

One Energy Place  
Pensacola, Florida 32520

Tel 850.444.6111



August 8, 2001

Ms. Blanca S. Bayo, Director  
Division of the Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee FL 32399-0870

Dear Ms. Bayo:

RE: Docket No. 010827-EI

Enclosed are an original and fifteen copies of Gulf Power Company's Response to FIPUG's Motion Seeking an Order to Strike Supplemental Direct Testimony or to Continue the Hearing and Extend Dates for Intervenor Testimony to be filed in the above docket.

Also enclosed is a 3.5 inch double sided, high density diskette containing the Motion in Adobe Acrobat 4.0 format as prepared on a Windows NT based computer.

Sincerely,

A handwritten signature in cursive script that reads "Susan D. Ritenour".

Susan D. Ritenour  
Assistant Secretary and Assistant Treasurer

lw

cc: Beggs and Lane  
Jeffrey A. Stone, Esquire

DOCUMENT NUMBER-DATE  
09680 AUG-9 01  
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Gulf Power Company's petition for )  
approval of purchased power arrangement ) Docket No.: 010827-EI  
regarding Smith Unit 3 for cost recovery ) Date Filed: August 9, 2001  
through recovery clauses dealing with )  
purchased capacity and purchased energy. )  
\_\_\_\_\_ )

**GULF POWER COMPANY'S RESPONSE TO FIPUG'S  
MOTION SEEKING AN ORDER TO STRIKE SUPPLEMENTAL DIRECT  
TESTIMONY OR TO CONTINUE THE HEARING AND EXTEND DATES FOR  
INTERVENOR TESTIMONY**

GULF POWER COMPANY ("Gulf Power", "Gulf", or the "Company"), by and through its undersigned attorneys, hereby responds to the motion filed by the Florida Industrial Power User's Group ("FIPUG") on August 3, 2001 and states:

1. Gulf requested that the Commission expedite a hearing to address the Company's petition in order to ensure that a favorable decision could be followed through the necessary next step at the Federal Energy Regulatory Commission and Gulf could otherwise complete the transaction in time to appropriately reflect the proposed purchased power arrangement in the upcoming projection filings for the fuel and capacity cost recovery clauses. The Company also needs expedited treatment in case of an unfavorable decision on Gulf's petition in order to ensure that the Company is able to timely pursue a rate case to incorporate Smith Unit 3 in Gulf's base rates effective on or about the commercial in-service date of the new unit. In support of its request for expedited treatment, Gulf filed its direct testimony on June 18, 2001;<sup>1</sup> filed an economic comparison of the two alternatives subject to a request for confidential treatment on

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<sup>1</sup> As indicated in its motion for expedited treatment, Gulf had originally hoped to have an issue identification meeting as early as June 13 so that the issues would be identified prior to Gulf's proposed deadline for filing its direct testimony. Although the first of such meetings was not held until July 19, Gulf chose to file its direct testimony on its original schedule as part of its commitment to provide information to interested parties on an expedited basis.

June 29, 2001;<sup>2</sup> participated in numerous meetings with the Commission Staff and other interested parties and responded to discovery requests submitted by the Commission Staff in 10 days or less;<sup>3</sup> and, in response to questions raised by the Commission Staff and other interested parties, Gulf also advanced its planned timetable for developing the various other agreements that will allow Gulf to transfer Smith Unit 3 to Southern Power if the proposed purchased power arrangement is ultimately approved.<sup>4</sup> FIPUG now seeks to exclude these documents (the June 29 economic comparison and the various agreements to be executed as part of the transfer of Smith Unit 3 ownership) from the hearing through its request that Gulf's supplemental direct testimony be stricken. Finally, in a series of meetings and correspondence, Gulf has worked with the Commission Staff and interested parties in an effort to agree on the wording of issues the parties want the Commission to consider in this case. Consistent with its petition, Gulf proposed that there were three issues that would need to be addressed by the Commission at the hearing in this case. The original list of three issues proposed by Gulf has now been expanded to a total of 19 issues, largely as a result of FIPUG's requests. The most recent of these issue identification meetings was held on the afternoon of July 31, 2001. Gulf's supplemental direct testimony was filed on the morning of August 1, 2001. In its 13 pages of supplemental direct testimony by two

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<sup>2</sup> This document was submitted in response to an informal request received from the Commission Staff on the afternoon of June 27, 2001.

<sup>3</sup> Staff's First Set of Interrogatories and Staff's First Request for Production of Documents were each dated July 10, 2001. Gulf's responses to 18 out of 50 interrogatories in Staff's First Set of Interrogatories were served by letter dated July 12, 2001; Gulf's responses to the remainder of Staff's First Set of Interrogatories and the 15 document requests in Staff's First Request for Production of Documents were served by letter dated July 19, 2001.

