

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for approval of ) DOCKET NO. 951161-EI  
proposed optional Commercial/ ) ORDER NO. PSC-96-0325-PHO-EI  
Industrial Service Rider by Gulf ) ISSUED: MARCH 6, 1996  
Power Company. )  
\_\_\_\_\_ )

PREHEARING ORDER

Pursuant to Notice, a Prehearing Conference was held on March 1, 1996, in Tallahassee, Florida, before Commissioner Diane K. Kiesling, as Prehearing Officer.

APPEARANCES:

Jeffrey A. Stone, Esquire and Russell A. Badders, Esquire, 700 Blount Building, 3 West Garden Street, P. O. Box 12950, Pensacola, Florida 32576-2950  
On behalf of Gulf Power Company.

John W. McWhirter, Jr., Esquire, McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, P. A., P. O. Box 3350, Tampa, Florida 33601-3350 and Joseph A. McGlothlin and Vicki Gordon Kaufman, McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, P. A., 117 S. Gadsden Street, Tallahassee, Florida 32301  
On behalf of The Florida Industrial Power Users Group.

Debra Swim, Esquire and Gail Kamaras, Esquire, 1115 North Gadsden Street, Tallahassee, Florida 32303  
On behalf of Legal Environmental Assistance Foundation.

Vicki D. Johnson, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Commission Staff.

I. CASE BACKGROUND

On September 27, 1995, Gulf Power Company filed a Petition for approval of its proposed Commercial/Industrial Service Rider (CISR). By Order No. PSC-95-1443-FOF-EI, issued November 28, 1995, the Commission suspended the tariff to allow additional time to study the implications of the CISR. This matter is currently set for an administrative hearing for Thursday, March 7, through Friday, March 8, 1996.

DOCUMENT NUMBER-DATE

02700 MAR-6 88

FPSC-RECORDS/REPORTING

Gulf has entered into stipulations with the Florida Industrial Power Users Group (FIPUG) and with the Legal Environmental Assistance Foundation, Inc. (LEAF). At the Prehearing Conference, LEAF withdrew its issues and the testimony of its witness, Sam M. Swanson. Notwithstanding the stipulations, the Commission staff has identified issues to be addressed at the hearing.

## II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to

present evidence which is proprietary confidential business information.

- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

#### Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time.

The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification.

After all parties and staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Issues #</u>	<u>Subject Matter</u>
J.T. Kilgore, Jr.	1, 9	Gulf's need for flexibility in service and pricing arrangements; CIS Rider as response to competitive electric market
J.T. Young	1, 5	Need for CIS Rider from customer perspective;

Verification of "at risk"  
customers

J.I. Thompson	1, 4, 10, 14, 15	Application of the CIS Rider; CIS Rider eligibility; Gulf's similar pricing programs; Regulatory issues associated with special contracts
D.S. Merilatt	1, 3, 6, 7, 8	Economic analysis of CSA opportunities
William B. Berg	1, 4, 5, 8, 9	
Richard Shine	6	
Brenda Buchan	14	
David A. Ging	15	

**REBUTTAL**

D.S. Merilatt	Various	Response to testimony of staff witnesses Berg, Ging and Shine
J.T. Young	Various	Response to testimony of staff witness Berg

V. BASIC POSITIONS

**GULF:** It is the basic position of Gulf Power Company that the proposed Commercial/Industrial Service Rider represents a reasonable and nondiscriminatory means of addressing the need to make adjustments in standard electric service and pricing arrangements to serve "at risk" loads, as defined in Gulf's testimony, and should be approved by this Commission.

**FIPUG:** In the periods between utility rate cases when sales are increasing generally incremental costs are lower than average embedded costs. Gulf Power is apparently in this position and proposes the CIS Rider to encourage new high

load factor commercial and industrial load and to retain existing load that might be in jeopardy of moving to self-generation by offering flexible rates to these customers.

FIPUG's primary concern in this case is that Gulf would attempt to collect the difference between embedded cost rates and the incremental cost rates from other customers. Gulf has stipulated with FIPUG that this will not happen. It has agreed that the Commission order approving the CISR Rider will prohibit cost shifting to other customers, that it will not attempt to recover any additional revenues through its cost recovery clauses as a result of the rider, and that in rate cases it will agree to make its records available for examination so that parties may assure that the price they pay for electricity does not increase as a result of CISR contracts.

FIPUG has two concerns about the issue of confidentiality. It is concerned that customer proprietary information might become a matter of public record. In its Stipulation Gulf has agreed that this shall not happen. FIPUG's second concern about confidentiality is the propriety of a regulated industry closing its records to public inspection by interested parties. This concern is likewise met by the Stipulation which agrees that no customers will be adversely affected by the rate schedules and that means will be provided in rate cases so that customers can examine the records to insure that no cost shifting has or will occur. The protection of customer proprietary information and the ability to examine the financial impact of the CIS Rider are sufficient to overcome FIPUG's general concerns about confidential records.

If such an order is entered, FIPUG is of the opinion that Gulf can enhance its revenue without adverse impact upon other customers.

**LEAF:** LEAF supports Gulf Power's Petition for Approval of Proposed Commercial/Industrial Service Rider as clarified in the stipulation of Gulf Power Company and LEAF. See Attachment B.

