

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 010949-EI
ORDER NO. PSC-01-2392-PCO-EI
ISSUED: December 11, 2001

ORDER GRANTING IN PART AND DENYING IN PART
GULF POWER COMPANY'S REQUEST FOR TEMPORARY PROTECTIVE ORDER

I. Background

On October 5, 2001, the Office of Public Counsel (OPC) served its First Request for Production of Documents to Gulf Power Company (Gulf) (Nos. 1 - 37) in this docket. Gulf is providing OPC access to certain responses either at the offices of Gulf or by delivery through U.S. Mail. On November 9, 2001, Gulf filed a Request for Temporary Protective Order, pursuant to Rule 25-22.006, Florida Administrative Code.

Gulf requests a temporary protective order for all or portions of Requests for Production Nos. 2, 8, 15, 16, 17, and 18.

II. Analysis and Findings

Request for Production No. 2

OPC's Request for Production No. 2 states:

Survey. Provide copies of the surveys referenced in the Letter to Investors on page 2 of the 2000 Annual Report.

Gulf states that this document is entitled to confidential classification pursuant to Section 366.093(3)(a) and (e), Florida Statutes. Gulf represents that the information provided reveals proprietary and commercially sensitive information about Gulf. Additionally, the survey instruments used to prepare and conduct the study are considered trade secrets. Gulf also states that disclosure of the specified information would cause irreparable harm to its competitive interests and would give access to Gulf's business strategy and overall performance.

DOCUMENT NUMBER-DATE

15424 DEC 11 01

FPSC-COMMISSION CLERK

Request for Production No. 8

OPC's Request for Production No. 8 asks Gulf to provide copies of invoices from the month of November 2000 for coal shipments.

Gulf asserts that the production of documents numbered 8 is proprietary confidential business information within the meaning of Section 366.093(3)(a), (d), and (e), Florida Statutes. Gulf represents that the information consists of invoices for fuel purchases which reveal the specific price and contract provisions of contracts entered into between Gulf and other parties. Additionally, Gulf states that this information concerns contractual data and disclosure of such information would impair the efforts of Gulf to contract for goods or services on favorable terms.

Request for Production Nos. 15 and 16

OPC's Request for Production No. 15 states:

Make available for review the Board of Directors minutes for the years 1999, 2000, and 2001 to date.

OPC's Request for Production No. 16 states:

Make available for review and copying the external auditors workpapers for the historical year 2000.

Gulf states that the responses to Request for Production Nos. 15 and 16 are entitled to confidential classification pursuant to Section 366.093(3)(a) and (e), Florida Statutes. Gulf represents that the information being provided contains details regarding Gulf's business strategy and financial matters, which are considered to be trade secrets and are competitively sensitive. Thus, the disclosure of this information would cause irreparable harm to Gulf's competitive interests and would reveal trade secrets.

Request for Production No. 17

OPC's Request for Production No. 17 asks Gulf to make available for review internal audit reports for 1999, 2000, and 2001 to date.

Gulf asserts that the response to Request for Production No. 17 is entitled to confidential classification pursuant to Section 366.093(3)(b), Florida Statutes. Internal auditing controls and reports of internal auditors are specifically designated as proprietary confidential business information pursuant to Section 366.093(3)(b), Florida Statutes.

Request for Production No. 18

OPC's Request for Production No. 18 asks Gulf to make available the 1999 and 2000 tax returns which reflect Gulf Power Company's portion of the consolidated tax determination.

Gulf is providing the tax returns for 1999 and 2000 in response to this request. However, Gulf represents these documents contain detailed financial information that is considered competitively sensitive. Additionally, Gulf states that tax returns are protected from disclosure under Federal law in order to protect the privacy of the provider. The disclosure of the tax returns would cause irreparable harm to Gulf's competitive interests.

Gulf seeks protection for these documents and objects to providing confidential proprietary business information. However, Gulf will allow OPC to inspect and possess this confidential information for the purpose of determining what information is to be used in this proceeding so long as the documents are marked as confidential and are not publicly disclosed.

Additionally, Gulf requests that the Commission require any party to provide Gulf with notice of its intent to use such confidential documents in the proceeding before the Commission no later than 30 days prior to the hearing date to allow sufficient time in which to prepare and file a specific request for a protective order as provided by Rule 25-22.006(6)(c), Florida Administrative Code. If the information is not used in the proceeding before the Commission, Gulf requests that the information be either returned to Gulf or destroyed such that it does not remain in the possession of any entity subject to Section 119.07(1), Florida Statutes.

Rule 25-22.006(6)(a), Florida Administrative Code, states that "... any utility or other person may request a protective order protecting proprietary confidential business information from

discovery." Additionally, Rule 25-22.006(6)(c), Florida Administrative Code, states:

When a utility or other person agrees to allow Public Counsel to inspect or take possession of utility information for the purpose of determining what information is to be used in a proceeding before the Commission, the utility may request a temporary protective order exempting the information from section 119.07(1), F.S.

After reviewing the pleadings, Gulf's Request for Temporary Protective Order is granted in part and denied in part. It appears that the material described by Gulf could be classified as proprietary confidential business information pursuant to Section 366.093, Florida Statutes; however, no finding of confidentiality is necessary since there has been no filing with the Commission. Since the material has been or will be provided to the Office of Public Counsel, Gulf's Request for Temporary Protective Order shall be granted, exempting this information from the requirements of Section 119.07, Florida Statutes.

Additionally, the 30-day notice requirement requested by Gulf is not consistent with Order No. PSC-01-2035-PCO-EI, the Order Establishing Procedure. Gulf has not shown any reason to deviate from the seven-day notice requirement concerning the use of confidential information as set out in Order No. PSC-01-2035-PCO-EI. If the information is used in the proceeding, it will be treated as confidential as set forth in this Order. In order to maintain continued confidentiality, Gulf shall file a Request for Confidential Classification with the Commission within 21 days of the conclusion of the hearing, pursuant to Rule 25-22.006(8)(b), Florida Administrative Code. Therefore, Gulf's petition requesting the imposition of a 30-day notice requirement is denied.

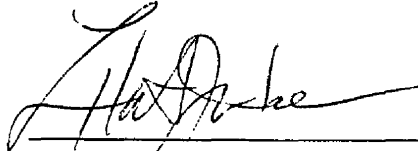
Based on the foregoing, it is

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that Gulf Power Company's Request for Temporary Protective Order is granted in part and denied in part, as set forth in the body of this Order. It is further

ORDER NO. PSC-01-2392-PCO-EI
DOCKET NO. 010949-EI
PAGE 5

ORDERED that if not used in the proceeding, the material shall be returned to Gulf Power Company, as required by Rule 25-22.006(6)(c), Florida Administrative Code.

By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer, this 11th day of December, 2001.



LILA A. JABER
Commissioner and Prehearing Officer

(S E A L)

KNE

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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial

ORDER NO. PSC-01-2392-PCO-EI
DOCKET NO. 010949-EI
PAGE 6

reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, 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.