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STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison St.
Room 812
Tallahassee, Florida 32399-1400
850-488-9330

JACK SHREVE
PUBLIC COUNSEL

June 28, 2001

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 010827-EI

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of a Motion to Dismiss for filing in the above-referenced docket.

Also enclosed is a 3.5 inch diskette containing the Motion to Dismiss in WordPerfect for Windows 6.1. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Robert D. Vandiver
Associate Public Counsel

RDV/dsb
Enclosures

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- CAF _____
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FPSC-RECORDS/REPORTING

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
FILED: June 28, 2001

MOTION TO DISMISS

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Rule 28-106.204(2), Florida Administrative Code, move the Florida Public Service Commission to dismiss the Petition filed by Gulf Power Company and, as grounds therefor state:

**GULF POWER COMPANY FAILS TO STATE A FACTUAL
OR LEGAL BASIS UPON WHICH RELIEF COULD BE GRANTED**

1. Gulf Power Company (Gulf Power) filed its Petition on June 8, 2001. On June 18, 2001, Gulf Power prefiled the direct testimony of three witnesses: Ronnie R. Labrato, M.W. Howell and Maria Jeffers Burke. Mr. Howell sponsors the Purchase Power Agreement (PPA) between Gulf Power and Southern Power Company (Southern Power).

2. Gulf Power is seeking expedited approval of its PPA. At the Agenda Conference on June 25, 2001, the Commission approved some kind of expedited treatment, subject to negotiation among the parties and approval by the Prehearing Officer. In its direct testimony, Gulf Power provides descriptive detail of the PPA, but scant attention is given to any benefits the PPA may provide Gulf Power's customers. The gist of this case is comparing the Smith 3 unit in rate base to the PPA option presented by Gulf Power here. In some twenty-nine pages of testimony, this comparison merits sixteen lines in Mr. Labrato's testimony (page 5, lines 4-20), and eighteen lines in Mr. Howell's testimony (page 13, lines 21-25, page 14, lines 1-14.) Both testimonies speak to the

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risk of the thirty year plant ownership with the rate base option and the flexibility of the ten year PPA option. Significantly, neither witness states that the PPA is cheaper for the ratepayers. There is language about what may occur, but there is no assertion that ratepayers will be any better off.

3. On August 2, 1999, the Commission issued Order No. PSC-99-1478-FOF-EI, in Docket No. 990325-EI, Petition of Gulf Power Company to determine need for proposed electrical power plant in Bay County. In that order, the Commission found Gulf Power's self-build option was the best alternative from among several competing proposals. OPC asserts that the conclusory statements put forth in Gulf Power's direct case here are insufficient to demonstrate any significant change in circumstances sufficient to alter Order No. PSC-99-1478-FOF-EI. See Austin Tupler Trucking, Inc. v. Hawkins, 377 So.2d 679, 681 (Fla. 1979); Gulf Coast Electric v. Johnson, 727 So.2d 259, 265 (Fla. 1999).

4. In addition to the thirty lines of justification provided by Mr. Labrato and Mr. Howell, Gulf Power provides little, if any, reason for approval of its Petition. Ms. Burke states that the PPA price is below the "other bids" Gulf Power received in Docket No. 990325-EI. She does not state that it is below the self-build option chosen by Gulf Power. Finally, Mr. Labrato (page 3, lines 3-21) discusses a report by the Energy 2020 Study Commission. This has no force of law. This study commission's reports may or may not be eventually adopted in whole or in part by the Florida Legislature.

5. There are certain aspects of the PPA that are operationally similar to what would occur if Smith Unit 3 were in rate base. For example, there is a strong need for voltage support in the Panama City area according to the testimony. Gulf Power would get this benefit were the unit

is rate base. Gulf Power contracts for this service in the PPA. No affirmative showing is made that the ratepayers are better off under the PPA in terms of voltage support.

6. Gulf Power has proposed to fundamentally alter a PSC order entered less than two years ago after a full hearing. The “reasons” for making these drastic changes to a well-considered product are contained in just over a page of testimony. An examination of testimony reveals that even the thirty-odd lines of testimony as to why the change should be approved is duplicative and conclusory. It certainly does not rise to the level of competent and substantial evidence upon which this Commission should make a finding that so fundamentally changes Commission policy in a truncated fashion.

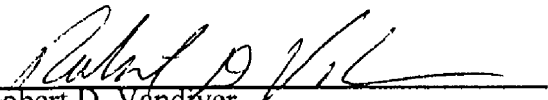
7. Imagine that Gulf Power in the need determination docket had simply made an unsupported declaration that it planned to build Smith Unit 3 and required an order from the Commission so it could proceed. If anyone, including the Commission itself, wanted to know if other alternatives had been considered, if RFP’s had been issued and responses received, or if the self-build option was the most cost effective, they could learn all that through discovery. Clearly, that would have been a defective petition because the utility is obligated to provide both factual and legal support before the Commission can issue a final order consistent with its statutory obligations. Discovery should be used to test the sufficiency of the company’s claims, not to provide the factual foundation for the petition itself. The party with the burden of proof is not entitled to first find out what other parties might be interested in before laying all its cards on the table.

8. This is exactly what Gulf Power is trying to do in this proceeding. The primary issue is obviously whether the PPA is less costly to customers than the self-build option approved in the need determination order. Yet Gulf Power’s petition does not even allege this ultimate fact. It is also

ignored in the prefiled direct testimony. Apparently, Gulf Power expects the other parties to address this critical issue through discovery. But the Citizens, for one, are not prepared to engage in extensive discovery until Gulf Power first identifies the facts and law the company believes support the relief sought. If Gulf Power is truly interested in expediting this proceeding, the first question to be answered should be: How soon can Gulf Power file its case? The petition now before the Commission is grossly inadequate to state a basis upon which the Commission could find that the PPA is better for Gulf Power's customers.

WHEREFORE, the Commission should dismiss the Petition filed June 8, 2001, by Gulf Power Company.

Respectfully submitted,


Robert D. Vandiver
Associate Public Counsel

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

(850) 488-9330

Attorneys for the Citizens of the
State of Florida

CERTIFICATE OF SERVICE
010827-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing MOTION TO DISMISS has been furnished by U.S. Mail or *Hand-delivery to the following parties on this 28th day of June, 2001.


Robert V. Elias, Esquire*
Marlene Stern, Esquire*
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Jeffrey A. Stone
Russell A. Badders
Beggs & Lane
P.O. Box 12950
Pensacola, FL 32576-2950

Susan D. Ritenour
Assistant Secretary and Assistant
Treasurer
Gulf Power Company
One Energy Place
Pensacola, FL 32520-0780

Vicki Gordon Kaufman, Esquire
Joseph A. McGlothlin, Esquire
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman,
Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301

John W. McWhirter, Jr., Esquire
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman,
Arnold & Steen, P.A.
Post Office Box 3350
Tampa, Florida 33601-3350



Robert D. Vandiver
Associate Public Counsel