information is granted confidential classification.

Pursuant to Section 366.093(4), Florida Statutes, the information for which confidential classification is granted herein shall remain protected from disclosure for a period of 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), Florida Statutes, unless Gulf or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is


ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Gulf Power Company's Request for Confidential Classification of Document No. 11815-04 is granted. It is further

ORDERED that the information in Document No. 11815-04 for which confidential classification has been granted shall remain protected from disclosure for a period of 18 months from the date of issuance of this order. 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.

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By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this  
8th day of December, 2004



RUDOLPH "RUDY" BRADLEY  
Commissioner and Prehearing Officer

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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 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.