**STAFF:** It is staff's basic position at this time that the Commission should not approve Gulf's proposed CISR tariff. Staff's basic position, however, as well as its

positions on the issues below, are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

#### VI. ISSUES AND POSITIONS

**ISSUE 1:** Should Gulf's proposed CISR tariff be approved?

**POSITIONS:**

**GULF:** Yes.

**FIPUG:** Yes, with an order prohibiting cost shifting and establishing means to discover economic impact of CISR in rate cases.

**LEAF:** LEAF supports Gulf Power's Petition for Approval of Proposed Commercial/Industrial Service Rider as clarified in the stipulation of Gulf Power Company and LEAF. See Attachment B.

**STAFF:** No. Gulf's petition has far-reaching ramifications and is too scant for the Commission to accept. The Commission should deny Gulf's petition and initiate a generic docket or rulemaking proceeding to address current competitive issues raised by the petition, to explore other options, and to determine alternate pricing mechanisms. One option to explore is indexed rates, which would insulate lower use customers who do not have the viable alternatives that large use customers have. (Berg)

**ISSUE 2:** (Legal issue) Is Gulf's proposal consistent with the Commission's obligation to prevent undue discrimination within the meaning of Chapter 366.03, Florida Statutes?

**POSITIONS:**

**GULF:** Yes. Undue discrimination is not a product of Gulf's proposed application of the CIS Rider. The price and/or service differentiation proposed by Gulf is justified and desirable to enable all of Gulf Power's customers to receive the economic benefits of obtaining and retaining

load that would not otherwise exist on Gulf's system. The obtaining and retaining of load under the circumstances contemplated by the proposed CIS Rider is beneficial in that it results in more efficient use of Gulf's plant and equipment and retains or gains a contribution towards the Company's fixed costs from the load that would otherwise be lost to the Company and its general body of customers. The underlying concept of the CIS Rider can also be found in Gulf's SE rate rider, which has been in effect for nearly twelve years.

**FIPUG:** There should be no undue discrimination if the Rider is available to any customer meeting the criteria.

**LEAF:** See LEAF position on issue 1.

**STAFF:** No. Gulf's proposal unduly discriminates between and within rate classes.

**ISSUE 3:** Is it appropriate for Gulf to influence the non-electric marketplace by charging one business less than another for the same class of service?

**POSITIONS:**

**GULF:** Yes. This happens every day under the Company's existing tariffs. One business pays a lower average price per kWh than another for the same class of service based on differences in purchase patterns. This result stems from management and operational choices among alternatives by the customer. Further, optional rates, riders and provisions are available to these "same class" customers on a non-discriminatory basis. The intended proper application of the proposed CIS Rider would in all likelihood result in two identical customers being treated similarly. However, the existence of two identical customers is more hypothetical than reality. Two customers may be similar from a traditional electric usage standpoint, but differences in the two may exist in terms of availability, price, and value of suitable substitutes to receiving service from their electric supplier. It is because of this difference that differing rates and terms of service may be obtained by two seemingly similar customers. Such differences do not represent undue discrimination.



**FIPUG:** Gulf should not be allowed to discriminate between customers which meet the criteria of applicability.

**LEAF:** See LEAF position on issue 1.

**STAFF:** No. Offering similarly situated customers different rates results in rate discrimination. Section 366.03, Florida Statutes, requires that rates be just, reasonable, and not unduly discriminatory. Section 366.03 also states that no public utility shall give preference or advantage to any person or locality. Gulf proposes to offer selective customers rates that are based on something other than cost of service. Thus, two similarly situated competitors could pay different prices for electric service, and the non-electric marketplace could be affected by such a result.

**ISSUE 4:** What procedure should the Commission follow in evaluating complaints of discriminatory rate setting under Gulf's proposed CISR and what remedies should be available if the complaint is found to be justified?

**POSITIONS:**

**GULF:** There is no need to change anything about the Commission's existing complaint procedure. In resolving complaints about disparate treatment under the CIS Rider, it is important for the Commission to recognize and support one of the critical premises on which Gulf's proposal is based: that the decision to enter into a CSA is entirely voluntary by both the utility and the customer. This premise goes hand-in-hand with another critical premise of Gulf's proposal: that any customer eligible to enter into a CSA with Gulf must have a documented bona fide alternative to taking the service that might otherwise be subject to the CSA from Gulf. The proper focus of such a complaint is not on what CSA another customer achieved but rather on the bona fide nature of the complaining customer's alternative to ordinary utility service. Therefore, the appropriate response to any customer complaining that it did not get offered the "same CSA deal" by Gulf as another customer would be for the Commission to remind the complaining party that it can always take the bona fide alternative to service from Gulf. The burden of proof should fall on the complaining customer to demonstrate that it has been treated unfairly.

Under Gulf's proposal, the Commission will continue to have the same regulatory authority over the Company that it has under the existing regulatory and pricing structure. The Commission's focus on special contracts will simply shift from a before-the-fact review and approval of every such arrangement to an after-the-fact oversight of the utility to ensure that it does not inappropriately shift costs from one group of customers to another when rates are adjusted generally for all customers. This regulatory oversight will be administered by the Commission in its continuing jurisdiction over Gulf with regard to the Company's "ordinary" tariff rates that are available to any customer on demand.

