

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 130140-EI
ORDER NO. PSC-13-0623-CFO-EI
ISSUED: November 26, 2013

ORDER GRANTING GULF POWER COMPANY'S REQUEST
FOR CONFIDENTIAL CLASSIFICATION AND MOTION FOR
TEMPORARY PROTECTIVE ORDER (DOCUMENT NO. 05415-13)

On September 12, 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 its Request for Confidential Classification and Motion for Temporary Protective Order for its responses to the Office of Public Counsel's (OPC) First Request to Produce Documents No. 30, Bates pages 48 through 279, Document No. 05415-13. This request was originally filed in Docket No. 130151-EI, which was consolidated into this docket by Order No. PSC-13-0454A-PCO-EI, issued on October 10, 2013. No objections to Gulf's Request for Confidential Classification and Motion for Temporary Protective Order have been filed.

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. Sections 366.093(3)(d) and (e), F.S., state that proprietary confidential business information includes, but is not limited to, "[i]nformation 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 "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

Gulf contends that its responses to OPC's First Request to Produce Documents No. 30, Bates pages 48 through 279, Document No. 05415-13, fall within these categories and, thus, constitute 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 the information contained in OPC's First Request to Produce Documents No. 30, Bates pages 48 through 279, Document No. 05415-13, consists of confidential pricing and non-price terms of a contractual agreement between Gulf and NCM Demolition and Remediation, L.P. (NCM). The contract contains a broad non-disclosure provision and negotiated provisions which are standard to Gulf. Gulf asserts that the public disclosure of these contract terms would harm their competitive interests as well as those of NCM since competitors

could use this information to Gulf's and NCM's disadvantage when bidding for similar goods and services.

Time Period For Confidential Classification

Gulf requests confidential classification for this information for a period of 18 months. 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."

Upon review, it appears the above-referenced information satisfies the criteria set forth in Sections 366.093(3), (d), and (e), F.S., for classification as proprietary confidential business information. The information consists of confidential pricing and non-price terms of a contractual agreement. The disclosure of this data would adversely impact the competitive interests of Gulf and its customers by impairing Gulf's ability to negotiate the lowest possible prices for goods and services with NCM Demolition and Remediation, L.P. and other competitors in the future. Thus, the information identified in Document No. 05415-13, Bates pages 48 through 279, 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.

Motion for Temporary Protective Order

Gulf also seeks protection of the documents as provided in Section 366.093(2), F.S., and Rule 25-22.006(6), F.A.C., while the material is in the possession of the Office of Public Counsel (OPC). 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 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.

In addition, Rule 25-22.006(6)(c), F.A.C., states that if a party allows OPC to inspect or take possession of utility information, then that "utility may request a temporary protective order exempting the information from section 119.07(1), F.S."

Upon consideration of Gulf's assertions of the confidential nature of the information contained in Document No. 05415-13, Bates pages 48 through 279, 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

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that Gulf Power Company's Request for Confidential Classification of Document No. 05415-13, Bates pages 48 through 279, is granted. It is further

ORDERED that the information in Document No. 05415-13, Bates pages 48 through 279, 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 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 the Motion for Temporary Protective Order filed by Gulf Power Company is granted.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 26th day of November, 2013.



LISA POLAK EDGAR
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.