

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 090001-EI
ORDER NO. PSC-09-0823-CFO-EI
ISSUED: December 15, 2009

ORDER GRANTING GULF POWER COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 01891-09)

On March 9, 2009, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006(3), Florida Administrative Code (F.A.C.), Gulf Power Company (Gulf) filed a request for confidential classification of certain information contained in Schedule CCA-4 of Exhibit RWD-1 to Richard W. Dodd's pre-filed direct testimony (Document No. 01891-09). This request was filed in Docket No. 090001-EI.

Request for Confidential Classification

Section 366.093(1), F.S., 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 Section 119.07(1) [the Public Records Act]." 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. Paragraphs (d) and (e) of Section 366.093(3), F.S., provide that proprietary confidential business information includes, but is not limited to "[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."

Gulf contends that portions of the information contained in Schedule CCA-4 of Exhibit RWD-1 to Richard W. Dodd's pre-filed direct testimony, specifically Lines 38-43, Columns E-BB, falls within these categories and thus constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. Gulf states that this information is intended to be and is treated by Gulf as private and has not been publicly disclosed.

Gulf claims that portions of the information contained in Schedule CCA-4 consist of proprietary confidential business information regarding contractual matters, the disclosure of which would cause irreparable harm to Gulf, the entities with whom Gulf has entered into contracts, and Gulf's customers. Gulf further claims that other portions of the information relate to competitive interests in capacity markets which, if disclosed, would cause irreparable harm to Gulf and the entities with whom it has contracted. According to Gulf, Schedule CCA-4 contains

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pricing information for capacity purchases between Gulf and various counterparties, and this information is regarded as confidential by Gulf and the counterparties. Gulf asserts that this pricing, which resulted from negotiations between Gulf and the counterparties, is specific to the individual contracts and is not publicly known. Gulf further asserts that disclosure of this information would negatively impact its ability to negotiate pricing favorable to its customers in future capacity contracts, and that potential counterparties may refuse to enter into contracts with Gulf, or charge higher prices, if the price terms were made public.

Ruling

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 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.” Moreover, none of the documentation discussed herein contains any information regarding the compensation of Gulf executives. Thus, the information identified in Document No. 01891-09, specifically Lines 38-43, Columns E-BB on Schedule CCA-4 of Exhibit RWD-1, 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 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 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 Nathan A. Skop, as Prehearing Officer, that Gulf Power Company’s Request for Confidential Classification of Document No. 01891-09, specifically Lines 38-43, Columns E-BB, on Schedule CCA-4 of Exhibit RWD-1, is granted. It is further

ORDERED that the information in Document No. 01891-09 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 Nathan A. Skop, as Prehearing Officer, this 15th day of
December, 2009.



NATHAN A. SKOP

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 Office of Commission Clerk, 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.