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ORIGINAL
FILE COPY

Jack L. Haskins
Manager of Rates and Regulatory Matters
and Assistant Secretary

the southern electric system

January 26, 1994

Mr. Steve Tribble, Director
Director of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee FL 32399-0870

Dear Mr. Tribble:

Re: Docket No. ~~940001~~-EI

Enclosed are an original and fifteen copies of Gulf Power Company's Response to the Petition for Intervention of the United Mine Workers of America to be filed in the above docket.

Also enclosed is a 3.5 inch double sided, high density diskette containing the Response in WordPerfect 5.1 format as prepared on a MS-DOS based computer.

Sincerely,

ACK _____

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APP _____

CAF _____

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EAG _____

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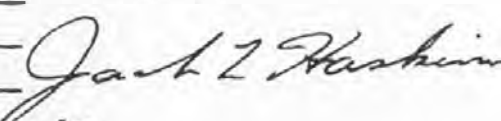
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"Our business is customer satisfaction"

FPSC-RECORDS/REPORTING



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Enclosures

cc: Beggs and Lane
Jeffrey A. Stone, Esq.

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FLORIDA PUBLIC SERVICE COMMISSION
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Fuel and Purchased Power)
Cost Recovery Clause and) Docket No. 940001-EI
Generating Performance) Filed: Jan. 27, 1994
Incentive Factor)
_____)

GULF POWER COMPANY'S RESPONSE TO THE
PETITION FOR INTERVENTION OF THE UNITED MINE WORKERS OF AMERICA

GULF POWER COMPANY ("Gulf Power", "Gulf", or "the Company"), by and through its undersigned counsel, hereby responds to the Petition for Intervention filed by the United Mine Workers of America ["UMWA"] in the above docket, and requests that, if said petition is granted by the Florida Public Service Commission ["Commission"], the UMWA's intervention be limited in scope to issues directly related to the UMWA's alleged interest in Gulf Power's Clean Air Act Compliance Plan. In support of its request, Gulf states:

1. As stated in the UMWA petition, the UMWA participated in Docket No. 921155-EI, Gulf Power Company's Clean Air Act Compliance Plan docket, regarding Gulf's decision to switch from high sulfur coal produced by UMWA members to low sulfur coal obtained from foreign or other sources.

2. Based on its participation in Docket No. 921155-EI, the UMWA also requested intervention in Docket No. 930613-EI, the proceeding in which Gulf requested recovery of environmental compliance costs (including costs related to Clean Air Act compliance) through implementation of an Environmental Cost Recovery Clause pursuant to Section 366.8255, Florida Statutes

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(1993). The basis for the UMWA's intervention in Docket No. 930613-EI was stated in the petition filed in that docket as the need to "fully protect the substantial interests which formed the basis for its intervention in Docket No. 921155-EI". The petition filed in Docket No. 930613-EI further alleged that the economic interests of the UMWA's members (none of whom work in Florida mining coal) would be impacted by Gulf's Clean Air Act Compliance Plan.

3. In its current petition, the UMWA again alleges that "UMWA miner's jobs are at risk as a result of Gulf's fuel switching strategy in general and the Peabody Coal contract buy-out specifically" [UMWA petition at p. 3] and that, "[i]n order for the UMWA to fully protect the substantial interests which supported its previous interventions, it must be allowed to intervene in this docket as well" [Id.].¹

4. In the Commission order² which granted the UMWA's petition to intervene in Docket No. 930613-EI, where identical interests were asserted, the extent of the UMWA's intervention was expressly limited to "the issues related to Docket No. 921155-EI

¹Interestingly, although the UMWA challenges the prudence of Gulf's fuel switching strategy in this docket, in Docket No. 921155-EI the UMWA's own witness conceded that "I believe that fuel switching at Crist is a cheaper option than scrubbing at Crist, for SO₂ purposes..." [Cross-Examination of Michael W. Buckner, Docket No. 921155-EI, Tr. 461].

²Order No. PSC-93-1197-PCO-EI issued August 16, 1993.

unless the UMWA can demonstrate that it is substantially affected by other issues in this docket."

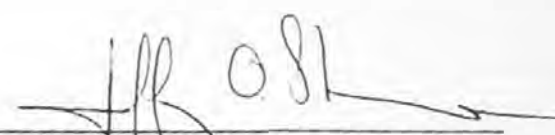
5. Although Gulf Power does not take a position as to whether the requested intervention by UMWA in this docket should be granted by the Commission, Rule No. 25-22.039, Florida Administrative Code, provides that intervention is to be allowed only to the extent that "the substantial interests of the intervenor are subject to determination or will be affected through the proceedings." Just as with the UMWA petition to intervene considered by the Commission in Docket No. 930613-EI, the UMWA's assertions of possible economic damage which might be suffered by the UMWA's active mining members, in and of itself, fail to demonstrate a "substantial interest" upon which the right to intervene may be founded. See, e.g., Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981), rev. denied, Freeport Sulphur Co. v. Agrico Chemical Co., 415 So.2d 1359 (Fla. 1982), and rev. denied, Sulphur Terminals co. v. Agrico Chemical Co., 415 So.2d 1361 (Fla. 1982); Gregory v. Indian River County, 610 So.2d 547 (Fla. 1st DCA 1991).

6. Gulf Power also disagrees with the assertion that the UMWA "is uniquely qualified to address the issue of the prudence of the Peabody Coal contract buy-out by virtue of its knowledge of the coal industry and position in that industry." [UMWA Petition at p.

3]³ Even if true, however, expertise in a given field has never been recognized as a "substantial interest" which would entitle the expert to intervention.

WHEREFORE, Gulf Power Company respectfully requests that, if the Commission determines that the UMWA's petition to intervene should be granted, the Commission specify in its order that such intervention be limited in scope to issues directly related to those issues raised by the UMWA in Docket No. 921155-EI.

Respectfully submitted this 26th day of January, 1994.



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³ In contrast to the statement that the UMWA's expertise "is unmatched by any other party", the witness testifying for the UMWA in Docket No. 921155-EI asserted that "[t]he Southern Company is the largest private utility consumer of coal in the United States". [Direct Testimony of Michael W. Buckner, Docket No. 921155-EI, Tr. 425] Gulf, as a member of the Southern Company, surely has greater expertise in procuring fuel at the least cost to our customers than the UMWA, an entity which almost certainly does not engage in coal procurement at all.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Fuel and Purchased Power Cost)
Recovery Clause with Generating) Docket No. 940001-EI
Performance Incentive Factor)
_____)

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was furnished by hand delivery or the U. S. Mail the 26th day of January, 1994 on the following:

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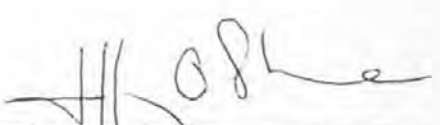
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