

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 130140-EI
ORDER NO. PSC-13-0435-CFO-EI
ISSUED: September 24, 2013

ORDER GRANTING GULF POWER COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION AND
FIRST MOTION FOR TEMPORARY PROTECTIVE ORDER
(DOCUMENT NO. 04839-13)

On August 19, 2013, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Gulf Power Company (Gulf) filed its First Motion for Temporary Protective Order regarding information contained in its response to Office of Public Counsel's (OPC) First Set of Interrogatories Nos. 1-79 and First Request for Production of Documents (POD) Nos. 1-59 (Document No. 04839-13). On September 9, 2013, Gulf filed its Request for Confidential Classification of portions of its responses to OPC's First Set of Interrogatories Nos. 1-79 and First Request for Production of Documents Nos. 1-59 contained in Document No. 04839-13 which Commission staff wished to retain. Specifically, Gulf requested confidential classification for its responses to OPC's First Set of Interrogatories Nos. 54(i), 63 and 64 and OPC's First Request for Production of Documents Nos. 1, 2, 3, 5, 10, 14, 16, 18, 19-20, 27-29, 32-33, 36, 41-42, 48-50, and 54-55. No objections to Gulf's First Motion for Temporary Protective Order or Request for Confidential Classification have been filed.

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. Sections 366.093(3)(b), 366.093(3)(d) and (e), F.S., state that proprietary confidential business information includes, but is not limited to, "[i]nternal auditing controls and reports of internal auditors", "[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 designated portions of its responses to OPC's First Set of Interrogatories Nos. 1-79 and POD Nos. 1-59 fall within these categories and, thus, constitute 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 states that its responses to OPC's Interrogatories Nos. 54(i) and 63 contain non-public employee compensation data for employee positions throughout the company the disclosure of which would give prospective employees an advantage in negotiating compensation packages and competitors the ability to hire current employees to the detriment of the company. Gulf's response to OPC's Interrogatory No. 64 contains the expected returns on Gulf's pension plan assets by asset class. This information is the proprietary work product of Gulf's consultant, Aon Hewitt, and its disclosure could result in Aon Hewitt's refusal to conduct business with Gulf or higher prices being charged to Gulf for the same services to the detriment of Gulf's ratepayers.

Gulf's response to OPC's POD Nos. 1-2 contains an Excel file entitled "E-1,3,4,5,6,9,10, non-MDS.xlsx.xlsx" that includes commercial and industrial customer names, account numbers and consumption data. Disclosure of this information would harm the competitive interests of these customers and their ability to contract for good and services on favorable terms. Gulf's response to OPC POD Nos. 1-2 also contains the work papers and support documentation for all minimum filing requirements filed in this case. This includes: Schedules B-6 and C-4, customer data and proprietary software/models used to generate the cost of service study; Schedule B-24, confidential transportation contracts and rates; Schedule C-24, financial data of parent company concerning the parent debt adjustment; Schedule C-30, projected financial contractual data and information concerning affiliated purchased power agreements; Schedule C-31, affiliate banking information and price quotes from external vendors; D-2, forecasted capital structure for affiliated companies; and F-8, planned outage schedules for Gulf's generating units. The disclosure of this information could place Gulf at a competitive disadvantage in negotiating future contracts for goods and services as well as be competitively harmful to Gulf's customers.

Gulf's response to OPC's POD Nos. 3 and 5 contains all work papers and support documentation for the testimony of Gulf's witnesses. Gulf contends that the following responses, listed by witness, are confidential: Alexander – customer names, account numbers and associated billing dates; Burroughs – natural gas storage contracts and Gulf fuel policy; Caldwell - Gulf's Ten year transmission plan; Garvie – employee PII including names, dates of birth, identification numbers and compensation data; Grove – schedule of planned outages for Gulf generating units; McMillan – employee PII including names, identification numbers, compensation and employment history. Gulf asserts that the disclosure of customer names and associated data is detrimental to Gulf's customers as it places them at a competitive disadvantage in their respective industries. Gulf further contends that the disclosure of fuel contracts and its fuel policies may likely result in higher prices having to be paid for those goods and services. Likewise, it is Gulf's position that the disclosure of Gulf's planned outages and transmission plans is likely to result in the payment of higher replacement energy costs by Gulf's customers. Finally, disclosure of employee compensation and personal information is likely to be detrimental to both Gulf and its employees. Pursuant to OPC's POD No. 10 Gulf has produced its complete General Ledger which contains, among other things, purchased power expenditures, wholesale sales and revenues, audit related transactions, personnel data and vendor data. For the reasons discussed above, disclosure of this type of information would be detrimental to the competitive interests of Gulf and its ratepayers.

