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March 20, 2002

VIA HAND DELIVERY

Blanca S. Bayo, Director
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Re: Docket No.: 010949-EI

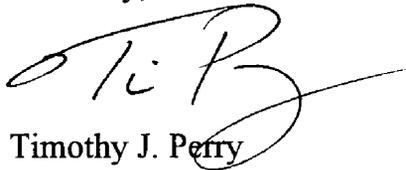
Dear Ms. Bayo:

On behalf of the Florida Industrial Power Users Group (FIPUG), enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Post-Hearing Statement of Issues and Positions and Post-Hearing Brief of the Florida Industrial Power Users Group.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,



Timothy J. Perry

US	_____
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FPSC-COMMISSIONER CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for Rate Increase by
Gulf Power Company

Docket No.: 010949-EI
Filed: March 20, 2002

**POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND
POST-HEARING BRIEF OF THE FLORIDA INDUSTRIAL POWER USERS GROUP**

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PRELIMINARY STATEMENT

Pursuant to rule 28-106.307, Florida Administrative Code, the Florida Industrial Power Users Group files its Post-Hearing Brief and its Post-Hearing Statement of Issues and Positions, which contain a summary statement of the positions developed and supported in this brief.

The following abbreviations are used in this brief. The Florida Industrial Power Users Group is referred to as FIPUG. Gulf Power Company is referred to as Gulf. The Florida Public Service Commission is referred to as the Commission. The Public Counsel is referred to as OPC or Public Counsel. References to the transcript are designated (Tr. __).

FIPUG has provided a position statement on all of the issues, except those which have been stipulated or as to which it has no position, but does not address all issues in this brief.

INTRODUCTION

In general, in this case, the Commission has two critical tasks. First, it must determine the appropriate revenue requirements for Gulf, including setting an appropriate ROE. Second, it must distribute any approved increase equitably among the customer classes.

Revenue Requirements

As to Gulf's revenue request, it is FIPUG's basic position that Gulf's revenue request is overstated for a variety of reasons. First, the ROE of 13.0%, which Gulf has requested, is highly inflated given current market conditions. FIPUG supports the 10.0% ROE sponsored by Public Counsel witness, James A. Rothschild. Further, Gulf's request for an additional increase in ROE due to its past performance has the effect of further inflating its revenue request.

Second, Gulf's expenses, particularly its O&M expenses are excessive. This is especially the case given Gulf's prior O&M levels. In general, FIPUG supports and endorses those revenue

adjustments sponsored by Public Counsel in this case.

Cost of Service Study

Gulf has proposed use of the Minimum Distributive System (MDS) to appropriately assign costs to the customer classes. FIPUG supports that methodology because it appropriately assigns costs to the cost causers. This methodology is also endorsed by NARUC. No witness in this case has provided any testimony to contravene the position that MDS is the appropriate methodology to use for Gulf.

ARGUMENT

TEST PERIOD

ISSUE 1

**IS GULF'S PROJECTED TEST PERIOD OF THE 12 MONTHS ENDING
MAY 31, 2003 (MAY 2003 PROJECTED TEST YEAR) APPROPRIATE?**

FIPUG's Position: *Adopts OPC's position.*

QUALITY OF SERVICE

ISSUE 3

**SHOULD GULF BE REQUIRED TO ESTABLISH A MECHANISM THAT
WOULD PROVIDE FOR A PAYMENT OR CREDIT TO RETAIL
CUSTOMERS IF FREQUENT OUTAGES OCCUR?**

FIPUG's Position: *Yes, FIPUG supports the position of Staff's witness, Mr. Bremen, on this issue.*

RATE BASE

ISSUE 6

SHOULD AN ADJUSTMENT BE MADE TO PRODUCTION RELATED ADDITIONS INCLUDED IN PLANT IN SERVICE?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 7

SHOULD AN ADJUSTMENT BE MADE TO TRANSMISSION AND DISTRIBUTION RELATED ADDITIONS INCLUDED IN PLANT IN SERVICE?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 8

SHOULD AN ADJUSTMENT BE MADE TO GENERAL PLANT RELATED ADDITIONS INCLUDED IN PLANT IN SERVICE?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 9A

SHOULD THE DEFERRAL OF THE RETURN ON THE THIRD FLOOR OF THE CORPORATE OFFICES BE ALLOWED IN RATE BASE?

