

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

DECEMBER 5, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF ELECTRIC & GAS (DRAPER) EJD *OR*
DIVISION OF LEGAL SERVICES (JOHNSON) *RVLE* Jbj

RE: DOCKET NO. 960789-EI - PETITION FOR AUTHORITY TO
IMPLEMENT PROPOSED COMMERCIAL/INDUSTRIAL SERVICE RIDER ON
PILOT/EXPERIMENTAL BASIS BY GULF POWER COMPANY

AGENDA: DECEMBER 17, 1996 - REGULAR AGENDA - PROPOSED AGENCY
ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\EAG\WP\960789A.RCM

CASE BACKGROUND

In Docket No. 951161-EI to address Gulf Power Company's petition for approval of its proposed Commercial/Industrial Service Rider, the Florida Industrial Power Users Group (FIPUG) and the Legal Environmental Assistance Foundation, Inc. (LEAF) were granted leave to intervene. Subsequently, both FIPUG and LEAF entered into stipulations with Gulf. The Commission voted to deny the tariff at the June 11, 1996, Agenda Conference and the proposed stipulations were not ruled on.

On June 28, Gulf filed a Petition for Authority to Implement a Proposed Commercial/Industrial Service Rider on a Pilot/Experimental Basis and Docket No. 960789-EI was opened. In this petition, Gulf reaffirmed its commitment to the other parties to the stipulations that the agreements would govern Gulf's implementation of the rider and pilot study implementation plan. At the July 30, 1996 Agenda Conference, Gulf voluntarily withdrew the proposed tariff. On August 20, 1996 Gulf submitted two alternative example tariffs and implementation plans. One of the tariffs and implementation plans was approved at the August 22 Agenda Conference. Order No. PSC-96-1219-FOF-EI. On October 30, Gulf, FIPUG, and LEAF filed a Joint Request asking that the stipulations which were originally filed in Docket No. 951161-EI be approved as though the stipulations were made in this docket.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 960789-EI
DATE: DECEMBER 5, 1996

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve Gulf's stipulations with FIPUG and LEAF?

RECOMMENDATION: Yes. The proposed stipulations, which are attached as Attachment A, should be approved.

STAFF ANALYSIS: In the stipulation between Gulf and FIPUG, FIPUG supports Gulf's proposal for a Commercial/Industrial Service Rider (CISR) on the basis that Gulf would not attempt to collect in the next rate case the difference between the embedded rate and the negotiated rate from non-CISR customers. Staff had difficulty understanding this stipulation, since Gulf admitted during the evidentiary hearing that it does intend to recover this difference from non-CIS customers in the next rate case.

After the hearing Gulf and FIPUG filed a Supplemental Stipulation in an attempt to clarify the original stipulation. The supplemental stipulation provides that: 1) FIPUG does not question Gulf's ability to make an appropriate "at-risk" determination, 2) Gulf committed that there will not be any adverse rate impacts on non-CISR customers between rate cases, and 3) Gulf agreed that in the event of a rate case, the proper allocation of the difference between the embedded rate and the negotiate rate, is an appropriate subject for discussion.

LEAF signed a stipulation with Gulf on the basis that a customer applying for a CISR-rate must receive a comprehensive energy audit and that Gulf will discuss possible cost-effective conservation measures with potential CISR customers. Gulf will not, however, require that a customer implement these measures prior to Gulf signing a contract with the customer.

While staff does not believe that the LEAF stipulation requires Gulf to increase its efforts in the conservation arena, staff does not oppose the stipulation. Both the LEAF and FIPUG stipulations helped avoid the time and expense associated with adversarial litigation between parties in keeping with the Commission's encouragement to settle disputes. Also, the stipulations are not inconsistent with the Commission's order approving the CISR tariff and pilot study implementation plan.

Based on the above analysis, staff recommends that the Commission accept the Joint Request for Approval of Stipulations by Gulf, FIPUG, and LEAF.

DOCKET NO. 960789-EI
DATE: DECEMBER 5, 1996

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no protest is filed within 21 days from the issuance date of the order, this docket should be closed.

