

ORIGINAL

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 13, 2006
TO: Richard Bellak, Attorney, Office of General Counsel
FROM: Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver)
RE: Docket 050927-EI, Recommendation concerning Gulf Power Company Inc.'s (Gulf's) request for confidential classification concerning a portion of the staff working papers prepared during "Investigation of Gulf Power Company Inc.'s Sale of Trouble Vision Software", Audit Control No. 03-099-1-1, Documents Numbered 11372-05 and 11779-05

On December 9, 2005, when copies of certain portions of staff's working papers obtained or prepared during the "Investigation of Gulf Power Company, Inc.'s Sale of Trouble Vision Software", were delivered to Gulf at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with the provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On December 2, 2005, staff filed document 11372-05 consisting of those specified portions of the staff's working papers.

On December 21, 2005, Gulf filed a request pursuant to Rule 25-22.006, FAC, and Section 366.093, Florida Statutes (F.S.), that selected portions of the working papers prepared by the staff during the audit receive confidential classification. The utility's request included redacted copies for public inspection (document 11799-05) and copies with the sensitive material highlighted (document 11779-05).

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On February 1, 2005, after discussions with the staff, Gulf reduced the amount of material to be considered for a confidential classification. This recommendation reflects Gulf's reduction to its request.

Documents 11372-05 and 11779-05 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of Gulf's request for confidential classification.

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)(d) and (e), F.S., provide the following exemptions.

DOCUMENT NUMBER-DATE

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Subsection 366.093, 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:

....

(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 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:

Documents containing the terms on which Gulf agreed to sell its "Trouble Vision Software" to CES International.

Gulf states: "...The documents contain proprietary confidential business information regarding contractual matters which would cause irreparable harm to Gulf Power Company and the entities with whom it has entered into contracts if such information were disclosed to the general public. Specifically, among other things, the documents contain the terms on which Gulf agreed to sell its Trouble Vision Software to CES International, Inc."

Section 366.093(3)(d), F.S., provides that contractual information release of which would harm the ability of Gulf or its affiliates to contract favorably in the future may be granted a confidential classification. In addition, Section 366.093(3)(e), F.S., provides that sensitive competitive business information may be granted a confidential classification if release of this information would harm the provider of that information.

Reading of the filing reveals that the sensitive information at the subject of this request does reveal the terms by which Gulf Power Company sold "Trouble Vision Software" to CES International, Inc. We agree with the assertion that release of this sensitive contractual and competitive business information would harm Gulf's and its affiliates ability to contract and impair the competitive businesses of the providers of that information.

Staff Analysis -- Conclusion

The information identified by Gulf should be granted a confidential classification since the sensitive information pertains to sensitive contractual information release of which would harm Gulf or its affiliates, and the information is also sensitive competitive business information release of which would harm the providers of that information. These types of information are set out as exceptions to public records law in accordance with the provisions of Sections 366.093(3)(d) and (e), Florida Statutes.

Information Held as Confidential

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

Duration of the Confidential Classification Period

Gulf's request does not specify how long the material should be classified as confidential.

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, as Found

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.

Furthermore, any order resolving Gulf's request should provide that once the order becomes final, the docket should be closed.

A detailed recommendation follows:

Detailed Recommendation, As Found

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 11372-05 and 11779-05					
10-3.1	Request 3 Revenues and/or Benefits	1	1-7	Grant	Sensitive contractual and competitive business information
10-3.2	Response to Request 3	1	All	Grant	Sensitive contractual and competitive business information
10-3.3	Response to Request 3	1	All	Grant	Sensitive contractual and competitive business information
10-3.4	Response to Request 3	1	All	Grant	Sensitive contractual and competitive business information
10-3.5	Response to Request 3	1	All	Grant	Sensitive contractual and competitive business information

A temporary copy of this recommendation will be held at I:11779-05gulfrac.doc for a short period.

CC: Division of Regulatory Compliance and Consumer Assistance (Deamer)
Division of Commission Clerk and Administrative Services (Flynn, Lockhard)