FIPUG's Position: *No. The third floor has never been used and useful and it is not used and useful now. Current and future ratepayers should not be required to pay earnings on the building from past years when it was not used and useful.*

ISSUE 9B

SHOULD THE THIRD FLOOR OF THE CORPORATE OFFICES BE ALLOWED IN RATE BASE?

FIPUG's Position: *No. This asset is not used and useful and it should not be placed in rate base. Plant and depreciation should be reduced to remove the third floor.*

ISSUE 13

SHOULD THE CAPITALIZED ITEMS CURRENTLY APPROVED FOR RECOVERY THROUGH THE ENVIRONMENTAL COST RECOVERY CLAUSE BE INCLUDED IN RATE BASE FOR GULF?

FIPUG's Position: *No. All capital items are much more appropriately recovered through base rates rather than a guaranteed cost recovery clause.*

ISSUE 16

IS GULF'S REQUESTED LEVEL OF PLANT IN SERVICE IN THE AMOUNT OF \$1,966,492,000 (\$2,015,013,000 SYSTEM) FOR THE MAY 2003 PROJECTED TEST YEAR APPROPRIATE?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 24

SHOULD ANY ADJUSTMENTS BE MADE TO GULF'S FUEL INVENTORIES?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 25

IS GULF'S REQUESTED LEVEL OF WORKING CAPITAL IN THE AMOUNT OF \$67,194,000 (\$69,342,000 SYSTEM) FOR THE MAY 2003 PROJECTED TEST YEAR APPROPRIATE?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 27

IS GULF'S REQUESTED RATE BASE IN THE AMOUNT OF \$1,198,502,000 (\$1,227,644,000 SYSTEM) FOR THE MAY 2003 PROJECTED TEST YEAR APPROPRIATE?

FIPUG's Position: *Adopts OPC's position.*

COST OF CAPITAL

ISSUE 34¹

IN SETTING GULF'S RETURN ON EQUITY (ROE) FOR USE IN ESTABLISHING GULF'S REVENUE REQUIREMENTS AND GULF'S AUTHORIZED RANGE, SHOULD THE COMMISSION MAKE AN ADJUSTMENT TO REFLECT GULF'S PERFORMANCE?

FIPUG's Position: *No. As part of its regulatory bargain, Gulf is expected to provide high quality service at cost effective rates. It should not be rewarded for doing what it is required to do.*

ISSUE 35

WHAT IS THE APPROPRIATE ROE TO USE IN ESTABLISHING GULF'S REVENUE REQUIREMENT?

FIPUG's Position: *The appropriate ROE is 10%, based on the testimony of witness Rothschild. There should be no "performance reward."*

ISSUE 37

WHAT IS THE APPROPRIATE AUTHORIZED RANGE ON ROE TO BE USED BY GULF FOR REGULATORY PURPOSES ON A PROSPECTIVE BASIS?

FIPUG's Position: *The appropriate range is 9.5% to 10.5% based on the testimony of witness Rothschild.*

Performance Reward

These three issues relate to the more general topic of whether Gulf should be "rewarded" for providing adequate and reliable service at appropriate rates. Gulf believes that it should be "rewarded"; it is FIPUG's view that Gulf is already sufficiently rewarded via its status as a monopoly provider and through its receipt of a guaranteed return. Any further "reward" would simply increase rates needlessly and signal to Gulf and other utilities that they will receive an additional monetary gain

¹Issues 34, 35 and 37 are interrelated and are addressed together

for fulfilling their statutory obligations.

