



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 4, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF AUDITING AND FINANCIAL ANALYSIS (MAILHOT) ^{DM}
DIVISION OF ELECTRIC AND GAS (KUMMER) ^{RVE}
DIVISION OF LEGAL SERVICES (ELIAS) ^{JDJ}

RE: DOCKET NO. 990250-EI - INVESTIGATION INTO THE EARNINGS AND AUTHORIZED RETURN ON EQUITY FOR GULF POWER COMPANY.

DOCKET NO. 990947-EI - PETITION FOR A FULL REVENUE REQUIREMENTS RATE CASE FOR GULF POWER COMPANY.

AGENDA: 10/05/99 - REGULAR AGENDA - DECISION ON STIPULATION PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\AFA\WP\990947.RCM

CASE BACKGROUND

Staff met with Gulf Power Company (GPC, Gulf, or the Company) and the Office of Public Counsel (OPC) in December 1998 and January 1999, to discuss staff's concerns with the Company's authorized return on equity (ROE) and the treatment of certain regulatory assets. Staff, the Company, and OPC also had conference calls in January and February 1999. Staff initiated the meetings with OPC and the Company after the Commission's decision at the December 1, 1998 Agenda Conference, to accept Florida Power and Light's (FPL) proposal to reduce its authorized ROE.

On March 2, 1999, GPC filed a Petition for approval of an incentive revenue sharing mechanism. Staff filed a recommendation on March 4, 1999. At the March 16, 1999 Agenda Conference, the Commission directed the staff, the Company, and interested parties

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FPSC-RECORDS/REPORTING

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to continue to try to resolve the issues in this docket through negotiation. Also, the Company agreed to record an additional accrual of \$3.0 million annually to its Property Insurance Reserve, effective January 1, 1999, in lieu of placing revenue subject to refund. Staff, the Company, and the interested parties met several times but did not reach an agreement. At the April 20, 1999 Agenda Conference, the Commission approved a three year regulatory incentive plan for GPC. Order No. PSC-99-1047-PAA-EI, issued on May 24, 1999, was protested by the Coalition For Equitable Rates (Coalition) on June 14, 1999. On August 4, 1999, GPC filed its response to the Coalition's protest of the order.

On July 22, 1999, OPC filed a Petition for a full revenue requirements rate case for Gulf Power Company (Petition). On August 13, 1999, GPC filed a Motion to Dismiss OPC's Petition. On August 24, 1999, OPC filed its response in opposition to GPC's motion to dismiss.

In Docket No. 990947-EI, on October 1, 1999, OPC, Gulf, FIPUG, and the Coalition for Equitable Rates filed a Stipulation and Settlement (Stipulation) that resolves the issues raised in this docket. (Issue 1)

In Docket No. 990250-EI, on October 1, 1999, the Coalition and Gulf filed a Joint Request that Dockets be Terminated and Closed to Further Action. (Issue 2)

In Docket No. 991487-EI, on October 1, 1999, Gulf filed a Request for Approval of Prospective Reduction to Authorized Return on Equity. (Addressed in Separate Recommendation)

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the Stipulation entered into by Gulf Power Company, the Office of Public Counsel, The Florida Industrial Power Users Group, and the Coalition for Equitable Rates? (Attachment A)

RECOMMENDATION: Yes. The Stipulation should be approved.
(KUMMER, MAILHOT)

STAFF ANALYSIS: On October 1, 1999, OPC, Gulf, FIPUG, and the Coalition filed a Stipulation and Settlement to resolve all the issues raised in OPC's Petition for a Rate Case. In summary, the Stipulation requires that:

1. base rates be reduced by \$10 million per year, effective 30 days following the vote of the Florida Public Service Commission (Implementation Date);

2. revenues between certain levels will be shared by Gulf and its customers, on a one-third/two-thirds basis respectively, beginning October 1, 1999 and ending sometime during 2002;

3. revenues in excess of the sharing level will be refunded entirely to Gulf's customers;

3. Gulf will have the discretion to record an additional accrual of up to \$5 million per year to its Property Insurance Reserve and up to \$1 million per year to reduce the accumulated balance of the deferred return on the third floor of the corporate offices;

4. if Gulf's achieved return on equity is outside the authorized range, then the revenue sharing mechanism is intended to be the appropriate and exclusive mechanism to address that circumstance; and,

5. the parties will not seek any additional rate decrease or increase in Gulf's base rates or charges.

