

17

**ORIGINAL  
FILE COPY**

**BEGGS & LANE**  
ATTORNEYS AND COUNSELLORS AT LAW  
SEVENTH FLOOR SLOUNT BUILDING  
3 WEST GARDEN STREET  
PENSACOLA, FLORIDA 32501

POST OFFICE BOX 12950  
PENSACOLA, FLORIDA 32576-2950  
TELEPHONE (904) 432-2451  
TELECOPIER (904) 438-6139

ROBERT P. GAINES  
WILLIAM GUY DAVIS, JR.  
W. SPENCER MITCHEM  
JAMES M. WEBER  
ROBERT L. CRONGEYER  
JOHN F. WINDHAM  
J. NIXON DANIEL, III  
G. EDISON HOLLAND, JR.  
RALPH A. PETERSON  
RONALD L. NELSON  
GARY B. LEUCHTMAN  
THOMAS R. JENKINS  
JOHN P. DANIEL  
JEFFREY A. STONE  
JAMES S. CAMPBELL  
LARRY A. MATTHEWS  
TERESA E. LILES  
T. RHETT SMITH  
CRYSTAL COLLINS

E DIXIE BEGGS  
*Retired*  
BERT H. LANE  
1917-1981

October 31, 1990

Mr. Steve Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0870

Dear Mr. Tribble:

RE: Docket Number 891345-EI

Enclosed are an original and fifteen copies of Gulf Power Company's Response to Public Counsel's Cross-Motion For Reconsideration, and Motion for Expedited Consideration in the above referenced docket.

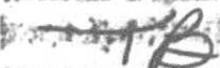
Please acknowledge receipt and filing of the enclosed material by stamping the duplicate copy of this letter and returning same to the attention of the undersigned.

Thank you for your assistance in this matter.

Very truly yours,

  
Jeffrey A. Stone  
For the Firm

- ACK
- AFA
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG  JAS/tlg
- LEG  Enclosures
- LIN 6
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

RECEIVED & FILED  
  
FPSC-BUREAU OF RECORDS

MAIL ROOM  
NOV 1 1990  
DOCUMENT NUMBER-DATE  
09826 NOV-1 1990  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Gulf Power Company )  
for an Increase in its Rates and ) Docket No. 891345-EI  
Charges ) Filed: 11-01-90  
\_\_\_\_\_ )

GULF POWER COMPANY'S RESPONSE TO  
PUBLIC COUNSEL'S CROSS-MOTION  
FOR RECONSIDERATION, AND  
MOTION FOR EXPEDITED CONSIDERATION

Gulf Power Company ("Gulf", "Gulf Power", or "the Company"), by and through its undersigned counsel, responds to Public Counsel's Cross-Motion for Reconsideration filed in the above docket as follows:

1. Public Counsel's Cross Motion for Reconsideration ("Public Counsel's Cross Motion" or "Cross Motion") requests reconsideration of two points decided by the Commission in Docket No. 891345-EI: (1) the Commission's decision to require a \$2,052,000 refund of interim revenues previously awarded, and (2) the imposition of a "mismanagement penalty", under which the Commission reduced the authorized return on equity of 12.55 percent to 12.05 percent, a reduction of 50 basis points, for a specific two year period.

2. Gulf has previously filed its "Motion for Reconsideration of Decision Requiring Partial Refund of Interim Rates" ("Gulf's Motion for Reconsideration"). The basis for Gulf's Motion for Reconsideration is that the Commission's

DOCUMENT NUMBER-DATE

09826 NOV -1 1990

FPSC-RECORDS/REPORTING

2086

action misinterpreted the mandate of Section 366.071 of the Florida Statutes. Since the full amount of the interim rate award does not cause Gulf to earn at a level equal to, much less in excess of, the rate of return deemed fair and reasonable by the Commission in this docket, no refund is appropriate under Section 366.071, the interim rate statute.