Section 366.41, Florida Statutes, charges the Commission with the duty to fix "just, reasonable, and compensatory rates." In return, the utility is to provide "efficient, sufficient, and adequate service" to ratepayers. Said another way, in return for freedom from competition and guaranteed rates and a guaranteed return, a utility is obligated to provide appropriate service to its customers. Gulf, however, wants to go a step further and receive more than just compensation as a "reward" for doing what the law and the Commission requires it to do. It wants its ROE set 50 - 100 basis points higher than a fair return to reward it for past performance and to encourage it to continue such performance in the future. In addition, Gulf wants an expanded ROE range for regulatory purposes.² The Commission should reject such notions, as well as any implied threat that service will deteriorate without such a reward.

Mr. Labrato, Gulf's Chief Financial Officer and Comptroller, testified that:

- a utility should strive to provide the most reliable, safest and most adequate service at the lowest rates that it can; (Tr. 635-636)
- a utility should strive to have the lowest possible number of customer complaints and to do all it can to reduce any customer complaints it might receive by resolving those complaints promptly; (Tr. 636)
- a utility should do all it can to comply with Commission rules and avoid violations of Commission rules; (Tr. 636)
- a utility should respond quickly to outages and restore service as quickly as possible; (Tr. 636)
- a utility should have appropriate employee training programs; (Tr. 636).

Finally, Mr. Labrato testified that regardless of the Commission's decision on a "reward", Gulf would

²Mr. Bowden was repeatedly questioned by OPC as to the rationale for this expanded range. (Tr. 71-74). He could offer none.

continue to comply with such directives. (Tr. 637). The Commission should hold Gulf to those representations as it is Gulf's, and the Commission's, duty under the law.

Objection to Late-filed Exhibit 25³

During Gulf witness Bowden's oral summary from the witness stand, he went outside the scope of his prefiled testimony to request that the Commission institute some type of incentive plan for Gulf. (Tr. 67-70). Such a request was not made in any of Gulf's prefiled testimony⁴ and Mr. Bowden could offer few specific details as to his proposal. (Tr. 71-72, 74-82, 88-94). After the hearing was concluded, Gulf provided late-filed Exhibit No. 25, which is Gulf's suggestion for a performance incentive plan.

FIPUG strenuously objects to this exhibit being admitted into evidence in this case for several reasons. First, though Gulf was instructed to provide a reference to prefiled testimony for each item in the late-filed exhibit (Tr. 110), it failed to do so. While Gulf cites testimony for some of the performance measures, such as quality of service, it provides no citations for the actual mechanics of the plan. Thus, there is nothing in the record which could form the basis for the approval of any such plan.

Second, as noted above, none of the issues in this case address performance incentive plans, so the parties were not on notice that such a plan would be considered or addressed in this case. Thus, the parties had no opportunity to conduct discovery on Gulf's proposal, to file testimony as

³FIPUG files its objection herein to late-filed exhibit 25 rather than in a separate pleading as permitted by Order No. PSC-02-0364-PCO-EI.

⁴The two issues relating to Gulf's performance are very specific. Issue 34 relates to Gulf's request that its ROE be increased as a "reward" for its past performance. Issue 37 relates to Gulf's request for an enlarged ROE range. Neither of these issues encompasses any sort of "performance incentive plan."

to the proposal, or even to cross-examine Mr. Bowden about it, since the proposal was filed after the conclusion of the hearing. Therefore, not only would Intervenors be deprived of their due process rights were the Commission to implement any sort of plan based on this proposal, the Commission lacks a fully developed record upon which to make informed decision. Gulf itself recognizes the due process flaws inherent in the late-filed exhibit. In the late-filed exhibit, it states that a "second phase," encompassing a hearing, would be needed before any incentive plan could be approved. (late-filed Exhibit No. 25, p. 10).

The subject of an incentive plan for Gulf is not properly before the Commission in this case. The Commission should not permit late-filed Exhibit No. 25 into the record of this proceeding.

