

Diamond Williams

From: Milstead, Natalie [NB MILSTE@SOUTHERNCO.COM]
Sent: Thursday, August 25, 2011 3:16 PM
To: Filings@psc.state.fl.us
Subject: Gulf Power Company's Motion for Temporary Protective Order
Attachments: Motion for Temporary Protective Order pertaining to the Office of Public Counsel's First Request
POD and First Set ROG.PDF

- A. s/Susan D. Ritenour
Gulf Power Company
One Energy Place
Pensacola FL 32520
850.444.6231
sdriteno@southernco.com
- B. Docket No. 110138-EI
- C. Gulf Power Company
- D. Document consists of 10 pages
- E. The attached document is Gulf Power Company's Motion for Temporary Protective Order

8/25/2011

DOCUMENT NUMBER-DATE

06141 AUG 25 =

FPSC-COMMISSION CLERK

Susan D. Ritenour
Secretary and Treasurer
and Regulatory Manager

One Energy Place
Pensacola, Florida 32520-0781
Tel 850.444.6231
Fax 850.444.6026
SDRITEND@southernco.com



August 25, 2011

Ms. Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0850

Dear Ms. Cole:

RE: Docket No. 110138-EI

Attached is a Motion for Temporary Protective Order pertaining to the Office of Public Counsel's First Request to Produce Documents and First Set of Interrogatories to Gulf Power.

Sincerely,

Susan D. Ritenour

nbn

Enclosures

cc: Beggs & Lane
Jeffrey A. Stone, Esq.

DOCUMENT NUMBER-DATE

06141 AUG 25 =

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for increase in rates by Gulf
Power Company.

Docket No. 110138-EI
Dated: August 25, 2011

GULF POWER COMPANY'S
FIRST MOTION FOR TEMPORARY PROTECTIVE ORDER

Gulf Power Company ("Gulf"), by and through undersigned counsel, hereby moves pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, for entry of a Temporary Protective Order covering confidential documents and information sought in discovery by the Office of Public Counsel ("OPC") and as grounds therefore states as follows:

1. In its First Request for Production of Documents (Nos. 1-74) and its First Interrogatories to Gulf Power (Nos. 1-87) (the "Requests") dated July 26, 2011, OPC has requested the discovery of confidential information the disclosure of which would harm Gulf's competitive business interests, reveal internal auditing controls and reports of internal auditors, reveal private information relating to Gulf's customers and employees, reveal non-public, proprietary information concerning Gulf's affiliates and violate contractual confidentiality provisions.

2. The responses to Requests include project specific information including contractual terms, pricing arrangements and budgetary plans. Such information, if made available to the public, could place Gulf at a competitive disadvantage with respect to competitors when attempting to contract for like services, as well as parties with which Gulf would hope to contract in the future. If market participants possessed Gulf's confidential information they would be able to adjust their behavior in the market place thereby changing the prices at which Gulf is able to contract for such services. See § 366.093(3)(d) & (e), Fla. Stat.

Furthermore, portions of these documents are subject to contractual confidentiality agreements, requiring that all parties to the contracts maintain the confidentiality of all documents and information pertaining thereto. The release of this information to the general public would violate those agreements, and seriously impair Gulf's ability to contract for goods and services in the future. Additionally, the information produced in response to Requests contains confidential budgetary information for certain projects. Such information, if made available to the public, could place Gulf at a competitive disadvantage when attempting to contract for certain products and services by allowing market participants to adjust their behavior accordingly. See § 366.093(3)(e), Fla. Stat. The responses to Requests contain confidential transmission related analyses and other information that Gulf does not release to the public and that would harm Gulf's competitive business interest if released to the public and are the product of external and internal audits, evaluations and studies. The responses to the Requests also include personally identifiable information ("PII") regarding Gulf's customers and personnel. Gulf has historically protected this information in recognition of the privacy rights of its customers and employees. Similarly, some responses include non-public salary data for filled and planned positions. Public disclosure of this information could provide Gulf's competitors with an advantage in acquiring and obtaining qualified employees, increase Gulf's employee turnover and associated training costs, and give prospective employees an advantage in negotiating compensation packages, leading to increases in the overall amount paid to employees.

3. Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, direct that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by OPC as confidential and shall be exempt from the public records law, Section 119.07(1), Florida Statutes. Gulf, by this motion, is

seeking protection of all confidential information that Gulf will produce to OPC in this matter pursuant to OPC's First Request for Production of Documents and First Interrogatories. This protection should extend not only to OPC, but also to any consultants or advisors with whom OPC has contracted for purposes of this proceeding. Gulf has recorded the appropriate objections to providing such confidential, propriety business information, and will provide documents and information responsive to these requests marked as confidential subject to this motion, the law, Commission rules, and Gulf's objections. By following this procedure and producing this information, Gulf is not waiving its right to seek further relief as necessary to make certain that its confidential, proprietary, business information is not publicly disclosed.