If the Commission were to imply to potential CSA customers that the Company might be compelled to enter into a particular CSA agreement upon a showing of similar circumstances, then the Commission would be undermining the ability of Gulf Power to test the bona fide nature of the customer's claimed alternative through negotiation. Both Gulf and the Commission must retain the unbridled discretion to tell a complaining customer that they are not entitled to a price for electric service from the utility that is different from the ordinary tariff rate. Otherwise, the customer would be encouraged to bluff as to claims of alternatives. The proper focus of such a complaint is not on what CSA another customer achieved but rather on the bona fide nature of the complaining customer's alternative to ordinary utility service.

**FIPUG:** Complaints should be evaluated on a case-by-case basis.

**LEAF:** See LEAF position on Issue 1.

**STAFF:** The Commission should follow its regular complaint procedures in evaluating complaints of discriminatory rate setting. There is no explicit statutory authority to investigate allegations of anticompetitive behavior, but such authority is implicit in the Commission's extensive and exclusive authority over the rates and services of public electric utilities. Because Gulf is requesting blanket confidentiality for CSA contracts, the Commission would have to address complaints in a confidential hearing. (Berg)

**ISSUE 5:** Are the procedures Gulf proposes adequate to verify that new or existing customers increased their electric load or retained existing load solely due to the rider? (i.e. would they have done so anyway, even without the rider)

**POSITIONS:**

**GULF:** Yes. An affidavit and other documentation demonstrating that there is a viable economic alternative, i.e. that the load is "at risk", is required from the customer. Gulf will analyze the supporting information and based on its reasoned judgment will determine if the customer has a viable alternative. Further, Gulf's customer relations network will be a part of the process of determining whether a load is "at risk". Gulf will perform its own analysis of the possible alternatives in an effort to verify the reasonableness of the customer's claims. Gulf has no incentive to apply this tariff to load that is not "at risk". No incentive exists for Gulf to offer this arrangement except where the customer will either remove or not add new load as a result of other alternatives. In fact, it is in Gulf's best interest to negotiate the best rate and terms possible.

**FIPUG:** If the Commission enters an order prohibiting cost shifting and provides a mechanism for confirming that there has been and will be no cost shifting, it is irrelevant to determine what customers would have done had the proposed tariff not existed.

**LEAF:** See LEAF position on Issue 1.

**STAFF:** No. The procedures Gulf proposes are not adequate. Moreover, evaluating a retention rate contract or a load building contract involves the accurate prediction of complex managerial decisions in industries with which the Commission is, at best, marginally familiar. (Berg)

**ISSUE 6:** Is Gulf Power's proposed RIM-based cost effectiveness test appropriate to evaluate pricing under the CISR tariff?

**POSITIONS:**

**GULF:** Yes. The Rate Impact Measure (RIM) test is appropriate to evaluate pricing and other elements under the CIS Rider. The RIM test permits inclusion of the all the

component costs and benefits necessary to analyze the cost-effectiveness of each specific CSA. Where the present value of the expected revenue stream associated with each CSA exceeds the present value of the incremental cost stream, Gulf as well as all of its customers will benefit from obtaining or retaining the load in question. This is the result of any action passing the Rate Impact Measure test, otherwise referred to as the RIM test. CSAs passing the RIM test are in Gulf's and its customers best interest. Gulf and other electric utilities in Florida have considerable expertise in this area as a result of resource planning, conservation and demand-side management activities. Analyses associated with these traditional utility functions are based on the same underlying principles. The type of analysis that the Company will be required to follow in evaluating each CSA opportunity is no different than the type of analysis that must be followed by businesses in the general marketplace on a daily basis, regardless of the degree of regulation.

**FIPUG:** No position.

**LEAF:** See LEAF position on Issue 1.

**STAFF:** No. Gulf's proposed cost-effectiveness analysis is too scant to evaluate. The company's proposal lacks a detailed explanation of how the incremental costs to serve a CISR customer will be calculated. Specifically, Gulf's proposal does not address: (1) a methodology to calculate incremental generation, transmission, and distribution costs; (2) increased pool payments for increased capacity, which immediately raise rates for all customers through the Capacity Cost Recovery Clause; (3) a methodology to match CISR contract loads with varying terms, expiration dates, and contract interdependencies with an avoided unit with a fixed in-service date; (4) the specific criteria to independently verify the "at risk" KW and KWH of the CISR customer; (5) a methodology to calculate incremental fuel costs; and (6) a methodology to account for increased SO<sub>2</sub> emissions as a result of increased or retained load. (Shine)

**ISSUE 7:** Is it reasonable for Gulf to offer a CISR rate based on an individual cost analysis for each customer?

**POSITIONS:**

**GULF:** Yes. For incremental loads of the size requirements outlined for the CIS Rider, Gulf can reasonably determine the incremental cost to serve the specific "at-risk" load.

**FIPUG:** Yes, if other customers are not required to pay for the individual cost analysis and other customers have an equal opportunity to receive a special contract.

**LEAF:** See LEAF position on Issue 1.

**STAFF:** No. Gulf has not provided a detailed methodology which specifically identifies individual customer cost components. As the CISR is proposed, Gulf would have too much discretion to define the incremental cost of service and to negotiate the price offered with no prior oversight by the Commission. The statement that Gulf would absorb any losses between rate cases is true only as long as cost recovery clauses are unaffected and Gulf remains within its authorized rate of return band. If earnings go above the top of the range, CISR contracts could be used to avoid or reduce refunds to the general body of ratepayers. Without commensurate risk on Gulf's part, this unfairly shifts the risks and rewards of use of the rider against the general body of ratepayers. Gulf should be held responsible in any future rate cases for some significant share of the difference between the revenues generated by the CSAs and the otherwise applicable rate.

