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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Gulf Power Company)
for an Increase in its Rates and)
Charges.)

Docket No. 891345-EI
Filed: October 25, 1990

PUBLIC COUNSEL'S RESPONSE TO MOTION FOR STAY

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, respond in opposition to Gulf Power Company's motion for stay as to Issue 38, which should be denied for the following reasons:

1. Gulf's complaint is that the rate increase allowed in Order No. 25373 is not as high as the company believes it should have been. Specifically, Gulf contends that it should earn a 12.55% return on equity instead of the 12.05% authorized in the order. The issue to be resolved, therefore, is whether the Commission should permit an electric utility to collect more than was found to be justified on the record of the proceeding while the utility challenges those determinations as error on appeal. As a matter of policy, it should not. In this regard, it is noteworthy that Gulf does not identify any instances in which the Commission has previously allowed an electric utility to increase rates while an appeal is pending. Consideration should also be given to whether the Commission would ever stay an order granting a management reward (which was at issue on cross-appeal in Gulf Power

v. Cresse, 410 So.2d 492, 494 (Fla. 1982)) while a utility's customers appealed the decision.

2. Gulf's motion also fails to meet the standards of Rule 25-22.061(2). There is nothing in the motion from which the Commission can gauge Gulf's likelihood of success on appeal. Rule 25-22.061(2)(a). Gulf alleges irreparable harm if the stay is not granted (Rule 25-22.061(2)(b)), but the harm in this case, if it can be characterized as harm, was of the company management's own making. Granting the motion would effectively reward management for its recognized failures.

3. Gulf's motion is internally inconsistent with respect to alleged effects on its customers. Rule 25-22.061(2)(c). Gulf states, at page 3, that its customers, along with the company and its shareholders, will suffer irreparable harm if the stay is not granted. Ratepayers must somehow be better off than if Gulf should win its appeal. But the motion also states that customers are protected because refunds would follow if the order is upheld. Then they are better off because rates would finally be reduced to the level found reasonable in Order No. 23573. Obviously, Gulf's customers are only better off if they do not have to pay, even for one day, for a prudent management when they have been served by an imprudent one.

WHEREFORE, the Citizens of the State of Florida, through the Office of Public Counsel, urge the Florida Public Service Commission to deny Gulf Power Company's motion for stay of Order No. 23573 as it applies to Issue 38.

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 891345-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing PUBLIC COUNSEL'S RESPONSE TO MOTION FOR STAY has been furnished by U.S. Mail or by *hand-delivery to the following parties on this 25th day of October, 1990.

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