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Sent: Tuesday, July 03, 2001 6:31 PM
To: 'filings@psc.state.fl.us'
Subject: Docket No. 010827-EI, Gulf Power Company's Response to OPC's Motion to Dismiss



Response to OPC
Motion to Dism...

Attached is the official filing of Gulf Power Company's Response to OPC's Motion to Dismiss in Docket No. 010827-EI. A true and certified hard copy will be mailed to the Division of the Commission Clerk and Administrative Services. Gulf looks forward to receiving your acknowledgement that this filing has been received.

<<Response to OPC Motion to Dismiss.pdf>>

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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: July 5, 2001  
through recovery clauses dealing with )  
purchased capacity and purchased energy. )  
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**GULF POWER COMPANY'S RESPONSE TO OPC'S MOTION TO DISMISS**

GULF POWER COMPANY ("Gulf Power", "Gulf", or the "Company"), by and through its undersigned attorneys, hereby responds to the Motion to Dismiss filed by the Citizens of the State of Florida through the Office of Public Counsel ("OPC") on June 28, 2001 and states:

1. OPC's motion mistakenly argues that Gulf's petition fails to state a factual or legal basis upon which relief could be granted. 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. If the proposed purchased power arrangement is approved, then Smith Unit 3 would 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. In this regard, the request for approval of the proposed purchased power arrangement and associated recovery of costs is no different than any purchased power agreement 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.

2. OPC's motion refers to the testimony Gulf filed subsequent to its filing of the petition in this case. OPC's motion argues that the testimony provides descriptive detail of the proposed purchased power arrangement, "but scant attention . . . to any benefits the PPA may provide Gulf Power's customers." This argument clearly goes to the weight of the evidence

provided rather than the question of whether Gulf's petition states a cause for relief. As such, OPC's argument in its motion is more appropriately considered by the Commission as a form of closing argument after hearing in this case rather than as a motion to dismiss testing the sufficiency of the pleadings.

3. OPC's motion also mistakenly construes the impact and effect of the Commission's decision in Order No. PSC-99-1478-FOF-EI issued August 2, 1999 in Docket No. 990325-EI, Petition of Gulf Power Company to determine need for proposed electrical power plant in Bay County. OPC argues that Gulf must show a change in circumstances in order to justify alteration of Order No. PSC-99-1478-FOF-EI. Gulf is not seeking an alteration of the Commission's determination of need for Smith Unit 3. To the contrary, the proposed purchased power arrangement secures the benefits of this capacity for Gulf's customers during the first ten years following the commercial in-service date of the new facility. This window is consistent with the 10-year planning horizon contemplated by the Commission's Ten Year Site Plan filing requirements associated with the Florida Electrical Power Plant Siting Act ("PPSA") under which the certificate of need contained in Order No. PSC-99-1478-FOF-EI was issued. Furthermore, the proposed purchased power arrangement also secures the benefits of this new capacity for purposes of voltage support in the area surrounding Panama City, Florida for at least 20 years from the initial commercial in-service date. As a result, Gulf's petition demonstrates that the proposed purchased power arrangement contractually commits Smith Unit 3 to Gulf's customers consistent with the Commission's determination that this capacity is needed to serve Gulf's customers as required under the PPSA. That determination of need by the Commission was a necessary prerequisite to site certification under the PPSA for Smith Unit 3 that was ultimately granted by the Governor and members of the Florida Cabinet sitting as the Power Plant Siting Board. The granting of site certification allowed Gulf to proceed with construction of Smith Unit 3 in order to have this capacity available to serve its customers. Nothing in the current petition seeks to alter the fundamental nature of that need certification or the associated

commitment of the Smith Unit 3 capacity to satisfy that need during the Commission's normal planning horizon.

4. OPC's argument in the motion to dismiss about a hypothetical need determination petition without details of alternatives considered or the details of any request for proposals issued by the hypothetical petitioner is not analogous to the petition in this case and has no relevance to the sufficiency of the pleadings in this case. The required contents of any petition of certificate of need are set forth in appropriate sections of the Florida Statutes and the Florida Administrative Code. As noted earlier in this response, there are no such minimum filing or pleading requirements set forth for petitions seeking approval of purchased power agreements.

5. OPC's motion argues that the primary issue is whether the proposed purchased power arrangement is less costly to Gulf's customers than the self-build option approved in the need determination order. Gulf respectfully disagrees. The 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 economic life of the unit or, given the alternative, would the Commission 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 approach advocated in OPC's motion would be to declare that such options should be foreclosed today despite any uncertainty that exists with regards to forecasts ten and twenty years hence.

6. Nothing in the PPSA requires a life of plant commitment to any capacity certified under the statute. Indeed, the rules promulgated in Chapter 62 of the Florida Administrative Code under the PPSA contemplate that power plants certified under the Statute may be transferred to other parties. See, Section 62-17.211(3) F.A.C. Notwithstanding such rule, there is no provision in the rule or the statute that obligates any certificate holder to return to the Commission for modification of the need certification prior to such transfer. The issue in this case for the Commission to decide is whether the option presented by Gulf through the proposed

purchased power arrangement is a reasonable hedge against 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 petition. If the Commission decides that such flexibility is not desirable, then it should deny the petition and direct the Company to 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 economic 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. Such opportunity for hearing should not be precluded by granting OPC's motion to dismiss.

WHEREFORE, Gulf Power Company respectfully requests that the Commission deny OPC's motion to dismiss and proceed to expedited hearing as contemplated by Commission action at the agenda conference on June 25, 2001.

Respectfully submitted this 3rd day of July 2001,

<p>The original physically signed version of this document is being retained by Gulf Power Company in accordance with the Electronic Filing Requirements of the Florida Public Service Commission</p>
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Docket No.: 010827-EI

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been furnished  
this 3rd day of July 2001 by U.S. Mail or hand delivery to the following:

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