Paragraph 2 addresses the up-front reduction in base rates and Paragraph 4 addresses the allocation of any refunds pursuant to the sharing mechanism. Under the Stipulation, both refunds are to be allocated on an energy basis. Although staff continues to believe allocating the reduction on a demand and energy component better matches the way dollars are collected through base rates, we recognize that the reduction in the base rate energy charge for all customers is administratively quicker to implement and more easily

explained to customers. Similarly, since any shared revenue credits are to be shown as a separate line item on the bill, allocating these dollars on an energy basis makes the credit easier for the customers to relate to the other charges on their bill.

Staff recommends approval of the Stipulation since it results in immediate and significant savings to all of Gulf's ratepayers. We recognize that at the conclusion of a full rate case, a greater reduction is possible. However, that would be after eight to twelve months. In addition to the \$10 million annual rate reduction, there is the potential for further credits under the revenue sharing plan.

Staff recognizes that the Stipulation may result in a higher achieved return on equity and that Gulf may earn above its authorized return on equity ceiling. However, the Commission maintains its authority to review Gulf's earnings during the period of the Stipulation.

Paragraph 6 of the Stipulation states:

Gulf Power Company's authorized return on equity range is not altered as a result of this Stipulation and Settlement and no party to this Stipulation and Settlement will seek a change in the authorized return on equity range to be effective until after the Expiration Date; it being understood that during the term extending from the Implementation Date through the Expiration Date **the achieved return on equity may, from time to time, be outside the authorized range** and the sharing mechanism herein described is intended to be the appropriate and **exclusive** mechanism to address that circumstance. (Emphasis added.)

In Florida, the historical use of the authorized return on equity (ROE) is to compare a utility's achieved return to its authorized return. If a utility earns above the top of the range of its authorized return, then it is overearning. The overearnings can be quantified in dollars using the top of the range of the authorized ROE. The Commission then disposes of the overearnings through rate reductions, offsets with regulatory assets, or another way.

This Stipulation will alter the relationship between ROE and excess earnings. With the Stipulation, the revenue sharing mechanism is the sole methodology for addressing excess earnings, i.e., earnings above the top of the authorized range. With the sharing mechanism, Gulf could earn above to top of its authorized

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range for ROE. Therefore, this Stipulation requires a fundamental change in its traditional rate base and rate of return regulation. The Stipulation is essentially based on revenues, not earnings.

The Commission has approved sharing plans before. In Docket No. 880069-TL, the Commission approved a rate stabilization plan for Southern Bell. This plan had a sharing mechanism in which revenues were shared between customers and shareholders from the point at which earnings exceeded the top of the range for ROE. The proposed Stipulation presented by Gulf, OPC, et al, **could** allow earnings to exceed the authorized ROE and be retained entirely by shareholders. This will depend on Gulf's revenues and how those revenues are measured.

The Commission has considered the impact of a stipulation on its jurisdiction in Order No. PSC-94-0172-FOF-TI, issued February 11, 1994, in Docket No. 920260-TL. In part, the Commission stated:

The text of the Settlement contains numerous references that purport to require us to act, to refrain from acting, or to otherwise restrict our actions in some manner, or seek action for which we have no authority. Generally, such attempts to bind us to a specified future course of action by adoption of the Settlement must fail as a matter of law. See, e.g., United Telephone Company v. Public Service Commission, 496 So.2d 116, 118 (Fla. 1986), (parties to a contract cannot confer jurisdiction). Similarly, parties cannot by contract or agreement limit or require our exercise of jurisdiction.

It is our statutory responsibility to ensure that Southern Bell's rates, charges, and practices are fair, just, and reasonable. See Sections 364.01(2), 364.03, and 364.14, Florida Statutes. The terms of a contract for the rendering of a service of a public nature are subject to governmental authority. State ex rel Ellis v. Tampa Waterworks Co., 48 So. 639 (Fla. 1909).