4. The following responses contain proprietary confidential business information. For ease of reference, Gulf is producing all confidential data on separate DVD's which are conspicuously labeled as "confidential." Moreover, unless otherwise noted, in instances where a document is not confidential in its entirety, Gulf has highlighted in yellow those portions of the document which are confidential. If a document or file is considered confidential in its entirety, Gulf has noted this fact in the file in lieu of highlighting the entire document.

OPC's First Request for Production of Documents (1-74)

Numbers 4-5: These requests seek electronic copies of all minimum filing requirements ("MFRs") and all workpapers and source data in support thereof. In response to these requests Gulf is producing hundreds of files and thousands of pages of data, some of which contain confidential information. Such information includes: Schedule B-1 (projected revenues from confidential purchased power agreements and non-public transmission data); Schedules B-6 and C-4 (non-public customer data and propriety software/models used to generate cost of service study); Schedule B-24 (confidential transportation contracts and transportation rates); Schedule

C-10 (non-public vendor quotes for services) Schedule C-24 (non-public financial data of parent company concerning parent debt adjustment); Schedule C-30 (projected financial contractual data). The foregoing information is confidential pursuant to section 366.093(3)(b),(d),(e) and (f), Florida Statutes.

Numbers 6 and 8: These requests seek electronic copies of all exhibits to direct testimony and all workpapers and source data in support thereof. Confidential information submitted in response to these requests has been segregated into files bearing witness names and includes the following: Burroughs (employee social security numbers and non-public generation selection information); Caldwell (salary information for specific transmission positions; ten year transmission plan); Erickson (short term borrowing daily summary); Grove (salary information for specific positions; future outage data; fuel pricing information, and reserve margin analyses); McMillan (projected revenues from confidential purchased power agreements and non-public transmission data); Moore (proprietary SCS Marketing Services customer satisfaction analyses) and Neyman (customer names and usage data). The foregoing information is confidential pursuant to section 366.093(3)(d),(e) and (f), Florida Statutes.

Number 10: This request seeks a complete copy of the Company's General Ledger. The general ledger is an extremely voluminous database which contains, among other things, competitively sensitive information including purchased power expenditures, wholesale sales and revenues, audit related transactions, personnel data and vendor data. The foregoing information is confidential pursuant to section 366.093(3)(d),(e) and (f), Florida Statutes.

Number 19: The response to this request contains non-public employee compensation data. This information is confidential pursuant to section 366.093(3)(e), Florida Statutes. See, Florida Power & Light v. Florida Public Service Commission, 31 So.3d 860 (Fla. 1st DCA 2010).

Numbers 21-22: These responses contain minutes of board of directors meetings and board of director reports. These documents contain competitively sensitive information including projected revenues, sales forecasts, operations plans and strategic plans. This information is confidential pursuant to section 366.093(3)(e), Florida Statutes.

Numbers 29-30: This response includes reports of internal auditors. This information is confidential pursuant to section 366.093(3)(b), Florida Statutes.

Number 31: This response contains complete copies of Southern Company Services' 2010 and 2011 Cost Accountability and Control manuals. These manuals could be used by competitors of Gulf to gain confidential details regarding the Company's internal cost allocation methodologies. These methodologies have been developed over time and through the expenditure of significant resources. Access to such methodologies would bestow on competitors of the Company an unfair advantage to the extent that such competitors would not similarly be required to expend such resources to develop similar methodologies. This would, in turn, confer an unfair advantage on such companies. In addition, access to the information would provide insight into the costs of the Company, which could also undermine the Company's position. The Company's competitors are not similarly required to disclose such information and access to such cost information would harm the Company and could result in competitors manipulating the market by artificially setting prices based on such information. This information is confidential pursuant to section 366.093(3)(a)(d) and (e), Florida Statutes.

Number 34: This response contains the methodology for calculating allocation factors for affiliate transactions. This information is similar to the information disclosed in response to request No. 31 and is confidential pursuant to section 366.093(3)(a) (d) and (e), Florida Statutes.

Number 35: This response contains a confidential contract and Memorandum of Understanding between Gulf Power and one or more affiliates for various services. These documents are subject to confidentiality obligations and contain commercially sensitive business information about the internal structure of Southern Company, the relationships among the Southern Company affiliates, the financial arrangements between the affiliates and non-public transmission information regarding future transmission expansion plans, related projects and costs. This information is confidential pursuant to section 366.093(3)(d) and (e), Florida Statutes.

Number 38: This response contains market price comparisons for affiliate transactions based on non-public vendor quotes and Southern Company Services direct costs. This information is confidential pursuant to section 366.093(3)(d) and (e), Florida Statutes.

