

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power) DOCKET NO. 940001-EI
Cost Recovery Clause and) ORDER NO. PSC-94-0411-CFO-EU
Generating Performance Incentive) ISSUED: April 7, 1994
Factor)
_____)

ORDER REGARDING GULF POWER COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION

On or about May 30, 1990, the Office of Public Counsel (OPC) served its First Request for Production of Documents on Gulf Power Company (Gulf) in Docket No. 900001-EI, and Gulf responded that the documents would be made available for the OPC's review and inspection. The documents consisted of certain fuel and transportation contracts and related correspondence. Gulf permitted the OPC to inspect the requested documents at Gulf's corporate offices on July 12-13, 1990, after which the OPC requested copies of several of the documents. Because of the volume of the documents requested, the short time frame requested by OPC for production of the copies, and the necessity of obtaining the consent of the other contracting parties before releasing the documents pursuant to confidentiality provisions contained in the contracts, Gulf produced the documents on July 30, 1990 under a Preliminary Motion for Protective Order and Request for Confidential Classification. Following the filing of the Preliminary Request, Gulf was able to review the documents, prepare highlighted and edited copies as required by Rule 25-22.006, Florida Administrative Code, and obtain the consent of other contracting parties to the release of the contracts. Accordingly, on August 14, 1990, Gulf filed its Supplemental Motion for Protective Order and Request for Confidential Classification in Connection with Public Counsel's First Request for Production of Documents.

Following the filing of Gulf's Supplemental Motion, representatives from the Commission staff and Gulf Power met in an attempt to narrow the scope of the request for confidential classification. As a result of those discussions, Gulf filed its Third Amended Motion which substantially decreases the volume of information for which confidentiality is requested. Gulf intends for this Motion to supersede its Preliminary Request and Supplemental Motion in their entirety. Gulf has requested confidential classification of information found in Document Numbers 6828-90, 7441-90, and 12154-92.

DOCUMENT NUMBER-DATE

03300 APR-7 8

FFSC-RECORDS/REPORTING

By letter dated April 21, 1993, Gulf revised several items in its request. Specifically, Gulf has included lines 9-10 on page 73 to its justification matrix for market adjustment date; waived its request for confidential classification as it relates to pages 87 through 93; attached redacted versions of pages 316 and 317, numbered by line; revised its request to include lines 11, 14-18, and 20-22 for page 316 and lines 9, 12-16, and 18-20 for page 317; and indicated that the correct expiration date on Delta contract should be November 30, 1997.

By letter filed February 7, 1994, Gulf has withdrawn portions of its request for confidential treatment. Specifically, Gulf has withdrawn its request for confidential treatment of items on hand-numbered pages 1-124 and 175-277 of Exhibits "C" and "D" to Gulf's Third Amended Motion. That portion of Gulf's request pertained to the Coal Supply Agreement between Gulf Power and Peabody Coal Company (Peabody), which is no longer in effect due to a suspension agreement entered into between the parties in 1993. Gulf maintains its request for confidential treatment of pages 125-174 because that document represents a transportation contract between Peabody and Orgulf Transport Company (Orgulf) to which Gulf is not a party. Although Gulf is currently in active litigation with Orgulf in the U.S. District Court for the Western Division of Ohio, to Gulf's knowledge the Peabody/Orgulf agreement has not been made public in that or any other matter and the Peabody/Orgulf agreement remains in effect. In the letter, Gulf also reaffirms and renews its request for confidential classification of all other items in Gulf's Third Amended Motion.

There is a presumption in the law of the State of Florida that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." It is this Commission's view that a request for specified confidential classification of documents must meet a very high burden. The company may fulfill its burden by demonstrating that the documents fall into one of the statutory examples set out in Section 366.093, Florida Statutes, or by demonstrating that the information is proprietary confidential information, the disclosure of which will cause the company or its ratepayers harm.

The Florida Legislature has determined that "[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" is proprietary

confidential business information. Section 366.093(3)(d), Florida Statutes.

