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August 1, 1995

Ms. Roberta Bass
Division of Electric and Gas
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 941102-EI - Gulf Power's Real Time Pricing Program

Dear Ms. Bass:

The Company has recently been informed that some members of the Staff believe Gulf Power has failed to fully comply with Order No. PSC-95-0256-FOF-EI, the Commission's order approving Gulf Power Company's Real Time Pricing Pilot Conservation Program and the associated tariff. That order was issued on February 23, 1995 and became final on March 17, 1995 due to the absence of any protest or petition for formal proceeding as provided for by Rule 25-22.036(4), Florida Administrative Code. In reliance on the final nature of that order, Gulf has implemented its real time pricing program. Gulf presently has six customers participating in the program and taking service under the Company's RTP rate schedule. These customers have similarly relied upon the final nature of the order by choosing to accept service under the RTP rate schedule with the understanding that it is offered pursuant to an approved pilot conservation program designed to last at least until December 31, 1998.

The area of contention relates to the reporting requirements described in the body of the order. Those requirements are set forth in one paragraph on page 3 of the order, which states:

> Within 120 days of completion of the RTP program, Gulf will submit a final report to this Commission describing the program results. In addition, we find that Gulf should submit the pre-test customer load profiles to us as each customer begins to take service under the RTP rate schedule. This information will allow us to verify the conclusions reached by the company at the end of the program. The company should also submit a letter each quarter to the Commission's Division of Electric and Gas, detailing the amount of the total costs the company has incurred for the current quarter to provide service under this rate schedule. The report should divide the costs into two categories: 1) The revenue shortfall/gain the utility experiences. This is defined as the difference between the what the customer would have paid on the otherwise applicable rate schedule and what

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> the customer actually paid on the RTP rate schedule; and 2) All other RTP program costs. In addition, the letter should provide the impact of the total costs on earnings in terms of basis points as reflected in the monthly surveillance report filed with the Commission. This requirement is consistent with the treatment the Commission has accorded Florida Power and Light Company's RTP rate schedule.

In consideration of the foregoing paragraph, Gulf Power has submitted the required pre-test customer load profiles for each of the currently participating customers. In addition, the Company has submitted its first quarterly letter to the Division of Electric and Gas. It is our understanding that these documents are fully compliant with the dictates of the foregoing paragraph from Order No. PSC-95-0256-FOF-EI.

The alleged area of non-compliance relates to Gulf's monthly surveillance reports and involves the last sentence of the quoted paragraph from the order. Apparently there are some members of the Staff who believe this simple declarative sentence requires Gulf Power to report the total costs incurred by the Company to provide service under the RTP rate schedule "below the line" for purposes of the surveillance report. We respectfully submit that there is no such requirement contained within Order No. PSC-95-0256-FOF-EI. We further submit that because of the actions taken by Gulf Power Company and its six participating customers in reliance upon the final nature of that order, it would be improper to impose such a requirement upon the Company at this time. Such a requirement fundamentally changes the nature of the program. If program approval had been contingent upon the Company agreeing to report such costs "below the line," Gulf Power may not have proceeded with program implementation, and the Company's customers would not have changed their service to the RTP rate schedule in reliance on its availability as a pilot program through December 31, 1998.

There are fundamental differences between Gulf Power's RTP program and the experimental RTP-GX rate schedule implemented by Florida Power and Light Company (FPL). Of particular relevance is the fact that Gulf Power's program does not entail "Marginal Reliability Cost Transactions" and "Marginal Recovery Transactions costs" which are part of FPL's RTP-GX rate. According to the Commission's order approving FPL's rate schedule, those ". . . transactions reflect the revenue differences between standard and RTP rates." Apparently, as part of its amended petition regarding the proposed RTP-GX rate schedule, FPL agreed ". . . never to seek recovery of the Marginal Reliability Cost Transactions and Marginal Recovery Transactions costs that are incurred while the experimental rate is in effect" and that "[t]hese transactions will be reported "below the line" for purposes of the surveillance report." The Commission's order in the FPL case made further note that FPL gave notice it may petition the Commission to allow

> . . . recovery of all unrecovered program costs incurred for the project at such time as the Commission approves RTP as a conservation program. Program costs include marketing,

> development, analysis and monitoring costs. In addition, *FPL will provide a quarterly report of all costs incurred during the experiment and its impact on FPL's Return on Equity.*

94 FPSC 10:123 (Emphasis added). Thus there is a distinction between the "Marginal Reliability Cost Transactions" and "Marginal Recovery Transactions costs" which FPL agreed to report "below the line" for purposes of the surveillance report and the "program costs" which are to be set forth in a quarterly report of all costs incurred during the experiment and its impact on FPL's return on equity. Indeed, since the former are reported "below the line" then by definition they have no effect on FPL's jurisdictional return on equity, while the program costs which are not stated as being reported "below the line" would, of course, have an effect on the jurisdictional return.

It is Gulf Power's position that it is the "quarterly reporting requirement" set forth in Order No. PSC-95-0256-FOF-EI that is described in that order as being ". . . consistent with the treatment the Commission has accorded Florida Power and Light Company's RTP rate schedule." It is Gulf Power's further position that there is no requirement in that order compelling Gulf to report the total costs incurred by the Company to provide service under the RTP rate schedule "below the line" for purposes of the surveillance report. Furthermore, any attempt to add such a requirement at this time, given the change in position undertaken by the Company and its customers alike in reliance upon the final nature of Order No. PSC-95-0256-FOF-EI, would violate fundamental legal principles of fairness and due process.

I hope that this letter will help all interested persons to come to a common understanding that, through the documents and quarterly reports thus far submitted to the Commission relative to the Company's approved Real Time Pricing Pilot Conservation Program, Gulf Power Company has fully complied with the requirements imposed by Order No. PSC-95-0256-FOF-EI, and that no further action by the Commission is necessary at this time. If this matter is to be brought back before the Commission, the Company would request an opportunity to address the Commission before a decision is made. Thank you for the opportunity to submit these comments.

Very truly yours,

Jeffrey A. Stone
For the firm

cc: Blanca S. Bayo, Director
Division of Records and Reporting

JAS/js