



Public Service Commission

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REPORTING AND

DATE: January 19, 1999

To: DIVISION OF APPEALS (BELLAK)

FROM: DIVISION OF AUDITING AND FINANCIAL ANALYSIS
(VANDIVER, FREEMAN) F ON

RE: RECOMMENDATION CONCERNING GULF POWER COMPANY'S REQUEST FOR CONFIDENTIAL CLASSIFICATION FOR PORTIONS OF THE STAFF AUDIT WORKING PAPERS OBTAINED DURING PREPARATION OF STAFF AUDIT REPORT NUMBERED 96-025-1-1, GULF POWER COMPANY AFFILIATE TRANSACTIONS (1993-1997), DOCKET NO. 981594-EI, DOCUMENT NOS. 12458-98 AND 12706-98

On November 5, 1998, staff filed document 12458-98 consisting of certain staff working papers prepared during the Commission staff's audit of the Gulf Power Company Affiliate Transactions (1993-1997). When an audit exit conference was held with the utility on October 21, 1998, the utility requested that these documents be temporarily excepted from public access in accordance with the provisions of Rule 25-22.006 (3)(a)(2), Florida Administrative Code.

On November 12, 1998, the utility filed a request pursuant to Rule 25-22.006, Florida Administrative Code, that certain portions of the staff working papers filed by staff in document 12458-98 receive confidential classification. On January 8, 1999, after discussions with the staff, the utility revised its request. The utility's filings include highlighted documents specifying confidential material (Document 12706-98) and edited documents for public inspection (Document 12707-98).

DOCUMENT
16923-99

Pursuant to Section 119.07, Florida Statutes, documents submitted to this Commission are public records. The only exemptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. Sections 366.093(3)(b)(d) and (e), Florida Statutes, provide the following general exemptions:

“Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person’s or company’s business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides the information will not be released to the public. Proprietary confidential business information includes, but is not limited to:....

(b) Internal auditing controls and reports of internal auditors....

(d) Information 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 other services on favorable terms.

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

Analysis of Gulf Power Company’s Request

The utility seeks confidential classification for the portions of staff’s audit working papers which contains information which pertains to:

a) Internal Audit Reports and Outlines of Internal Audit Controls;

Gulf Power Company states in its filing; “....Internal audit controls [and reports] are recognized by statute as proprietary confidential business information in section 366.093(3)(b), Florida Statutes.... Gulf Power regards this information to be confidential and competitively sensitive. No public disclosure of this information has been made.”

Analysis of Gulf Power Company's Request (Continued)

Listing of Confidential Materials (Continued)

- b) Documents Disclosing Allocation of 1994 Overheads, 1995 Overheads, and Overhead Rates.

Gulf Power Company states; "...Public disclosure of this information would harm the competitive interests of Gulf Power and give an unfair advantage to energy service providers who seek to compete with Gulf Power. Competitors can utilize this cost information to gain a superior position to Gulf Power in markets where Gulf Power conducts its business...."

- c) Contractual terms, cost data and pricing data concerning:
 - 1) Overheads and Tracing to the Ledger
 - 2) Lease Data
 - 3) Related Party Transactions
 - 4) Privileged and Confidential Attorney/Client Information

Gulf Power Company argues; "...Public disclosure of this information would impair the ability of Gulf Power Company to negotiate terms and conditions in future contracts for services performed for or by Gulf that are the most favorable to Gulf and its general body of customers. Moreover, disclosure of pricing and cost data would harm the competitive interests of Gulf. Competitors can utilize this information to gain a superior position to Gulf Power in the markets in which Gulf Power conducts business. Gulf Power and the vendor regard this information to be confidential and competitively sensitive....."

Gulf Power also asserts the material for which confidential classification is requested is intended to be, and is treated as, confidential by Gulf Power company and has not been otherwise disclosed.

Technical Staff Recommendation

We recommend as follows:

Section 366.093(3)(b), Florida Statutes provides that Internal Auditing Controls and Reports of Internal Auditors are confidential. We therefore recommend that those documents which are internal audits or report internal auditing controls be granted confidential classification.

Technical Staff Recommendation (Continued)

Sections 366.093(3)(d) and (e), Florida Statutes, provide that materials concerning bids or contractual data and material reporting competitive information the release of which could harm the utility or provider of that information are confidential. Based upon reading documents identified by the company as reporting information of a sensitive competitive or contractual nature, we recommend these documents be granted a confidential classification; that is, (1) documents disclosing allocation of 1994 overheads, 1995 overheads and overhead rates and (2) contractual terms, cost data and pricing data concerning: (1) overheads and tracing to the ledger, (2) lease data, and (3) related party transactions.

