

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Gulf Power Company's request for confidential classification of document request responses and portions of audit staff's draft report entitled Coal Combustion Residual Storage and Disposal Processes of the Florida Electric Industry.

DOCKET NO. 110321-EI
ORDER NO. PSC-15-0170-CFO-EI
ISSUED: May 4, 2015

ORDER GRANTING GULF POWER COMPANY'S REQUEST FOR EXTENDED
CONFIDENTIAL CLASSIFICATION OF PORTIONS OF DOCUMENT NO. 08598-11
(CROSS-REF. 04808-13, 06025-13, AND 02165-15), AND CLOSING DOCKET

On April 17, 2015, pursuant to section 366.093(3), Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Gulf Power Company (Gulf or company) filed a request for extended confidential classification for certain information it produced in connection with the Commission's Review of Coal Combustion Residual Storage and Disposal Processes of the Florida Electric Industry (Review). The materials that are subject to this request are contained in Document No. 08598-11 (cross-ref. 04808-13, 06025-13, and 02165-15).

Gulf originally requested confidential classification of the materials subject to this request on November 23, 2011. In its original request, Gulf also sought confidential treatment for information pertaining to quantities of Coal Combustion Residues produced, disposed of, and marketed between 2008 and 2010, along with costs and revenues associated with same. The Commission granted that request by Order No. PSC-12-0035-CFO-EI, issued January 24, 2012, upon finding that the materials satisfied the criteria set forth in section 366.093(3), F.S., for classification as proprietary confidential business information. The Commission ordered that the materials be protected from disclosure for a period of 18 months.

On August 16, 2013, Gulf filed an amended request for confidential classification of certain portions of the materials contained in its original request for an additional 18-month period. The Commission granted that request by Order No. PSC-13-0492-CFO-EI, issued October 17, 2013, upon finding that the materials satisfied the criteria set forth in section 366.093(3), F.S., for classification as proprietary confidential business information. The Commission ordered that those materials be protected from disclosure for an additional 18 months.

In its current request for extended confidential classification, Gulf states that due to the passage of time, a substantial portion of the information identified as confidential by Order No. PSC-13-0492-CFO-EI is no longer considered confidential and is therefore not a subject of this request. In support of its request, Gulf states that the remainder of the materials for which it received confidential treatment pursuant to its amended request continue to be sensitive and are entitled to continued confidential classification for the same reasons that they were initially classified.

In paragraph 7 of its request, Gulf states that portions of its Response to Data Request 2 produced in connection with the Review constitute "proprietary confidential business information" as defined by section 366.093(3), F.S. Gulf states that in response to question 6 of Data Request 2, it provided: 1) copies of bid proposals from three vendors, the pricing components of which are confidential pursuant to section 366.093(3)(d), F.S.; 2) a functional design specification, which is the intellectual property of and is considered confidential by vendor, Infilco Degremont, Inc., and which is confidential pursuant to section 366.093(3)(d) and (e), F.S.; and 3) two reports relating to research and development, which are the intellectual property of and are considered confidential by Chiyoda Corporation, and which are confidential pursuant to section 366.093(3)(d) and (e), F.S.

Along with its request, Gulf separately submitted a sealed Exhibit A (Document No. 02165-15), containing an unredacted copy of the portions of Gulf's responses to Data Request 2 for which the company seeks continued confidential treatment. In Exhibit A, the information asserted to be confidential is highlighted in yellow. Gulf also submitted an Exhibit B, containing two copies of redacted versions of the documents for which the company requests confidential classification. In Exhibit B, the specific information for which Gulf requests confidential treatment has been blocked out by opaque marker or other means.

Gulf's line-by-line justifications for the confidential treatment of the above-described requested information are contained in Attachment A to this Order, which is incorporated herein by reference.

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 [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. Section 366.093(3)(d) and (e), F.S., provides that proprietary confidential business information includes, but is not limited to "[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliate 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 the information falls within these categories and thus constitutes 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.

Upon review, it appears that the above-referenced information satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business

information and shall be treated as confidential. 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 affiliate 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), 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.

Based on the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that Gulf Power Company’s Request for Extended Confidential Classification of portions of Document No. 08598-11 (cross-ref. 04808-13, 06025-13, and 02165-15) is granted. It is further

ORDERED that Attachment A to this Order is incorporated herein by reference. It is further

ORDERED that the information in Document No. 08598-11 (cross-ref. 04808-13, 06025-13, and 02165-15) 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. It is further

ORDERED that this docket shall be closed.

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By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 4th day of May, 2015.



LISA POLAK EDGAR

Commissioner and Prehearing Officer

Florida Public Service Commission

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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.

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

EXHIBIT "C"

Line-by-Line/Field-by-Field Justification

Line(s)/Field(s)

Justification

Data Request 2 (Documents Produced)

This information is entitled to confidential classification pursuant to §366.093(3)(d)-(e), Florida Statutes. The basis for this information being designated as confidential is more fully set forth in paragraph 7.

Question 6

Bid Proposal (Siemens)
Page 2 of Attachment 1, lines 1-13

Bid Proposal (Aquatech International Corp.)
Page 2 of Attachment 1, lines 1-9

Bid Proposal (Infilco Degremont, Inc.)
Page 2 of Attachment 1, lines 1-16
Page 4 of Attachment 1, lines 1-6

Functional Design Specification (Infilco
Degremont, Inc)
(Confidential in its Entirety)

1/2008 and 1/2009 Pilot Test Plant Reports
From Chiyoda Corporation
(Confidential in their Entirety)