<sup>4</sup> Because the documents are only needed if a transfer of ownership will occur and such transfer will occur only if Gulf's petition for cost recovery of the proposed purchased power arrangement is approved, Gulf had originally planned to prepare such documents only after Commission approval of the proposed purchased power arrangement had been obtained. Due to questions raised at an early meeting with Commission Staff and other interested parties and subsequently at the June 25, 2001 agenda conference by at least one of the Commissioners, Gulf agreed to move up the original timetable to ensure that such documents would be available for review as part of the hearing that is now set for September 5, 2001.

witnesses, Gulf has simply attempted to respond to the expanded list of issues identified by FIPUG, OPC and the Commission Staff so that the Commission would have evidence before it at the hearing rather than simply argument of counsel that such issues exist and have not been addressed. Gulf's filing of supplemental direct testimony is entirely consistent with the efforts to expedite the decision process in this case. By filing its supplemental direct testimony at the earliest date possible, Gulf has put the Company's response to certain of the new issues on the record in an effort to satisfy parties' concerns on these points and hopefully work towards a stipulation regarding as many issues as possible by the time of the prehearing conference.<sup>5</sup>

2. FIPUG inappropriately complains that the filing of supplemental direct testimony has impeded its ability to prepare any testimony it may file in this case, although it appears that its consultants have only recently become involved. Due to the nature of this case, there are a number of confidential documents that have been filed with the Commission pursuant to either a request for confidential treatment or a notice of intent to file a request for confidential treatment. In order to provide FIPUG with access to such documents, Gulf has entered into a non-disclosure agreement with John W. McWhirter, Jr. and Vicki Gordon Kaufman. Under the terms of such agreement, neither Mr. McWhirter nor Ms. Kaufman could share access to such documents with any consultants unless and until the consultants themselves signed the non-disclosure agreement and agreed to be bound by its terms and FIPUG provided such signed documents to counsel for Gulf. FIPUG's consultants, Jeffrey Pollock or Kathryn E. Iverson, signed the non-disclosure agreement on August 1, 2001 as evidenced by the notice received by undersigned counsel for Gulf on August 2, 2001. (See Attachment A) FIPUG's first formal discovery requests were served on Gulf's counsel by fax on August 3, 2001. (See Attachment B) As a result, it certainly appears that the consultants' involvement in the case coincides with the date the supplemental

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<sup>5</sup> For example, one of the new issues addressed in Gulf's supplemental direct testimony concerns the perceived problem of possible amendments to the purchased power agreement after the Commission grants the request for approval set forth in Gulf's petition. As indicated in Gulf's supplemental direct testimony, Gulf commits that there will be no such amendments without the prior review and approval of the Florida Public Service Commission.

direct testimony was filed. Under the schedule agreed to by Gulf as set forth in the Order Establishing Procedure, Order No. PSC-01-1532-PCO-EI, Gulf shortened the time frame for responding to Staff's discovery requests and shortened the time frame between the filing of intervenor testimony and the date by which Gulf must file its rebuttal testimony in order to preserve the maximum amount of time for the intervenors to prepare and file any testimony in this case. As a result, FIPUG has more than two weeks to consider the 13 pages of supplemental direct testimony before it must file its own testimony in this case on August 17, 2001. In contrast, Gulf agreed to a schedule that provides four days for the Company to consider any and all testimony that may be submitted by FIPUG, OPC and the Commission Staff before the Company's rebuttal testimony is due on August 21, 2001. Under the circumstances, it would be unreasonable to allow FIPUG's unsubstantiated claims of prejudice to either result in probative evidence being excluded from consideration by the Commission or to deprive the Commission of an opportunity to consider the proposed purchased power arrangement at all by delaying the hearing beyond September 5, 2001.

3. There is a misconception held by several individuals participating in this case that is highlighted by FIPUG's motion. The misconception is that Gulf is first seeking authority to transfer Smith Unit 3 to an affiliate company and then seeks approval of a power purchase agreement regarding the output of the unit. To the contrary, Gulf's petition presents a proposed purchased power arrangement regarding Smith Unit 3 to the Commission for approval as to cost recovery through the Purchased Power Capacity Cost ("PPCC") and Fuel and Purchased Power (energy) cost recovery clauses. Only if the proposed purchased power arrangement is approved would Smith Unit 3 be transferred from Gulf to Southern Power Company, an affiliate company within the Southern electric system organized as an operating company providing wholesale electric service. This distinction is significant because the primary emphasis of Gulf's proposal is on the purchased power arrangement as a means of cost recovery for the costs of Smith Unit 3. As detailed in the petition, such an arrangement positions Gulf and its customers to be able to take advantage of changes in the wholesale market that are anticipated to occur during the next