**ISSUE 8:** Is Gulf's proposed use of incremental costs (to serve a CISR customer) as the price floor appropriate?

**POSITIONS:**

**GULF:** Yes. The identified price floor represents the point of indifference. That is, the Company would have no economic preference with regard to serving the load. It is in the Company's best interest to negotiate a price that exceeds this floor by as much as possible. Since the revenue that would be produced by any price that is over and above the identified price floor more than

covers the incremental cost of serving that load (and consequently provides a contribution towards fixed costs that would not otherwise occur), it would be inappropriate to consider a higher floor because that could result in missed opportunities to gain or retain load that would contribute to Gulf's fixed costs and to the efficient use of the Company's facilities.

**FIPUG:** Yes.

**LEAF:** See LEAF position on issue 1.

**STAFF:** No. The price floor should include average embedded transmission and distribution costs and the sum of the tariffed adjustment clauses. (Berg)

**ISSUE 9:** Should the difference in revenues between the standard tariffed rates and the negotiated CISR tariff rates be identified as a separate line item for surveillance purposes?

**POSITIONS:**

**GULF:** No. The basic premise and condition for offering a CSA under the CIS Rider is that a load covered by a CSA would not be served by the Company in the absence of the CSA. Therefore, since the load would not otherwise be on the system under another tariff rate schedule, there simply is no revenue difference or short-fall to report. It would be misleading to show such a fictional difference for surveillance purposes. Further, to the extent that the CSA includes different terms, conditions and services, the standard tariff rate would be irrelevant since these differences provide value not captured in the standard tariff rate.

**FIPUG:** FIPUG would prefer a separate line item but has compromised on this issue by accepting discovery in lieu of separate line item in return for the guaranty against cost shifting.

**LEAF:** See LEAF position on Issue 1.

**STAFF:** Yes. Gulf should be required to identify the difference between the otherwise applicable tariff rates and the negotiated CISR rate. This information is necessary should the Commission decide on a mechanism to share the

revenue difference between the tariffed rates and the negotiated CISR tariff between ratepayers and stockholders. The information is also necessary to ensure that overearnings are not manipulated through this rider. (Berg)

**ISSUE 10:** Is it appropriate for the CISR tariff to be used for economic development purposes by offering CISR tariff rates to induce current customers to add new load and to attract new customers to Gulf's service territory?

**POSITIONS:**

**GULF:** Yes, if the terms and conditions for application of the proposed CIS Rider are satisfied. Under such conditions, the general body of customers served by the Company are better off because the contribution towards the Company's fixed costs of operation are improved by gaining the new load. Under these conditions, the new load enhances the efficient use of existing resources.

**FIPUG:** Economic development is a matter of government policy. As long as other electric customers don't have to subsidize economic development through their electric bills, FIPUG has no objection to innovative methods that Gulf, the State, or local government should employ to induce growth.

**LEAF:** See LEAF position on issue 1.

**STAFF:** No. To expand an electric utility's role in economic development beyond what is specified in the economic development rule might require further legislative authority. Section 290.007(8), Florida Statutes, merely states that the Commission may allow discount rates for small businesses located in an enterprise zone.

**ISSUE 11:** (Legal Issue) Does Gulf's proposed CISR tariff conflict with the statutory requirement of Section 366.051, Florida Statutes, to promote cost-effective cogeneration?

**POSITIONS:**

**GULF:** No. Gulf's proposed CIS Rider is only available where Gulf's analysis and the documentation supporting that analysis reveal that it is cost-effective for Gulf to

serve the new or existing load. A purpose of the CIS Rider is to prevent the uneconomic bypass of Gulf's system in the pursuit of alternative energy sources. That is clearly within the permissible scope allowed by FEECA. Where Gulf's analysis reveals that such bypass is uneconomic and offers a CSA under the CIS Rider, the most economic source of energy will be utilized. In fact, the flexibility allowed to the Company under the CIS Rider will enhance the Company's ability to promote cost-effective cogeneration.

**FIPUG:** The deterrent to cost effective cogeneration may be offset by the more efficient utilization of existing resources.

**LEAF:** See LEAF position on Issue 1.

**STAFF:** No position at this time.

**ISSUE 12:** (Legal Issue) Does Gulf's proposed CISR tariff conflict with the Florida Energy Efficiency Conservation Act, Sections 366.80 through 366.85 and 403.519, Florida Statutes?

**POSITIONS:**

**GULF:** No. A comprehensive energy audit of a customer's facility is a condition of the CIS Rider. This audit will reveal opportunities for cost-effective energy efficiency that may not otherwise be discerned since audits are not required, but are voluntary at a customer's request. Thus, application of the CIS Rider will reveal additional opportunities for meeting the mandate of FEECA that otherwise would not be available. Furthermore, since individual CSA's may include custom load management as a term or condition, an opportunity for promoting cost-effective energy efficiency would be created by the CIS rider. Finally, load served by the Company as a result of a CSA entered into pursuant to the CIS Rider enhances the efficient use of existing resources. The flexibility allowed to the Company under the CIS Rider will enhance the Company's ability to promote cost-effective energy efficiency opportunities.

