

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Michael, by Gulf Power Company.

DOCKET NO. 20190038-EI
ORDER NO. PSC-2020-0120-CFO-EI
ISSUED: April 21, 2020

ORDER GRANTING GULF POWER COMPANY'S AMENDED REQUEST FOR CONFIDENTIAL CLASSIFICATION AND MOTION FOR PROTECTIVE ORDER (DOCUMENT NOS. 00188-2020 AND 00737-2020)

On January 10, 2020, Gulf Power Company (Gulf) filed a Motion for Temporary Protective Order, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), pertaining to Gulf's response to the Office of Public Counsel's (OPC's) 1st set of Interrogatories (No. 15) and 1st request for Production of Documents (PODs) (Nos. 1, 2, 6, 9-15, and 18) (Document No. 00188-2020). On January 31, 2020, Gulf filed a Request for Confidential Classification, pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., pertaining to Gulf's response to OPC's 1st set of Interrogatories (No. 15) and 1st request for PODs (Nos. 1, 2, 6, 9, 10, 18, and 20) (Document No. 00737-2020).

Gulf filed an Amended Request for Confidential Classification and Motion for Temporary Protective Order on March 2, 2020. In the filing, Gulf clarified that it was requesting confidential treatment for Gulf's responses to OPC's 1st set of Interrogatories, No. 15, and 1st request for PODs, Nos. 1, 2, 6, 9-15, 18, and 20. In other words, Document Nos. 00188-2020 and 00737-2020 are identical.

Request for Confidential Classification

Gulf contends that the information in its responses to OPC's 1st set of Interrogatories, No. 15, and 1st request for PODs, Nos. 1, 2, 6, 9-15, 18, and 20, 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 relates to proprietary confidential business information concerning bids or other contractual data, the disclosure of which would cause harm to Gulf and its customers. For this reason, Gulf argues the information is entitled to confidential classification pursuant to Section 366.093(3)(d), F.S.

Ruling

Section 366.093(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary 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:

(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.

Upon review, it appears the above-referenced information in Document Nos. 00188-2020 and 00737-2020 satisfy the criteria set forth in Section 366.093(3)(d), 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.” Thus, the information identified in Document Nos. 00188-2020 and 00737-2020 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 up to 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.

Motion for Temporary Protective Order

Gulf also seeks protection of the documents as provided in 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 the 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, Document Nos. 00188-2020 and 00737-2020,

Gulf's Motion for Temporary Protective Order is hereby granted. As a result, this information shall be protected from disclosure pursuant to Rule 25-22.006(6), F.A.C.

Based on the foregoing, it is hereby

ORDERED by Commissioner Andrew Giles Fay as Prehearing Officer, that Gulf Power Company's Request for Confidential Classification of Document Nos. 00188-2020 and 00737-2020 is granted. It is further

ORDERED that the information in Document Nos. 00188-2020 and 00737-2020, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. 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. It is further

ORDERED that Gulf's Motion for Temporary Protective Order is granted as set forth herein.

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 21st day of April, 2020.



ANDREW GILES FAY
Commissioner and Prehearing Officer
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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.

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.