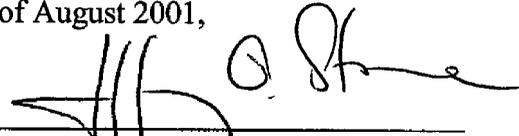
ten years. The request for approval of the proposed purchased power arrangement and associated recovery of costs is no different than any other power purchase contract subject to recovery through the respective cost recovery clauses dealing with capacity and energy purchases. There is no established minimum filing requirement associated with such agreements, nor is there any established precedent regarding the specific allegations required to state a prima facie case for relief in regards to cost recovery for such agreements. There is no established precedent for the type and timing of testimony the Commission needs or expects in order to rule on a petition such as Gulf's in this case.

4. The ultimate issue in this case is whether the Commission wishes to commit Gulf's customers to paying the carrying costs of Smith Unit 3 over the entire life of the unit or, given the alternative, whether the Commission would prefer to secure the benefits of Smith Unit 3 over a reasonable planning horizon and preserve an option for Gulf's customers to be able to take advantage of other opportunities that may appear at the end of ten years (with regard to committed capacity) and twenty years (with regard to commitment to operate for voltage support). The Commission is being asked to decide whether the option presented by Gulf through the proposed purchased power arrangement is a reasonable response to the uncertainty the future holds with regards to wholesale electric power supplies. If the Commission decides that such flexibility is prudent in these uncertain times, then it should approve the proposed purchased power arrangement for cost recovery as requested in Gulf's June 8, 2001 petition. If the Commission decides that such flexibility is not desirable, then it should deny the petition, in which case the Company will proceed with the more traditional rate base treatment of this capacity as a Gulf-owned resource with the associated customer commitment to recovery of costs associated with the unit through base rates over the life of the asset. In either case, such decision should be made following an opportunity for the Commission to hear the evidence and arguments presented by Gulf and other interested parties.

5. From the beginning of this case, Gulf has emphasized the need for an expedited decision on the request in its petition. Consistent with the need for an expedited decision, Gulf specifically requested a hearing before the Commission rather than follow a “proposed agency action” process. Without the Commission’s decision to expedite a hearing in this case, Gulf would be compelled to withdraw its proposal in order to pursue the more traditional rate base treatment of this capacity as a Gulf-owned resource with the associated customer commitment to recovery of costs associated with the unit through base rates over the life of the asset. Almost from the beginning, FIPUG and others have attempted to deprive the Commission of an opportunity to consider evidence in this case, either through opposition to an expedited hearing, a motion to dismiss or now a motion to strike testimony. The proposed alternative to rate basing Smith Unit 3 for the life of the unit would essentially be denied an opportunity for hearing before the Commission if either alternative sought by FIPUG’s motion were to be granted. Granting a motion to strike testimony filed on August 1, 2001 would deprive the Commission of evidence intended to respond to issues identified on July 31, 2001. The alternative motion to continue the case and extend the time for intervenor testimony would, in essence, be a denial of the request for an expedited decision in this case which is tantamount to a denial of a hearing. Those who seek to tie the hands of the Commission by thwarting Gulf’s efforts to present a complete case to the Commission should not be rewarded through either a continuance or the striking of legitimate testimony.

WHEREFORE, Gulf Power Company respectfully requests that the Commission deny FIPUG's motion and proceed to hearing on September 5, 2001 as contemplated by the decision of the Prehearing Officer at the status conference on August 1, 2001 with all of Gulf's prefiled direct and supplemental direct testimony intact.

Respectfully submitted this 8<sup>th</sup> day of August 2001,



**JEFFREY A. STONE**

Florida Bar No. 325953

**RUSSELL A. BADDERS**

Florida Bar No. 007455

**Beggs & Lane**

P. O. Box 12950

(700 Blount Building)

Pensacola, FL 32576-2950

(850) 432-2451

**Attorneys for Gulf Power Company**

EXHIBIT 1

AGREEMENT OF CONFIDENTIALITY

(1) I have read the Confidentiality Agreement ("Agreement") entered into on this 22 day of June, 2001, by FIPUG and Gulf Power Company, and I am aware of the meaning and contents of said Agreement. I have been given a copy of that Agreement and hereby agree to be bound by the Agreement.

