

ORIGINAL

MCWHIRTER REEVES

ATTORNEYS AT LAW

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
P. O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:
TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 FAX

May 21, 1999

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
4075 Esplanade Way
Tallahassee, Florida 32399-0870

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RECORDS AND REPORTING

Re: Docket No. 990557-EI

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and seven copies of the Florida Industrial Power Users Group's Response to Gulf Power Company's Request for Confidential Classification in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

VGK/pr
Enclosures

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MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, AND STEIN, P.A. 06475 MAY 21 99

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Gulf Power Company)
FERC Form 1 for the year ending)
December 31, 1998.)
_____)

Docket No. 990557-EI

Filed: May 21, 1999

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
RESPONSE TO GULF POWER COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 25-22.006(3)(b),¹ Florida Administrative Code, files its response to Gulf Power Company's (Gulf) Request for Confidential Classification. Such request should be denied outright and in its entirety. As grounds therefor, FIPUG states:

Introduction

1. FIPUG is a group of large industrial consumers, some of whom are Gulf customers. The price of electricity represents one of the largest variable costs incurred by FIPUG's members. Therefore, FIPUG closely monitors data related to Gulf's cost to produce electricity as well as the prices Gulf pays for wholesale power and fuel in order to ensure that Gulf gets the lowest possible price. The only way that FIPUG can monitor Gulf's costs and prices is through the information filed at the Commission, including Gulf's filing of the FERC Form 1.

2. On April 30, 1999, Gulf filed a request with the Commission seeking to conceal from the public a wide array of diverse information about its operations. Gulf seeks to shield the following information from the public:

¹ Rule 25-22.006(3)(b) gives a party 14 days *after service* to respond to a confidentiality request. FIPUG was not served with Gulf's request but rather obtained one from the Clerk's office after learning of Gulf's filing through a review of the Commission's report on new dockets opened. On May 17, FIPUG filed a petition to intervene and an objection. FIPUG files now files this detailed response within 14 days of the time it received ~~and reviewed Gulf's request.~~

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- a. The cost of electric plant in service;²
- b. Plant held for future use;³
- c. Construction work in progress;⁴
- d. Accumulated depreciation;⁵
- e. Allowances;⁶
- f. All operating revenues;⁷
- g. O & M expenses;⁸
- h. Purchased power;⁹
- i. Transmission revenue;¹⁰
- j. Depreciation and amortization;¹¹
- k. Energy sources;¹²

² FERC Form 1, p. 201-207.

³ FERC Form 1, p. 214.

⁴ FERC Form 1, p. 216-216.1.

⁵ FERC Form 1, p. 219.

⁶ FERC Form 1, p. 228-229.

⁷ FERC Form 1, p. 300-311.

⁸ FERC Form 1, p. 320-323.

⁹ FERC Form 1, p. 326-327.

¹⁰ FERC Form 1, p. 328-330.

¹¹ FERC Form 1, p. 336-337.

¹² FERC Form 1, p. 401a.

- l. Monthly peaks and output;¹³
- m. Steam electric generating plant statistics;¹⁴
- n. Environmental protection facilities.¹⁵

Burden of Proof

3. As this Commission has recognized many times, Florida law presumes that all documents submitted to governmental agencies are public records. The presumption is that government shall operate in the sunshine. It is Gulf's burden to demonstrate that the above documents are entitled to confidential classification.¹⁶ Gulf has woefully failed to meet this burden.

Gulf's Request Must Be Denied

4. Gulf's request to keep the above information secret must be rejected for several reasons. First, the majority of the information Gulf seeks to conceal relates to costs and expenses which are borne by the retail ratepayers, such as plant in service, CWIP and O & M. Nonetheless, Gulf wants to bar the ratepayers who fund these items from access to this important information.¹⁷ Gulf itself admits that it wants to conceal information on its "costs and operations."¹⁸ Retail ratepayers are entitled to this information in order to ensure that retail

¹³ FERC Form 1, p. 401b.

¹⁴ FERC Form 1, p. 402-403.

¹⁵ FERC Form 1, p. 430-431.

¹⁶ Order No. PSC-96-0737-CFO-EI, Docket No. 960001-EI (June 4, 1996).

¹⁷ FIPUG would also point out that much of this information is data which would be required in a rate case. Is Gulf suggesting that MFR information would be confidential? Hopefully, the Commission will not consider going down such a path.

¹⁸ Gulf justification, exhibit C.

utility plant and fuel are appropriately costed and priced.

5. Further, the cost of plant investment composing the retail rate base is clearly in the public domain. Concealing this information from public disclosure will convert the regulatory process into a "Star Chamber" proceeding.