When we approve a stipulation between parties, the provisions of the stipulation become part of our order. However, we cannot, by our own order, require or preclude a future Commission from carrying out its mandate. This is analogous to the principle that in adopting legislation, the legislature is not bound by actions of prior legislatures nor can it bind future legislatures.

The question of the Commission being precluded from acting was last addressed in Docket No. 880069-TL. There, Southern Bell argued that, in approving the parameters of the Plan, we committed to leave the Plan as

is, absent some precipitous change in circumstances. Several parties had argued that, because the cost of equity capital had fallen, certain amounts of revenue should be held subject to refund, pending the outcome of the upcoming rate case. We concluded that regardless of the Plan's silence on whether it could be modified due to changes solely in the cost of equity capital and regardless of our prior approval of the Plan, we were not precluded from acting, if the public interest so required. See Order No. PSC-92-0524-FOF-TL, issued June 18, 1992.

The Commission, even if it so desired, cannot be bound to a specific course of action through the approval of a stipulation. As we stated in Docket No. 890216-TL:

[W]e do not possess the legal capacity of a private party to enter into contracts covering our statutory duties. Indeed, we cannot abrogate -- by contract or otherwise -- our authority to assure that our mandate from the Legislature is carried out. As a result, we may not bind the Commission to take or forego action in derogation of our statutory obligations.

See Order No. 22352, issued December 29, 1989.

The parties are without authority to confer or preclude our exercise of jurisdiction by agreement. In our view, any such provisions in the Settlement are not fatal flaws; they are simply unenforceable against the Commission and are void ab initio. The parties cannot give away or obtain that for which they have no authority. We note that, consistent with our discussion above, the parties commented during our agenda conference that there was no intent to restrict in any fashion the Commission's responsibility or legal authority.

While it is clear that we cannot be precluded from carrying out our statutory mandate by approving this Stipulation, we also understand that should we find it necessary in the future to alter the regulatory provisions we are now approving, such changes could be the basis for a party to the Settlement to abrogate the prospective portions of the agreement.

Order No. PSC-94-0172-FOF-TL at pages 5, 6.

The situation addressed by the Commission in Order No. PSC-94-0172-FOF-TL is analogous to that confronting the Commission in this docket. The stipulation binds the parties, and not the Commission. The Commission remains able to utilize during the term of the

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agreement, all powers explicitly and impliedly granted by Chapter 366, Florida Statutes. This includes the ability to determine that the rates charged by Gulf are no longer fair, just, and reasonable, and to change those rates. This also includes the ability to order an interim change in rates. Given that this stipulation does not limit the Commission's ability to exercise its jurisdiction to the fullest extent, and does not violate any specific provision of Chapter 366, it is consistent with the requirements of Chapter 366.

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ISSUE 2: Should the Commission approve Gulf Power Company's and the Coalition for Equitable Rates' Joint Request that Dockets be Terminated and Closed to Further Action (Joint Request)? (Attachment B)

RECOMMENDATION: Yes. The Joint Request should be approved. (ELIAS, KUMMER, MAILHOT)

STAFF ANALYSIS: On October 1, 1999, Gulf and the Coalition filed a Joint Request that Dockets be Terminated and Closed to Further Action. They entered into the Joint Request to resolve any and all remaining issues raised in the Coalition's Petition on Proposed Agency Action filed on June 14, 1999, in protest of Order No. PSC-99-1047-PAA-EI, issued on May 24, 1999.

In Order PSC-99-1047-PAA-EI in Docket 990250-EI, the Commission ordered a prudence review of the incentive contracts Gulf has signed under the Commercial/Industrial Service (CISR) as anticipated under Order No. PSC-96-1219-FOF-EI, issued in Docket No. 960789-EI. Although the CISR review initiated under Docket 990250-EI is not specifically addressed in the Stipulation, Staff believes the all-inclusive language in Paragraph 8 of the stipulation precludes any further investigation into the prudence of these contracts for the duration of the stipulation. Unless the Commission specifically directs otherwise, staff's investigation in the prudence of the CISR contracts will be closed. However, after the expiration of the stipulation, all CISR contracts in effect at the time a review is triggered under Order No. PSC-96-1219-FOF-EI will be subject to review if circumstances warrant.