(2) I understand that all documentary information which I receive designated as "trade secret" or "confidential", and all working copies, computer data storage, digests, summaries, or abstracts prepared from this material, are to remain in my personal custody until I have completed my assigned duties, if any, whereupon all such material and all notes made by me containing any of this restricted or confidential information are to be returned to FIPUG so that this information may be returned to Gulf Power as per the Agreement.

NAME SIGNATURE DATE

Jeffrey Pollock Jeffrey Pollock 1 August 2001

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**MCWHIRTER REEVES**  
ATTORNEYS AT LAW

TAMPA OFFICE:  
400 NORTH TAMPA STREET, SUITE 2450  
TAMPA, FLORIDA 33602-5126  
P O BOX 3350 TAMPA, FL 33601-3350  
(813) 224-0866 (813) 221-1854 Fax

PLEASE REPLY TO:  
TALLAHASSEE

TALLAHASSEE OFFICE  
117 SOUTH GADSDEN  
TALLAHASSEE, FLORIDA 32301  
(850) 222-2525  
(850) 222-5606 Fax

August 3, 2001  
Via Fax

Jeff Stone  
Beggs & Lane  
Post Office Box 12950  
Pensacola, Florida 32576

Re: Confidentiality Agreement in Docket No. 010827-E1

Dear Jeff:

Enclosed pursuant to our Confidentiality Agreement is Exhibit 1 executed by Kathryn E. Iverson. I have enclosed a fax copy and will provide the original as soon as I receive it.

Regards,



Vicki Gordon Kaufman

encl.

Cc: Kathryn E. Iverson

EXHIBIT I

AGREEMENT OF CONFIDENTIALITY

(1) I have read the Confidentiality Agreement ("Agreement") entered into on this 22 day of June, 2001, by FIPUG and Gulf Power Company, and I am aware of the meaning and contents of said Agreement. I have been given a copy of that Agreement and hereby agree to be bound by the Agreement.

(2) I understand that all documentary information which I receive designated as "trade secret" or "confidential", and all working copies, computer data storage, digests, summaries, or abstracts prepared from this material, are to remain in my personal custody until I have completed my assigned duties, if any, whereupon all such material and all notes made by me containing any of this restricted or confidential information are to be returned to FIPUG so that this information may be returned to Gulf Power as per the Agreement.

NAME SIGNATURE DATE

Kathryn E. Iverson *Kathryn E. Iverson* 1 August 2001

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Gulf Power Company's Petition for  
Approval of Purchased Power Arrangement  
Regarding Smith Unit 3 for Cost Recovery  
Through Recovery Clauses Dealing with  
Purchased Capacity and Purchased Energy.

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Docket No.: 010827-EI

**FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS (NOS. 1 - 3) TO  
GULF POWER COMPANY**

Pursuant to Rule 1.350, Florida Rules of Civil Procedures, the Florida Industrial Power Users Group (FIPUG), by and through its undersigned counsel, hereby serves the following request for production of documents upon Gulf Power Company (Gulf).

Please produce the following documents to Vicki Gordon Kaufman, McWhirter, Reeves, McGlothlin, Davidson, Decker, Kaufman Arnold & Steen, P.A., 117 South Gadsden, Tallahassee, Florida 32301.

**DEFINITIONS AND INSTRUCTIONS**

1. For the purposes of these data requests, the following definitions shall apply:

"Documents" is used in the broadest sense and includes all tangible things that record information, whether or not such things are in Gulf's possession, custody or control, and regardless of who prepared or signed them. "Documents" includes both the original and any copy or draft, and all copies which contain any notation not on the original. Examples of "documents" include, but are not limited to, handwritten, typed or printed papers, handwritten notations, office notes, calendar entries, diaries, notes of telephone conversations, photographs, reports, receipts, invoices, memoranda, correspondence, notes, ledger entries, and computer printouts, cards, tapes, disks, and other means of electronically or magnetically maintained information.

"Identify" means (1) when used with reference to a natural person, give the person's full name, business or residence address, business or residence telephone numbers, occupation and employer; (2) when used with reference to an entity, give the entity's full name, principal place of business, address and telephone number; (3) when used with reference to a document, give the document's date, title, author, recipient, type (*e.g.*, letter, memorandum, note, *etc.*), name of the custodian of the document, and a description of the contents with sufficient specificity to be the basis for discovery; and (4) when used with reference to an action taken by an entity, identify the person(s) taking the action, describe the nature of the action, and give the date on which the action was taken. If any action identified pursuant to (4) involved a communication with another person, identify the person(s) with whom the actor(s) communicated; and, if the communication was through the use of a document, identify the document through which the communication was made.

"Person" includes a natural person, partnership, joint venture, firm, corporation, association, organization, or any other type of business or legal entity.