THE RETURN ON EQUITY FOR INTERIM PURPOSES

3. Public Counsel's Cross-Motion with respect to the interim rate refund consists entirely of reargument of the points previously raised by Public Counsel at the hearings in this docket and in its post-hearing brief. Having raised no point of law or fact overlooked by the Commission in reaching its decision, the Cross-Motion should be summarily denied. Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962).

4. Further, while Public Counsel's Cross-Motion alleges that the use of a 12.55 percent return on equity (as opposed to the 12.05 percent return on equity after imposition of the penalty) to calculate the interim refund "is contrary to the letter and intent of Section 366.071(4)", the referenced statute is completely silent concerning the imposition of a "mismanagement penalty" to reduce the authorized rate of return on equity. Instead, the statute, as argued by Gulf in its Motion for Reconsideration on this issue, requires only that the interim rates authorized to be collected during the pendency of the proceeding not cause the utility to earn outside the range

of the rate of return found fair and reasonable on a prospective basis. As dramatically demonstrated in Gulf's Motion for Reconsideration, collection of the entire interim rate increase authorized will still leave Gulf well below the bottom of the range of the rate of return on equity found fair and reasonable by the Commission.

5. In its efforts to increase the penalty to Gulf Power and exacerbate the already dire financial condition of the Company, Public Counsel has mischaracterized the Commission's Order by referring to 12.05 percent as the "newly authorized rate of return which is found fair and reasonable on a prospective basis". What the Commission actually did in the Order was "set the rate of return on common equity capital at 12.55%." Order No. 23573 at p. 7. The Commission then imposed a 50 basis point penalty on equity for a specific two year period. At page 20 of the Order the Commission held as follows:

Based on the evidence in the record and a review of the equity costing methodologies presented, we find that a reasonable allowed return on equity capital for Gulf is 12.55%. This rate of return on common equity will allow Gulf the opportunity to raise capital on fair and reasonable terms and to maintain its financial integrity. (See also, Order No. 23573 at p. 67.)

As reflected at page 7 of the Order, "[t]he reduced increase in gross annual revenues for the two years beginning September 13, 1990, reflects a 50 basis point penalty on return on equity imposed for mismanagement."

In other words, the Commission determined the "appropriate ROE for Gulf Power Company to be 12.55%," then reduced it for revenue setting purposes to only 12.05 percent for a discrete two year period based upon the Commission's finding of "mismanagement." See, Order No. 23573 at p. 29. The Commission very clearly determined that the penalty should last for a period of two years beginning on September 13, 1990, and ending on September 12, 1992. The 50 basis point penalty and the resulting 12.05 percent ROE have no application whatsoever to the interim rates set under Section 366.071 of the Florida Statutes which were collected on meter readings taken on and after March 10, 1990 through September 12, 1990.

6. As clearly reflected in Gulf's Motion for Reconsideration, even if the 12.05 percent were used for purposes of determining whether to refund any portion of the interim increase, proper application of the interim statute would result in no refund. It was the express intent of the Commission to penalize Gulf Power for a period of two years based on the Commission's "belief that Gulf Power has turned the corner" on dealing with the matters which led to the mismanagement penalty. Public Counsel has not taken issue with the length of the "penalty period," i.e., two years. Therefore, one must assume that if, as Public Counsel has suggested, the penalty were to commence the day the interim increase became effective, March 10, 1990, then in order to be consistent with the Commission's

decision to impose a penalty for two years, the full \$14,131,000 increase would be placed into effect beginning March 10, 1992, after the end of the two year period.

#### MISMANAGEMENT PENALTY

7. As to the issue of the "mismanagement penalty," Public Counsel in its Cross-Motion argues that the Commission should have made a greater adjustment to the authorized return on equity. Again, this point consists entirely of reargument, and the Cross-Motion raises no point of law or fact overlooked or misapprehended by the Commission in reaching its initial decision on this matter. Diamond Cab, supra.

