

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery  
clause with generating performance incentive  
factor.

DOCKET NO. 130001-EI  
ORDER NO. PSC-13-0457-CFO-EI  
ISSUED: October 14, 2013

ORDER GRANTING GULF POWER COMPANY'S REQUEST FOR CONFIDENTIAL  
CLASSIFICATION (DOCUMENT NO. 02792-13)

On May 20, 2013, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Gulf Power Company (Gulf) filed a request for confidential classification (Request) of certain information submitted by Gulf pursuant in connection with the review of Gulf's 2012 capacity expenditures (Audit Control No. 13-016-1-1) (the Audit). (Document No. 02792-13). This Request was filed in Docket No. 130001-EI.

Section 366.093(1), F.S., provides that "any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from Section 119.07(1) [the Public Records Act]." 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. Paragraphs (3)(d) and (e) of Section 366.093 F.S., provide that proprietary confidential business information includes, but is not limited to "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."

Gulf contends that the designated portions of the information contained in its responses to the Audit, as more specifically described in the line-by-line/field-by-field justification attached as Exhibit C to the Request, fall within these categories and, thus, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. Gulf states that this information is intended to be and is treated by Gulf as private and has not been publicly disclosed.

Gulf states that this information contains details concerning bids and other contractual data. Specifically, Gulf states that the information relates to pricing data for coal, oil and natural gas transportation/storage. Gulf contends that disclosure of this information would impair the efforts of Gulf to contract for goods and services on favorable terms and would negatively impact Gulf's ability to negotiate pricing favorable to its customers in future contracts. In addition, Gulf argues that potential counterparties may refuse to enter into contracts with Gulf, or may charge higher prices, if the price terms were made public.

Florida appellate courts have held that information other than the types of information specifically listed in subsections (a) through (f) Section 366.093(3) can qualify for protection under the statute. See Florida Power & Light Company v. Florida Public Service Commission, 31 So.3d 860, 865 (Fla. 1<sup>st</sup> DCA 2010).

Gulf contends that in addition to pricing-related data, a portion of the confidential information is included in a summary description of pending litigation in which Gulf is presently involved. Gulf states that the subject information consists of legal counsel's mental impressions concerning potential damages which may be awarded as a result of the litigation. Gulf argues that public disclosure of this information could impair Gulf's litigation positions and, ultimately, their competitive business position. Gulf asserts that this information should be protected from public disclosure by section 366.093(3)(e), F.S.

### **Time Period For Confidential Classification**

According to Section 366.093(4), F.S., confidential classification may only extend for 18 months from the issuance of an Order granting confidential classification unless "the Commission finds, for good cause, that the protection from disclosure shall be for a specified longer period." Gulf has not requested a period longer than the 18 months.

### **Ruling**

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. The 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;" or "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Additionally, some of the above-referenced information falls under the catch-all provisions of Section 366.093(3), F.S., as discussed in Florida Power & Light Company v. Florida Public Service Commission, and are protected under the attorney work product and attorney-client privileges. Thus, the information identified in Document No. 02792-13 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.

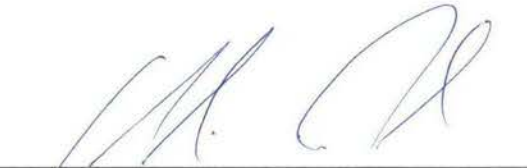
Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that Gulf Power Company's Request for Confidential Classification of Document No. 02792-13 is granted. It is further

ORDERED that the information in Document No. 02792-13 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. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 14th day of October, 2013.



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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.

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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.

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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.