

State of Florida



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Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: June 25, 2008

TO: Lisa Bennett, Attorney, Office of General Counsel

FROM: Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver)

RE: Docket 080001-EI, Recommendation concerning Gulf Power Company's (Gulf's) request for confidential classification concerning a portion of the staff working papers prepared during "Gulf Power 2007 Fuel Price Hedging Cost Audit for the Year Ended December 31, 2007", Audit Control No. 07-353-1-1, Documents Numbered 03774-08 and 04547-08

On May 8, 2008, when copies of certain portions of staff's audit working papers obtained or prepared during the "Gulf Power 2007 Fuel Price Hedging Cost Audit for the Year Ended December 31, 2007", were delivered to Gulf at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On May 7, 2008, staff filed document numbered 03774-08 consisting of those specified portions of the staff's audit working papers.

On May 29, 2008, Gulf filed a request pursuant to Rule 25-22.006, FAC, that selected portions of the audit working papers prepared by the staff during the audit receive a confidential classification. The utility's request included redacted copies for public inspection (Document No. 04546-08, Exhibit B) and copies with the sensitive material highlighted (Document No. 04547-08).

Documents numbered 03774-08 and 04547-08 are currently held by the Office of the Commission Clerk as confidential pending resolution of FPL's request for confidential classification.

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Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific items of a statutory provision. Subsections 366.093(3)(b)(d) and (e), F.S., provide the following exemptions.

DOCUMENT NUMBER-DATE

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Subsection 366.093(3), F.S., provides; *“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 that 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 services on favorable terms.

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

According to Section 366.093, F.S., and Rule 25-22.006, FAC, the utility has the burden of demonstrating that materials qualify for confidential classification. According to Rule 25-22.006, FAC, the utility must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility, the provider of the information or the ratepayer harm.

Staff Analysis of the Request

Reading the filing reveals the sensitive material consists of:

1) Summaries of Internal Audits

Gulf asserts that: “.... A portion of the information...contains summaries of internal audits regarding the company’s fuel procurement program.”

Section 366.093(3)(b), F.S., provides that the Commission may grant a confidential classification to internal auditing controls and reports of internal auditors. We have read the information in question and agree with the company that this material discusses internal auditing controls and reports of internal auditors. We therefore recommend that this material be granted a confidential classification.

2) Sensitive Contractual Information

Gulf asserts that: "...information submitted by Gulf Power in connection with the Audit constitutes...information regarding contractual matters which would cause irreparable harm to Gulf Power, the entities with whom its has entered into contracts and most importantly to Gulf's customers if such information was disclosed to the general public. Specifically, this information contains details concerning Gulf Power's hedging activities to the benefit of its customers and would impair Gulf's ability to enter into contracts for the benefit of its customers...."

Section 366.093(3)(d), F.S. provides that the Commission may grant a confidential classification to contract and bid information if release of that information would impair the ability of the public utility or its affiliates to contract for goods and services. Section 366.093(3)(e), F.S., provides that the Commission may grant a confidential classification to sensitive competitive business information if release of that information would harm the competitive business of the provider of that information. We have read the sensitive material identified by the utility and agree its release would reasonably cause the contractual and competitive business harm as the utility suggests. We therefore recommend that this material be granted a confidential classification.

Information Held as Confidential

To qualify as proprietary confidential business information, the material must also be held as private and not released to the public. Gulf asserts that this sensitive information is intended to be, and is treated as, confidential by Gulf Power and has not been publicly disclosed.

Duration of the Confidential Classification Period

Gulf has not requested a specific period for the confidential classification of this information. According to the provisions of Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Without cause shown for a longer period, we recommend that the period of confidential classification be set as 18 months. As deemed necessary, the utility may request an extension of the confidential classification before the period tolls.

Staff Recommendation

Based upon reading the filing, and for the reasons presented above, we recommend the utility's request be granted and that the identified material be granted a confidential classification for 18 months.