Numbers 51-52: This response consists of invoices between Gulf and its affiliates. These invoices include bank account and routing information, credit card numbers, personally identifiable information of employees and third parties, and pricing data associated with confidential contracts. Due to the sheer volume of documents, Gulf has not highlighted the confidential information on these documents. This information is confidential pursuant to section 366.093(3)(d)(e) and (f), Florida Statutes.

Number 53: This response includes copies of presentations made by Gulf to certain financial rating agencies. Portions of these presentations include forward looking financial data and other commercially sensitive financial information, the disclosure of which could harm the competitive interest of the Company. This information is confidential pursuant to section 366.093(3)(e), Florida Statutes.

OPC's First Interrogatories to Gulf Power (1-87)

Numbers 33-34: These responses include non-public compensation data for specific positions that have been filled or will be filled in the near future. This information is confidential pursuant to section 366.093(3)(e), Florida Statutes. See, Florida Power & Light v. Florida Public Service Commission, 31 So.3d 860 (Fla. 1st DCA 2010).

Number 65(i): This response includes non-public employee compensation data for employees whose time has been allocated, in part, to non-regulated operations. This information is confidential pursuant to section 366.093(3)(e), Florida Statutes. See, Florida Power & Light v. Florida Public Service Commission, 31 So.3d 860 (Fla. 1st DCA 2010).

Number 76: This response includes non-public employee compensation data for shared officers or directors. This information is confidential pursuant to section 366.093(3)(e), Florida Statutes. See, Florida Power & Light v. Florida Public Service Commission, 31 So.3d 860 (Fla. 1st DCA 2010).

Gulf requests that in connection with the entry of a temporary protective order, the Commission also request Public Counsel to provide Gulf with notice of its intent to use such confidential information in connection with the hearing in this matter.

WHEREFORE, Gulf requests that the Commission enter an Order granting its Motion for Temporary Protective Order relating to information identified as confidential and produced in response to OPC's First Request for Production of Documents and OPC's First Interrogatories, *instructing Public Counsel to continue to treat it as confidential, and requiring Public Counsel to provide Gulf with notice of its intent to use such confidential information in connection with the hearing in accord with the prehearing order governing procedure.*

Respectfully submitted this 25th day of August, 2011.

s/ Steven R. Griffin
JEFFREY A. STONE
Florida Bar No. 325953
RUSSELL A. BADDERS
Florida Bar No. 007455
STEVEN R. GRIFFIN
Florida Bar No. 627569
Beggs & Lane
P. O. Box 12950
501 Commendencia Street
Pensacola, FL 32576-2950
(850) 432-2451

CHARLES A. GUYTON
Florida Bar No. 398039
Gunster, Yoakley & Stewart, P.A.
215 South Monroe Street, Suite 618
Tallahassee, FL 32301
(850) 521-1980

RICHARD D. MELSON
Florida Bar No. 201243
705 Piedmont Drive
Tallahassee, FL 32312
(850) 894-1351
Attorneys for Gulf Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and via U.S. Mail this 25th day of August, 2011 to all counsel of record as indicated below.

Office of Public Counsel
J. R. Kelly/Joseph A.
McGlothlin/Erik
c/o The Florida Legislature
111 W. Madison Street,
Room 812
Tallahassee, FL 32393-1400
Kelly.jr@leg.state.fl.us
mcglotthlin.joseph@leg.state.fl.us
Saylor.erik@leg.state.fl.us
Merchant.tricia@leg.state.fl.us

Caroline Klancke
Keino Young
Martha Barrera
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0850
mbarrera@psc.state.fl.us
cklancke@psc.state.fl.us
kyoung@psc.state.fl.us

Young Law Firm
Robert Scheffel Wright/John T. La
Via,
225 South Adams Street, Suite 200
Tallahassee, FL 32301
swright@yvflaw.net

Gunster Law Firm
Charles A. Guyton
215 S. Monroe St.,
Suite 618
Tallahassee, FL 32301
cguyton@gunster.com

Richard Melson
705 Piedmont Drive
Tallahassee, FL 32312
rick@rmelsonlaw.com

Florida Retail
Federation
227 South Adams
Street
Tallahassee, FL 32301

Florida Industrial Power
Users Group
Vicki G. Kaufman/Jon C.
Moyle, Jr.
c/o Keefe Law Firm
118 North Gadsden Street
Tallahassee, FL 32301
vkaufman@kagmlaw.com
jmoyle@kagmlaw.com

Federal Executive Agencies
c/o Major Christopher C.
Thompson
Ms. Karen White
AFLOA/JACL-ULFSC
139 Barnes Drive, Suite 1
Tyndall Air Force Base,
Florida 32403
chris.thompson.2@tyndall.af.mil
karen.white@tyndall.af.mil

BY: s/Steven R. Griffin
Steven R. Griffin
Fla. Bar No. 627569