

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 030001-EI
ORDER NO. PSC-03-0032-CFO-EI
ISSUED: January 6, 2003

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 10999-02)

On October 10, 2002, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Gulf Power Company (Gulf) filed a request for confidential classification of its Risk Management Plan for Fuel Procurement filed in this docket (Document No. 10999-02).

Section 366.093(1), Florida Statutes, 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 [the Public Records Act]." Section 366.093(3), Florida Statutes, 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. Section 366.093(3), Florida Statutes, provides that proprietary confidential business information includes, but is not limited to "[t]rade secrets," "[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 its Risk Management Plan for Fuel Procurement, in its entirety, falls within these categories and thus constitutes proprietary confidential business information entitled to protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Gulf states that this

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information is intended to be and is treated by Gulf as private and has not been publicly disclosed.

Gulf contends that its Risk Management Plan for Fuel Procurement contains proprietary and commercially sensitive information regarding Gulf, the disclosure of which would cause irreparable harm to Gulf. Gulf asserts that this document contains, in a single resource, detailed information about Gulf's fuel procurement in the near term and into the future. Gulf asserts that it and other members of the market in which it competes for fuel, fuel transportation, and fuel storage consider this type of information to be trade secret and competitively sensitive. Gulf asserts that this document discusses how Gulf manages its fuel procurement, with specific information regarding Gulf's fuel needs, market position, views on trends in fuel markets, and possible reactions to various market events and conditions. Gulf contends that its competitors are not required to disclose this type of information so that Gulf may not gain the same competitive advantage that its competitors would gain from access to this information. Further, Gulf contends that fuel suppliers could use this information to Gulf's disadvantage in negotiations for fuel and fuel transportation, adversely affecting Gulf's ability to secure the best prices and terms for Gulf and its customers.

Upon review, it appears that the information in Gulf's Risk Management Plan for Fuel Procurement satisfies the criteria set forth in Section 366.093(3), Florida Statutes, for classification as proprietary confidential business information and, thus, shall be treated as confidential. While it is not clear whether this information constitutes "trade secrets" as that term is used in Section 366.093(3)(a), Florida Statutes, 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." Thus, this information is granted confidential classification.

Pursuant to Section 366.093(4), Florida Statutes, the information for which confidential classification is granted herein

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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), Florida Statutes, 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 Michael A. Palecki, as Prehearing Officer, that Gulf Power Company's Request for Confidential Classification of Document No. 10999-02 is granted. It is further

ORDERED that the information in Document No. 10999-02 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.

By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 6th day of January, 2003.



MICHAEL A. PALECKI
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, 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 the Commission Clerk and Administrative Services, 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.