8. Gulf's position with respect to the mismanagement penalty is well documented. It will not be reargued here. It is sufficient to say that neither the penalty itself nor the amount can be supported in law or equity. See, Post-Hearing Brief of Gulf Power Company, pp. 107 - 138. As was stated in the Brief, the position of Public Counsel with respect to the penalty constitutes a "classic case of overreaching." The Office of Public Counsel has neither shown nor attempted to show how the events described in the Order have impacted its "clients," Gulf's customers. As was clearly shown in the record, by all relevant standards (i.e., quality of service, rates, etc.) Gulf is perhaps the most well managed utility within the jurisdiction of the Commission. The Office of Public Counsel is well aware of this

and as a result, in the absence of any substantive basis for its position, has resorted to broad generalizations that have no basis in the record or under the law.

REQUEST FOR EXPEDITED CONSIDERATION

9. Due to the Company's precarious financial condition, Gulf has previously filed a Motion to Sever as to Issue 111, the issue pertaining to the interim rate refund, seeking to allow the remainder of Order No. 23573 to become final so that Gulf may file an immediate appeal of the remainder of that order due to demonstrated immediate financial distress and irreparable harm caused thereby. In the alternative, the Company's Motion to Sever seeks expedited consideration of Gulf's Motion for Reconsideration. Any delay in finally resolving Gulf's Motion for Reconsideration and Public Counsel's Cross-Motion will irreparably harm the Company. Consequently, Gulf respectfully requests that the Commission expedite consideration of Public Counsel's Cross-Motion, and renews the Company's previous request to either sever issue 111 for purposes of reconsideration or expedite consideration of Gulf's Motion for Reconsideration. This will allow Gulf to obtain prompt judicial review of the prospective aspects of Order No. 23573 and thereby attempt to alleviate the Company's existing financial distress.

10. Prior to a judicial determination of the propriety of the penalty itself, the Commission certainly should not

exacerbate the Company's deteriorating financial condition by imposing an even more excessive penalty against the rate of return specifically found by the Commission to be fair and reasonable.

WHEREFORE, Gulf Power respectfully requests that the Commission deny Public Counsel's Cross-Motion for Reconsideration, for the reasons heretofore expressed, and further that the Commission give expeditious consideration to all motions currently pending before it with respect to this docket.

Respectfully submitted,



---

G. EDISON HOLLAND, JR.  
Florida Bar No. 261599  
JEFFREY A. STONE  
Florida Bar No. 325953  
Beggs & Lane  
Post Office Box 12950  
Pensacola, Florida 32576  
904/432-2451  
Attorneys for Gulf Power Co.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition of Gulf Power )  
Company for an increase in its )  
rates and charges. )

DOCKET NO: 891345-EI

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 31st day of October, 1990 by U.S. Mail to the following:

Jack Shreve, Esquire  
Public Counsel  
Florida House of Representatives  
The Capitol  
Tallahassee, FL 32399-1300

John W. McWhirter, Jr., Esquire  
Lawson, McWhirter, Grandoff &  
Reeves  
P.O. Box 3350  
Tampa, FL 33601

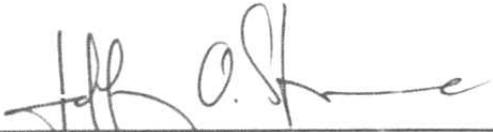
Robert Vandiver, Esquire  
Michael Palecki, Esquire  
Marsha Rule, Esquire  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0863

Joseph A. McGlothlin, Esquire  
Lawson, McWhirter, Grandoff &  
Reeves  
522 E. Park Avenue, Suite 200  
Tallahassee, FL 32301

Terrie M. Gent  
HQ USAF/ULT  
Stop 21  
Tyndall AFB, FL 32403-6001

Richard Chais  
ORI, Inc.  
1375 Piccard Drive  
Rockville, MD 20850

Ronald C. LaFace, Esquire  
Roberts, Baggett, LaFace  
& Richard  
101 E. College Avenue  
P.O. Drawer 1838  
Tallahassee, FL 32302

  
\_\_\_\_\_  
G. EDISON HOLLAND, JR.  
Florida Bar No. 261599  
JEFFREY A. STONE  
Florida Bar No. 325953  
Beggs & Lane  
P.O. Box 12950  
Pensacola, FL 32576  
(904) 432-2451  
Attorneys for Gulf Power Company