

One Energy Place
Pensacola, Florida 32520

Tel 850.444.6111



February 11, 1999

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

990172-EL

Dear Ms. Bayo:

RE: Petition for Waiver of Rule 25-17.0832(4), FAC

Enclosed for official filing are an original and fifteen copies of Gulf Power Company's Petition for Waiver of Rule 25-17.0832(4), F.A.C.

Also enclosed is a 3.5 inch double sided, high density diskette containing the Petition in WordPerfect for Windows 6.1 format as prepared on a Windows NT based computer.

Sincerely,

Susan D. Ritenour
Assistant Secretary and Assistant Treasurer

lw

Enclosure

cc: Beggs and Lane
Jeffrey A. Stone, Esquire

DOCUMENT NUMBER-DATE

01879 FEB 12 99

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition for waiver of Rule)
25-17.0832(4), F.A.C., by Gulf Power)
Company)
_____)

Docket No.:
Filed: February 12, 1999

**GULF POWER COMPANY'S
PETITION FOR WAIVER
OF RULE 25-17.0832(4), F.A.C.**

GULF POWER COMPANY ("Gulf Power", "Gulf", or "the Company"), by and through its undersigned counsel, and pursuant to Chapter 120.542, Florida Statutes (1997), hereby petitions the Florida Public Service Commission (Commission) for waiver of Rule 25-17.0832(4), Florida Administrative Code which sets forth requirements for the filing of a standard offer contract by Gulf for the purchase of capacity and energy from certain eligible small qualifying facilities. 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. Ritenour
Assistant Secretary and Assistant Treasurer
Gulf Power Company
One Energy Place
Pensacola, FL 32520-0780

As grounds for the relief requested by this petition, the Company would respectfully show:

- (1) Gulf is a corporation with its headquarters located at 500 Bayfront Parkway, Pensacola, Florida 32501. The Company is an investor-owned utility operating under the jurisdiction of this Commission.

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FPSC-RECORDS/REPORTING

(2) Gulf hereby petitions for waiver of Rule 25-17.0832(4), F.A.C. with regard to its requirement governing the filing of a standard offer contract.¹ Chapter 120.542, F. S., requires a showing by Gulf that both the purpose of the underlying statute, Chapter 366.051, F.S., is served and that application of the rule, Rule 25-17.0832(4), F.A.C., would create a substantial hardship or violate principles of fairness. Gulf submits with this petition the accompanying affidavit of William F. Pope in support of the facts alleged herein. The affidavit of William F. Pope is attached hereto as Exhibit 1.

(3) Rule 25-17.0832(4), F.A.C. sets forth requirements which govern the submission for Commission approval a tariff(s) and a standard offer contract(s) for the purchase of firm capacity and energy from certain eligible small qualifying facilities. A standard offer filing must be based on a designated "avoided unit" identified through a utility's planning process. Timing plays an important part in the determination of which unit is designated the "avoided unit" in two ways. First, and most obvious, is the lead time necessary to accomplish those activities necessary to construct a particular unit in a utility's planning process, including the Request for Proposals (RFP) process (if applicable), contract negotiations and actual environmental permitting and construction of the unit. Delay beyond this point in time could lead to a unit not being online when energy or capacity from that unit is required in order to serve customers. Once this point in time is reached, a unit can no longer be utilized as an "avoided unit" without

¹Rule 25-17.0832(4), F.A.C., states that a standard offer contract shall be submitted to the Commission "upon petition by a utility or pursuant to a Commission action." Gulf is not seeking to establish a standard offer contract via a petition, nor has Commission action requested such submission. Thus, uncertainty exists as to the requirement to submit a standard offer contract pursuant to Rule 25-17.0832(4), F.A.C. and Gulf files this petition for waiver to address this uncertainty.

jeopardizing its in-service date. The Commission recognized the critical importance of this point in time in Rule 25-17.0832(4)(e)(5), where an end to the open solicitation period of standard offer contracts is specified. Specifically, the Commission recognized that once the RFP process begins, negotiations for standard offer contracts must, necessarily end. Thus, the availability for standard offer contract of a designated "avoided unit" must come prior to the lead time necessary to construct a unit.

