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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Petition by City of Parker for declaratory statement concerning City's application of its Comprehensive Plan, Land Development Regulations, and City Codes and Ordinances to Gulf Power Company's proposed aerial power transmission line planned to travel from private property located within the City, crossing the shoreline of the City, and running across St. Andrew Bay.

Docket No. 030159-EC
Filed: March 10, 2003

GULF POWER COMPANY'S REQUEST FOR ORAL ARGUMENT, TO ADDRESS THE COMMISSION AT AGENDA, AND/OR SECTION 120.57(2) HEARING

Gulf Power Company ("Gulf," "Gulf Power," or "Company") hereby requests to address the Commission on the issues raised by the City of Parker's Petition for Declaratory Statement ("Petition") and Gulf Power's Motion to Dismiss ("Motion") and its alternative Response in Opposition to Petition for Declaratory Statement ("Response"), either via oral argument, oral presentation at a Commission agenda conference, or a Section 120.57(2) hearing. This request is made pursuant to Rules 25-22.058 and 28-105.003, Florida Administrative Code, and Sections 120.569 and 120.57(2), Florida Statutes. In support of this request, Gulf Power states:

- 1. The Commission's Rule 25-22.0021(1) on agenda conference participation gives parties an affirmative right to address the Commission on items for which a hearing has not been held, other than actions on interim rates and declaratory statements. The rule does not affirmatively grant a right to participate in declaratory statement proceedings, but it also does not affirmatively prohibit participation. The portion of the rule which affirmatively limits participation, Rule 25-22.0021(2), applies only to matters on which a hearing has been held, not

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to declaratory statement proceedings where no hearing has been conducted. Accordingly, the Commission retains the discretion to allow parties to address it on declaratory statement matters. The Commission's decision on whether to allow participation in this case should be guided both by Rule 25-22.058 relating to oral arguments and by Rule 28-105.003, relating to hearings on declaratory statement proceedings.

2. Rule 25-22.058 permits the Commission to grant oral argument on the request of any party upon a showing of why oral argument would aid the Commission in comprehending and evaluating the issues before it. Oral argument is particularly appropriate in this case. The issues raised by the Petition, Motion and Response involve the nature of the Commission's jurisdiction over the rates and service of public utilities as it relates to local regulations regarding the type and location of, and cost responsibility for, transmission line facilities. The courts have previously addressed this issue, although the parties disagree as to the applicability of existing judicial decisions to the specific case before the Commission. To the best of Gulf's knowledge, this is first time the Commission has been asked to declare the extent of its authority in this context. Because of the disruptive effects on utility planning, reliability and cost of service if local governments are permitted to dictate the type and location of, and cost responsibility for, transmission facilities, the Petition, Motion and Response raise issues of great importance to the electric utility industry and to the ratepayers of Florida. Gulf therefore submits that the Commission would benefit by hearing oral argument on the issues in this docket.

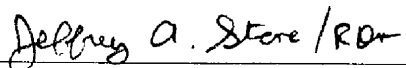
3. In addition, Rule 28-105.003, *F.A.C.*, provides that an agency may hold a hearing to consider a petition for declaratory statement. Under that rule, such a hearing shall be conducted in accordance with Sections 120.569 and 120.57(2), *Fla. Stat.* Section 120.57(2)(a)2

in turn provides that an agency “shall give parties or their counsel the option . . . to present to the agency . . . written or oral evidence” addressing the agency’s action or its refusal to act.

4. Taking all of these statutory and rule provisions together, it is clear that the Commission has the discretion to allow the parties to address the Commission on the matters at issue in this case. Gulf submits that these provisions can be satisfied in this case by granting it the opportunity to address the Commission, whether via oral argument, oral presentation at an agenda conference, or a separate Section 120.57(2) hearing. Any one of these mechanisms will allow the Commission to obtain input from the parties and will satisfy the parties’ due process rights.


WHEREFORE, Gulf Power requests to Commission to allow it to address the Commission (at agenda conference, oral argument, or otherwise) on the issues raised by the Petition, Motion and Response filed in this docket.

RESPECTFULLY SUBMITTED, this 10th day of March, 2003.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served by Hand Delivery this 10th day of March, 2003 on the following:

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