ISSUE 36

WHAT IS THE APPROPRIATE WEIGHTED AVERAGE COST OF CAPITAL INCLUDING THE PROPER COMPONENTS, AMOUNTS AND COST RATES ASSOCIATED WITH THE CAPITAL STRUCTURE?

FIPUG's Position: *Agree with OPC.*

NET OPERATING INCOME

ISSUE 40

SHOULD THE COMMISSION ACCEPT GULF POWER'S MODIFIED ZERO BASED BUDGET AS SUPPORT FOR THE REQUESTED INCREASE?

FIPUG's Position: *No. Adopt OPC's position.*

ISSUE 41

IS GULF'S REQUESTED LEVEL OF O&M EXPENSE IN THE AMOUNT OF \$182,419,000 (\$186,354,000 SYSTEM) FOR THE MAY 2003 PROJECTED TEST YEAR APPROPRIATE?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 42

SHOULD AN ADJUSTMENT TO NET OPERATING INCOME BE MADE TO REMOVE WHOLESALE RELATED COSTS ALLOCATED TO GULF?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 48

SHOULD AN ADJUSTMENT BE MADE TO ADVERTISING EXPENSES FOR THE MAY 2003 PROJECTED TEST YEAR?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 50

SHOULD AN ACCRUAL FOR INCENTIVE COMPENSATION BE ALLOWED?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 50A

SHOULD AN ADJUSTMENT BE MADE TO EMPLOYEE RELOCATION EXPENSE FOR THE MAY 2003 PROJECTED TEST YEAR?

FIPUG's Position: *Adopts Staff's position.*

ISSUE 51

SHOULD AN ADJUSTMENT BE MADE TO GULF'S REQUESTED LEVEL OF SALARIES AND EMPLOYEE BENEFITS FOR THE MAY 2003 PROJECTED TEST YEAR?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 54

SHOULD ADJUSTMENTS BE MADE FOR THE NET OPERATING INCOME EFFECTS OF TRANSACTIONS WITH AFFILIATED COMPANIES FOR GULF?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 55

SHOULD AN ADJUSTMENT BE MADE TO THE ACCRUAL FOR PROPERTY DAMAGE FOR THE MAY 2003 PROJECTED TEST YEAR?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 58

SHOULD AN ADJUSTMENT BE MADE TO RATE CASE EXPENSE FOR THE MAY 2003 PROJECTED TEST YEAR?

FIPUG's Position: *Yes. Adopts OPC's position.*

ISSUE 59

SHOULD AN ADJUSTMENT BE MADE TO MARKETING EXPENSES FOR GULF'S MARKETING OF HIGH EFFICIENCY ELECTRIC TECHNOLOGIES FOR HEATING AND WATER HEATING? (HAFF)

FIPUG's Position: *Yes. These expenses should be removed. They are not permitted to be recovered through the conservation cost recovery clause and thus are not appropriate for base rate recovery.*

ISSUE 62

SHOULD AN ADJUSTMENT BE MADE TO PRODUCTION EXPENSES FOR THE MAY 2003 PROJECTED TEST YEAR?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 64

SHOULD AN ADJUSTMENT BE MADE TO CABLE INSPECTION EXPENSE?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 65

SHOULD AN ADJUSTMENT BE MADE TO SUBSTATION MAINTENANCE EXPENSE?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 66

SHOULD ADJUSTMENTS BE MADE TO TREE TRIMMING EXPENSE?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 67

SHOULD AN ADJUSTMENT BE MADE TO POLE LINE INSPECTION EXPENSE?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 68

SHOULD AN ADJUSTMENT BE MADE TO STREET AND OUTDOOR LIGHT MAINTENANCE EXPENSE?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 71A

SHOULD AN ADJUSTMENT BE MADE TO CUSTOMER ACCOUNTS-POSTAGE EXPENSE FOR THE MAY 2003 PROJECTED TEST YEAR?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 71B

SHOULD AN ADJUSTMENT BE MADE TO CUSTOMER RECORDS EXPENSE FOR THE MAY 2003 PROJECTED TEST YEAR?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 72

IF THE DEFERRAL OF THE RETURN ON THE THIRD FLOOR OF THE CORPORATE OFFICES IS ALLOWED IN RATE BASE, WHAT AMORTIZATION PERIOD SHOULD BE USED?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 81

SHOULD AN ADJUSTMENT BE MADE TO INCOME TAX EXPENSE FOR THE MAY 2003 PROJECTED TEST YEAR?