STAFF ANALYSIS: At the conclusion of the protest period, if no protest is filed, this docket should be closed.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Gulf Power Company's petition for approval) Docket No. 951161-EI
of its proposed Commercial/Industrial Service Rider.) Filed: February 6, 1996

**STIPULATION OF GULF POWER COMPANY
AND THE FLORIDA INDUSTRIAL POWER USERS GROUP**

This stipulation is entered into by Gulf Power Company ("Gulf Power", "Gulf" or "the Company") and the Florida Industrial Power Users Group ("FIPUG") pursuant to Section 120.57(3), Florida Statutes, for the purpose of an informal disposition of FIPUG's Petition for Leave to Intervene in Docket No. 951161-EI and reflects a settlement of all issues between Gulf and FIPUG in this docket. Gulf and FIPUG wish to avoid the time, expense and uncertainty associated with adversarial litigation in this docket, in keeping with the Florida Public Service Commission's ("Commission") encouragement to settle disputes. Accordingly, without prejudice as to either Gulf's or FIPUG's position in any other proceeding before this Commission, Gulf and FIPUG agree and stipulate as follows:

1. FIPUG recognizes the Company's efforts to obtain needed regulatory flexibility to allow Gulf Power to retain existing load and to attract potential commercial/industrial customers by negotiating individual contracts when it is mutually beneficial to the Company and all customers. In this regard, FIPUG wishes to clarify for the Commission that the purpose behind FIPUG's intervention in this proceeding was to establish a dialogue through which FIPUG could seek clarification of the Company's proposal to assure that an appropriate

framework for negotiations is established and that there will be no “cost shifting”¹ to other customers as a result of the individual negotiated contracts.

2. Through their respective authorized representatives, FIPUG and Gulf have discussed the issues of concern to FIPUG. Through this dialogue, and based on representations set forth below, FIPUG is now able to advise the Commission that it supports Gulf’s proposal as filed by the Company and as clarified by this stipulation. This stipulation does not preclude either the Company or FIPUG from opposing modifications or additions to Gulf’s proposal that might be sought by others.

3. Gulf Power specifically acknowledges that the Company’s proposal does not contemplate, nor does the Company intend, that costs be shifted to other customers on Gulf’s system from the customers who are served through arrangements negotiated under the CIS Rider. To the contrary, the intent of the Company’s filing is to achieve sufficient regulatory flexibility to allow Gulf to negotiate arrangements that secure and serve loads of commercial/industrial customers which would otherwise not be served by the Company in the absence of such negotiated arrangements and that the negotiated price set forth in such arrangements would be as close as possible to the Company’s otherwise applicable tariff rate but in no case less than the

¹The references to “cost shifting” or to “costs being shifted” as used in this document are handy, although not totally accurate, abbreviations for a wordier concept. The concept actually involves the potential impact on the “rate” or “price” as seen by the customer rather than the cost allocation which is generally internal to the utility. The real issue is not how costs are defined, allocated, accounted for, or how costs may be shifted. Instead, the issue is whether there would be any adverse rate or price impacts on non-CIS customers resulting from the application of the CIS rider. This stipulation is intended to provide the Company’s assurance that there will not be any adverse rate or price impacts on the non-CIS customers projected to occur as a result of any CSA agreement entered into by the Company if the CIS rider is approved as proposed by Gulf Power.

projected incremental cost of serving such loads. In this manner, the incremental revenues derived via the loads served under the CIS Rider would more than cover the incremental costs and therefore allow Gulf to spread its fixed costs across a larger number of sales than would otherwise be possible. Gulf contends that its proposal therefore provides a mechanism whereby the Company has the means to mitigate the risk of stranded investment and secure the benefits of increased efficiency in the use of its electric system for all of its customers. Gulf agrees that the premise of its proposed CIS rider is consistent with a final order of approval that prohibits cost shifting to other customers. The parties to this stipulation jointly request that the Commission include language adopting this premise in its final order approving Gulf's proposed CIS rider. Gulf further agrees that, in the event that the Company files a general rate case during a period when any CSA's developed pursuant to its proposed CIS rider are in effect, Gulf will ensure that a discovery mechanism is available to appropriate representatives of interested customers of the Company that will allow such representatives to review the allocation of costs and the tracking of aggregate revenue to determine whether any cost responsibility has been shifted to non-CIS customers in violation of the Company's statements within this stipulation. Such discovery shall be conducted under conditions that protect the confidentiality of individual agreements.

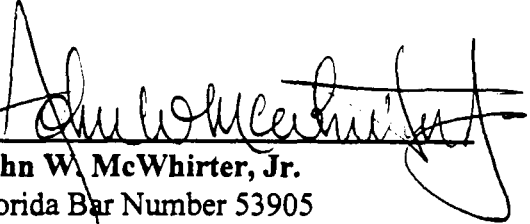
4. Given the design and intent of Gulf Power's proposed CIS Rider as discussed above and in the Company's petition, it is not now, nor has it been, the intent of Gulf Power to seek to explicitly recover any differential between the otherwise applicable tariff rate and the negotiated price that results from any contract negotiated by the Company through the operation of its CIS Rider. This statement of the Company's intent applies to any of the existing cost-specific cost recovery clauses.