To establish that material is proprietary confidential business information under Section 366.093(3)(d), Florida Statutes, a utility must demonstrate (1) that the information is contractual data, and (2) that the disclosure of the data would impair the efforts of the utility to contract for goods or services on favorable terms. The Commission has previously recognized that this latter requirement does not necessitate the showing of actual impairment, or the more demanding standard of actual adverse results; instead, it must simply be shown that disclosure is "reasonably likely" to impair the company's contracting for goods or services on favorable terms.

Gulf states that the material for which confidential treatment is sought is intended to be and is treated by Gulf Power Company and its affiliates and by the other parties to the contracts as confidential and not subject to disclosure.

Gulf asserts that the information found on the lines listed in Attachment A to this Order identifies base prices, price components and other pricing data (including the weights assigned to various published indices which are used to calculate price components) which, if disclosed as public record, would "impair the efforts of [Gulf Power Company] to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. The Commission has consistently recognized that disclosure of data that would enable competing vendors to calculate the current prices paid by utilities would adversely affect the utilities' bargaining position in future negotiations, allowing other potential suppliers to tailor their bids based on current prices, and making it unlikely that vendors would enter into price concessions to individual utilities since other purchasers would then expect similar concessions.

Upon review, I agree with Gulf's assertions and find that Gulf has met its burden that the information it has requested above be treated as confidential except for lines 7-8 on page 312. Gulf disclosed information from line 8 onto line 10. Once the information on line 8 is known, a simple mathematical calculation is all that is needed to deduce the information on line 7. Thus, the information in lines 7-8 on page 312 is essentially public information and cannot be treated as confidential.

Gulf also requests confidential treatment of lines 7 and 9 on page 300 and line 26 on page 301. Gulf asserts that this specified information identifies market adjustment dates which allow for

price renegotiation based on market prices as of those dates and which, if disclosed as public record, would "impair the efforts of [Gulf Power Company] to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. The rationale for this classification is similar to that discussed above, in that disclosure of the dates on which prices may be renegotiated by either party could artificially affect the market price as of those dates, increasing the cost Gulf must pay for the supplies contracted for, or making it unlikely that vendors would agree to renegotiate contract prices based on future market prices since their competitors could affect market prices on the relevant market adjustment dates and reduce their profits.

In addition, Gulf requests confidential classification of all of the information found on pages 125-174. Gulf argues that this information identifies a contract to which Gulf is not a party, but on which Gulf's contract prices are partially based and which was provided to Gulf in confidence by the contracting parties in order to allow Gulf to evaluate the reasonableness of those prices and other contract terms. Disclosure of this proprietary data, Gulf asserts, would "impair the efforts of [Gulf Power Company] to contract for goods or services on favorable terms," Section 366.093 (3)(d), Florida Statutes, since forced disclosure would make other companies less likely to provide proprietary data to Gulf, and thus, impair Gulf's ability to accurately evaluate and confirm the factors underlying the supplier's proposal in contract negotiations.

Upon review of this request, except for lines 7-8 on page 312, I find that Gulf has met its burden, and the information sought by Gulf to be protected should be provided confidential treatment. Should this information be made readily available, it would afford Gulf's competitors an unfair advantage over Gulf in the marketplace. Accordingly, I agree that this information should be treated as proprietary confidential business information.

Declassification

Gulf requests that the confidential treatment of information in this Order be maintained through the expiration dates of the contracts as specified below:

<u>Contract</u>	<u>Page No.</u>	<u>Requested Declassification</u>
Peabody	125 - 174	February 1, 2008
Marrowbone	278 - 418	October 30, 2012
Delta	419 - 502	November 30, 1997
Fuelco	503 - 708	September 30, 1997

