

One Energy Place
Pensacola, Florida 32520

Tel 850 444 6000



June 23, 1998

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0870

980783-EI

Dear Ms. Bayo:

Enclosed are an original and fifteen copies of Gulf Power Company's Petition for Waiver of the Requirements of Rule Subsection 25-22.082)(a), Florida Administrative Code.

Sincerely,

A handwritten signature in cursive script that reads "Linda G. Malone".

Linda G. Malone
Assistant Secretary and Assistant Treasurer

lw

Enclosures

cc: Administrative Procedures Committee
Mr. Carroll Webb
Room 120 Holland Building
600 South Calhoun Street
Tallahassee FL 32399-1300
Beggs and Lane
Mr. Jeffrey A. Stone, Esquire

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MAIL ROOM

DOCUMENT NUMBER DATE

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FPC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Gulf Power Company's petition for)
waiver of the requirements of rule subsection) Docket No.: 98 _____-EI
25-22.082(4)(a), Florida Administrative) Filed:
Code.)

PETITION

Notices and communications with respect to this petition and docket should be addressed to:

Jeffrey A. Stone
Russell A. Badders
Beggs & Lane
P. O. Box 12950
Pensacola, FL 32576-2950

Susan D. Cranmer
Assistant Secretary and Assistant Treasurer
Gulf Power Company
One Energy Place
Pensacola, FL 32520-0780

GULF POWER COMPANY ("Gulf Power", "Gulf", or "the Company"), by and through its undersigned counsel, and pursuant to Subsection 25-22.082(9), Florida Administrative Code, and Section 120.542 of the Florida Statutes, hereby petitions the Florida Public Service Commission ("the Commission") to waive a portion of Rule 25-22.082, Selection of Generating Capacity ("the RFP Rule"). Specifically, Gulf Power is asking the Commission to waive the requirements of subsection 25-22.082(4)(a), F.A.C. In support of the Company's request for waiver, Gulf shows:

1. Gulf Power is an investor-owned electric utility providing retail electric service to customers within northwest Florida and, pursuant to the provisions of Chapter 366 of the Florida Statutes, is subject to economic regulation by the Commission. The Company's principal offices are physically located at 500 Bayfront Parkway, Pensacola, Florida 32501. The principal mailing address of the Company is: Gulf Power Company, One Energy Place, Pensacola, Florida 32520.

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2. In accordance with paragraph 2 of the RFP Rule, Gulf Power must evaluate supply-side alternatives to its next planned generating unit by issuing a Request for Proposals (RFP) under the RFP Rule prior to filing a petition for determination of need for an electrical power plant pursuant to Section 403.519, Florida Statutes. Based on its current internal evaluation of the need for generating capacity, Gulf anticipates that it will be filing a need determination petition within the next several months. In order to meet this schedule, Gulf must issue an RFP pursuant to the RFP Rule during July 1998. Therefore, Gulf Power requests that this request for waiver be considered by the Commission at its earliest reasonable opportunity.

3. Pursuant to paragraph 9 of the RFP Rule, the Commission has reserved to itself the power to waive the "... rule or any part thereof upon a showing that the waiver would likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest." §25-22.082(9), F.A.C. Pursuant to Section 120.542(2) of the Florida Statutes, variances or waivers shall be granted upon a demonstration "... that the purpose of the underlying statute will be or has been achieved by other means ... and when application of the rule would create a substantial hardship or would violate principles of fairness."

4. The RFP Rule was implemented by the Commission on January 20, 1994 following rulemaking proceedings held during 1993. The rulemaking was initiated in response to the federal government's enactment of the Energy Policy Act of 1992 ("EPAct") which heralded expanded competition in the wholesale electric generation markets. Since the Commission's rulemaking proceedings, the wholesale market for electric power has matured significantly with the addition of many participants willing to supply electric generating power via the wholesale

market. This increased competition in the wholesale market has been fostered in large part by Federal Energy Regulatory Commission ("FERC") Order No. 888 and subsequent related FERC orders which have required open access to the transmission facilities under the FERC's jurisdiction for purposes of wholesale electric energy transactions. FERC Order No. 888 was issued in 1996, two years after the Commission's implementation of the RFP Rule.

