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August 3, 2001

**VIA HAND DELIVERY**

Blanca S. Bayo, Director  
Division of Records and Reporting  
Betty Easley Conference Center  
4075 Esplanade Way  
Tallahassee, Florida 32399-0870

Re: Docket No.:010827-EI

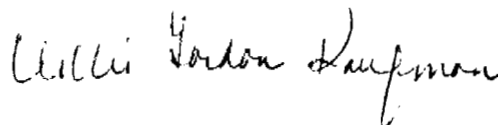
Dear Ms. Bayo:

On behalf of Florida Industrial Power Users Group (FIPUG), enclosed for filing and distribution are the original and 1 copy of the following:

- The Florida Industrial Power Users Group's Motion to Strike Gulf Power Company's "Supplemental" Direct Testimony or in the alternative, to Continue the Hearing and Extend the Date for Intervenor Testimony.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,



Vicki Gordon Kaufman

DOCUMENT NUMBER - DATE

09483 AUG-30

RECORDS MANAGEMENT CLERK

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CAF \_\_\_\_\_  
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Gulf Power Company's Petition for  
Approval of Purchased Power Arrangement  
Regarding Smith Unit 3 for Cost Recovery  
Through Recovery Clauses Dealing with  
Purchased Capacity and Purchased Energy.

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Docket No. 010827-EI

Filed: August 3, 2001

**The Florida Industrial Power Users Group's Motion to Strike Gulf Power  
Company's "Supplemental" Direct Testimony or in the Alternative,  
To Continue the Hearing and Extend the Date for Intervenor Testimony**

The Florida Industrial Power Users Group (FIPUG) hereby moves to strike the "supplemental" direct testimony filed by Gulf Power Company (Gulf) on August 1, 2001, or in the alternative, to continue the hearing now set for September 5, 2001 and extend the date for the filing of intervenor testimony. As grounds therefor, FIPUG states:

1. On June 8, 2001, Gulf filed a petition asking this Commission to approve a purchase power arrangement whereby Gulf would transfer Smith Unit 3, which the Commission approved in a prior need determination proceeding in Docket No. 990325-EI, to an affiliate company, Southern Power Company (Southern Power). After such transfer, Gulf proposed that the output of the unit be purchased by Gulf under a power purchase agreement (PPA) between Gulf and Southern Power and that this arrangement be approved for cost recovery.
2. The petition provided little information on exactly what the Gulf proposal entailed and no analysis whatsoever of the costs/benefits of the proposal versus the unit going into rate base.<sup>1</sup>
3. Simultaneously, Gulf filed a request for expedited treatment of its petition and proposed a procedural schedule. Among other things, the schedule proposed that Gulf would file its direct testimony on June 18, which it did. Gulf's proposed schedule did not suggest the filing of any "supplemental" direct testimony by Gulf.
4. FIPUG objected to the expedited treatment as an abuse of its right to due process. The full Commission heard Gulf's request for expedited treatment. The parties were directed to work toward an expedited

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<sup>1</sup> The deficiencies in Gulf's petition are the subject of a motion to dismiss filed by the Office of Public Counsel (OPC).

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

schedule. In good faith, the parties worked toward such an end and the “agreed upon” schedule<sup>2</sup> was essentially incorporated in the Order Establishing Procedure, Order No. PSC-01-1532-PCO-EI, issued on July 24, 2001. That schedule does not provide for “supplemental” direct testimony and Gulf did not ask that the Procedural Order be modified. Intervenor testimony is currently due on August 17.

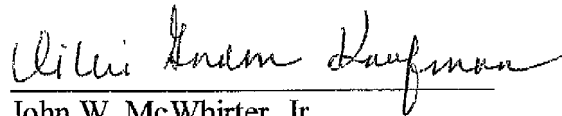
5. During the same time period, the parties engaged in several issue identification meetings in which they attempted to agree on the issues in the case.
6. On August 1, 2001 at a status conference before Prehearing Officer Baez, Gulf announced for the first time, its intent to file “supplemental” direct testimony. It distributed such testimony at the status conference.
7. A cursory review of the “supplemental” direct testimony reveals that Gulf has attempted to respond to the many concerns raised by FIPUG and OPC and set forth in the issues that the parties have delineated in this case. In addition, Gulf also attempts to include in the record documents which should have been part of its direct case filed on June 18, such as additional agreements related to the transaction.
8. FIPUG objects to Gulf’s “supplemental” filing for several reasons. First, under any circumstances, but especially under the expedited processing of this case, allowing a party to have, in essence, two opportunities to file its direct case, is prejudicial to the other participants and fundamentally unfair. Gulf had the obligation to file its entire direct case on the date required (and which it proposed). It is not entitled to attempt to bolster its case now, after hearing the objections and legal arguments of the parties as to the deficiencies of its filing.
9. Second, Gulf has not sought or received permission from the Commission to file “supplemental” direct testimony nor has it given any justification whatsoever as to the reason for such a filing.
10. Third, and most important, FIPUG was already under an almost impossible burden to meet the August 17th filing deadline for intervenor testimony and was attempting to prepare to deal with the testimony Gulf filed on June 18th. Now, a little more than two weeks before FIPUG’s testimony is due, Gulf has attempted to “supplement” its case via additional testimony and documents which, if FIPUG’s motion is not

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<sup>2</sup> The schedule may be viewed as “agreed upon” only to the extent that the Commission directed the parties to move forward on an expedited basis. While FIPUG has done its best to comply with that direction, it continues to maintain that the current schedule does not protect its due process rights and hinders its ability to adequately prepare for hearing.

granted, FIPUG will have to attempt to analyze and respond to in record time. Such a process is at procedural odds with the rights of the parties.

**WHEREFORE**, FIPUG requests that the Commission either 1) strike Gulf's "supplemental" direct testimony; or 2) continue this hearing and extend the date for the filing of intervenor testimony so that the parties have the opportunity to adequately address Gulf's new filing.



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Attorneys for the Florida Industrial  
Power Users Group

## CERTIFICATE OF SERVICE

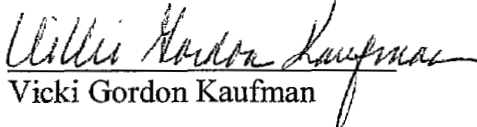
**I HEREBY CERTIFY** that a true and correct copy of the foregoing FIPUG's Motion to Strike Gulf Power's "Supplemental" Direct Testimony or in the alternative, To Continue Hearing and Extend the Date for Intervenor Testimony has been furnished by (\*) hand delivery, (\*\*) fax or U.S. Mail to the following this 3rd day of August, 2001:

(\*) Marlene Stern  
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Vicki Gordon Kaufman