FIPUG's Position: *Adopts OPC's position.*

ISSUE 82

IS GULF'S PROJECTED NET OPERATING INCOME IN THE AMOUNT OF \$61,378,000 (\$61,658,000 SYSTEM) FOR THE MAY 2003 PROJECTED TEST YEAR APPROPRIATE?

FIPUG's Position: *Adopts OPC's position.*

REVENUE REQUIREMENTS

ISSUE 84

IS GULF'S REQUESTED ANNUAL OPERATING REVENUE INCREASE OF \$69,867,000 FOR THE MAY 2003 PROJECTED TEST YEAR APPROPRIATE?

FIPUG's Position: *Adopts OPC's position.*

COST OF SERVICE AND RATE DESIGN

ISSUE 88⁵

WHAT IS THE APPROPRIATE COST OF SERVICE METHODOLOGY TO BE USED IN DESIGNING GULF'S RATES?

FIPUG's Position: *The Minimum Distribution System (MDS) methodology is the appropriate cost of service methodology to use in this case as it appropriately assigns costs to the cost causers.*

ISSUE 89

WHAT IS THE APPROPRIATE TREATMENT OF DISTRIBUTION COSTS WITHIN THE COST OF SERVICE STUDY?

FIPUG's Position: *The Commission should use the Minimum Distribution System (MDS) methodology to correctly classify and assign distribution costs.*

⁵Issues 88, 89 and 90 are addressed together.

ISSUE 90

IF A REVENUE INCREASE IS GRANTED, HOW SHOULD IT BE ALLOCATED AMONG THE CUSTOMER CLASSES?

FIPUG's Position: *Any increase should be spread as recommended by Gulf in its proposed cost of service study utilizing the Minimum Distribution System (MDS) methodology. Use of the cost of service study which Gulf has proffered results in an appropriate allocation of any increase. It also ensures that no class receives an increase greater than 1.5 times the system average percentage increase in total and no class receives a decrease.*

All parties in this case agree that the appropriate cost of service methodology for Gulf to utilize is the 12 CP and 1/13 demand methodology. The only outstanding cost of service issues relate to whether the Minimum Distribution System (MDS) methodology should be used to more properly account for customer-related costs. As a preliminary matter, it is important for the Commission to note that the only cost of service testimony filed in this case, and the only cost of service witness who testified, was proffered by Gulf. Gulf, through its cost of service witness, Mr. O'Sheasy, supported and endorsed the use of MDS. Such methodology is also supported by FIPUG and the Federal Executive Agencies (FEA).⁶ No contravening testimony was filed. Though Staff, through its prehearing position, stated its opposition to use of the MDS, it provided no testimony or evidence to support its view.

Failure to use MDS will result in a less accurate cost of service study. (Tr. 684). An appropriate allocation of distribution costs (as well as other costs) is critical to a cost of service study so as to reveal the true costs to provide service; otherwise, erroneous and inaccurate conclusions will be drawn from the cost of service study and costs will be spread incorrectly. (Tr. 675-676). This will result in some customers paying less than their true service cost, while other classes subsidize those

⁶Other Intervenors took no position on the appropriate methodology.

costs. (Tr. 693).