5. Subparagraph 4a of the RFP Rule requires that a utility's RFP contain detailed technical information about the utility's next planned generating unit or units on which the RFP is based including specific financial assumptions and parameters associated with such generating unit(s).¹ This detailed information is in addition to more general information required under paragraph 3 of the RFP Rule. The requirement of detailed financial assumptions was to help a fledgling wholesale power market by encouraging the participation of a relatively small number of active wholesale suppliers. This relatively small number of participants in the fledgling

¹The full text of §25-22.082 (4)(a), F.A.C. provides:

(4) Each utility's RFP shall include, at a minimum:

(a) a detailed technical description of the utility's next planned generating unit or units on which the RFP is based, as well as the financial assumptions and parameters associated with it, including, at a minimum, the following information:

1. a description of the utility's next planned generating unit(s) and its proposed location(s);
2. the MW size;
3. the estimated in-service date;
4. the primary and secondary fuel type;
5. an estimate of the total direct cost;
6. an estimate of the annual revenue requirements;
7. an estimate of the annual economic value of deferring construction;
8. an estimate of the fixed and variable operation and maintenance expense;
9. an estimate of the fuel cost;
10. an estimate of the planned and forced outage rates, heat rate, minimum load and ramp rates, and other technical details;
11. a description and estimate of the costs required for associated facilities such as gas laterals and transmission interconnection;
12. a discussion of the actions necessary to comply with environmental requirements; and
13. a summary of all major assumptions used in developing the above estimates;

wholesale market sought to allocate their reportedly scarce resources for responding to RFPs by screening out any RFP for which they did not wish to compete.

6. Given the changes in the wholesale market that have occurred since the implementation of the RFP Rule, it is not necessary nor is it in the best interest of Gulf's general body of retail ratepayers for the Commission to require that Gulf's RFP contain the detailed information set forth in subparagraph 4a of the RFP Rule. Release of this detailed information can reasonably be expected to result in the convergence of prices offered by respondents to Gulf's RFP around the "target" revealed by this detailed technical information. By eliminating the public dissemination of such detailed information as part of the RFP process, Gulf seeks to encourage more aggressive competition among potential suppliers responding to the Company's RFP. This more aggressive competition is intended and expected to result in proposals with a lower cost of supply to Gulf than would otherwise occur. In support of this proposition, affidavits from M. W. Howell, Transmission and System Control Manager for Gulf Power Company, John F. Young, Vice President of Southern Wholesale Energy, and Hugh A. Gower, CPA, have been attached to this petition and are incorporated herein by this reference.

7. The purpose of the underlying statute for the RFP Rule is to enable the Commission, in its role as the exclusive forum to determine the need for electrical power plants in Florida, to take into account "... whether the proposed plant is the most cost-effective alternative available." §403.519 Fla. Stat. (1997) This purpose of the underlying statute will be achieved by the RFP process that Gulf proposes to follow if the requested waiver is granted. Indeed, in the absence of the requested waiver, the expected price convergence among supplier responses to Gulf's RFP would frustrate the purpose of the underlying statute by preventing the Commission

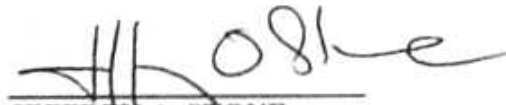
from being reasonably assured that the most cost effective alternative had been identified through the RFP process. Failure to allow for the identification of the most cost-effective alternative available would create a substantial economic hardship to Gulf Power and its general body of ratepayers in the form of increased cost for generating capacity.