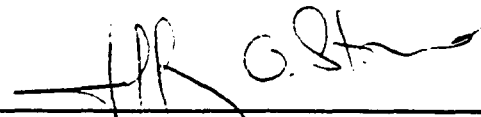
WHEREFORE, the Florida Industrial Power Users Group and Gulf Power Company request that the Florida Public Service Commission accept and approve this stipulation and proceed to approve the Company's proposed Commercial/Industrial Service Rider, as filed, with the express prohibition against cost shifting and the requirement of an appropriate ^{discovery} ~~audit~~ *for* *gas* mechanism to enable the enforcement of this prohibition.

Dated this 1st day of February 1996.

The Florida Industrial Power Users Group

Gulf Power Company


John W. McWhirter, Jr.
Florida Bar Number 53905
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
P. O. Box 3350
Tampa, Florida 33601-3350
(813) 224-0866


Jeffrey A. Stone
Florida Bar Number 325953
Russell A. Badders
Florida Bar Number 007455
Beggs & Lane
P. O. Box 12950
Pensacola, Florida 32576
(904) 432-2451

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 S. Gadsden Street
Tallahassee, Florida 32301
(904) 222-2525

Attorneys for Gulf Power Company

Attorneys for the Florida Industrial Power Users Group

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Gulf Power Company's petition for approval) Docket No. 951161-EI
of its proposed Commercial/Industrial Service Rider.) Filed: February 29, 1996
_____)

**STIPULATION OF GULF POWER COMPANY
AND LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION, INC.**

This stipulation is entered into by Gulf Power Company ("Gulf Power", "Gulf" or "the Company") and Legal Environmental Assistance Foundation, Inc. ("LEAF")¹ pursuant to Section 120.57(3), Florida Statutes, for the purpose of an informal disposition of LEAF's petition for leave to intervene in Docket No. 951161-EI and reflects a settlement of all issues between Gulf and LEAF in this docket. Gulf and LEAF wish to avoid the time, expense and uncertainty associated with adversarial litigation in this docket, in keeping with the Florida Public Service Commission's ("Commission") encouragement to settle disputes. Accordingly, without prejudice as to either Gulf's or LEAF's position in any other proceeding before this Commission except as specifically stated herein, Gulf and LEAF agree and stipulate as follows:

1. Gulf and LEAF recognize that increased competitive pressures affecting electricity markets are at hand and that Gulf's proposed Commercial/Industrial Service ("CIS") rider as clarified in this stipulation is a reasonable and timely response to such competition. Gulf and LEAF agree that utility energy efficiency programs will continue to play a valuable role in reducing market barriers in certain market segments, reducing customer costs and mitigating environmental impacts; and that the costs associated with these programs should be recovered in a non-discriminatory, non-avoidable manner. Gulf affirms that it will support these principles

¹All references to LEAF in this stipulation shall be construed to include Candis Harbison who was also a party to the petition to intervene filed on November 16, 1995.

before the PSC. LEAF believes that the Company should affirm that its commitment to energy efficiency will be a significant component of the Company's negotiations with CIS Rider-eligible customers. Through their respective authorized representatives, LEAF and Gulf have discussed the issues of concern to LEAF. Through this dialogue, and based on representations set forth herein, LEAF is now able to advise the Commission that it supports Gulf's proposal as filed by the Company and as clarified by this stipulation. This stipulation does not preclude either the Company or LEAF from opposing modifications or additions to Gulf's proposal that might be sought by others.

2. Gulf and LEAF agree that the identification and successful pursuit of cost effective energy efficiency is an important goal. To that end, Gulf agrees that the potential for cost-effective energy conservation investments will form an integral part of its negotiations with CIS Rider-eligible customers. Gulf also agrees that it will develop a plan for negotiations with potential CIS Rider customers that will include the provision of energy audits and appropriate incentives to facilitate cost-effective solutions to any energy inefficiencies that are revealed by those audits. Gulf further agrees that customers having CIS Rider-eligible "at risk" load, in order to be considered for a Contract Service Arrangement ("CSA"), must receive a comprehensive energy audit or have received such an audit within one year provided that the customer's facilities or processes have not materially changed since that audit other than through the adoption of cost-effective energy efficiency improvements. If such audit is not performed by or under the direction of Gulf Power, the results must be made available to Gulf in order to initiate discussions towards a customer-specific CSA. The confidentiality of any proprietary subject matter contained within the audit results received by Gulf will be maintained. Gulf also agrees

that all costs and benefits associated with energy efficiency investments that are part of the executed CSA will be accounted for.