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ISSUE 3: Should Docket No. 990947-EI be closed?

RECOMMENDATION: Yes. Absent a timely appeal of the Commission's final order, no further Commission action will be required and Docket No. 990947-EI should be closed. (ELIAS)

STAFF ANALYSIS: If Issue 1 is approved, Docket No. 990947-EI should be closed. The Stipulation has been signed by all of the official parties of record, namely OPC, FIPUG, the Coalition, and Gulf. The Stipulation is offered "pursuant to and in accordance with Section 120.57(4), Florida Statutes." Section 120.57(4), Florida Statutes, provides that "...informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order." The Stipulation does not require further Commission action to implement the agreement. Therefore, the docket should be closed.

ISSUE 4: Should Docket No. 990250-EI be closed?

RECOMMENDATION: Yes. Absent a timely appeal of the Commission's final order, no further Commission action will be required and Docket No. 990250-EI should be closed. (ELIAS)

STAFF ANALYSIS: Docket No. 990250-EI should be closed. As discussed in Issue 2, the previously approved investigation of GPC's Contract Service Agreements under its Commercial/Industrial Service Rider should be discontinued. All other issues in this docket have been resolved.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a full revenue
requirements rate case for
Gulf Power Company.

Docket No. 990947-EI

STIPULATION AND SETTLEMENT

The Office of Public Counsel, Gulf Power Company, the Florida Industrial Power Users Group, and the Coalition for Equitable Rates, pursuant to Section 120.57(4), Florida Statutes (Supp. 1998), have entered into this Stipulation and Settlement to effect an informal disposition and complete and binding resolution of any and all matters and issues which might be addressed in this docket. This Stipulation and Settlement avoids the time, expense and uncertainty associated with adversarial litigation in keeping with the Florida Public Service Commission's long-standing policy and practice of encouraging parties in contested proceedings to settle issues whenever possible. Accordingly, without prejudice to any party's position in any other proceeding before the Florida Public Service Commission or any other venue, present or future, the parties stipulate and agree as follows:

1. This Stipulation and Settlement will become effective on the day following the vote of the Florida Public Service Commission approving this Stipulation and Settlement. The Florida Public Service Commission's decision will be reflected in a final order. The starting date for the full term of this Stipulation and Settlement will be 30 days following the vote and will be referred to as the "Implementation Date." The ending date for the revenue sharing plan and other matters set forth in paragraphs 3,5,6, and 7 of this Stipulation and Settlement will be the earlier of (a) the day before

the commercial in-service date of Smith Unit 3; or (b) December 31, 2002. Such ending date will be referred to as the "Expiration Date."

2. Gulf Power Company will reduce its base rates by \$10 million per year. This rate decrease will be implemented by reducing the base rate energy charge on customers' bills by 0.105 cents per kWh. Gulf Power Company will apply the lower base rate energy charge to all meter readings made on and after the Implementation Date.

3. Revenues above certain levels, as defined below, will be shared between Gulf Power Company and its customers. It is expressly understood and agreed that the mechanism for revenue sharing established here is not intended to be a vehicle for "rate case" type inquiry concerning expenses, investments or financial results of operations. "Retail base rate revenues" are defined as, and will be reported consistently with, the FPSC Adjusted Operating Revenues (Schedule 2, page 2 of 3, column 1) shown on Gulf Power Company's monthly surveillance reports. A separate schedule showing year-to-date amounts will be filed with each monthly surveillance report for the months of September through December, 1999, and for each month of 2002.

- a. For the months of October through December, 1999, Gulf Power Company's retail base rate revenues in excess of \$80 million up to \$83 million will be shared between Gulf Power Company and its retail customers on a one-third/two-thirds basis, one-third to be retained by Gulf Power Company and two-thirds to be refunded to its retail customers. Retail base rate revenues above \$83 million for the months of October through December, 1999, will be refunded to Gulf Power Company's customers.