**FIPUG:** No position.

**LEAF:** See LEAF position on Issue 1.



**STAFF:** No position at this time.

**ISSUE 13:** (Legal Issue) Should Gulf's request for confidential treatment of the customer-specific terms and rates pursuant to the CISR tariff be granted, in whole or in part?

**POSITIONS:**

**GULF:** Yes. Public disclosure of the CSA terms and conditions would impair Gulf's ability to negotiate the highest favorable price and terms of service for other potential candidates for service under the CIS Rider. In addition, the confidential treatment of CSAs negotiated under the CIS Rider would ensure that the competitors of CIS Rider customers do not obtain sensitive information about those customers' operations. The disclosure of such sensitive information may impact the customers' ability to compete in their native markets. The alternatives Gulf will be competing against in individual negotiations are not subject to public disclosure. This may cause potential CIS Rider customers who would be sensitive to the impact of public disclosure of a CSA to avoid negotiations with Gulf if it cannot guarantee that the negotiations and resulting contract will remain confidential. This may lead to further uneconomic by-pass of Gulf's facilities if the Commission does not allow confidential treatment as proposed by Gulf.

**FIPUG:** Yes, subject to substantially affected parties being given the opportunity to ensure that there is no cost shifting.

**LEAF:** See LEAF position on Issue 1.

**STAFF:** No. Gulf's request for blanket confidentiality of the terms and rates negotiated under the CISR tariff should not be granted as proposed. Section 366.093, Florida Statutes, requires that Gulf show that a specific document received by the Commission is entitled to confidential treatment. Blanket confidential treatment would hamper the Commission's ability to review allegations of anticompetitive behavior as addressed in Issue 4, and could expose the utility to antitrust liability for activity that would not be immune under the State Action Doctrine.

**ISSUE 14:** In its petition, with regard to the issue of filing requirements, Gulf has compared its proposal to similar remedies adopted for the telecommunications industry. Is this comparison appropriate?

**POSITIONS:**

**GULF:** Yes, in the context that Gulf made the comparison.

**FIPUG:** Without knowledge.

**LEAF:** See LEAF position on issue 1.

**STAFF:** No, a comparison is not appropriate. There are fundamental differences in the nature of the telecommunications and electric industries. (Buchan)

**ISSUE 15:** In its petition, with regard to flexible pricing arrangements, Gulf has compared its proposal to similar arrangements adopted for the gas industry. Is this comparison appropriate?

**POSITIONS:**

**GULF:** Yes, in the context that Gulf made the comparison.

**FIPUG:** No position.

**LEAF:** See LEAF position on Issue 1.

**STAFF:** No. There are fundamental differences between the flex rate provision for gas utilities and Gulf's proposed CISR. (Ging)

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Kilgore/ Thompson	GULF	_____	Rate Schedule CIS (Optional Rider)
Merilatt	GULF	_____ (DSM-1)	Resume of Daniel S. Merilatt

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Merilatt	GULF	_____ (DSM-2)	Composite exhibit containing Gulf's responses to various interrogatories promulgated by Staff and LEAF
Merilatt	GULF	_____ (DSM-3)	Checklist for Incremental Cost-Benefit Analysis of At-Risk Load under the CIS Rider
Young	GULF	_____ (JTY-1)	Illustrative Scenarios
Young	GULF	_____ (JTY-2)	Decision Process Flowchart
Berg	STAFF	_____ (WWB-1)	Examples of how other states have implemented special rate contracts

Parties and staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

Gulf and FIPUG have entered into a written stipulation that has been filed of record in this docket. (See Attachment A)

Gulf and LEAF have entered into a written stipulation that has been filed of record in this docket. (See Attachment B)

IX. PENDING MOTIONS

None.

X. RULINGS

LEAF's motion for the admission of Mary C. Lampi to practice before the Commission in this proceeding is granted.

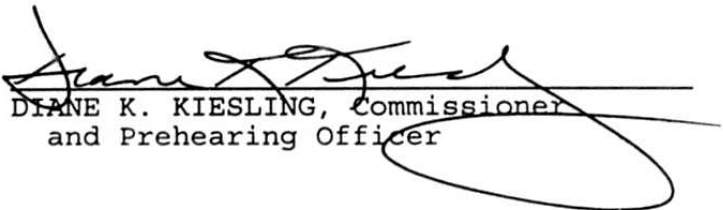
XI. OTHER MATTERS

The Notice of Hearing and Prehearing was issued by the Commission on February 29, 1996. At the Prehearing Conference all parties waived the 14-day notice requirement pursuant to Section 120.57(1)(b)(2), Florida Statutes. The parties noted that they had actual notice of the prehearing and hearing. Moreover, the prehearing was noticed in the Florida Administrative Weekly, Vol. 22, No. 6., issued on February 9, 1996, and the hearing was noticed in the Florida Administrative Weekly, Vol. 22, No. 7, issued on February 16, 1996.

It is therefore,

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 6th day of March, 1996.