3. Gulf Power will provide customers with comprehensive technical audits of the cost-effective energy efficiency potential available in their facilities performed by individuals experienced as specialists in commercial/industrial energy efficiency auditing, including building energy efficiency. When dealing with a customer that uses an industrial process, Gulf will provide a technical audit, including a process audit performed by a team comprised of the specialist as stated above and a process design engineer with experience in the particular manufacturing process involved. If a comprehensive audit of the customer's facilities requires specialized technical knowledge that Gulf does not possess, Gulf will obtain the outside expertise required to assess cost-effective energy efficiency opportunities. To the extent that outside expertise is obtained by Gulf for any audit, such personnel shall be contractually bound to protect the confidentiality of the customer's proprietary information that may be discovered in the course of the audit. The goal of the audit will be to identify all significant and cost-effective energy efficiency opportunities. Estimates of the level of utility-provided financial assistance (if any) needed to make the improvement cost-effective from the customer's perspective and from the perspective of Gulf's general body of customers, considering the then-current tariff rate and considering rates that may be available under the CIS Rider, will be made as an integral part of the CSA negotiation with the customer.

Gulf agrees that each such audit will include an analysis of process usage, lighting and HVAC requirements, and the capital requirements and maintenance expenses that may be associated with any energy efficiency investment. Gulf will provide the customer with

information on all efficiency improvements identified in the audit and include advice on the energy and bill savings that could be achieved with the identified actions. Gulf will develop, with the customer, a plan to implement energy efficiency improvements that will assist the customer.

4. LEAF and Gulf Power agree that the CIS Rider negotiations offer an important opportunity to use cost-effective energy efficiency improvements to help meet the energy service needs of CIS Rider-eligible customers at the lowest cost. Gulf will offer CIS Rider-eligible customers the results and advice obtained through the comprehensive technical and process energy audits as well as financing services and/or other incentives when necessary and appropriate. In addition, when an energy efficiency investment is a component of the least cost approach to gaining or retaining the “at-risk” load, Gulf may assist the CIS Rider customer with the purchase of energy efficiency measures to assure their implementation. In such instances, Gulf’s financial contributions toward the energy efficiency investments will be a component of the offer that Gulf will negotiate with CIS Rider-eligible customers.

Gulf Power will employ the least cost approach to gaining or retaining the “at-risk” load and will negotiate with a goal to minimize the cost of serving that “at-risk” load and maximize the contribution from that “at-risk” load to the Company and its customers. Energy efficiency is a component of the least cost approach when the per kWh cost of energy efficiency is less than the per kWh incremental cost of serving the “at-risk” load. The cost of energy efficiency is the incremental cost of the measure installed. Gulf agrees that the difference between the incremental cost of serving the “at-risk” load and the incremental cost of energy efficiency provides a resource from which financial contributions may be made when the incremental cost

of serving the "at-risk" load exceeds the incremental cost of energy efficiency.

5. Gulf agrees that it will maintain its efforts to implement cost-effective energy efficiency programs and to employ the least cost approach to the provision of energy and demand services with the goal of minimizing customer costs while allowing the company a fair return on investment. Gulf and LEAF agree to revisit the agreement set forth in this paragraph within five years.

6. Gulf will include information on the energy efficiency potential identified in CIS Rider audits in its quarterly reports to the Commission on the implementation of the CIS Rider. These reports will present information on the energy efficiency opportunities identified in the audits of "at risk" customers and will present a summary report of the actual investments made and energy reductions estimated to be achieved. These reports will be designed to provide the Commission and others with sufficient information to assess the extent to which CIS Rider participants are taking advantage of energy efficiency opportunities, while providing individual customers with protection from the public disclosure of information about their specific facilities and actions.

For the first several customers agreeing to a CSA (who also consent to LEAF's review as stated below), under all necessary confidentiality agreements and within 90 days of contract execution, and if the participating CSA customer consents, Gulf agrees to provide the Commission, LEAF (and/or a consultant chosen and paid by LEAF): the audit results including conservation investments identified and level of utility-provided financing assistance required to make each investment cost-effective from the customer's perspective, the conservation investments agreed to be implemented pursuant to the contract, including any financial assistance

Gulf agreed to provide, the rate agreed upon and other contract terms. Gulf will endeavor in good faith to secure the customer's consent to LEAF's review as stated above. Commission staff and LEAF may make appropriate recommendations as to how to better effectuate energy conservation investments by CIS Rider-eligible customers (which may in part be subject to confidentiality limitations) to the Commission within one year of the date the first CSA to which LEAF has access as contemplated herein is executed.