- b. For calendar year 2000, Gulf Power Company's retail base rate revenues in excess of \$352 million up to \$368 million will be shared between Gulf Power Company and its retail customers on a one-third/two-thirds basis, one-third to be retained by Gulf Power Company and two-thirds to be refunded to its retail customers. Retail base rate revenues above \$368 million for calendar year 2000 will be refunded to Gulf Power Company's customers.
- c. For calendar year 2001, Gulf Power Company's retail base rate revenues in excess of \$358 million up to \$374 million will be shared between Gulf Power Company and its retail customers on a one-third/two-thirds basis, one-third to be retained by Gulf Power Company and two-thirds to be refunded to its retail customers. Retail base rate revenues above \$374 million for calendar year 2001 will be refunded to Gulf Power Company's customers.
- d. For 2002, the amount and timing of Gulf Power Company's retail base rate revenues which are subject to sharing will be based upon the Expiration Date according to the following schedule:
 - i. If the Expiration Date is before May 31, 2002, the revenue sharing points for calendar year 2002 as reflected in paragraph 3.d.ix., below, will be multiplied by a ratio in which the numerator is the number of days in 2002 up to and including the Expiration Date and the denominator is 365. Gulf Power Company's retail base rate revenues in excess of \$364 million multiplied by this ratio up to \$380 million multiplied by this ratio will be shared on a one-third/two-thirds basis,

one-third being retained by Gulf Power Company and two-thirds being refunded to its customers. Retail base rate revenues above \$380 million multiplied by this ratio for January 1, 2002, through the Expiration Date will be refunded to Gulf Power Company's customers.

- ii. If the Expiration Date is on or after May 31, 2002, but on or before June 30, 2002, Gulf Power Company's retail base rate revenues in excess of \$135 million up to \$141 million for the months of January through May, 2002, will be shared on a one-third/two-thirds basis, one-third being retained by Gulf Power Company and two-thirds being refunded to its customers. Retail base rate revenues above \$141 million for January through May, 2002, will be refunded to Gulf Power Company's customers.
- iii. If the Expiration Date is after June 30, 2002, but on or before July 31, 2002, Gulf Power Company's retail base rate revenues in excess of \$171 million up to \$179 million for the months of January through June, 2002, will be shared on a one-third/two-thirds basis, one-third being retained by Gulf Power Company and two-thirds being refunded to its customers. Retail base rate revenues above \$179 million for January through June, 2002, will be refunded to Gulf Power Company's customers.

- iv. If the Expiration Date is after July 31, 2002, but on or before August 31, 2002, Gulf Power Company's retail base rate revenues in excess of \$211 million up to \$221 million for the months of January through July, 2002, will be shared on a one-third/two-thirds basis, one-third being retained by Gulf Power Company and two-thirds being refunded to its customers. Retail base rate revenues above \$221 million for January through July, 2002, will be refunded to Gulf Power Company's customers.
- v. If the Expiration Date is after August 31, 2002, but on or before September 30, 2002, Gulf Power Company's retail base rate revenues in excess of \$248 million up to \$259 million for the months of January through August, 2002, will be shared on a one-third/two-thirds basis, one-third being retained by Gulf Power Company and two-thirds being refunded to its customers. Retail base rate revenues above \$259 million for January through August, 2002, will be refunded to Gulf Power Company's customers.
- vi. If the Expiration Date is after September 30, 2002, but on or before October 31, 2002, Gulf Power Company's retail base rate revenues in excess of \$280 million up to \$293 million for the months of January through September, 2002, will be shared on a one-third/two-thirds basis, one-third being retained by Gulf Power Company and two-thirds being refunded to its customers. Retail base rate revenues

above \$293 million for January through September, 2002, will be refunded to Gulf Power Company's customers.