  
DIANE K. KIESLING, Commissioner  
and Prehearing Officer

( S E A L )

VDJ

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Gulf Power Company's petition for approval ) Docket No. 951161-EI  
of its proposed Commercial/Industrial Service Rider. ) Filed: February 6, 1996  
\_\_\_\_\_ )

**STIPULATION OF GULF POWER COMPANY  
AND THE FLORIDA INDUSTRIAL POWER USERS GROUP**

This stipulation is entered into by Gulf Power Company ("Gulf Power", "Gulf" or "the Company") and the Florida Industrial Power Users Group ("FIPUG") pursuant to Section 120.57(3), Florida Statutes, for the purpose of an informal disposition of FIPUG's Petition for Leave to Intervene in Docket No. 951161-EI and reflects a settlement of all issues between Gulf and FIPUG in this docket. Gulf and FIPUG wish to avoid the time, expense and uncertainty associated with adversarial litigation in this docket, in keeping with the Florida Public Service Commission's ("Commission") encouragement to settle disputes. Accordingly, without prejudice as to either Gulf's or FIPUG's position in any other proceeding before this Commission, Gulf and FIPUG agree and stipulate as follows:

1. FIPUG recognizes the Company's efforts to obtain needed regulatory flexibility to allow Gulf Power to retain existing load and to attract potential commercial/industrial customers by negotiating individual contracts when it is mutually beneficial to the Company and all customers. In this regard, FIPUG wishes to clarify for the Commission that the purpose behind FIPUG's intervention in this proceeding was to establish a dialogue through which FIPUG could seek clarification of the Company's proposal to assure that an appropriate

framework for negotiations is established and that there will be no "cost shifting"<sup>1</sup> to other customers as a result of the individual negotiated contracts.

2. Through their respective authorized representatives, FIPUG and Gulf have discussed the issues of concern to FIPUG. Through this dialogue, and based on representations set forth below, FIPUG is now able to advise the Commission that it supports Gulf's proposal as filed by the Company and as clarified by this stipulation. This stipulation does not preclude either the Company or FIPUG from opposing modifications or additions to Gulf's proposal that might be sought by others.

3. Gulf Power specifically acknowledges that the Company's proposal does not contemplate, nor does the Company intend, that costs be shifted to other customers on Gulf's system from the customers who are served through arrangements negotiated under the CIS Rider. To the contrary, the intent of the Company's filing is to achieve sufficient regulatory flexibility to allow Gulf to negotiate arrangements that secure and serve loads of commercial/industrial customers which would otherwise not be served by the Company in the absence of such negotiated arrangements and that the negotiated price set forth in such arrangements would be as close as possible to the Company's otherwise applicable tariff rate but in no case less than the

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<sup>1</sup>The references to "cost shifting" or to "costs being shifted" as used in this document are handy, although not totally accurate, abbreviations for a wordier concept. The concept actually involves the potential impact on the "rate" or "price" as seen by the customer rather than the cost allocation which is generally internal to the utility. The real issue is not how costs are defined, allocated, accounted for, or how costs may be shifted. Instead, the issue is whether there would be any adverse rate or price impacts on non-CIS customers resulting from the application of the CIS rider. This stipulation is intended to provide the Company's assurance that there will not be any adverse rate or price impacts on the non-CIS customers projected to occur as a result of any CSA agreement entered into by the Company if the CIS rider is approved as proposed by Gulf Power.

projected incremental cost of serving such loads. In this manner, the incremental revenues derived via the loads served under the CIS Rider would more than cover the incremental costs and therefore allow Gulf to spread its fixed costs across a larger number of sales than would otherwise be possible. Gulf contends that its proposal therefore provides a mechanism whereby the Company has the means to mitigate the risk of stranded investment and secure the benefits of increased efficiency in the use of its electric system for all of its customers. Gulf agrees that the premise of its proposed CIS rider is consistent with a final order of approval that prohibits cost shifting to other customers. The parties to this stipulation jointly request that the Commission include language adopting this premise in its final order approving Gulf's proposed CIS rider. Gulf further agrees that, in the event that the Company files a general rate case during a period when any CSA's developed pursuant to its proposed CIS rider are in effect, Gulf will ensure that a discovery mechanism is available to appropriate representatives of interested customers of the Company that will allow such representatives to review the allocation of costs and the tracking of aggregate revenue to determine whether any cost responsibility has been shifted to non-CIS customers in violation of the Company's statements within this stipulation. Such discovery shall be conducted under conditions that protect the confidentiality of individual agreements.

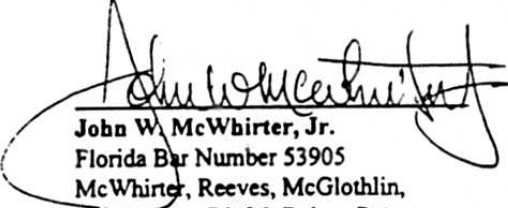
4. Given the design and intent of Gulf Power's proposed CIS Rider as discussed above and in the Company's petition, it is not now, nor has it been, the intent of Gulf Power to seek to explicitly recover any differential between the otherwise applicable tariff rate and the negotiated price that results from any contract negotiated by the Company through the operation of its CIS Rider. This statement of the Company's intent applies to any of the existing cost-specific cost recovery clauses.



WHEREFORE, the Florida Industrial Power Users Group and Gulf Power Company request that the Florida Public Service Commission accept and approve this stipulation and proceed to approve the Company's proposed Commercial/Industrial Service Rider, as filed, with the express prohibition against cost shifting and the requirement of an appropriate <sup>discovery</sup> ~~audit~~ *for* <sub>of</sub> mechanism to enable the enforcement of this prohibition.

Dated this 1<sup>st</sup> day of February 1996.