Use of the MDS is the appropriate methodology to accomplish this because it correctly determines which costs are customer related so that those costs can be properly allocated. (Tr. 675). MDS is commonly accepted. (Tr. 684). MDS relies on the principle that in order to simply hook up to a utility's system there are certain "minimum" facilities which must be available. (Exhibit No. 18 at 38). These "minimum" facilities, along with meters and service drops, comprise the plant investment portion of customer-related costs. (Tr. 679). Failure to use MDS will result in a less accurate cost of service study. (Tr. 684).⁷

In particular, the MDS methodology looks at FERC accounts 364-370 so that the costs of these accounts are properly allocated. The NARUC Electric Utility Cost Allocation Manual⁸ (Exhibit No. 23) endorses this approach. It states:

Distribution plant Accounts 364 through 370 involve demand and customer costs. The customer component of distribution facilities is that portion of costs which varies with the number of customers. Thus, the number of poles, conductors, transformers, services and meters are directly related to the number of customers on the utility's system. As shown in table 6-1, each primary plant account can be separately classified into a demand and customer component. Two methods are used to determine the demand and customer components of distribution facilities. They are, the minimum-size-of-facilities method, and the minimum-intercept cost (zero-intercept or positive-intercept cost, as applicable) of facilities.

(Exhibit No. 23 at 10). The MDS is used by at least two other Southern Company utilities – Georgia Power Company and by Mississippi Power Company. (Tr. 681).

⁷In his testimony, Mr. O'Sheasy discusses the two minimum distribution approaches-- minimum size and zero-intercept. He recommends, and has used, the zero-intercept methodology as it is an improved technique for this analysis. (Tr. 679-680).

⁸This manual is used by utilities as a sound and reasonable guide to proper allocation of costs. (Tr. 693).

Though as noted above, Staff appears to oppose use of the MDS, even in its prehearing statement it does not state the rationale for its view. Mr. O'Sheasy speculated on two reasons for Staff's opposition to MDS. First, this methodology was not approved in Gulf's last rate case, some 12 years ago. However, as Mr. O'Sheasy pointed out, the time has come to reevaluate that decision.⁹

Further, as Mr. O'Sheasy points out, things are quite different today in the electric industry than they were 12 years ago. Today, issues of cross subsidy among rate classes are even more critical than they were 12 years ago. Competitive processes on customers are stronger. Structural changes to the economy have permitted international competition at new levels. In addition, Gulf's unique characteristics, such as its large preponderance of residential customers and the existence of a significant number of seasonal customers, makes MDS appropriate. (Tr. 689; Exhibit No. 18 at 33-34). Additionally, the accounts which are critical to the MDS approach have grown much faster than other accounts and comprise more significant costs than other distribution accounts. (Tr. 689).

Second, Staff may believe that the MDS methodology causes a "shift" of cost responsibility to residential customers.¹⁰ However, MDS does not "shift" cost responsibility to residential ratepayers that belong to other customer classes. As Mr. O'Sheasy testified, MDS does not shift costs, it identifies those costs which should be borne by the class that has caused the cost. (Tr. 694). This is the purpose of a cost of service study and is the reason that use of MDS is appropriate here.

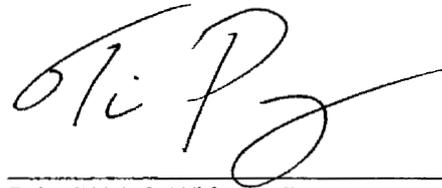
ISSUE 91

WHAT ARE THE APPROPRIATE DEMAND CHARGES?

⁹Mr. O'Sheasy testified that he thought the decision was flawed 12 years ago and should be corrected. (Tr. 694).

¹⁰This is apparently what Staff was attempting to illustrate with Exhibit No. 39.

FIPUG's Positon: *Demand charges should be based on the cost of service methodology prepared by Gulf, including use of the MDS methodology.*



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Post-Hearing Statement of Issues and Positions and Post-Hearing Brief of Florida Industrial Power Users Group has been furnished by (*) hand delivery, or U.S. Mail this 20th day of March, 2002, to the following:

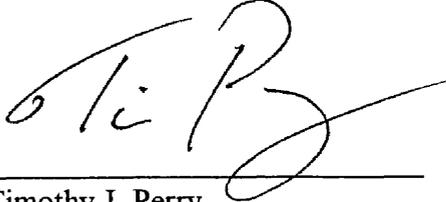
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