6. Second, all the information Gulf seeks to shield is historical information which is many months old. It is difficult to divine of what use such dated information could be to would-be competitors.

7. Third, despite the diverse and voluminous information for which secrecy is sought, Gulf's "rationale" for its request is *identical* for each item and wholly inadequate to escape the rigors of Florida's Sunshine Law. Gulf's "rationale" is summarized in its petition: "Wholesale and retail electricity markets in the United States are becoming increasingly competitive."¹⁹

8. As to the allegation that the Florida retail market is in any way competitive, this Commission knows otherwise. There is no competition in the retail market in Florida and thus, this argument can in no way support Gulf's request.

9. As to competition in the wholesale market, Florida Power and Light Company (FPL) made a similar (though much more narrow request) based on alleged competitiveness in the wholesale market in an attempt to shield from public view certain information on its A schedules. The Commission rejected FPL's request in numerous orders.²⁰

10. In its orders, the Commission noted that FPL had "not stated any specific set of

¹⁹ Gulf request at 2.

²⁰ Order No. PSC-96-0737-CFO-EI; Order No. PSC-96-0736-CFO-EI; Order No. PSC-96-0738-CFO-EI; Order No. PSC-96-0739-CFO-EI; Order No. PSC-96-074--CFO-EI; Order No. PSC-96-0734-CFO-EI; Order No. 96-0735-CFO-EI.

circumstances that justifies classification of A Schedule information as confidential."²¹ The same is true in Gulf's case. There are nothing but vague conclusory statements in Gulf's pleading.

11. Fourth, much of Gulf's argument is premised on its view that its competitors do not have to disclose similar information. The Commission addressed a similar argument from FPL:

[W]holesale power brokers are required by FERC to file quarterly reports of their interchange transactions. These reports indicate the quantity and price of the transactions for each customer. FPL could use this information much the same as its competitors use the A Schedules to gain a "competitive-edge."²²

Thus, information is available to Gulf in the public domain. And even if it were not, there is a significant difference between a regulated monopoly which is guaranteed a rate of return, like Gulf, and non-monopoly competitors.

12. Finally, Gulf is a subsidiary of a Public Utility Holding Company that is composed of numerous affiliated companies who deal with one another. The Public Utility Holding Company Act, 15 U.S.C. § 79, enumerates a number of abuses which it seeks to avoid. One of these abuses is the possibility that affiliated unregulated companies may charge regulated companies excessive prices. 15 U.S.C. §79a(b)(2). These prices are then passed through to the public. To avoid the possibility of this abuse occurring, Gulf must be required to disclose with particularity all prices that the regulated affiliate pays to affiliated companies. This information is needed to maintain public confidence and achieve effective regulation. Gulf has totally failed to justify concealing this information under a veil of secrecy.

²¹ Order No. PSC-96-0737-CFO-EI at 2.

²² *Id.* at 6.

Conclusion

13. FIPUG specifically opposes Gulf's request for confidential treatment on the following grounds:

a. Gulf's request is in contravention of the Florida Public Records Law, Chapter 119, Florida Statutes;

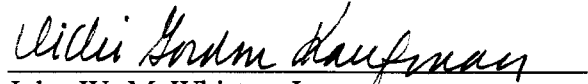
b. Gulf has failed to carry its burden to demonstrate that the information is entitled to confidential classification;

c. Customers are entitled to basic information concerning the operating cost of Gulf's generating plants to determine the prudence of Gulf's operations;

d. Gulf has failed to demonstrate how the information will give competitors a competitive advantage;

e. This case will set a precedent for Florida's other investor-owned utilities.

WHEREFORE, Gulf's request for confidential classification should be denied.


John W. McWhirter, Jr.
Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 222-2525

400 North Tampa Street
Suite 2450 (33602-5126)
Post Office Box 3350
Tampa, Florida 33601-3350
Telephone: (813) 224-0866

Attorneys for The Florida Industrial
Power Users Group

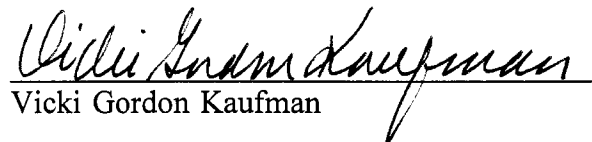
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of FIPUG's foregoing **Response to Gulf Power Company's Request for Confidential Classification** has been furnished by Hand Delivery (*) or by United States Mail to the following this **21st** day of **May, 1999**:

Robert Elias*
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Gerald L. Gunter Building, Room 370N
Tallahassee, Florida 32399-0850

John Roger Howe
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400

Jeffrey A. Stone
Russell A. Badders
Beggs & Lane
Post Office Box 12950
Pensacola, Florida 32576-2950


Vicki Gordon Kaufman