Gulf's response to OPC's POD No. 14 contains incentive compensation plans and target percentage awards for incentive compensation by salary grade. The disclosure of this information could give Gulf's competitors the ability to hire current employees to the detriment of the company. Gulf's response to OPC's POD No. 16 contains proprietary actuarial analyses conducted by Aon Hewitt the disclosure of which could result in Aon Hewitt's refusal to conduct business with Gulf or higher prices being charged to Gulf for the same services to the detriment of Gulf's ratepayers. Gulf's response to OPC's POD No. 18 contains proprietary employee compensation data the disclosure of which would be detrimental to both Gulf's employees and its ability to recruit and retain employees. Gulf's responses to OPC's POD Nos. 19-20 contain the minutes of Board of Directors meetings and Board of Director reports with information regarding projected revenues, sales forecasts, operations plans and strategic plans the disclosure of which could place Gulf at a competitive disadvantage.

Gulf's response to OPC's POD Nos. 27 and 28 contain internal auditing reports prepared by Southern Company Services. Gulf's response to OPC's POD No. 29 and 32 contain internal policies and procedures governing affiliate transactions including cost allocation methodologies applied to the Southern companies. Gulf contends that disclosure of this information would allow competitors to manipulate the market for energy and capacity sales thereby increasing the cost to Gulf's ratepayers. Gulf's response to OPC's POD Nos. 33 and 36 contain confidential contracts between Gulf and its affiliated companies and market price comparisons for affiliate transactions based on vendor quotes and Southern Company Services direct costs, respectively. Gulf's response to OPC's POD No. 41 contains billing correspondence between Gulf and its affiliates, bank routing information, employee names, compensation data, vendor quotations, invoices for goods and services and affiliate accounting procedures. Should this information become publically available Gulf's ability to negotiate favorable pricing for goods and services and to retain employees would be impaired. Gulf's response to OPC's POD No. 42 contains a lease/purchase agreement for real property that if made publically available could impair the ability to Gulf to negotiate the most favorable pricing in similar transactions in the future. Gulf's response to POD Nos. 48-49 consists of invoices between Gulf and its affiliates containing credit card numbers, personally identifiable employee and third party information and pricing data for goods and services associated with confidential contracts. Disclosure of this information would impair Gulf's ability to negotiate contracts for goods and services in the future at the most favorable prices.

Gulf's response to OPC's POD No. 50 consists of copies of presentations made by Gulf to financial rating agencies which includes projected capital expenditures, environmental compliance costs, financing needs, credit profiles and other commercially sensitive information the disclosure of which could harm the competitive interests of Gulf by increasing its debt costs. Gulf's response to OPC's POD No. 54 contains credit rating letters from Moody's Investor's Service that are subject to non-disclosure agreements with Moody's and copies of draft rating agency presentations. Gulf's response to POD No. 55 contains Aon Hewitt's proprietary 30 year projections for the U.S. capital market the disclosure of which could result in the consultant's refusal to do business with Gulf or charging higher prices for its services in the future.

Time Period For Confidential Classification

Gulf requests confidential classification for this information for a period of 18 months. According to Section 366.093(4), F.S., confidential classification may only extend for 18 months from the issuance of an Order granting confidential classification unless “the Commission finds, for good cause, that the protection from disclosure shall be for a specified longer period.”

Upon review, it appears the above-referenced information satisfies the criteria set forth in Sections 366.093(3)(b), (d), and (e), F.S., for classification as proprietary confidential business information. The information consists of internal audits and/or the reports of internal auditors or information whose disclosure would adversely impact the competitive interests of the utility. Thus, the information identified in Document No. 04839-13 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.

Motion for Temporary Protective Order

Gulf also seeks protection of the documents as provided in Section 366.093(2), F.S., and Rule 25-22.006(6), F.A.C., while the material is in the possession of the Office of Public Counsel (OPC). 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 the public records law. Section 119.07(1), F.S. 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 both parties. 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.

In addition, Rule 25-22.006(6)(c), F.A.C., states that if a party allows OPC to inspect or take possession of utility information, then that “utility may request a temporary protective order exempting the information from section 119.07(1), F.S.”

Upon consideration of Gulf's assertions of the confidential nature of the information contained in its responses to OPC's First Set of Interrogatories Nos. 54(i), 63 and 64 and OPC's First Request for Production of Documents Nos. 1-2, 3, 5, 10, 14, 16, 18-20, 27-29, 32-33, 36 41-42, 48-50 and 54-55, Gulf'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

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that Gulf Power Company's Request for Confidential Classification of Document No. 04839-13 is granted. It is further

ORDERED that the information in Document No. 04839-13 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.

ORDERED that the Motion for Temporary Protective Order filed by Gulf Power Company is granted.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 24th day of September, 2013.



LISA POLAK EDGAR
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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.

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.