8. Based on the foregoing, waiver of the requirements set forth in subparagraph 4a of the RFP Rule would likely result in a lower cost supply of electricity to Gulf and its general body of retail ratepayers than would otherwise result in the absence of the requested waiver and is otherwise in the public interest. As a result, the standard for waiver set forth in paragraph 9 of the RFP Rule is clearly met. Conversely, failure to grant the requested waiver would cause substantial economic hardship to petitioner and its general body of ratepayers because of the failure to identify the most cost-effective alternative and would consequently frustrate the purpose of the underlying statute which would otherwise be met if the waiver is granted. As a result, the standard for waiver set forth in §120.542(2) Fla. Stat. (1997) is likewise clearly met.

WHEREFORE Gulf Power Company requests: (1) that the Florida Public Service Commission waive that portion of Rule 25-22.082 set forth in subparagraph 4a with regard to the Request for Proposals Gulf expects to issue in July 1998 on the basis that this waiver is likely to result in a lower cost supply of electricity to the utility's general body of ratepayers or is otherwise in the public interest; (2) that the Florida Public Service Commission consider this

request for waiver at the Commission's earliest opportunity in order to facilitate the issuance of the proposed RFP pursuant to the stated schedule; and (3) that the Florida Public Service Commission grant such other reasonable relief as the Commission deems appropriate.

Respectfully submitted this 23rd day of June, 1998.



JEFFREY A. STONE

Florida Bar No. 325953

RUSSELL A. BADDERS

Florida Bar No. 007455

Beggs & Lane

P. O. Box 12950

(700 Blount Building)

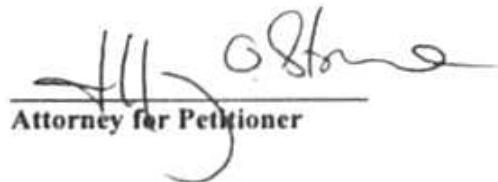
Pensacola, FL 32576-2950

(850) 432-2451

Attorneys for Gulf Power Company

CERTIFICATE

I HEREBY CERTIFY that, in order to comply with Section 120.542(5) of the Florida Statutes, a copy of the foregoing petition has been sent to the Administrative Procedures Committee by U.S. Mail this 23rd day of June, 1998.


Attorney for Petitioner

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
Affidavit of M. W. Howell on behalf of Gulf Power Company
Regarding Request for Waiver of Rule 25-22.082(4)(a), F.A.C.

Comes the Affiant, M. W. Howell, and having first been sworn, states as follows:

1. My name is M. W. Howell and my business address is One Energy Place, Pensacola, Florida 32520. I am Transmission and System Control Manager for Gulf Power Company ("Gulf Power", "Gulf", or "the Company"). In this position, I have responsibility for generation and transmission system planning.

I graduated from the University of Florida in 1966 with a Bachelor of Science Degree in Electrical Engineering. I received my Masters Degree in Electrical Engineering from the University of Florida in 1967, and then joined Gulf Power Company as a Distribution Engineer. I have since served as Relay Engineer, Manager of Transmission, Manager of System Planning, Manager of Fuel and System Planning, and Transmission and System Control Manager. My experience with the Company has included all areas of distribution operation, maintenance, and construction; transmission operation, maintenance, and construction; relaying and protection of the generation, transmission, and distribution systems; planning the generation, transmission, and distribution systems; bulk power interchange administration; overall management of fuel planning and procurement; and operation of the system dispatch center.

I am a member of the Engineering Committees and the Operating Committees of the Southeastern Electric Reliability Council and the Florida Reliability Coordinating Council, and have served as chairman of the Generation Subcommittee of the Edison Electric Institute System Planning Committee. I have served as chairman or member of many technical committees and task forces within the Southern electric system, the Florida Electric Power Coordinating Group, and the North American Electric Reliability Council. These have dealt with a variety of technical issues including bulk power security, system operations, bulk power contracts, generation expansion, transmission expansion, transmission interconnection requirements, central dispatch, transmission system operation, transient stability, underfrequency operation, generator underfrequency protection, and system production costing.

I have been involved in competitive bidding for generating capacity, construction materials, major equipment, and transmission line and major substation construction contracts for a number of years for Gulf Power Company. I have observed bidder behavior under a variety of situations.