Gulf asserts that these time periods are necessary to ensure that Gulf and its affiliated companies are able to bargain on competitive terms in future negotiations for contractual provisions which will ultimately protect Gulf's ratepayers. For all other information subject to its request for confidential treatment, Gulf requests confidential treatment for the 18 month period as provided by Rule 25-22.006(8)(a), Florida Administrative Code. I note that Gulf requested that the confidential information regarding the Peabody, Marrowbone, Delta and Fuelco contracts not be declassified for periods ranging from 3 to 18 years. However, I find that Section 366.093, Florida Statutes, does not give the Commission such broad authority to give contractual data confidential status for a period of 18 years. Instead, Section 366.093(4), Florida Statutes, states that "[a]ny finding by the commission that records contain proprietary confidential business information is effective for a period set by the commission not to exceed 18 months, unless the commission finds, for good cause shown, that the protection from disclosure shall be for a specified longer period." I do not find good cause to hold this contractual information confidential for such a lengthy period. Instead, I find this contractual data to be confidential for a period of 18 months from the date this Order is issued. Near the end of this time period, Gulf may resubmit a petition to extend this period of confidentiality. Thus, before the period's expiration, the prehearing officer will consider extending the period upon Gulf's request.

It is, therefore,

ORDERED by Chairman J. Terry Deason, as Prehearing Officer, that the proprietary confidential business information, as found in Document Nos. 6828-90, 7441-90, and 12154-92, shall be afforded confidential treatment except for lines 7-8 on page 312, as discussed within the text of this Order. It is further

ORDERED that this information will remain confidential for a period of 18 months from the date this Order is issued.

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By ORDER of Chairman J. Terry Deason, as Prehearing Officer,
this 7th day of April, 1994.



J. TERRY DEASON, Chairman and
Prehearing Officer

(S E A L)

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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.

ATTACHMENT A

<u>PAGE NO.</u>	<u>LINE NO.</u>	<u>PAGE NO.</u>	<u>LINE NO.</u>
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282	3	355	13
283	21	356	2
284	6	357	8, 12
288	25	360	14, 17
289	6, 8, 10, 12-14, 16, 18-21, 23-24, 33	365	16, 24
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290	22	367	1-6, 16
291	4, 6, 8, 16	369	2
293	10	405	3-8, 10-11
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304	5, 11-12, 14-15	408	10, 20
307	4, 9-10	409	9-10, 12-13, 15-16, 18, 20, 22-23, 25-26, 28
309	4, 9-10, 12-13		
311	22	410	3-15, 18, 20-22, 24, 26
312	7-8, 11-12, 14	411	14, 16-17, 19
313	8, 14-17, 19	412	7-11, 15-18, 20
314	11-16, 18-27, 29, 31	414	7, 9-10, 12, 16, 28
315	8-13, 15-24, 26-28	423	128
316	11, 14-18, 20-22	426	217
317	9, 12-16, 18-20	428	278
318	15-17, 21	430	330
319	12-14, 18	431	376

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ATTACHMENT A (con't.)

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434	466-467	525	353
439	606	526	374-377,379-382
441	667	527	413-414
442	678,687,694	531	538
443	707,715	533	594,601
460	1232,1234,1236	534	616,623
462	1293	552	1145,1147,1149
477	1729	553	1193
481	5-9	579	6-10
482	18,20,22	580	18,20,22
483	12,14,16	581	12,14,16
484	10,12-16,18,20,22	582	10,12,14-15,18-19, 21-24,26,28,30
485	7,9-13,15,17,19		
486	14,16,18	583	7,9,11-12,15- 16,18-21,23,25,27
487	10,12,14		
488	12,14-15,22-23,28-29	584	15,17,19
489	10-13,16-19,27-30	585	11,13,15
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509	13,15,18-19,21-22, 24-25,27-28,30,32	588	10-13,16-19,27-30
		606	20
517	111	621	18-19
522	260	622	2-3,7

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632	112	699	6-10
637	263	700	18, 20, 22
638	310	701	12, 14, 16
640	354	702	10, 12, 14-15, 18-19, 21-24, 26, 28-30
641	376-379, 381-384	703	6, 8, 10-11, 14-15, 17-20, 22, 24, 26
642	415-416	704	15, 17, 19
646	531	705	11, 13, 15
648	587, 594, 605	706	14, 17-18, 21-22, 24-25
649	616, 628	707	4-5, 7-8, 10, 12-13
650	640	708	10-13, 16-19, 27-30
667	1163, 1165, 1167	853	2, 5