The second important point in time, as the Commission has recognized in prior proceedings and orders, is a point in time at which it would be premature to designate a unit as an "avoided unit" for purposes of standard offer contracts. The Commission in In Re: Petition for approval of standard offer contract for cogenerators and small power producers by Tampa Electric Company, PSC Order 94-1008-FOF-EQ, recognized that designating a unit prematurely and allowing standard offer contracts to "avoid" part of that unit is not in the ratepayers best interest. Units too far out on a utilities planning horizon may or may not be built depending on load growth, the effect of demand side measures and technology changes. See also PSC Order 25550. Allowing standard offer contracts during this "too early" period would have significant potential of saddling ratepayers with unneeded capacity or energy at potentially too high a price or without a need. Therefore, a window exists within which a particular unit can be reasonably designated as an "avoided unit." That window is a period of time between the time at which it would be premature to designate a unit as the "avoided unit" and that time when it is too late to successfully avoid such a unit.

(4) There is no planned generation unit addition identified through Gulf's current planning process that is suitable for designation as an "avoided unit" for the purposes of a standard offer contract and therefore, no reasonable standard offer contract can be established at this time without causing substantial harm to both Gulf and its general body of ratepayers. Gulf's most recent Ten Year Site Plan (TYSP) dated June 1998, shows two potential "avoided units" that must be examined with regard to standard offer contracts.² Examination of the type and timing of these two units clearly lead to the conclusion that neither unit is suitable for designation as an "avoided unit" for purposes of a standard offer contract.

(5) The first potential "avoided unit" for Gulf is a 532MW combined cycle unit with an in-service date of June 2002. This 532MW combined cycle unit is unsuitable for designation as the "avoided unit" because the activities necessary to construct this unit have already begun. In fact, at the time this unit became a part of Gulf's generation resource plan it was already too late to submit a standard offer contract for Commission approval for this unit. At the time this unit became a part of Gulf's generation resource plan, Gulf had to pursue the activities necessary to construct the unit without delay in order to meet the planned in-service date of June 2002. These activities include the RFP process which Gulf is currently finalizing with regard to this unit. Forcing Gulf to establish a standard offer contract based on the 532MW combined cycle

²Gulf filed an amended Ten Year Site Plan (TYSP) in June 1998 replacing its prior TYSP dated April 1998. The April TYSP showed a combination of June 2002 combined cycle and combustion turbine capacity, instead of the combined cycle unit as shown in the June 1998 TYSP. This change reflected updated planning information which Gulf received after the filing deadline for the April 1998 TYSP. The lead time to build a combined cycle unit is longer than that required to construct a combustion turbine. Construction of a combustion turbine would allow time for establishing a standard offer contract where a combined cycle at this point in time does not.

unit would result in a delay in the construction of the unit and consequently a need for capacity and energy to serve ratepayers would go unmet. This would impose substantial hardship on both Gulf and its general body of ratepayers with no tangible benefits.

(6) The next unit in Gulf's generation resource plan is a 30Mw portion of a planned Southern Company system combustion turbine unit with an in-service date of June 2006, at a location not yet determined. Designating this unit as the "avoided unit" for purposes of standard offer contracts would be premature. The June 2006 unit is over seven years out on Gulf's planning horizon. Again, uncertainty exists with regard to load growth, the effect of demand side measures and technology changes that make it too soon to look to this unit as the "avoided unit." The window within which this unit could serve as an "avoided unit" has not commenced and should not reasonably commence until late 2001. This would allow for an open solicitation period for this unit of just over a year prior to the point in April 2003 at which activities would have to begin for this unit's construction, if it is not avoided. It is in Gulf's and the general body of ratepayers best interest to wait until this unit is closer in time before designating it as the "avoided unit." Utilizing this unit as the "avoided unit" could lead to Gulf and the general body of ratepayers paying too high a price for capacity and energy that is not needed and may never be needed because of changes that may occur between now and late 2001. Establishing a standard offer contract based on this unit, at this time, would result in substantial hardship to both Gulf and its general body of ratepayers and therefore should not be pursued.

