

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Gulf Power Company.

DOCKET NO. 160186-EI

In re: Petition for approval of 2016 depreciation and dismantlement studies, approval of proposed depreciation rates and annual dismantlement accruals and Plant Smith Units 1 and 2 regulatory asset amortization, by Gulf Power Company.

DOCKET NO. 160170-EI
ORDER NO. PSC-17-0186-CFO-EI
ISSUED: May 18, 2017

ORDER GRANTING GULF POWER COMPANY'S AMENDED
REQUEST FOR CONFIDENTIAL CLASSIFICATION AND
MOTION FOR TEMPORARY PROTECTIVE ORDER
(DOCUMENT NO. 03100-17)

On January 23, 2017, Gulf Power Company (Gulf) filed a Request for Confidential Classification and Motion for Temporary Protective Order, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), pertaining to "certain documents and information" produced in response to Staff's Tenth Request for Production of Documents (Nos. 67-70) and Staff's Eleventh Set of Interrogatories to Gulf Power Company (Nos. 361-381).¹ On March 6, 2017, Gulf filed an Amended Request for Confidential Classification and Motion for Temporary Protective Order (Amended Request) of "certain documents and information" produced in response to Staff's Tenth Request for Production of Documents (Nos. 67-70) and Staff's Eleventh Set of Interrogatories to Gulf Power Company (Nos. 361-381), in order to clarify the confidential nature of the information previously provided.² Gulf states that its Amended Request "is intended to replace" its January 23, 2017, filing, and requests that the original filing (Document No. 00792-17) be returned.³

Request for Confidential Classification

Gulf contends that the information, described with specific justification in Exhibit A of its Amended Request, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. Gulf asserts that the information at issue relates to: (i) contractual data, such as proprietary confidential business information concerning bids, the disclosure of which could impair the efforts of Gulf to contract for goods and/or services on favorable terms; and (ii) competitive interests, the disclosure of which would impair Gulf's competitive business interests. Gulf contends that the information in the documents, described with specific justification in Exhibit A to its Amended Request, is

¹ Document No. 00792-17 (Confidential DN 00792-17).

² Document No. 03099-17.

³ Id.

intended to be, and is treated as, confidential by Gulf and has not been otherwise publicly disclosed. For those reasons, Gulf argues the information is entitled to confidential classification pursuant to Section 366.093(3), F.S., and requests that the Commission grant confidential classification for the documents for a period of 18 months from the date of the issuance of this Order, pursuant to Section 366.093(4), F.S.

Ruling

Section 366.093(1), F.S., provides that records the Florida Public Service Commission has found to contain proprietary business information shall be kept confidential and shall be exempt from Chapter 119, F.S. 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. Specifically, Section 366.093(3)(d) and (e), F.S., provide that proprietary confidential business information includes, but is not limited to:

(d) Information 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.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3)(d) and (e), F.S., for classification as proprietary confidential business information. The information contains (i) hourly and projected load data, including the names of Gulf's largest customers; (ii) economic analysis with regard to Plant Scherer Unit 3 performed by Gulf; and (iii) Gulf's potential contractual negotiation and asset sale considerations and strategies. This information constitutes "information 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 "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Thus, the information identified in Document No. 03100-17 shall be 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 up to 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.

Motion for Temporary Protective Order

Gulf also seeks protection of the documents as provided in Section 366.093, F.S., and Rule 25-22.006, F.A.C. Section 366.093(2), F.S., directs that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by any party subject to the public records law as confidential and exempt from Section 119.07(1), F.S., the public records law. Rule 25-22.006(6), F.A.C., codifies the Commission's policy regarding the protection of confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006(6)(a), F.A.C., in pertinent part, states:

In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure.

Upon consideration of Gulf's assertions of the confidential nature of the information contained in portions of its responses to Staff's Tenth Request for Production of Documents (Nos. 67-70) and Staff's Eleventh Set of Interrogatories to Gulf Power Company (Nos. 361-381), Gulf's Motion for Temporary Protective Order is hereby granted. As a result, this information shall be protected from disclosure pursuant to Rule 25-22.006(6), F.A.C.

Based on the foregoing, it is

ORDERED by Commissioner Jimmy Patronis as Prehearing Officer, that Gulf Power Company's Amended Request for Confidential Classification and Motion for Temporary Protective Order of Document No. 03100-17, as detailed in Exhibit A, is granted. It is further

ORDERED that Document No. 03100-17 shall replace Document No. 00792-17, and Document No. 00792-17 shall be returned to Gulf Power Company. It is further

ORDERED that the information in Document No. 03100-17, 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. 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 Power Company or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information. It is further

ORDERED that the Temporary Protective Order shall extend not only to the Office of Public Counsel, but also to any consultants or advisors with whom the Office of Public Counsel has contracted for purposes of this proceeding. 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 Jimmy Patronis, as Prehearing Officer, this 18th day of May, 2017.



JIMMY PATRONIS
Commissioner and Prehearing Officer
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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.

KFC

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; 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 or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.