

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for continuation) DOCKET NO. 910110-WS
of gross-up of contributions-in-) ORDER NO. PSC-92-0773-CFO-WS
aid-of-construction (CIAC) in Lee) ISSUED: 8/7/92
County by GULF UTILITY COMPANY)
_____)

ORDER ON CONFIDENTIALITY FOR
GULF UTILITY COMPANY'S FEDERAL TAX RETURNS
CONTAINED IN DOCUMENT NO. 05235-92

On May 21, 1992, Gulf Utility Company (Gulf or utility) filed a Request for Confidential Treatment of Federal Income Tax Returns and Motion for Protective Order seeking confidential treatment of the utility's 1987, 1988, 1989, and 1990 federal income tax returns submitted to the Commission pursuant to Commission Staff's written request, dated February 10, 1992. The utility submitted the tax returns on April 30, 1992.

In its Request, the utility alleges that: (1) pursuant to Order No. 16971, issued December 18, 1986, income tax returns are deemed confidential; (2) Gulf's tax returns have been treated by Gulf as private and confidential; (3) Gulf does not intend to publicly disclose these materials; and (4) Gulf's tax returns are confidential in their entirety.

On June 1, 1992, Southwest Florida Capital Corporation (SFCC), intervenors, filed an objection to the utility's request for confidential classification of its income tax returns. As grounds for the objection, SFCC states that: (1) the returns, when originally submitted to staff on April 30, 1992, were not accompanied with a notice of intent to request confidential classification; (2) on May 21, 1992, SFCC made an oral request to inspect the tax records pursuant to Section 119.07(1), Florida Statutes, and this request was "constructively denied by staff"; (3) Gulf's tax returns were not submitted pursuant to Order No. 16971, and thus the provisions in the Order with respect to confidentiality are inapplicable; and (4) SFCC has offered to enter into a confidentiality agreement with Gulf and Gulf has refused.

On June 5, 1992, Gulf filed a Response to SFCC's objection. In its Response, Gulf states that pursuant to Section 119.07(3)(a), Florida Statutes, "all public records which are presently provided by law to be confidential or which are prohibited from being inspected by the public, whether by general or special law are exempt from the provisions of 119.07(1), Florida Statutes." Gulf

DOCUMENT NUMBER-DATE

08819 AUG-7 1992

FSCC RECORDS / SEEDOTING

ORDER NO. PSC-92-0773-CFO-WS
DOCKET NO. 910110-WS
PAGE 2

argues that since 26 U.S.C. Section 6103(a) deems returns and return information confidential, they are automatically exempt from Section 119.07(1), Florida Statutes, by "operation of law." Gulf further states that an administrative rule must be consistent with the underlying statutes.

On June 10, 1992, SFCC filed a Reply to Gulf's Response. In its Reply, SFCC requests that the Commission deny the utility's request for confidential treatment of its tax records and argues that the Commission cannot retrospectively grant confidentiality to defeat SFCC's right to inspect the records. This argument is based on the fact that Gulf did not file a notice of intent first. SFCC also states that tax returns are not automatically exempt from the public records law. However, SFCC states in its Reply that returns "are clearly qualified to be treated as confidential pursuant to the rules of the Commission."

Order No. 16971 required utilities to annually file signed copies of federal and state income tax returns to allow the Commission to monitor the appropriateness of the utilities' gross-up of contributions-in-aid-of-construction (CIAC). This Docket involves Gulf's request for authority to continue its gross-up of CIAC. In Order No. 16971, the Commission stated that federal and state income tax returns filed pursuant to that Order would receive confidential treatment. As Order No. 16971 continues to have force and effect, and because Gulf's federal income tax returns were filed pursuant to its provisions, we find Gulf's reliance on Order No. 16971 as establishing the confidentiality of its federal income tax returns was well founded.

Therefore, we hereby acknowledge that the information contained in Document No. 05235-92 is proprietary confidential business information.

Based on the foregoing, it is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Gulf Utility Company's 1987, 1988, 1989 and 1990 federal tax returns as contained in Document No. 05235-92 are proprietary confidential business information pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, and that they will be treated as such by the Florida Public Service Commission.

ORDER NO. PSC-92-0773-CFO-WS
DOCKET NO. 910110-WS
PAGE 3

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 7th day of AUGUST, 1992.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)

SFC/LAJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2), 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 Records and Reporting, 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.