- vii. If the Expiration Date is after October 31, 2002, but on or before November 30, 2002, Gulf Power Company's retail base rate revenues in excess of \$309 million up to \$323 million for the months of January through October, 2002, will be shared on a one-third/two-thirds basis, one-third being retained by Gulf Power Company and two-thirds being refunded to its customers. Retail base rate revenues above \$323 million for January through October, 2002, will be refunded to Gulf Power Company's customers.
- viii. If the Expiration Date is after November 30, 2002, but before December 31, 2002, Gulf Power Company's retail base rate revenues in excess of \$335 million up to \$350 million for the months of January through November, 2002, will be shared on a one-third/two-thirds basis, one-third being retained by Gulf Power Company and two-thirds being refunded to its customers. Retail base rate revenues above \$350 million for January through November, 2002, will be refunded to Gulf Power Company's customers.
- ix. If the Expiration Date is December 31, 2002, Gulf Power Company's retail base rate revenues in excess of \$364 million up to \$380 million for calendar year 2002 will be shared on a one-third/two-thirds basis, one-third being retained by Gulf Power Company and two-thirds

being refunded to its customers. Retail base rate revenues above \$380 million for calendar year 2002 will be refunded to Gulf Power Company's customers.

4. All refunds will be paid with interest at the 30-day commercial paper rate as specified in Rule 25-6.109, Florida Administrative Code. For the purposes of calculating interest only, it will be assumed that revenues to be refunded were collected evenly on a monthly basis throughout the applicable time period. Refunds for October through December, 1999, and for 2000 and 2001 will be paid with interest to customers of record during the month of February of the next calendar year. If the Expiration Date is December 31, 2002, refunds for calendar year 2002 will be paid with interest to customers of record during the month of February, 2003. If the Expiration Date is prior to December 31, 2002, refunds for the applicable portion of 2002 will be paid with interest to customers of record during the second month following the period for which revenues are subject to sharing. Refunds will be made by crediting customers' bills through a separate line item entitled "Revenue Sharing Plan Refund" based upon their proportionate share of energy usage billed during the refund month. Any amounts which cannot be refunded will be treated as part of the true-up in the next fuel and purchased power cost recovery proceedings.

5. Beginning on the Implementation Date, Gulf Power Company is authorized to record, at its discretion, an additional accrual of up to \$5 million per year to its Property Insurance Reserve through the Expiration Date. Any additional accrual to the Property Insurance Reserve pursuant to this Stipulation and Settlement is in addition to the currently approved accrual of \$3.5 million and in lieu of the \$3 million additional accrual for 1999 previously ordered and approved by the Commission pending the resolution of Docket No. 990250-EI, as discussed at the March 16, 1999,

agenda conference. Gulf Power Company is also authorized to record, at its discretion, up to \$1 million per year through the Expiration Date to reduce the accumulated balance of the deferred return on the third floor of the corporate offices which was authorized and identified in Order No. 23573, issued October 3, 1990, in Docket No. 891345-EI, Gulf Power Company's last rate case. No other changes in Gulf Power Company's accounting practices with regard to the current authorized amortization of regulatory assets or other accelerated cost recognition will be made until after the Expiration Date.

6. Gulf Power Company's authorized return on equity range is not altered as a result of this Stipulation and Settlement and no party to this Stipulation and Settlement will seek a change in the authorized return on equity range to be effective until after the Expiration Date; it being understood that during the term extending from the Implementation Date through the Expiration Date the achieved return on equity may, from time to time, be outside the authorized range and the sharing mechanism herein described is intended to be the appropriate and exclusive mechanism to address that circumstance. The foregoing sentence notwithstanding, Gulf Power Company may voluntarily agree to lower its authorized return on equity range on a prospective basis for the term extending from the Implementation Date through the Expiration Date in which event no party to this stipulation and Settlement will object to or otherwise seek to modify Gulf Power Company's voluntary reduction.

