

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Authority ) DOCKET NO. 931044-EI  
to Implement a Replacement Rate ) ORDER NO. PSC-94-1176-CFO-EI  
Schedule for Stand-by Electric ) ISSUED: September 27, 1994  
Service by GULF POWER COMPANY. )  
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ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION

The Commission held a Chapter 120.57 formal hearing on Gulf Power Company's (Gulf) Petition for Authority to Implement a Replacement Rate Schedule for Standby Electric Service on August 1 and 2, 1994. At the hearing, the Commission ordered Gulf to present late-filed Exhibit No. 14 by a date certain. On August 11, 1994, Gulf filed a Notice of Intent to request confidential classification of portions of late-filed Exhibit No. 14. Attached to the Notice of Intent was a copy of the portion of Exhibit No. 14 for which Gulf planned to seek confidential classification. This document was given Document No. 08193-94. On August 30, 1994, Gulf filed its request for confidential classification together with page 4 of late-filed Exhibit No. 14. Page 4 was given Document No. 08920-94. Monsanto Company, Stone Container Corporation, and Champion International, Inc. (Industrial Intervenors) filed a Joinder in Gulf's Request for Confidential Classification on September 8, 1994.

Staff advised Gulf by letter on September 1, 1994, that Document No. 08920-94 did not comport with the data requested for late-filed Exhibit No. 14. On September 16, 1994, Gulf filed a revised late-filed Exhibit 14 with a request for confidential classification of Page 4 of the revised exhibit, which was assigned Document No. 09554-94. The Industrial Intervenors filed a Joinder to Gulf's Supplemental Request for Confidential Classification on September 20, 1994.

The Commission is returning documents numbered 08193-94 and 08920-94 to Gulf because these documents do not contain the information requested and the Commission has no further need for them. Therefore, the Commission shall not rule as to whether they should be granted confidential classification.

As to Document No. 09554-94, Gulf and the Industrial Intervenors argue that the recalculated schedule may harm the competitive posture of the customers because it discloses standby customers' costs of power and consumption patterns. This is a very small class of customers and if the information was disclosed it would harm the competitive interests of those customers in that their competitors would gain information heretofore unavailable

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concerning the customer's costs and patterns of production. The information is therefore entitled to confidential classification pursuant to Section 366.093(3)(e), Florida Statutes.

Florida law provides, in Section 119.01, Florida Statutes, that documents submitted to governmental agencies shall be public records. The only exceptions to this statute 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 law derives from the concept that government should operate in the "sunshine."

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.0006, Florida Administrative Code, Gulf has the burden to show that the material submitted is qualified for confidential classification. Rule 25-22.006, Florida Statutes, provides that the company may fulfill its burden by demonstrating that the information falls under one of the statutory examples set out in Section 366.093, Florida Statutes, or by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the company or its ratepayers harm.

There is some reservation as to whether this information can truly be considered to be competitive because the calculations were made in part based on hypothetical components supplied by Staff. Still, the class of customers number only five and these five companies compete with each other in the marketplace. They are all co-generators knowledgeable about production demands, energy usage and cost of power. It would not be difficult for them to make fairly accurate assumptions from Exhibit No. 14. Whether the assumptions are meaningful is questionable; however, it cannot be demonstrated with certainty that they are not meaningful. It is conceivable that release of the information may impact the competitive ability of one or more of these companies.

Based on the foregoing page 4 of Late-Filed Exhibit No. 14 is granted confidential classification until the time for appeals has run in this docket. At such time, the information shall be returned to Gulf.

In consideration of the foregoing, it is

ORDERED by Commission Susan F. Clark, as prehearing officer that Gulf Power Company's request for confidential classification for document number 09554-94 is granted. It is further

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ORDERED that the material shall be returned to the utility when the time for appeals has run on this docket or at the completion of an appellate review of this docket.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 27th day of September, 1994.

  
SUSAN F. CLARK, Commissioner 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.