A detailed recommendation follows:

Detailed Recommendation

Staff Work Paper Number		Description	Page	Lines	Recommend	Type of Information
Utility	Staff					
Documents Numbered 03774-08 and 04547-08						
1	10-5.1	Internal Audit Summary	1	Col. A, 1	Grant	Internal Auditing Material
2	10-5.2	Internal Audit Summary	1	Col. A, 1	Grant	Internal Auditing Material
3	10-5.3	Internal Audit Summary	1	Col. A, 1	Grant	Internal Auditing Material
4	48-2.1	Hedging Information	1	Cols. A-B, 1-29; Cols. C-D, 1-2,5-6,9-11, 15-17,19-21, 23-25,28-29	Grant	Contractual and Competitive Business Information
5	48-2.2	Hedging Information	1	Cols. A-C, 1	Grant	Contractual and Competitive Business Information
6	48-3.1	Hedging Information	1	Cols. A-B, 1-57; Cols. C-D, 1-5,9-12, 17-23,29-31, 35-37,43-49, 54-56	Grant	Contractual and Competitive Business Information
7	48-3.2	Hedging Information	1	Cols. A-C, 1	Grant	Contractual and Competitive Business Information

Staff Work Paper Number		Description	Page	Lines	Recommend	Type of Information
Utility	Staff					
Documents Numbered 03774-08 and 04547-08						
8	48-4.1	Hedging Information	1	Cols. A-B, 1-62; Cols. C-D, 1-5,10-14, 19-24,31-34, 38-41,47-51, 58-61	Grant	Contractual and Competitive Business Information
9	48-5.1	Hedging Information	1	Col A, 1-62; Cols. B-C, 63-64; Col. D; 1-62; Cols. E-F, 1-6,11-14, 20-26,29, 33-37,40-42, 49-53,60-61;	Grant	Contractual and Competitive Business Information
10	48-6.1	Hedging Information	1	Col. A, 1-55; Cols. B-C, 54-55; Col. D, 1-55 Cols. E-F, 1-3,7-8,14-19, 27-30,36-39, 45-48,53;	Grant	Contractual and Competitive Business Information
11	48-7.1	Hedging Information	1	Cols. A-B, 1-75 Cols. C-D, 1-7,17-19, 25-32,40-47, 53-56,62-66, 73-75	Grant	Contractual and Competitive Business Information

Staff Work Paper Number		Description	Page	Lines	Recommend	Type of Information
Utility	Staff					
Documents Numbered 03774-08 and 04547-08						
12	48-8.1	Hedging Information	1	Cols. A-B, 1-75 Cols. C-D, 1-9,14-16, 21-29,37-44, 50-53,60-65, 72-74	Grant	Contractual and Competitive Business Information
13	48-9.1	Hedging Information	1	Cols. A-B, 1-74; Cols. C-D, 1-7,12-14, 20-28,37-44, 48-52,57-61, 69-71	Grant	Contractual and Competitive Business Information
14	48-10.1	Hedging Information	1	Cols. A-B, 1-67 Cols. C-D, 1-4,9-11, 15-24,31-38, 41-43,51-55, 64-65	Grant	Contractual and Competitive Business Information
15	48-11.1	Hedging Information	1	Cols. A-B, 1-50; Cols. C,D, 1-7,11-12, 17-23,28-31, 35-38,41-43, 46	Grant	Contractual and Competitive Business Information
16	48-12.1	Hedging Information	1	Cols. A-B, 1-63; Cols. C-D, 1-5,12-16, 22-28,32-35, 39-44,48-51, 55-59	Grant	Contractual and Competitive Business Information

Staff Work Paper Number		Description	Page	Lines	Recommend	Type of Information
Utility	Staff					
Documents Numbered 03774-08 and 04547-08						
17	48-13.1	Hedging Information	1	Cols. A-B, 1-57; Cols. C-D, 1-4,9-13, 17-22,27-29, 33-38,43-46, 50-53	Grant	Contractual and Competitive Business Information
18	48-13.2	Hedging Information	1	Cols. A-C, 1-4	Grant	Contractual and Competitive Business Information
19	48-13.3	Hedging Information	1	Cols. A-B, 1-55; Cols. C-D, 1-6,10-14, 17-21,25-27, 30-36,39-43, 46,48-51	Grant	Contractual and Competitive Business Information
20	48-14	Hedging Information	1	Cols. A, 2,4,6,8,10; Col. B, 9 Col. C, 1,3,5,7,9 Col. D, 1,3,5,7; Col. E, 1,3,5,7,9; Cols. F-G, 1,3,5,7,9	Grant	Contractual and Competitive Business Information

A temporary copy of this recommendation will be held at I:04547-08 Gulf Power 2007 hedging raf.doc.

CC: Division of Regulatory Compliance and Consumer Assistance (Deamer)
Office of the Commission Clerk (McLean)