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March 28, 2002

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0870

RE: Docket No. 010949-EI

Dear Ms. Bayó:

Enclosed are an original and fifteen copies each of Citizens' Response and Objection to to Gulf's Exhibit 25 and Request for Oral Argument for filing in the above referenced file.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Burgess  
Deputy Public Counsel

SCB/dsb  
Enclosures

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*Responses*  
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FPSC-COMMISSION CLERK

*Oral A.*  
DOCUMENT NUMBER-DATE

03572 MAR 28 08

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for Rate Increase     )  
by Gulf Power Company             )  
\_\_\_\_\_ )

Docket No.: 010949-EI  
Date: March 28, 2002

**CITIZENS' RESPONSE AND OBJECTION TO GULF'S EXHIBIT 25**

Before the Commission can address the merits of Gulf's proposal, it should first clarify the extent of its ongoing jurisdiction over Gulf's earnings and revenues after rates have been established through a final order. Gulf's proposal in exhibit 25 appears to rely on the principle that, even outside of a rate case setting, the Commission has the authority to order Gulf to refund overearnings from a previous period. In describing this concept, Gulf President Travis Bowden testified:

Q. (By OPC Counsel) Okay. Well, wouldn't that mean that, just trying to understand legally the context of this, wouldn't that mean that, even without an incentive plan, the Commission could then issue an order saying if you go above a certain level, you'll refund those revenues to the customers?

A. It's my understanding, Mr. Burgess, that the incentive plan would not change the Commission's rights or obligations in any way.

Q. Right. And as I understand from what you're saying then, that you would understand that they have that authority at this point?

A. That's my understanding, yes.

Since Gulf appears to concede that the Commission can exercise continuing jurisdiction over its earnings, the Citizens recommend that the PSC simply require Gulf to refund all earnings above the top of the range. The Citizens recommend this treatment not only for Gulf, but also for all utilities regulated by the Commission.

If the Commission has ongoing jurisdiction to order refunds of historical overearnings, it simply should wait until the close of each fiscal year and order refunds wherever earnings are excessive.

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If, on the other hand, the Commission does not believe it has continuing jurisdiction to order refunds of subsequent overearnings, then the Citizens cannot understand under what authority exhibit 25 would be implemented. If the Commission has no authority to order refunds, then it cannot implement Gulf's proposal through an order.

Unless this threshold legal issue is addressed, the Citizens are unsure how to proceed on the issue. The problem is that, in its proposal, Gulf has not directly addressed this issue. As a result, it is impossible to provide a complete response to Gulf's proposal.

This quandary amplifies the objection voiced by the Citizens and FIPUG at the hearing. That is, Gulf's proposal has not been presented in the timely, deliberative fashion necessary to assure due process to all affected persons. At a minimum, due process requires: that all potentially affected parties be put on clear notice as to the administrative action being sought or contemplated; for all issues that call for any finding of any fact (as this issue clearly does), parties must be given the opportunity to probe the proposed action through discovery and cross-examination; parties must be given the opportunity to present contrary evidence and comment.

The manner in which Gulf's exhibit 25 arose fails the standards of due process on several counts. The issue was not identified in any form during the prehearing process, so the parties had no opportunity at discovery. While a nebulous oral version was presented for the first time at the hearing [T-75], most of the plan was withheld until the late-filed exhibit, so no cross-examination has been afforded. Finally, no testimony can be offered to refute the proposal. Clearly, the proposal has not undergone the scrutiny contemplated by due process.

When the plan was first mentioned at the hearing, it was clear that the hearing record would not provide the evidentiary support for the proposal. Mr. Bowden made it clear that the proposal had not yet been brought forward when he testified:

I don't have a specific percentage at this time. The concepts I'm talking about are concepts that I have in mind. We would be happy to sit down and develop a proposal and put it in writing and submit it to this Commission. We would be glad to do that, but I do not have that available today.

[T-75]

In exhibit 25, Gulf has attempted to show evidentiary support for the proposal by cobbling together a hodgepodge of statements by various witnesses who make general references to performance indices or incentive ratemaking. No witness, however, comes anywhere close to providing cohesive record support for the proposal. In fact, Mr. Bowden himself testified explicitly that the hearing record does not provide support for the proposal, as he stated:

Q. (By Mr. McWhirter) Is there a plan on the table today that's part of the record of this proceeding that we can examine and understand?

A. I believe that the Commission asked me to develop such a plan, and I believe I agreed that we would do so and submit that to the Commission and to the parties for that purpose.

CHAIRMAN JABER: No, actually, Mr. Bowden, we haven't taken that up yet.

WITNESS BOWDEN: I'm sorry. I'm sorry.

CHAIRMAN JABER: That's all right. But Mr. McWhirter's question is, based on the testimony that has been prefiled, is there a plan that's set out -- articulated that the Commission could consider?

WITNESS BOWDEN: That is not in the prefiled testimony,  
no.

[T-102, 103]

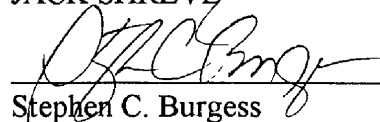
Based on the utility's own testimony, therefore, Gulf did not present the testimony necessary to support the proposal presented in exhibit 25.

Based on the foregoing reasons, the Citizens object to exhibit 25. Exhibit 25 should not be allowed into the record in this docket, and the Commission should not rely on exhibit 25 in reaching any decision in this rate case.

Further, should the Commission consider allowing exhibit 25 into the record, the Citizens request oral argument on that matter. Prior to the filing of exhibit 25, the Citizens had no certainty of the proposal's contents, nor of the specific record evidence that Gulf purports to justify the entry of the proposal. After examining exhibit 25, the Citizens now seek an opportunity to argue the impropriety of its admission, since there was no opportunity to argue the specifics of exhibit 25 prior to examining that document.

Respectfully submitted,

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JACK SHREVE

  
\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**  
**DOCKET NO. 010949-EI**

I HEREBY CERTIFY that a true and correct copy of the foregoing Citizens' Response and Objection to Gulf's Exhibit 25 has been furnished by hand-delivery(\*) or U.S. Mail to the following parties on this 28th day of March, 2002.

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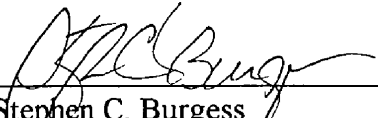
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