

One Energy Place
Pensacola, Florida 32520

850.444.6111



January 25, 2000

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

000091-EI

Dear Ms. Bayo:

Enclosed 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 8 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

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No.:
Filed: January 26, 2000

**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 (1999), hereby petitions the Florida Public Service Commission (Commission) for waiver of Rule 25-17.0832(4), Florida Administrative Code which requires Gulf to file a standard offer contract.

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.
- (2) Section 120.542, F. S., acknowledges that strict application of agency rules can lead to "unreasonable, unfair, and unintended results." That section requires a showing by Gulf that both the purpose of the underlying statute, Chapter 366.051, F.S., is served and that the specific facts of this instance justify a waiver of an agency rule, Rule 25-17.0832(4), F.A.C.
- (3) Gulf is required by Rule 25-17.0832(4), F.A.C. to submit for Commission

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approval a tariff(s) and a standard offer contract(s) for the purchase of firm capacity and energy from small qualifying facilities. This filing must be based on a designated "avoided unit" from Gulf's planning process. Gulf's most recent standard offer pursuant to Rule 25-17.0832(4), F.A.C. was approved by the Commission in Order No. PSC-99-2215-TRF-EQ, issued November 9, 1999, in Docket No. 991183-EQ¹. The standard offer approved in Order No. PSC-99-2215-TRF-EQ had a two-week open solicitation period beginning on December 1, 1999. That open solicitation period has expired, without response, and no standard offer is available at this time.

(4) No unit or capacity addition identified in or resulting from Gulf's ongoing planning process is suitable for designation as an "avoided unit" for the purposes of a standard offer contract and therefore no standard offer contract can reasonably be established at this time. In prior proceedings and orders, the Commission has recognized that there 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, Order No. PSC-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. In In Re: Petition by Gulf Power Company for waiver of Rule 25-17-0832(4), F.A.C., which sets forth requirements for filing a standard offer contract, Order No. PSC-99-1091-PAA-EI, the Commission found that a unit six years out on Gulf Power Company's planning horizon was too far in the future to be designated as an "avoided unit" for purposes of standard offer contracts. Units too far out on a utility's planning horizon may or may not be built depending on load growth and technology changes.

¹Consummating Order No. PSC-99-2400-CO-EQ, issued December 7, 1999.

See also PSC Order 25550. Allowing standard offer contracts during this period would have significant potential of saddling ratepayers with capacity or energy that may not be needed, or if it is needed, may be available at a lower price at a time nearer to the in-service date of the unit or capacity addition.

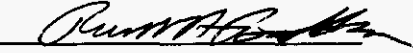
(5) Gulf's next projected need for constructing capacity that could be designated the "avoided unit" for purposes of Rule 25-17.0832(4), F.A.C., is a 47 mW portion of a combustion turbine unit with an anticipated in-service date in 2007. Designating a portion of this unit as the "avoided unit" for standard offer contracts would be premature. The 2007 need is more than seven years out on Gulf's planning horizon. Uncertainty exists as a result of potential technology changes and load growth that make it too soon to look to this unit as the "avoided unit." The window of time within which this unit could serve as an "avoided unit" has not commenced and should not reasonably commence until the year 2003. It is in Gulf's and the general body of ratepayers' best interests 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 contracting to pay for capacity and energy that is not currently needed and may never be needed. Forcing Gulf to establish a standard offer contract based on Gulf's next capacity need or any other unit in Gulf's current planning process would result in a substantial hardship to Gulf and its general body of ratepayers.

(6) Rule 25-17.0832(4), F.A.C., specifically implements Section 366.051, Florida Statutes. This statute 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 doing so is

beneficial to the general body of ratepayers. The actual language of the statute focuses not only on promoting purchases but also on protecting the general body of ratepayers. For example, the statute requires electric utilities to purchase firm capacity and energy at a utility's "full avoided costs." This is to protect the general body of ratepayers from paying too high a price for capacity and energy. In addition, the financial stability of a small power producer or a cogenerator is also a consideration of the Commission in requiring purchases. Likewise, this provision is to protect the general body of ratepayers. Thus, the underlying purpose of Section 366.051, F.S., 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. Requiring a standard offer contract that would have significant potential of saddling ratepayers with capacity or energy that may not be needed, or if it is needed, may be available at a lower price at a time nearer to the in-service date of the unit or capacity addition is an unreasonable and unintended result of the application of Rule 25-17.0832(4), F.A.C. Granting Gulf a waiver of Rule 25-17.0832(4), F.A.C. would meet the underlying purpose of the statute, avert the substantial hardship to Gulf and the harm to the general body of ratepayers, and prevent an unreasonable and unintended result of strictly applying Rule 25-17.0832(4), F.A.C.

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

Respectfully submitted the 25th day of January, 2000.



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