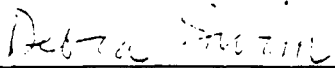
7. Gulf further agrees that, in the event that the Company files a general rate case during a period when any CSAs developed pursuant to its proposed CIS rider are in effect, Gulf will ensure that a discovery mechanism is available to appropriate representatives of interested customers of the Company that will allow such representatives to review the allocation of costs and the tracking of aggregate revenue to determine whether any cost responsibility has been shifted to non-CIS customers in violation of the Company's statements within the stipulation of Gulf Power Company and the Florida Industrial Power Users Group filed in this docket on February 6, 1996. Such discovery shall be conducted under conditions that protect the confidentiality of individual agreements.

WHEREFORE, Legal Environmental Assistance Foundation, Inc., Candis Harbison and Gulf Power Company request that the Florida Public Service Commission accept and approve this stipulation and proceed to approve the Company's proposed Commercial/Industrial Service Rider, as filed and clarified by this stipulation.

Dated this 27th day of February 1996.

**Legal Environmental Assistance
Foundation, Inc.**

Gulf Power Company



Debra Swim

Jeffrey A. Stone

Florida Bar Number 0336025

Florida Bar Number 325953

Gail Kamaras

Russell A. Badders

Class "B" Practitioner

Florida Bar Number 007455

**Legal Environmental Assistance
Foundation, Inc.**

Beggs & Lane

1115 North Gadsden Street

P. O. Box 12950

Tallahassee, Florida 32303-6327

Pensacola, Florida 32576

(904) 681-7591

(904) 432-2451

Attorneys for LEAF and

Attorneys for Gulf Power Company

Candis Harbison

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Gulf Power Company's petition for approval) Docket No. 951161-EI
of its proposed Commercial/Industrial Service Rider.)
_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by hand delivery or the U. S. Mail this 29th day of February, 1996 on the following:

Vicki D. Johnson, Esquire
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0863

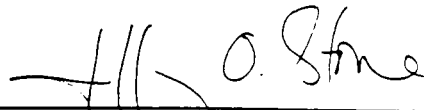
Joseph A. McGlothlin, Esquire
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, FL 32301

Robert Scheffel Wright, Esquire
Landers & Parsons
P. O. Box 271
Tallahassee, FL 32302

John W. McWhirter, Jr., Esquire
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
P. O. Box 3350
Tampa, FL 33601-3350

Debra Swim, Esquire
Gail Kamaras, Esquire
LEAF, Inc.
1115 N. Gadsden Street
Tallahassee, FL 32303

Mollie Lampi
Pace Energy Project
234 Hudson Avenue
Albany, NY 12210



JEFFREY A. STONE

Florida Bar No. 325953

RUSSELL A. BADDERS

Florida Bar No. 7455

Beggs & Lane

P. O. Box 12950

(700 Blount Building)

Pensacola, Florida 32576-2950

(904) 432-2451

Attorneys for Gulf Power Company

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Gulf Power Company's petition for approval) Docket No. 951161-EI
of its proposed Commercial/Industrial Service Rider.) Filed: March 21, 1996
_____)

**SUPPLEMENTAL STIPULATION OF GULF POWER COMPANY
AND THE FLORIDA INDUSTRIAL POWER USERS GROUP**

This stipulation supplements that certain stipulation that was entered into by Gulf Power Company ("Gulf Power", "Gulf" or "the Company") and the Florida Industrial Power Users Group ("FIPUG") pursuant to Section 120.57(3), Florida Statutes, for the purpose of an informal disposition of FIPUG's Petition for Leave to Intervene in Docket No. 951161-EI. The original stipulation and this supplemental stipulation, taken together, reflect a settlement of all issues between Gulf and FIPUG in this docket. As stated in the original stipulation, Gulf and FIPUG wish to avoid the time, expense and uncertainty associated with adversarial litigation in this docket, in keeping with the Florida Public Service Commission's ("Commission") encouragement to settle disputes. Accordingly, without prejudice as to either Gulf's or FIPUG's position in any other proceeding before this Commission, Gulf and FIPUG agree and stipulate as follows:

1. FIPUG and the Company reaffirm their commitment to the original stipulation.

Furthermore, in the interest of avoiding premature debate of an issue that is not relevant until a general rate case, the parties to this supplemental stipulation agree to reserve until that time any further debate regarding the proper allocation of costs associated with customers who may be taking service pursuant to a Contract Service Arrangement ("CSA") entered into under the authority of Gulf Power's proposed Commercial/Industrial Service ("CIS") rider.