Request Not Taken Up

The utility request includes several documents which are reported to be of both of a sensitive competitive and contractual nature and which also contain privileged attorney-client information. We have reviewed these documents and recommend that they be granted confidential classification because they are of a sensitive competitive nature. Because a confidential classification is being recommended, it is a moot point at this time to also evaluate the utility's second claim that this material is also contains sensitive attorney-client privileged information. We therefore recommend that at this time the utility's claim of confidentiality on the basis that attorney-client privileged information is present within the audit workingpapers not be taken up.

Regarding Audit Procedures

The Company has requested confidential protection for "All documents retained by the F.P.S.C. staff regarding vendor Beggs & Lane." When the Commission auditor was notified during the audit that documents pertaining to the vendor Beggs and Lane were part of the utility's request for confidentiality, these documents were protected and accorded a temporary confidential status during the audit as described by Rule 25-22.006(3)(a)(2), F.A.C. At the conclusion of audit fieldwork, copies of the audit documents accorded "temporary confidential protection" are provided to the utility at the audit exit conference and the originals of these documents are filed with the Division of Records and Reporting. But, for records previously filed with an unprotected status, no assurance can be made that this material has been fully and completely protected. Unprotected material; that is, material which is present in the Public Record, cannot qualify for confidential protection.

All documents identified by the utility as confidential during the audit of Gulf's Affiliate Transactions for the Period 1993 to 1997 are covered by Gulf's filing in this case.

Length of Confidential Classification Period

Lastly, the company has not requested a specific length for the confidential classification period; therefore, in accordance with the provisions of Section 366.093(4), Florida Statutes, the classification period should be set at 18 months.

Technical Staff Recommendation (Continued)

Close Docket

Language should be included in the Prehearing Officer's Order to close this docket once the period for appeal has run and this matter becomes final.

A detailed recommendation follows. This listing also provides the reason a confidential classification was recommended for each document.

Staff Work paper Number	Page(s)	Line(s)	Recommend	Type of Confidential Information
Documents 12458-98 and 12706-98				
11-1.1 to 11-1.16	1-16	All	Grant	Internal Audit Report
11-1A.1 to 11-1A.2	1-2	All	Grant	Internal Audit Control
11-1B.1 to 11-1B.4	1-7	All	Grant	Internal Audit Control
11-1C.1 to 11-1C.3	1-3	All	Grant	Sensitive Competitive Information
11-1D.1 to 11-1D.2	1-2	All	Grant	Sensitive Competitive Information
11-1E.1 to 11-1E.3	1-3	All	Grant	Sensitive Contractual Information
11-1F.1 to 11-1F.5	1-5	All	Grant	Sensitive Contractual Information
11-1G.1 to 11-1G.7	1-7	All	Grant	Sensitive Competitive Information
11-1H.1 to 11-1H.20	1-20	All	Grant	Internal Audit Control

Staff Work paper Number	Page(s)	Line(s)	Recommend	Type of Confidential Information
Documents 12458-98 and 12706-98				
11-8.3 to 11-8.14	3-14	All	Grant	Sensitive Contractual Information
11-9.3 to 11-9.14	3-14	All	Grant	Sensitive Contractual Information
11-10.3 to 11-10.6	3-6	All	Grant	Sensitive Contractual Information
11-11.1	1	7-10	Grant	Sensitive Contractual Information
11-11.2 to 11-11.10	2-10	All	Grant	Sensitive Contractual Information
11-13B.1 to 11-13B.4	1-4	All	Grant	Internal Audit Control
11-13C.1	1	All	Grant	Internal Audit Control
11-13C.1A	1	All	Grant	Internal Audit Control
11-13C.2	1	All	Grant	Internal Audit Control
11-13C.2A	1	All	Grant	Internal Audit Control
11-15.6	1	All	Grant	Sensitive Competitive Information
11-15.14	1	All	Grant	Sensitive Competitive Information

Staff Work paper Number	Page(s)	Line(s)	Recommend	Type of Confidential Information
Documents 12458-98 and 12706-98				
11-15.15	1	All	Grant	Sensitive Competitive Information

For a limited time, a copy of this recommendation is presented at I:12706-98.RAF

cc: Division of Financial Analysis (Slemkewicz, Hicks, Wilson, Pelt)
Division of Electric and Gas (Trapp)
Division of Records and Reporting (M. Sanders)