

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Gulf Power)	DOCKET NO. 881167-EI
Company for an Increase in its)	ORDER NO. 21101
Rates and Charges.)	ISSUED: 4-24-89
)	

ORDER ON GULF POWER'S OBJECTIONS, MOTION FOR
PROTECTIVE ORDER, AND REQUEST FOR CONFIDENTIALITY
IN CONNECTION WITH PORTIONS OF STAFF'S
FOURTH SET OF INTERROGATORIES

On November 14, 1988, Gulf Power Company (Gulf) petitioned the Commission for a rate increase. As part of its discovery as to the petition, Staff served a fourth set of interrogatories on Gulf on January 23, 1989. On February 28, 1989, Gulf, pursuant to Rule 1.280, Florida Rules of Civil Procedure, and Section 366.093, Florida Statutes, filed its responses to the Interrogatories and a Motion for Protective Order and Request for Confidentiality in Connection with Portions of Staff's Fourth Set of Interrogatories.

In the responses, Gulf objects to Interrogatory Nos. 146, 149, and 150.

Interrogatory No. 146 asks Gulf to:

Provide a list of the contributions made to Gulf Power Company's political action committee (PAC) by name and amount for the years 1980 through 1988.

Gulf's objection to Interrogatory No. 146 is twofold. First, Gulf argues that the requested information is irrelevant to its request for a rate increase, and is not reasonably calculated to lead to the discovery of relevant evidence. Second, Gulf argues that federal law limits disclosure of employees who make certain minimum PAC contributions "to the Federal Election Commission, the Clerk of the U.S. House of Representatives, the Secretary of the U.S. Senate, law enforcement officials, or judicial bodies," while records of employee contributions in excess of the minimum are available as public records from the Federal Election Commission. Gulf alternatively argues in its response that disclosure be specified confidential pursuant to Section 366.093(3)(e), Florida Statutes, which exempts employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

First, investigations as to the appropriateness, reasonableness, and legality of campaign contributions, direct or indirect, to political action committees (PAC) or utility-friendly candidates are made inherently relevant to a request for a rate change by Section 366.06(1), Florida Statutes; if property is claimed, it must be "used and useful," and if money is invested, it must be done "honestly and prudently." We find issues of imprudent, unauthorized, or extra-utility spending relevant to Gulf's burden of proof before the Commission as to its expenditures and rate base.

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Second, the Federal Election Campaign Act of 1971, 2 USCS §§431 et seq., requires each treasurer of a PAC supporting federal candidates to file with the Federal Election Commission regular reports disclosing, in part, the full name, mailing address, occupation, and place of business, if any, of each person who has made one or more contributions to or for such PAC or candidate within the calendar year in an aggregate amount in excess of \$100, together with the amount and dates of such contributions. 2 USCS §434(b)(2).

The Florida Campaign Financing statute, Chapter 106, Florida Statutes, requires each treasurer of a PAC supporting state candidates to file with the Division of Elections of the Department of State regular reports disclosing, in part, the full name, address, and occupation, if any, of each person who has made one or more contributions to or for such PAC or candidate within the reporting period, together with the amount and date of such contribution. Section 106.07(4)(a) 1, Florida Statutes. The section expressly provides that if the contribution is \$100 or less, or is from a relative, although the occupation of the contributor need not be listed, "the name and address are necessary." Therefore, we find that in the event of PAC contributions in excess of \$100, both federal and state law require disclosure of the contributor, the address and occupation of the contributor, and the amounts and dates of contributions; the requested information should have previously been disclosed by Gulf. In the event of contributions of less than \$100, state law still requires disclosure of the name and address of the contributor. Further, we find that Gulf has provided no basis for its contention that "federal law requires that Gulf's PAC preserve the anonymity of employees who do not contribute to the PAC, or who choose to make a single contribution of \$50 or less, or multiple contributions abrogating [sic] to \$100 or less per calendar year."