**The Florida Industrial Power Users  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Gulf Power Company's petition for approval ) Docket No. 951161-EI  
of its proposed Commercial/Industrial Service Rider. )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the  
individuals named below by U. S. Mail this 5th day of February, 1996:

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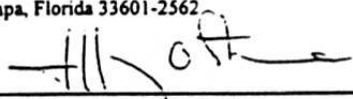
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ORDER NO. PSC-96-0325-PHO-EI  
DOCKET NO. 951161-EI  
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ATTACHMENT B

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February 29, 1996

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W SPENCER MITCHEM  
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G EDISON HOLLAND JR  
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JEFFREY A STONE  
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LARRY A MATTHEWS  
TERESA E LILES  
T RHETT SMITH  
CRYSTAL COLLINS

Ms. Blanca Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Drive  
Tallahassee, Florida 32399


Re: Docket No. 951161-EI

Dear Ms. Bayo:

The original and fifteen copies of the document entitled "Stipulation of Gulf Power Company and Legal Environmental Assistance Foundation, Inc." are enclosed for official filing in the docket that is referred to above.

An extra copy of this letter is also enclosed. Please mark this letter to indicate the date that the enclosed material was accepted for filing and return same to the undersigned. Thank you for your assistance.

Very truly yours,

  
Jeffrey A. Stone  
For the Firm

cc: S. D. Cranmer  
J. T. Kilgore, Jr.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Gulf Power Company's petition for approval ) Docket No. 951161-EI  
of its proposed Commercial/Industrial Service Rider. ) Filed: February 29, 1996  
\_\_\_\_\_ )

**STIPULATION OF GULF POWER COMPANY  
AND LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION, INC.**

This stipulation is entered into by Gulf Power Company ("Gulf Power", "Gulf" or "the Company") and Legal Environmental Assistance Foundation, Inc. ("LEAF")<sup>1</sup> pursuant to Section 120.57(3), Florida Statutes, for the purpose of an informal disposition of LEAF's petition for leave to intervene in Docket No. 951161-EI and reflects a settlement of all issues between Gulf and LEAF in this docket. Gulf and LEAF wish to avoid the time, expense and uncertainty associated with adversarial litigation in this docket, in keeping with the Florida Public Service Commission's ("Commission") encouragement to settle disputes. Accordingly, without prejudice as to either Gulf's or LEAF's position in any other proceeding before this Commission except as specifically stated herein, Gulf and LEAF agree and stipulate as follows:

1. Gulf and LEAF recognize that increased competitive pressures affecting electricity markets are at hand and that Gulf's proposed Commercial/Industrial Service ("CIS") rider as clarified in this stipulation is a reasonable and timely response to such competition. Gulf and LEAF agree that utility energy efficiency programs will continue to play a valuable role in reducing market barriers in certain market segments, reducing customer costs and mitigating environmental impacts; and that the costs associated with these programs should be recovered in a non-discriminatory, non-avoidable manner. Gulf affirms that it will support these principles

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<sup>1</sup>All references to LEAF in this stipulation shall be construed to include Candis Harbison who was also a party to the petition to intervene filed on November 16, 1995.

before the PSC. LEAF believes that the Company should affirm that its commitment to energy efficiency will be a significant component of the Company's negotiations with CIS Rider-eligible customers. Through their respective authorized representatives, LEAF and Gulf have discussed the issues of concern to LEAF. Through this dialogue, and based on representations set forth herein, LEAF is now able to advise the Commission that it supports Gulf's proposal as filed by the Company and as clarified by this stipulation. This stipulation does not preclude either the Company or LEAF from opposing modifications or additions to Gulf's proposal that might be sought by others.

2. Gulf and LEAF agree that the identification and successful pursuit of cost effective energy efficiency is an important goal. To that end, Gulf agrees that the potential for cost-effective energy conservation investments will form an integral part of its negotiations with CIS Rider-eligible customers. Gulf also agrees that it will develop a plan for negotiations with potential CIS Rider customers that will include the provision of energy audits and appropriate incentives to facilitate cost-effective solutions to any energy inefficiencies that are revealed by those audits. Gulf further agrees that customers having CIS Rider-eligible "at risk" load, in order to be considered for a Contract Service Arrangement ("CSA"), must receive a comprehensive energy audit or have received such an audit within one year provided that the customer's facilities or processes have not materially changed since that audit other than through the adoption of cost-effective energy efficiency improvements. If such audit is not performed by or under the direction of Gulf Power, the results must be made available to Gulf in order to initiate discussions towards a customer-specific CSA. The confidentiality of any proprietary subject matter contained within the audit results received by Gulf will be maintained. Gulf also agrees

that all costs and benefits associated with energy efficiency investments that are part of the executed CSA will be accounted for.

3. Gulf Power will provide customers with comprehensive technical audits of the cost-effective energy efficiency potential available in their facilities performed by individuals experienced as specialists in commercial/industrial energy efficiency auditing, including building energy efficiency. When dealing with a customer that uses an industrial process, Gulf will provide a technical audit, including a process audit performed by a team comprised of the specialist as stated above and a process design engineer with experience in the particular manufacturing process involved. If a comprehensive audit of the customer's facilities requires specialized technical knowledge that Gulf does not possess, Gulf will obtain the outside expertise required to assess cost-effective energy efficiency opportunities. To the extent that outside expertise is obtained by Gulf for any audit, such personnel shall be contractually bound to protect the confidentiality of the customer's proprietary information that may be discovered in the course of the audit. The goal of the audit will be to identify all significant and cost-effective energy efficiency opportunities. Estimates of the level of utility-provided financial assistance (if any) needed to make the improvement cost-effective from the customer's perspective and from the perspective of Gulf's general body of customers, considering the then-current tariff rate and considering rates that may be available under the CIS Rider, will be made as an integral part of the CSA negotiation with the customer.