2. As part of our ongoing internal evaluation of the need for generating capacity, Gulf anticipates that it will be seeking a formal determination of need from the Florida Public Service Commission ("Commission") pursuant to the Florida Power Plant Siting Act ("Siting Act"). As a necessary prerequisite to the filing of a petition for need determination, Gulf intends to evaluate supply-side alternatives to its next planned generating unit that is subject to the Siting Act by issuing a Request for Proposals ("RFP") pursuant to Rule 25-22.082, Selection of Generating Capacity ("the RFP Rule").

Our plans for the RFP to be issued later this summer are still being developed. In general our plans are to:

- a. Issue the RFP to all potential suppliers. The RFP package will include all information set forth in §25-22.082(3), F.A.C.
- b. Allow bidders a reasonable time to prepare their proposals.
- c. Receive the proposals and screen out frivolous or non-responsive submissions.
- d. Eliminate non-competitive proposals through a preliminary economic screening.
- e. Evaluate remaining proposals with Gulf's internal cost models using lowest revenue requirements as a yardstick.
- f. Develop a short list of participants for possible negotiation.
- g. Negotiate for the lowest evaluated proposal.
- h. Make final selection between resulting proposal or self build alternative based on economic evaluation.

At the conclusion of the selection process, it is expected that the selected alternative along with its associated costs will be presented to the Commission for review as part of a petition for certification of need under the Florida Power Plant Siting Act.

3. I support Gulf Power's request for waiver of the provisions of Rule 25-22.082(4)(a) which would otherwise require the Company to provide detailed technical information including specific financial assumptions and parameters about Gulf's self build alternative to prospective bidders as part of the RFP package. Such detailed technical and financial information about Gulf's self-build alternative, if made public as part of the RFP package, would create an artificial price target around which proposals would likely converge. The result

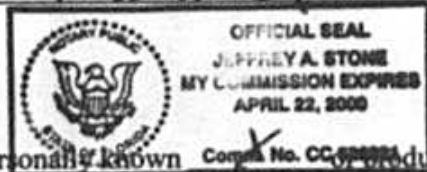
would be that Gulf's ratepaying customers could not be assured that the RFP process resulted in the lowest possible price for needed generating capacity. Such a result is contrary to the spirit and intent of the Commission's RFP Rule.

Further, affiant saith not.

This 19th day of June, 1998.

M. W. Howell
M. W. Howell

Sworn to and subscribed before me this 19th day of June, 1998, by M. W. Howell



[Signature]
Notary

Personal known 1 or produced identification _____
Type of identification produced _____

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
Affidavit of Hugh A. Gower on behalf of Gulf Power Company
Regarding Request for Waiver of Rule 25-22.082(4)(a), F.A.C.**

Comes the Affiant, Hugh A. Gower, and having first been sworn, states as follows:

1. My name is Hugh A. Gower and my address is 195 Edgemere Way South, Naples, Florida 34105. I am self-employed and a consultant on public utility financial, economic regulation and cost containment and control matters. I also provide expert testimony on topics related to public utility economics and rate regulation in cases before public service commissions and courts.

I received a Bachelor of Science degree in accounting and economics from the University of Florida, and I am, or have been, registered as a Certified Public Accountant in several states. I am a member of the American Institute of Certified Public Accountants and the Florida Institute of CPAs. I practiced public accounting continuously for more than 30 years with Arthur Andersen & Co., with whom I was a partner for more than 20 years.

Arthur Andersen is among the largest international firms of independent public accountants and it serves as auditors for businesses of all kinds, including a major share of electric, gas and telephone companies, as well as numerous other utilities operating in the United States and other parts of the world. In addition to audits of financial statements, its work includes tax work, design and installation of accounting and other information systems, and other consulting assignments for businesses of all types. Representatives of the Firm also provide expert testimony in connection with public utility regulatory proceedings before federal and state regulatory authorities on a variety of accounting, financial and ratemaking topics.