Both in its response to Interrogatory No. 146 and its concurrent Motion for Protective Order and Request for Confidentiality, Gulf alternatively argues that the disputed information falls within Section 366.093(3)(e), Florida Statutes, exempting from disclosure employee information unrelated to compensation, duties, qualifications, or responsibilities. Interrogatory No. 146, however, does not limit its inquiry to employee contributions, nor has Gulf alleged that such contributions were not the result of a written, or an unwritten but understood, duty, qualification, or responsibility of employment or contracted work. Also, "contribution," as defined in Section 106.011(3)(1), Florida Statutes, is not limited to payroll deductions, but includes gifts, subscriptions, conveyances, deposits, loans, payments, or distributions of money or anything of value from or by anyone. The term also does not address voluntariness. Therefore, as represented, we find that this material fits within §366.093(3)(d), Florida Statutes, and cannot be granted confidentiality.

Gulf also objects to, and alternatively requests confidentiality for, its responses to Interrogatory Nos. 149 and 150.

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Interrogatory No. 149 asks Gulf to:

Provide the results of the recent Board of Director's audit of the Ray Howell advertising account.

Interrogatory No. 150 asks Gulf to:

Provide the results of any audits, performed on the accounts of advertising vendors beginning with the year 1980.

In its response to Interrogatory No. 149, Gulf objects arguing that the audit was prepared by Gulf in anticipation of litigation with Howell, is work product, and therefore, undiscoverable absent a showing of need and hardship pursuant to Rule 1.280(b)(2), Florida Rules of Civil Procedure. Gulf alternatively requests specified confidential classification of this material. In its concurrent Motion for Protective Order and Request for Confidentiality, Gulf reiterates the work product doctrine and refines its request for confidentiality by specifically citing Section 366.093(3)(b), Florida Statutes, exempting internal audits from the public disclosure. Gulf indicates that the disputed information, a "12-page interim report entitled 'Special Report to the Audit Committee of the Board of Directors of Gulf Power Company'," was dated February 6, 1989 and represents "Gulf's internal audits of Design Associates and the John Appleyard Agency."

We find that Gulf has provided a sufficient basis for the Commission to find that the disputed document is work product. Although Gulf has failed to furnish the required information in the form of an affidavit as required by the court in Cotton States Mutual Insurance Co. v. Turtle Reef Associates, Inc., 444 So.2d 595, 596 (Fla. 4th DCA 1984); Selected Risks Insurance Co. v. White, 447 So.2d 455, 456 (Fla. 4th DCA 1984), it has set forth both the date upon which and the purpose for which the item subject to the discovery request was obtained: February 6, 1989, and in anticipation of litigation with Ray Howell. From the date on which the materials were prepared and the purpose stated, we find the report to be work product, undiscoverable absent a showing of need and undue hardship in obtaining substantially the same material from another source. Until and unless there is such a showing, we need not address the request for specified confidential classification.

We note here that Gulf's qualified response to Interrogatory No. 150 intrigues us: "To date there have been no specific audits performed on advertising vendors" except the one above-cited. (Emphasis added) The above report, which has been unilaterally construed by Gulf to be an internal audit, was prepared in 1989. The interrogatory addresses any audit since 1980, whether specific, general, or incidentally for another purpose. If any other audit besides the one produced was done, it must be produced in order to completely respond to Interrogatory No. 150.

In consideration of the foregoing it is

ORDERED that Gulf's objection, motion, and request as to Interrogatory No. 146 of Staff's Fourth Set of Interrogatories are hereby denied. It is further

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ORDERED that Gulf's motions for protective orders as to Interrogatories Nos. 149 and 150 of Staff's Fourth Set of Interrogatories are hereby granted. It is further

ORDERED that Gulf revisit its response to Interrogatory No. 150 of Staff's Fourth Set of Interrogatories and provide, if such exist, any other audits of the accounts of advertising vendors beginning with the year 1980.

ORDERED that if a protest is filed within 14 days of the date of this order it will be resolved by the appropriate Commission panel pursuant to Rule 25-22.006(3)(d), Florida Administrative Code.

By ORDER of Commissioner Thomas M. Beard, as Prehearing Officer, this 24th day of APRIL, 1989.


THOMAS M. BEARD, Commissioner
and Prehearing Officer

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