(7) Requiring Gulf to designate the June 2006 unit as the "avoided unit" for purposes of standard offer contracts would also violate principles of fairness. Forcing Gulf to prematurely designate the June 2006 unit as its "avoided unit" would result in a dissimilar

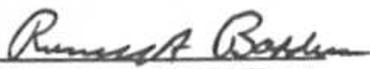
treatment between Gulf and other similarly situated utilities where the other utilities are permitted to designate as their "avoided unit" a unit that is closer in time and not subject to the uncertainties associated with a unit such as Gulf's that is not needed for over seven years, if it is needed at all. Moreover, in two prior cases before the Commission, two utilities that are similarly situated with regard to Gulf, i.e. both are investor owned utilities subject to Rule 25-17.0832(4), F.A.C., the Commission has refused to require the designation of a unit as the "avoided unit" where that unit has been seven or more years away on the planning horizon. See PSC Orders 94-1008-FOF-EQ and 25550. If the June 2006 unit is used in this instance, Gulf and its general body of ratepayers would be saddled with potentially higher cost energy and/or capacity while other utilities and their ratepayers would enjoy the benefits of using an "avoided unit" closer in time to its need which considers the affects of demand side measures as well as the changes in load growth and technology. It would be fundamentally unfair to force one utility to use a unit far away on the planning horizon, while allowing others to use one which is not so far off and premature. Gulf should be afforded the same treatment as the two previous utilities as well as other similarly situated utilities, and not be required to designate the 2006 unit as its "avoided unit" .

(8) The underlying purpose of Chapter 366.051, Florida Statutes, the law implemented by Rule 25-17.0832(4), F.A.C., is met through this waiver. Chapter 366.051, Florida Statutes, directs the Commission to establish guidelines and rates for the purchase of firm capacity and energy by electric utilities from cogeneration and small power producers. The underlying purpose of the statute is clearly to promote such purchases where such purchases are beneficial to the general body of ratepayers. The benefit to rate payers is accomplished by the statutory

requirement that electric utilities purchase firm capacity and energy at a utility's "full avoided costs." This means that Gulf should not be required to purchase capacity and energy at a price greater than its full avoided costs and, in turn, should not be offering a price through a standard offer contract to cogenerators and small power producers that is greater than "full avoided costs." It is in the best interest of Gulf and its ratepayers to wait until plans are more definite to declare an "avoided unit" for a standard offer proposal. This is to protect the general body of ratepayers from paying too high a price for capacity and energy as mandated by Chapter 366.051, Florida Statutes. In addition, the requirement that the Commission review the financial stability of a small power producer or a cogenerator before requiring a utility to purchase energy or capacity from it is an indication that the underlying purpose of the statute is protect the general body of ratepayers. Thus, the clear language of the Chapter 366.051, F.S., reveals that its underlying purpose is to require purchases of capacity and energy by electric utilities from cogeneration and small power producers where such purchases would result in a benefit to the general body of ratepayers. The statutory mandate would be frustrated where an electric utility is required to make purchases that would result in harm to the general body of ratepayers. As discussed herein above, requiring Gulf to establish a standard offer at this time would not result in any benefit to Gulf's general body of ratepayers, but instead would result in substantial harm to Gulf and its general body of ratepayers. Granting Gulf a waiver of Rule 25-17.0832(4), F.A.C. would meet the underlying purpose of the statute and avert this substantial hardship to Gulf and the harm to the general body of ratepayers.

WHEREFORE, Gulf Power Company respectfully requests the Commission to approve a waiver of Rule 25-17.0832(4), F.A.C.

Respectfully submitted the 11th day of February, 1999.


JEFFREY A. STONE
Florida Bar No. 325953
RUSSELL A. BADDERS
Florida Bar No. 7455
Beggs & Lane
P. O. Box 12950
Pensacola, Florida 32576-2950
(850) 432-2451
Attorneys for Gulf Power Company

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Affidavit of William F. Pope on behalf of Gulf Power Company
Docket No. 99 _____-EI

Comes the Affiant, William F. Pope, and having first been sworn, states as follows:

1. My name is William F. Pope and my business address is One Energy Place, Pensacola, Florida 32520. I am the Coordinator of Bulk Power Planning 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 March, 1975 with a Bachelor of Science in Electrical Engineering; and in May, 1985, I graduated with a Masters of Business Administration from the University of West Florida. In October of 1978, I joined Gulf Power Company and spent the next eight years in various engineering and supervisory positions at two of the company's electric generating plants. In April of 1987, I became Supervisor of System Planning which made me responsible for the Company's long range distribution, transmission, and generation planning. On May 1, 1993, I assumed my current position of Coordinator of Bulk Power Planning at the Corporate Office in Pensacola. In this position, I am responsible for supervising the Company's activities for capacity resource and transmission planning for Gulf Power's long-range needs along with other bulk power operational and planning issues.