Gulf agrees that each such audit will include an analysis of process usage, lighting and HVAC requirements, and the capital requirements and maintenance expenses that may be associated with any energy efficiency investment. Gulf will provide the customer with

information on all efficiency improvements identified in the audit and include advice on the energy and bill savings that could be achieved with the identified actions. Gulf will develop, with the customer, a plan to implement energy efficiency improvements that will assist the customer.

4. LEAF and Gulf Power agree that the CIS Rider negotiations offer an important opportunity to use cost-effective energy efficiency improvements to help meet the energy service needs of CIS Rider-eligible customers at the lowest cost. Gulf will offer CIS Rider-eligible customers the results and advice obtained through the comprehensive technical and process energy audits as well as financing services and/or other incentives when necessary and appropriate. In addition, when an energy efficiency investment is a component of the least cost approach to gaining or retaining the "at-risk" load, Gulf may assist the CIS Rider customer with the purchase of energy efficiency measures to assure their implementation. In such instances, Gulf's financial contributions toward the energy efficiency investments will be a component of the offer that Gulf will negotiate with CIS Rider-eligible customers.

Gulf Power will employ the least cost approach to gaining or retaining the "at-risk" load and will negotiate with a goal to minimize the cost of serving that "at-risk" load and maximize the contribution from that "at-risk" load to the Company and its customers. Energy efficiency is a component of the least cost approach when the per kWh cost of energy efficiency is less than the per kWh incremental cost of serving the "at-risk" load. The cost of energy efficiency is the incremental cost of the measure installed. Gulf agrees that the difference between the incremental cost of serving the "at-risk" load and the incremental cost of energy efficiency provides a resource from which financial contributions may be made when the incremental cost

of serving the "at-risk" load exceeds the incremental cost of energy efficiency.

5. Gulf agrees that it will maintain its efforts to implement cost-effective energy efficiency programs and to employ the least cost approach to the provision of energy and demand services with the goal of minimizing customer costs while allowing the company a fair return on investment. Gulf and LEAF agree to revisit the agreement set forth in this paragraph within five years.

6. Gulf will include information on the energy efficiency potential identified in CIS Rider audits in its quarterly reports to the Commission on the implementation of the CIS Rider. These reports will present information on the energy efficiency opportunities identified in the audits of "at risk" customers and will present a summary report of the actual investments made and energy reductions estimated to be achieved. These reports will be designed to provide the Commission and others with sufficient information to assess the extent to which CIS Rider participants are taking advantage of energy efficiency opportunities, while providing individual customers with protection from the public disclosure of information about their specific facilities and actions.

For the first several customers agreeing to a CSA (who also consent to LEAF's review as stated below), under all necessary confidentiality agreements and within 90 days of contract execution, and if the participating CSA customer consents, Gulf agrees to provide the Commission, LEAF (and/or a consultant chosen and paid by LEAF): the audit results including conservation investments identified and level of utility-provided financing assistance required to make each investment cost-effective from the customer's perspective, the conservation investments agreed to be implemented pursuant to the contract, including any financial assistance



Gulf agreed to provide, the rate agreed upon and other contract terms. Gulf will endeavor in good faith to secure the customer's consent to LEAF's review as stated above. Commission staff and LEAF may make appropriate recommendations as to how to better effectuate energy conservation investments by CIS Rider-eligible customers (which may in part be subject to confidentiality limitations) to the Commission within one year of the date the first CSA to which LEAF has access as contemplated herein is executed.

7. Gulf further agrees that, in the event that the Company files a general rate case during a period when any CSAs developed pursuant to its proposed CIS rider are in effect, Gulf will ensure that a discovery mechanism is available to appropriate representatives of interested customers of the Company that will allow such representatives to review the allocation of costs and the tracking of aggregate revenue to determine whether any cost responsibility has been shifted to non-CIS customers in violation of the Company's statements within the stipulation of Gulf Power Company and the Florida Industrial Power Users Group filed in this docket on February 6, 1996. Such discovery shall be conducted under conditions that protect the confidentiality of individual agreements.

WHEREFORE. Legal Environmental Assistance Foundation, Inc., Candis Harbison and Gulf Power Company request that the Florida Public Service Commission accept and approve this stipulation and proceed to approve the Company's proposed Commercial/Industrial Service Rider, as filed and clarified by this stipulation.

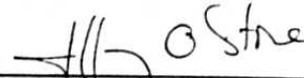
Dated this 27th day of February 1996.

**Legal Environmental Assistance  
Foundation, Inc.**

**Gulf Power Company**



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**Gail Kamaras**  
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**Attorneys for Gulf Power Company**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Gulf Power Company's petition for approval ) Docket No. 951161-EI  
of its proposed Commercial/Industrial Service Rider. )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by hand delivery or the U. S. Mail this 29<sup>th</sup> day of February, 1996 on the following:

Vicki D. Johnson, Esquire  
Staff Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
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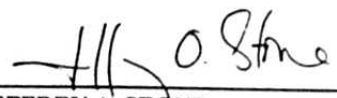
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