

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 160001-EI
ORDER NO. PSC-16-0452-CFO-EI
ISSUED: October 11, 2016

ORDER GRANTING GULF POWER COMPANY'S REQUEST FOR CONFIDENTIAL
CLASSIFICATION AND MOTION FOR TEMPORARY PROTECTIVE ORDER
(DOCUMENT NO. 03100-16)

On May 20, 2016, 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 and Motion for Temporary Protective Order (Request) of certain information provided in response to the Citizens of the State of Florida's First Set of Interrogatories (No. 7) (the discovery responses) (Document No. 03100-16). This request was filed in Docket No. 160001-EI.

Request for Confidential Classification

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

Gulf contends that the information provided in the discovery responses contains specific details about the company's risk management plan fuel hedging percentages, which would reveal the company's fuel hedging targets. Gulf asserts that knowledge of this information would provide insight into the confidential target hedge percentages in Gulf's Risk Management Plan and impair Gulf's efforts to hedge on the most favorable terms. Gulf argues that this information is protected pursuant to Section 366.093(3)(e), 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:

- (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Upon review, it appears that the information described above satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. The information constitutes “information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Thus, the information identified in Document No. 03100-16 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. Accordingly, the information identified in Document No. 03100-16 shall be granted confidential classification for a period of 18 months from the 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. 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. Section 119.07(1), F.S. 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.

Upon consideration of Gulf’s assertions of the confidential nature of the information contained in portions of the discovery responses, Document No. 03100-16, 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 Art Graham, as Prehearing Officer, that Gulf Power Company's Request for Confidential Classification of Document No. 03100-16 is granted. It is further

ORDERED that Gulf Power Company's Motion for Temporary Protective Order of the information in Document No. 03100-16 is granted. It is further

ORDERED that the information referenced in Document No. 03100-16 shall be granted confidential classification for a period of 18 months from the date of the 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 Art Graham, as Prehearing Officer, this 11th day of October, 2016.



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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.

DLH

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.