2. Gulf's planning process utilizes an annual cycle that coincides with the calendar year. Gulf's annual Ten Year Site Plan (TYSP) was filed in April 1998. As a result of adding a "planned unit", Gulf filed a revised 1998 TYSP in June 1998. The new "planned unit" was the result of extensive evaluations that had been conducted during the eight months prior to the April 1998 TYSP. These evaluations were supplemental to the normal planning process because of the need to make a firm decision to obtain capacity resources and to review the availability of other system options. Unfortunately, the results of these evaluations were not completed in time for inclusion in the April 1998 TYSP.
3. Gulf's revised 1998 Ten-Year Site Plan (TYSP) shows that the Company's next "planned unit" is a 532 mW combined cycle (CC) unit at the Smith Generating Plant with a June, 2002 in-service date (hereafter "2002 Smith CC"). This is the "planned unit" added to Gulf's generation resource plan in the June 1998 TYSP. Since this unit has a steam generating capacity greater than 75 mW, it must

undergo the RFP process which began with Gulf issuing an RFP on August 21, 1998. This date was driven by Gulf's need to meet its regulatory and construction time frames for a June 2002 start up. The evaluations of the alternatives are being completed and the Company is preparing a filing for a determination of need in accordance with Chapter 403.519, F.S. and Rule 25-22.081, F.A.C.

4. After the 2002 Smith CC unit or some suitable alternative, the Company's next "planned unit" is a 30 mW portion of a larger Southern electric system (SES) combustion turbine (CT) unit with a June, 2006 in-service date, whose location has not been determined (hereafter "2006 CT"). Since this CT unit does not have any steam capacity, it is not subject to the mandatory RFP process of Rule 25-22.082, F.A.C. Unlike the CC unit mentioned above, the lead time decision point to proceed with commitment and permitting of this unit is shorter and therefore will not occur until April 2003 in order to meet a June 2006 commercial operation date.
5. I support Gulf Power's request for waiver of the provisions of 25-17.0832(4), F.A.C. since neither of the next planned generation unit additions identified through Gulf's current planning process, as discussed above, is suitable for designation as an "avoided unit" for the purposes of a standard offer contract.
6. The 2002 Smith CC is unsuitable for designation as the "avoided unit" because when this unit became a part of Gulf's generation resource plan and the activities necessary to construct this unit began, it was already too late to initiate an open solicitation period prior to the commencement of the RFP process pursuant to Rule 25-22.082(3), F.A.C. Rule 25-17.0832(4)(c)(3), F.A.C. requires that the reasonable solicitation period shall be ended prior to the issuance of the RFP. Forcing Gulf to establish a standard offer contract based on the 2002 Smith CC would result in a delay in the construction of the unit and therefore would create substantial hardship for Gulf and its general body of ratepayers.
7. Likewise, the 2006 CT is not a suitable "avoided unit" for purposes of a standard offer contract. Since the 2006 CT is over seven years away, it would be premature to designate it as the "avoided unit" at this time. Too much uncertainty exists at this time with regard to load growth, the effect of demand side measures and technology changes that make it too soon to look to this unit as the "avoided unit." This unit should not be looked to as a potential "avoided unit" until late 2001. This would allow for an open solicitation period for this unit of just over a year, if it is not avoided. Premature designation of this unit as the "avoided unit" could lead to Gulf and its general body of ratepayers paying too high a price for

it is not avoided. Premature designation of this unit as the "avoided unit" could lead to Gulf and its general body of ratepayers paying too high a price for capacity and energy that is not needed and may never be needed because of changes that may occur between now and late 2001. Establishing a standard offer contract based on this unit, at this time, would result in substantial hardship to both Gulf and its general body of ratepayers and therefore should not be pursued.

Further, affiant saith not.

This 11th day of February 1999.

William F. Pope
William F. Pope

Sworn to and subscribed before me this 11th day of February, 1999, by

William F. Pope

Linda C. Webb
Notary

Personally known X or produced identification _____
Type of identification produced _____



LINDA C. WEBB
Notary Public-State of FL
Comm. Exp: May 31, 2002
Comm. No: CC 725000