I was a partner in the Atlanta office of Arthur Andersen & Co. which serves as the concentration office for the Firm's utilities and telecommunications practice for the Southeastern United States. This area of practice includes work for electric, gas, telephone, water & sewer utilities, motor carriers and airlines. For 17 years I served as the Southeastern Area Director of this practice. I had responsibility for supervising the work done for clients, training of Firm personnel and administrative matters, I also had direct responsibility for work done by the Firm for numerous clients in this area of the practice and in others. The greatest portion of my work was with public utilities and telecommunications companies, but I also had substantial experience with other industries.

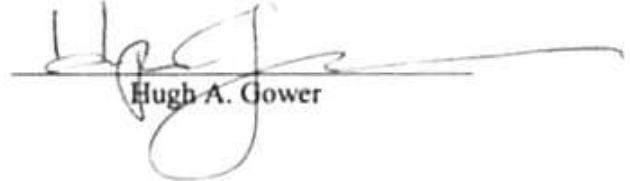
I performed independent audits of public utilities and other companies as a result of which Arthur Anderson & Co. issued reports on the financial statements of such companies. I have also participated in the development of accounting and management information systems designed to promote close control over resources, such as materials, fuel and construction costs. I also participated in

- management audits, the purpose of which was to assess whether management systems and procedures promoted economy and efficiency in utility operations.
2. Each of the numerous audits in which I participated, performed or directed during my 30-plus years of public accounting practice included reviews and tests of the subject client's accounting procedures and internal accounting controls. One of the principal areas of review and audit testing was procurement policies and practices. In the case of the management audits in which I participated, procurement practices were also frequently an area subjected to audit review. These audit reviews and verifications provided me with first hand knowledge of the practices followed by numerous companies, both utilities and others, in connection with the purchase of materials, supplies, inventories, equipment and outside services, including construction of production or other facilities.
 3. In my experience, the vast majority of companies utilize competitive bidding in acquiring goods and services whenever practical and appropriate. Without question, the best practice when competitive bidding procedures were employed, was that bidders were provided with sufficient technical and operating specifications to permit the formation of an intelligent and well formulated proposal which would meet the purchaser's needs, but this information never included the purchaser's estimates of the project costs, nor were they given access to other bidder's estimates or bids. The prevailing belief in this regard was that prudent business practice dictated that bidders should make completely independent evaluations and estimates and provide the purchaser with their best efforts and lowest estimated cost for the goods or services being acquired. Bids obtained under such a disciplined procedure provided independent and objective evidence of the lowest cost for which such goods, services or facilities could be obtained because the integrity of the competitive bidding process is preserved. Of course, criteria other than cost are usually considered in evaluating bids and other business practices and procedures are employed to protect the purchaser from cost overruns or technical failures after contracts are awarded. Nonetheless, conventional wisdom of procurement practices is that the best (lowest) bids are obtained when bidders are not informed in advance of cost estimates or targets.
 4. I support Gulf Power Company's ("the Company") request for waiver of the provisions of Rule 25-22.082(4)(a) which would otherwise require the Company to provide prospective bidders with detailed technical and financial information about the Company's self-build generating capacity alternative in connection with its request for proposals regarding additional generating capacity. Relieving the Company of the obligation to provide prospective bidders with detailed technical and financial information about the generating capacity addition being

contemplated would, in my opinion, better preserve the integrity of the competitive bidding process, provide greater assurance of independently developed evaluations and estimates on the part of the bidders and provide all parties at interest greater assurance that the process results in the lowest cost to customers.

Further, affiant saith not.

This 16 day of June, 1998.


Hugh A. Gower

Sworn to and subscribed before me this 16th day of June, 1998, by _____




Notary 11 Oct 20, 2001

Person Hugh A. Gower or produced identification 660032137418-0
Type of identification produced DL FL D

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
Affidavit of John F. Young on behalf of Gulf Power Company
Regarding Request for Waiver of Rule 25-22.082(4)(a), F.A.C.