2. If you maintain that any document or record which refers to or relates to anything about which these production requests ask or that would be responsive to any of the production requests has been destroyed, set forth the contents of said document, the location of any copies of said document, the date and circumstances of said destruction and the name of the person who ordered or authorized such destruction.

3. In answering these production requests, furnish all information and responsive documents in the possession of Gulf or in the possession of any director, officer, employee, agent, representative, or attorney of Gulf.

4. If you cannot answer any production request in full after exercising due diligence to secure all the information requested, or do not have precise information with regard to any part of

a production request, you should so state, describing in full your efforts to obtain the information requested, and then proceed to answer to the fullest extent possible.

5. When the information requested by a production request varies over time, state the response for each period of time as to which the response differs, and identify the time periods applicable to each portion of the response.

6. Where the document requested, including but not limited to cost studies and related information, is or can be made available on diskette, please provide the documentation on diskette and indicate the format in which the data is provided.

### **DOCUMENT REQUESTS**

The following document requests should be answered separately, fully and served on Vicki Gordon Kaufman, McWhirter, Reeves, McGlothlin, Davidson, Decker, Kaufman, Arnold & Steen, P.A. 117 South Gadsden, Tallahassee, Florida 32301. Each of the following document requests is intended to be a continuing document request; in the event that at any later date Gulf obtains any additional facts or documentation, or forms any conclusions, opinions or contentions that are different from those set forth in its answers to such document requests, Gulf shall amend and/or supplement its answers to such document requests promptly, and sufficiently in advance of any hearing on this matter before the Commission.

PRODUCTION REQUESTS (Nos. 1 - 3)

1. Please provide a copy of the RFP solicitation used by Gulf for purposes of Docket No. 990325-EI.
  
2. Please provide all responses to Gulf's RFP solicitation in Docket No. 990325-EI.
  
3. Please provide, in electronic format, (with all formulae and links intact), all analyses performed by Gulf in evaluating the RFP responses referenced in Production Request No. 2 as well as all analyses indicating that the self-build option was the lowest cost alternative compared to any bids received.

*John W. McWhirter, Jr.*

John W. McWhirter, Jr.  
McWhirter Reeves McGlothlin Davidson  
Decker Kaufman Arnold & Steen, P.A.  
400 North Tampa Street, Suite 2450  
Tampa, Florida 33601-3350  
(813) 224-0866 Telephone  
(813) 221-1854 Telefax

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin, Davidson,  
Decker, Kaufman, Arnold & Steen, P.A.  
117 South Gadsden Street  
Tallahassee, Florida 32301  
(850) 222-2525 Telephone  
(850) 222-5606 TeleFax

Attorneys for the Florida Industrial  
Power Users Group

**CERTIFICATE OF SERVICE**

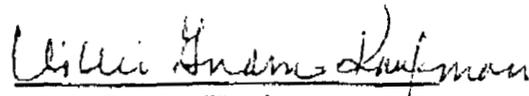
I HEREBY CERTIFY that a copy of the foregoing First Request for Production of Documents (Nos. 1 - 3) to Gulf Power Company has been furnished by (\*) hand delivery (\*\*) fax, or U.S. Mail this 3rd day of August, 2001, to the following:

(\*) Marlene Stern  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

(\*\*) Jeffery Stone  
Beggs & Lane Law Firm  
Post Office Box 12950  
Pensacola, Florida 32576-2950

Roger Howe  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, Florida 32399-1400

Ronald C. LaFace  
Greenberg Traurig, P.A.  
P.O. Drawer 1838  
Tallahassee, FL 32303

  
Vicki Gordon Kaufman

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Gulf Power Company's petition for approval of purchased power arrangement regarding Smith Unit 3 for cost recovery through recovery clauses dealing with purchased capacity and purchased energy )  
 ) Docket No.: 010827-EI  
 )  
 )  
 )  
 )  
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Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 8<sup>th</sup> day of August 2001 by U.S. Mail or hand delivery to the following:

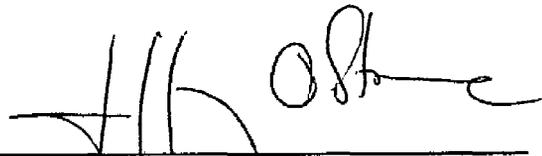
Marlene Stern, Esquire  
Staff Counsel  
FL Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee FL 32399-0863

John W. McWhirter, Esquire  
McWhirter Reeves, P.A.  
400 N. Tampa St., Suite 2450  
Tampa FL 33602

Jack Shreve, Esquire  
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Attorneys for Gulf Power Company