7. No party to this Stipulation and Settlement will request, support or seek to impose a change in the application of any provision hereof. The Office of Public Counsel, the Florida Industrial Power Users' Group and the Coalition for Equitable Rates will neither seek nor support any additional reduction in Gulf Power Company's base rates and charges, including interim rate

decreases, to take effect until after the Expiration Date unless such reduction is initiated by Gulf Power Company. Gulf Power Company will not petition for an increase in its base rates and charges, including interim rate increases, to take effect until after the Expiration Date. Furthermore, subject to the approvals of the Florida Public Service Commission set forth in paragraphs 8 and 9 below, all parties hereto waive any right to request further administrative or judicial proceedings in regards to the establishment or implementation of this Stipulation and Settlement. Such requests for further administrative or judicial proceedings shall include (but not be limited to): a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code; a motion for reconsideration of the decision in this matter in the form prescribed by Rule 25-22.060, Florida Administrative Code; or a notice of appeal to initiate judicial review by the Florida Supreme Court pursuant to Rule 9.110, Florida Rules of Appellate Procedure, in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

8. This Stipulation and Settlement Agreement is contingent upon (1) the Florida Public Service Commission's acceptance of the provisions herein in lieu of the regulatory incentive plan for Gulf Power Company previously proposed as set forth in Section III of and Attachment A to Commission Order No. PSC-99-1047-PAA-EI or any other regulatory plan that may otherwise result from activities in Docket No. 990250-EI and (2) the termination and closing of Docket No. 990250-EI, to the extent that such docket may affect Gulf Power Company's authorized return on equity, retail base rates, revenue credits, the level of Gulf Power Company's jurisdictional expenses or the level of jurisdictional revenues that may be retained by Gulf Power Company. Such acceptance, termination and closing shall occur either upon the Florida Public Service Commission's own motion or upon the joint request of the parties to that docket and in any event shall include explicit

recognition by the Florida Public Service Commission that all such matters are resolved by this Stipulation and Settlement.

9. This Stipulation and Settlement is also contingent upon approval in its entirety by the Florida Public Service Commission. This Stipulation and Settlement will resolve all matters in this docket pursuant to and in accordance with Section 120.57(4), Florida Statutes (Supp. 1998). This docket will be closed effective on the date the Florida Public Service Commission order approving this Stipulation and Settlement is final. If this Stipulation and Settlement is not accepted and approved without modification by an order not subject to further proceedings or judicial review, then this Stipulation and Settlement shall be considered null and void and of no further force or effect.

10. This Stipulation and Settlement, dated as of September 29, 1999, may be executed in counterpart originals and a facsimile of an original signature shall be deemed an original.

The Parties evidence their acceptance and agreement with the provisions of this Stipulation and Settlement by their signatures:

Office of Public Counsel
111 W. Madison Street, Room 812
Tallahassee, Florida 32399-1400

Gulf Power Company
500 Bayfront Parkway
Pensacola, Florida 32501

Beggs & Lane

By: _____
Jack Shreve

By: _____
Jeffrey A. Stone

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ATTACHMENT A
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Florida Industrial Power Users Group

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By: _____
John W. McWhirter, Jr.

By: _____
Ronald C. LaFace

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the)
earnings and authorized return on) Docket No. 990250-EI
equity of Gulf Power Company.)
_____)

In re: Petition of Gulf Power Company)
for approval of proposed plan for an) Docket No. 990244-EI
incentive revenue sharing mechanism)
that addresses certain regulatory) Date filed: _____
issues including a reduction to the)
Company's authorized return on)
equity.)
_____)

**JOINT REQUEST THAT DOCKETS BE TERMINATED
AND CLOSED TO FURTHER ACTION**

The Coalition for Equitable Rates ("Coalition") and Gulf Power Company ("Gulf Power", "Gulf", or "the Company"), by and through their respective undersigned attorneys, and pursuant to Section 120.57(4), Florida Statutes (Supp. 1998), have entered into this joint request to resolve any and all remaining issues raised in Coalition's Petition on Proposed Agency Action for the purposes of an informal disposition of their respective interests in the above-styled proceedings. The parties to this joint request wish to avoid the time, expense and uncertainty associated with adversarial litigation in these dockets in keeping with the long standing policy and practice of the Florida Public Service Commission ("Commission") that encourages parties to contested proceedings to settle issues whenever possible. Accordingly, without prejudice as to any party's position in any other proceeding before this Commission or any other venue, present or future, Coalition and Gulf stipulate and agree as follows:

1. The Stipulation and Settlement between the Office of Public Counsel, Gulf Power, the Florida Industrial Power Users Group and the Coalition in Docket No. 990947-EI should be implemented in lieu of the regulatory incentive plan for Gulf Power previously proposed as

set forth in Section III of and Attachment A to Commission Order No. PSC-99-1047-PAA-EI or any other regulatory plan that may otherwise result from activities in Docket No. 990250-EI.

