

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of 2020-2029 Storm Protection
Plan pursuant to Rule 25-6.030, F.A.C., Gulf
Power Company.

DOCKET NO. 20200070-EI
ORDER NO. PSC-2020-0239-CFO-EI
ISSUED: July 17, 2020

ORDER GRANTING GULF POWER COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION
AND
MOTIONS FOR PROTECTIVE ORDER
(DOCUMENT NO. 03551-2020 x-ref. DOCUMENT NO. 03057-2020)

Pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), on July 2, 2020, Gulf Power Company (Gulf or Company) filed a Request for Confidential Classification (Request) for information provided in response to specified discovery requests.¹ On June 11, 2020, the Company filed a Notice of Intent to Request Confidential Classification for this information.² On April 23, and May 7, 2020, Gulf filed Motions for Temporary Protective Order related to this information (collectively, Motions for Temporary Protective Order).³ This sequencing of filings occurred because some of the information at issue was initially provided to the Office of Public Counsel (OPC), over time, subject to the Motions for Temporary Protective Order. The information was not contemporaneously provided to the Commission. When our staff asked for the information, it was grouped together and provided with a single Notice of Intent to Request Confidential Classification and then a Request for Confidential Classification.

Request for Confidential Classification

Gulf contends that the information identified in Exhibit A and described in Exhibit C of the Request, constitutes proprietary and 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 is proprietary and includes: internal auditing controls and reports of internal auditors; trade secrets; information relating to 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. Gulf avers that it has maintained the confidentiality of the information. For these reasons, Gulf argues that the information is entitled to confidential classification pursuant to Section 366.093 (3)(a), (b), (d) and (e), F.S.

¹ Document No. 03546-2020.

² Document No. 03056-2020.

³ Respectively, Documents Nos. 02180-2020, and 02469-2020.

Ruling

Section 366.093(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary confidential 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. Section 366.093(3), F.S., provides that proprietary confidential business information includes, but is not limited to:

- (a) Trade secrets.
- (b) Internal auditing controls and reports of internal auditors.
- (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 in Document No. 03551-2020 (x-ref Document No. 03057-2020), as specifically detailed in Exhibit A and described in Exhibit C, satisfies the criteria set forth in Section 366.093(3)(a), (b), (d) and (e), F.S., for classification as proprietary confidential business information. The information constitutes "trade secrets," "Internal auditing controls and reports of internal auditors," "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. 03551-2020 (x-ref Document No. 03057-2020) 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 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.

Motions for Temporary Protective Order

Gulf also seeks protection of the information as provided by 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 this 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.

Ruling

Upon consideration of Gulf's assertions of the confidential nature of the information contained in portions of the discovery responses, Gulf's Motions for Temporary Protective Order are hereby granted. As a result, this information shall be protected from disclosure pursuant to Rule 25-22.006(6), F.A.C.⁴

Based on the foregoing, it is hereby

ORDERED by Commissioner Donald J. Polmann as Prehearing Officer, that Gulf Power Company's Request for Confidential Classification of Document No. 03551-2020 (x-ref Document No. 03057-2020) is granted. It is further

ORDERED that the information in Document No. 03551-2020 (x-ref Document No. 03057-2020), for which confidential classification has been granted, shall remain protected from disclosure for 18 months from the date of issuance of this Order. It is further

ORDERED that Gulf Power Company's Motions for Temporary Protective Order are granted. 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.

⁴Whether separately as initially provided to OPC, or grouped together as provided to the Commission in Document No. 03551-2020 (x-ref Document No. 03057-2020).

By ORDER of Commissioner Donald J. Polmann, as Prehearing Officer, this 17th day of July, 2020.



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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.

CWM

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.