2. FIPUG does not dispute or otherwise question the Company's ability to make an appropriate "at risk" determination with regard to the proper application of Gulf's CIS rider as proposed.

3. Gulf has committed that there will not be any adverse rate or price impacts on non-CIS customers projected to occur as a result of any CSA agreement entered into by the Company if the CIS rider is approved as proposed by Gulf Power. FIPUG understands and the Company agrees that Gulf Power has further committed that it will not seek to recover any differential that is calculated specifically between an otherwise applicable tariff rate and the negotiated price that results from any CSA agreement entered into by the Company if the CIS rider is approved as proposed by Gulf Power. FIPUG believes that these commitments by the Company provide sufficient protection to the non-CIS customers until there is an adjustment to the Company's base rates in the context of a general rate case during a period when any CSAs developed pursuant to Gulf's proposed CIS rider are in effect.

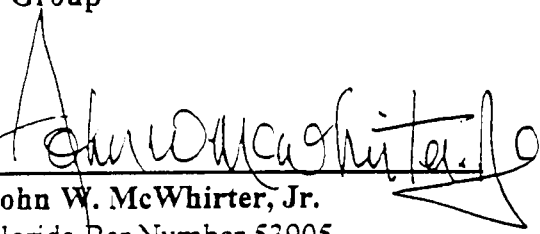
4. FIPUG believes that in the event of a general rate case, the proper allocation of costs for those CSAs Gulf has entered into prudently should be open to further discussion. Gulf agrees that the debate regarding the proper allocation of costs for those CSAs the Company has entered into prudently is an appropriate subject for the next general rate case filed by the Company during a period when any CSAs developed pursuant to Gulf's proposed CIS rider are in effect.

5. Based upon the agreement of the Company to request approval of this stipulation and the mutual desire of FIPUG and Gulf to have the CIS rider approved as filed, FIPUG agrees that it will not be filing a post hearing brief in this matter.

WHEREFORE, the Florida Industrial Power Users Group and Gulf Power Company request that the Florida Public Service Commission accept and approve both the original stipulation and this supplemental stipulation. The parties hereto respectfully request that the Commission proceed to approve the Company's proposed Commercial/Industrial Service rider, as filed and as clarified by the stipulations filed of record in this proceeding.

Dated this 18th day of March 1996.


**The Florida Industrial Power Users
Group**


John W. McWhirter, Jr.
Florida Bar Number 53905
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
P. O. Box 3350
Tampa, Florida 33601-3350
(813) 224-0866

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 S. Gadsden Street
Tallahassee, Florida 32301
(904) 222-2525

**Attorneys for the Florida Industrial
Power Users Group**

Gulf Power Company


Jeffrey A. Stone
Florida Bar Number 325953
Russell A. Badders
Florida Bar Number 007455
Beggs & Lane
P. O. Box 12950
Pensacola, Florida 32576
(904) 432-2451
Attorneys for Gulf Power Company

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Gulf Power Company's petition for approval) Docket No. 951161-EI
of its proposed Commercial/Industrial Service Rider.)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the individuals named below by U. S. Mail this 21st day of March, 1996:

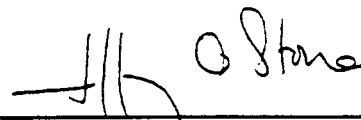
Vicki D. Johnson, Esquire
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0863

Gail Kamaras, Esquire
Debra Swim, Esquire
LEAF, Inc.
1115 N. Gadsden Street
Tallahassee, Florida 32303

John W. McWhirter, Esquire
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
P.O. Box 3350
Tampa, Florida 33601-3350

Joseph A. McGlothlin, Esquire
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 S. Gadsden Street
Tallahassee, Florida 32301

Mollie Lampi
Pace Energy Project
234 Hudson Avenue
Albany, New York 12210



Jeffrey A. Stone
Florida Bar Number 325953
Russell A. Badders
Florida Bar Number 007455
Beggs & Lane
P. O. Box 12950
Pensacola, Florida 32576
(904) 432-2451
Attorneys for Gulf Power Company