2. That in exchange for acceptance of and agreement to the Stipulation and Settlement Agreement in Docket No. 990947-EI and subject to the approval of the Commission set forth in paragraph 4 below, the Coalition's Petition on Proposed Agency Action filed on June 14, 1999 shall be and the same is hereby resolved and shall be of no further force and effect and the parties hereto join in requesting that the Commission accept the Stipulation and Settlement in Docket No. 990947-EI as a complete resolution of all remaining issues in Docket Nos. 990250-EI and 990244-EI affecting Gulf Power Company's authorized return on equity, retail base rates, revenue credits, the level of Gulf's jurisdictional expenses or the level of jurisdictional revenues that may be retained by the Company, and upon such acceptance to close Docket No. 990250-EI without reinstating the order that had been the subject of Coalition's Petition on Proposed Agency Action. Furthermore, subject to the approval of the Commission set forth in paragraph 3 below, all parties hereto waive any right to request further administrative or judicial proceedings in regards to the Stipulation and Settlement in Docket No. 990947-EI and this joint request. Such requests for further administrative or judicial proceedings shall include (but not be limited to): a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code; a motion for reconsideration of the decision in this matter in the form prescribed by Rule 25-22.060, Florida Administrative Code; or a notice of appeal to initiate judicial review by the Florida Supreme Court pursuant to Rule 9.110, Florida Rules of Appellate Procedure, in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

4. This joint request is expressly conditioned upon receiving the Commission's approval of the Stipulation and Settlement in Docket No. 990947-EI and the Commission's approval of the actions requested in this joint request. If the Stipulation and Settlement in Docket No. 990947-EI is not accepted and approved by the Commission in its entirety without further modification by an order that is not subject to further proceedings or judicial review, then this joint request shall be considered null and void and shall be of no further force or effect. In order to allow the Stipulation and Settlement in Docket No. 990947-EI to be implemented as soon as possible, the parties expressly request the Commission to take final agency action approving both the Stipulation and Settlement in Docket No. 990947-EI and this joint request in Docket Nos. 990250-EI and 990244-EI at the earliest possible Commission Conference.

5. Pursuant to and in accordance with Section 120.57(4), Florida Statutes (Supp. 1998), and contingent on approval in its entirety by the Florida Public Service Commission, this joint request is intended to and will resolve all matters in this docket that may affect Gulf Power Company's authorized return on equity, retail base rates, revenue credits, the level of Gulf's jurisdictional expenses or the level of jurisdictional revenues that may be retained by the Company. Accordingly, as part of this joint request, Docket No. 990250-EI is to be terminated and closed to the extent that it may affect Gulf Power Company's authorized return on equity, retail base rates, the level of Gulf's jurisdictional expenses or the level of jurisdictional revenues that may be retained by the Company, such termination and closure to be effective on the date the Commission's order approving this joint request is final.

6. In the interest of administrative efficiency and in order to avoid the expense of litigation that would otherwise be necessary between

the filing of this joint motion and the opportunity for official Commission consideration of the settlement agreements referenced herein, the Coalition and Gulf Power have filed a joint motion to suspend further activities in Docket No. 990250-EI for which the parties hereby join in a request for an immediate ruling.

WHEREFORE, the Coalition for Equitable Rates and Gulf Power Company respectfully request the Florida Public Service Commission to accept and approve the Stipulation and Settlement in Docket No. 990947-EI by the issuance of a final order therein, and to thereupon terminate and close Docket No. 990250-EI to the extent provided for herein.

Respectfully submitted the _____ day of October 1999.

Coalition for Equitable Rates

Gulf Power Company

By: _____

By: _____

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