

Marguerite McLean

From: Milstead, Natalie [NB MILSTE@SOUTHERNCO.COM]
Sent: Monday, October 10, 2011 4:57 PM
To: Filings@psc.state.fl.us
Cc: Badders, Russell A. (Beggs & Lane); Griffin, Steven R. (Beggs & Lane); 'Jeffrey Stone'
Subject: Gulf Power Company's Fifth Motion for Temporary Protective Order pertaining to Citizens' Sixth Set of Interrogatories and Request to Produce Documents to Gulf Power
Attachments: Gulf Power Company's Fifth Motion for Temporary Protective Order pertaining to Citizens' Sixth Set of Interrogatories and Request to Produce Documents.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 8 pages
- E. The attached document is Gulf Power Company's Fifth Motion for Temporary Protective Order pertaining to Citizens' Sixth Set of Interrogatories and Request to Produce Documents to Gulf Power

DOCUMENT NUMBER-DATE

07416 OCT 10 =

FPSC-COMMISSION CLERK

10/10/2011

Susan D. Ritenour
Secretary and Treasurer
and Regulatory Manager

One Energy Place
Pensacola, Florida 32520-0781

Tel 850.444.6231
Fax 850.444.5026
SDRITENO@southernco.com



October 10, 2011

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

RE: Docket No. 110138-EI

Dear Ms. Cole:

Attached is the Fifth Motion for Temporary Protective Order pertaining to Citizens' Sixth Set of Interrogatories and Request to Produce Documents to Gulf Power to be filed in the above referenced docket.

Sincerely,

Susan D. Ritenour

nm

Enclosures

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

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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: October 10, 2011

**GULF POWER COMPANY'S
FIFTH 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:

In its Sixth Request to Produce Documents (Nos. 107-151) and Sixth Interrogatories to Gulf Power (Nos. 226-259) dated September 8, 2011, OPC has requested the discovery of proprietary confidential business information as defined pursuant to section 366.093(3), Florida Statutes.

OPC's Sixth Request to Produce Documents (Nos. 107-151)

1. Gulf's response to request number 124 contains, among other things, historical and projected costs associated with corporate aircraft and potential options for cost containment. This non-public information is considered proprietary by Gulf Power and its affiliates. Public disclosure of this information would reveal ongoing business strategies and would adversely impact Southern Company's ability to negotiate future contracts for lease of aircraft, aircraft facilities and labor. These documents are considered confidential in their entirety.

2. Gulf's responses to request numbers 132, 133, 136 and 137 contain copies of invoices from third party vendors. These invoices reflect confidential pricing data for goods and services rendered to Gulf Power and Southern Company Services by the vendors in connection

with Gulf's Premium and Commercial Surge programs. 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. Similarly, vendors may refuse to do business with Gulf, or charge higher prices, if their negotiated pricing is publicly disclosed. This information is confidential pursuant to section 366.093(3)(d) and (e), Florida Statutes.

3. Gulf's response to request number 148 contains copies of monthly bills rendered to specific Gulf Power customers. These monthly bills contain personally identifiable information such as customer names and addresses in conjunction with account numbers, account access codes and meter numbers. Gulf has historically protected this information in recognition of its customers' expectations of privacy. Public disclosure of this information could provide wrongdoers with access to customer accounts and could potentially subject Gulf to lawsuits for wrongful disclosure of customer information. As recognized in Florida Power & Light v. Florida Public Service Commission, 31 So.3d 860 (Fla. 1st DCA 2010), the categories of confidential information referenced in section 366.093(3)(a)-(f), Florida Statutes, are not exclusive. The statute specifically provides that proprietary confidential business information "includes, but is not limited to" the information identified in subparts (a) through (f). § 366.093(3), Fla. Stat. While not specifically enumerated in the statute, the foregoing information constitutes proprietary confidential business information pursuant to section 366.093(3), Florida Statutes. See, Order No. PSC-09-0162-CFO (finding that customers' personally identifiable information qualifies as proprietary confidential business information under the statute).

4. Gulf's response to request number 150 contains non-public employee compensation data for officers, directors and executives whose compensation is charged in part to Gulf. For those employees whose compensation is reported publicly, only future projections for compensation have been highlighted. 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).

OPC's Sixth Interrogatories (Nos. 226-259)

5. Gulf Power's response to interrogatory 231 references the identity of third party vendors which submitted bids for the provision services for Southern Company Services and the amounts by which those bids exceeded Southern Company Services' costs to perform those same services. Public disclosure of the monetary figures identified in this response would enable the unsuccessful bidders to ascertain Southern Company Services' cost to perform these services and provide them with a competitive advantage over Southern Company Services and other potential bidders in developing bids for similar services in the future. Additionally, public disclosure of the identities of losing bidders could provide a disincentive for potential vendors to bid on Company projects in the future. The foregoing information is confidential pursuant to section 366.093(3)(d) and (e), Florida Statutes.

6. Gulf Power's response to interrogatory 248 contains non-public employee compensation data for officers, directors and executives whose compensation is charged in part

to Gulf. For those employees whose compensation is reported publicly, only future projections for compensation have been highlighted. 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).

7. 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 Sixth Request to Produce Documents and Sixth 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.

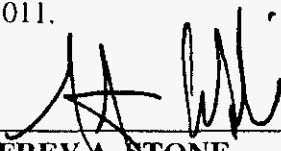
8. For ease of reference, Gulf is producing two versions of its responses to OPC's Sixth Interrogatories. One version contains confidential information which has been highlighted

in yellow. The second version has been redacted in black. Confidential information contained in Gulf's response to OPC's Sixth Request to Produce Documents has been highlighted or marked as confidential in its entirety 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 OPC 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 Sixth Request to Produce Documents and Sixth Interrogatories, instructing OPC to continue to treat it as confidential, and requiring OPC 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 10th day of October, 2011.



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

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition for Increase in Rates)
by Gulf Power Company)
)
)

Docket No. 110138-EI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by electronic mail the 10th day of October, 2011, on the following:

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

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

Florida Retail Federation
227 South Adams Street
Tallahassee, FL 32301

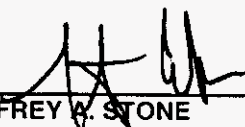
Gunster Law Firm
Charles A. Guyton
215 S. Monroe St.,
Suite 618
Tallahassee, FL 32301
cguyton@gunster.com

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

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

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@kaqmlaw.com

Gardner Law Firm
Robert Scheffel Wright
John T. La Via,
1300 Thomaswood Drive
Tallahassee, FL 32308
schef@gbwlegal.com



JEFFREY A. STONE
Florida Bar No. 325953
RUSSELL A. BADDERS
Florida Bar No. 007455
STEVEN R. GRIFFIN
Florida Bar No. 0627569
BEGGS & LANE
P. O. Box 12950
Pensacola FL 32591-2950
(850) 432-2451
Attorneys for Gulf Power Company