Comes the Affiant, John F. Young, and having first been sworn, states as follows:

1. My name is John F. Young and my business address is 241 Ralph McGill Blvd. N.E., Atlanta, Georgia 30308. I am Vice President of Southern Wholesale Energy where I am responsible for directing the wholesale power marketing activities of the Southern electric system. In this role, I act as wholesale electric power agent for the domestic electric utility subsidiaries of the Southern Company, which includes Gulf Power Company. My responsibilities include market analysis, collecting competitive intelligence, operating a trading floor to perform short-term trading of power for the system, as well as responding to request for proposals for long-term sales of power to non-associated. I should point out that Southern Wholesale Energy will not be responding to Gulf Power Company's planned request for proposals.

Prior to joining Southern Wholesale Energy, I was the Manager, Fuel Procurement/Planning at Southern Company Services, Inc. with responsibilities for the negotiation and procurement of fuel for the five domestic electric utilities of the Southern Company. Prior to joining Southern Company Services, Inc., I was the General Manager, Marketing/Load Management at Gulf Power Company with responsibilities that included negotiations, rate design, and contracting with Gulf's large industrial customers.

I am a graduate of the U. S. Naval Academy with a B. S. in mechanical engineering.

2. The organization over which I have direct supervisory responsibility is actively participating in the competitive wholesale power markets that have developed and matured largely as a result of the policy direction expressed in the Energy Policy Act of 1992 ("EPAct") and the open transmission access policy adopted by the Federal Energy Regulatory Commission in Order No. 888 and other related orders. As a result of this active participation on a daily basis, both as a buyer and as a seller of short term and long term electric power, I am familiar with the nature of the wholesale power markets as they exist today. These markets are characterized by a larger number of active, sophisticated participants willing to submit competitive proposals in response to solicitations by potential purchasers.
3. In my professional opinion, if a competitive bidding process is used in the wholesale power markets, the best results for the purchaser are achieved when potential sellers are forced to make completely independent evaluations and estimates in the course of developing their proposals. From the perspective of the purchaser (and ultimately its customers), the absence of the type of detailed

technical and financial information otherwise required by §25-22.082(4)(a), F.A.C. as part of the Request for Proposals ("RFP") solicitation package is likely to result in lower bids in a competitive market. Conversely, the inclusion of such detailed information in the RFP package is likely to create a price target around which proposals submitted in response to the RFP are likely to converge. In other words failure to grant the waiver sought by Gulf Power Company in this proceeding would defeat the very purpose of requiring a solicitation for proposals prior to seeking certification of need. That purpose is to provide reasonable assurance that the capacity option selected provides the lowest available cost to the ratepaying customers of the electric utility with the need for generating capacity. For a true competitive bidding process to take place, bidders must have limited knowledge of what the target or their competitors' bids will be. Each bidder would then be in the position of evaluating the lowest price it is willing to accept in return for the project, a price that presumably covers their cost with sufficient margin to satisfy the bidder's own internal investment strategy.

- 4. I support Gulf Power Company's ("the Company") request for waiver of the provisions of Rule 25-22.082(4)(a) with regard to the solicitation for proposals to be issued later this summer. In the absence of such a waiver, providing potential suppliers with detailed technical and financial information about the Company's self-build generating capacity alternative as part of an RFP package is likely to cause the resulting proposals to be higher in price than would otherwise result from a more traditional competitive solicitation. Waiver of the requirements set forth in subparagraph 4a of the RFP Rule would likely result in a lower cost supply of electricity to Gulf and its general body of retail ratepaying customers than would otherwise result in the absence of the requested waiver and is otherwise in the public interest.

Further, affiant saith not.

This 22nd day of June, 1998.

John F. Young
John F. Young

Sworn to and subscribed before me this 22nd day of June, 1998, by John F. Young

Linda C. Webb
Notary

Personally known or produced identification



LINDA C. WEBB
Notary Public-State of FL
Comm. Exp: May 31, 2002
Comm. No: CC 725988