

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 010949-EI
ORDER NO. PSC-01-2391-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 9, 2001, the Office of Public Counsel (OPC) served its Second Request for Production of Documents to Gulf Power Company (Gulf) (Nos. 38 - 57) 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 13, 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. 43, 45, and 46.

II. Analysis and Findings

Request for Production No. 43

OPC's Request for Production No. 43 asks Gulf to "provide copies of all two most recent Southern Company and/or Southern Company Services internal audit reports on the subject of affiliate transactions and/or cost allocations between affiliated companies."

Gulf asserts that the response to Request for Production No. 43 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. Thus, the internal audit report on affiliate transactions is entitled to confidential classification pursuant to Section 366.093(3)(b), Florida Statutes.

DOCUMENT NUMBER-DATE

15423 DEC 11 01

FPSC-COMMISSION CLERK

Request for Production Nos. 45 and 46

OPC's Request for Production No. 45 states:

Please provide all current contracts between Gulf Power Company and any and all subsidiaries and affiliates that provide services to Gulf Power Company.

OPC's Request for Production No. 46 states:

Please provide all current contracts between Gulf Power Company and any and all subsidiaries where Gulf Power Company provides services to the subsidiary or affiliate.

Gulf asserts that the response to Requests for Production Nos. 45 and 46 are entitled to confidential classification pursuant to Section 366.093(3)(a) and (e), Florida Statutes, as information concerning contractual data. Gulf represents that the information provided consists of multiple contracts for goods and services between Gulf and one or more of its affiliates. 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.

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 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.

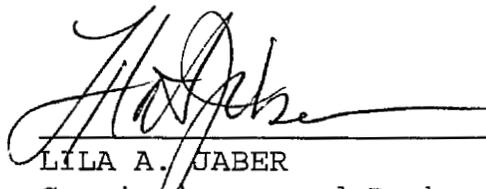
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Based on the foregoing, it is

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

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

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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.

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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 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.