

Diamond Williams

From: Williams, Monica A. [MOWILLIA@SOUTHERNCO.COM]
Sent: Thursday, September 01, 2011 3:13 PM
To: Filings@psc.state.fl.us
Subject: Gulf Power Company's Second Motion for Temporary Protective Order
Attachments: Second Motion for Temporary Protective Order OPC 2nd .PDF

- A. s/Susan D. Ritenour
Gulf Power Company
One Energy Place
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- B. Docket No. 110138-EI
- C. Gulf Power Company
- D. Document consists of 6 pages
- E. The attached document is Gulf Power Company's Second Motion for Temporary Protective Order pertaining to the Office of Public Counsel's Second Request to produce Documents and Second Set of Interrogatories to Gulf Power.

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9/1/2011

DOCUMENT NUMBER-DATE
06310 SEP-1 =
FPSC-COMMISSION CLERK

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September 1, 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 the Second Motion for Temporary Protective Order pertaining to the Office of Public Counsel's Second Request to Produce Documents and Second Set of Interrogatories to Gulf Power.

Sincerely,

A handwritten signature in cursive script that reads "Terry A. Davis".

nbn

Enclosures

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

DOCUMENT NUMBER-DATE

06310 SEP-11

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: September 1, 2011

GULF POWER COMPANY'S
SECOND 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 Second Request for Production of Documents (Nos. 75-85) and Second Interrogatories to Gulf Power (Nos. 88-153) dated August 2, 2011, OPC has requested the discovery of proprietary confidential business information as defined pursuant to section 366.093(3), Florida Statutes.

2. Specifically, Gulf's responses to Interrogatory Nos. 135, 144 and 152 include non-public salary and benefits 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. 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).

Similarly, Gulf's response to request number 77 of OPC's Second Request for Production of Documents includes confidential pricing terms contained in a contract for services from a

third party vendor. 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. This information is confidential pursuant to section 366.093(3)(d) and (e), Florida Statutes.

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 Second Request for Production of Documents and Second 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 in not publicly disclosed.

4. For ease of reference, Gulf is producing two versions of its responses to OPC's Second Interrogatories. One version contains confidential information which has been highlighted in yellow. The second version has been redacted in black. Confidential information

contained in Gulf's response to request number 77 of OPC's Second Request for Production of Documents has been highlighted and will be provided on a separate DVD conspicuously labeled as "confidential."

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 Second Interrogatories and Second Request for Production of Documents, 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 1st day of September, 2011.

s/ Steven R. Griffin
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically on this 1st day of September, 2011 to all counsel of record as indicated below.

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