

HOPPING GREEN & SAMS
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS

123 SOUTH CALHOUN STREET
POST OFFICE BOX 6526
TALLAHASSEE, FLORIDA 32314
(850) 222-7500
FAX (850) 224-8551
www.hgss.com

ORIGINAL

JAMES S. ALVES
BRIAN H. BIBEAU
RICHARD S. BRIGHTMAN
DIANE W. CARR
KEVIN B. COVINGTON
T. SPENCER CROWLEY, III
BRIAN A. CRUMBAKER
PETER C. CUNNINGHAM
RALPH A. DEMEO
WILLIAM H. GREEN
MATTHEW L. HICKS
WADE L. HOPPING
GARY K. HUNTER, JR.
JONATHAN T. JOHNSON
ROBERT A. MANNING
FRANK E. MATTHEWS
RICHARD D. MELSON
KYLE V. MITCHELL

ANGELA R. MORRISON
ERIC T. OLSEN
GARY V. PERKO
MICHAEL P. PETROVICH
DAVID L. POWELL
CAROLYN S. RAEPPLE
DOUGLAS S. ROBERTS
D. KENT SAFRIET
GARY P. SAMS
TIMOTHY G. SCHOENWALDER
DAN R. STENGLE
CHERYL G. STUART
JENNIFER A. TSCHETTER
VICTORIA L. WEBER
OF COUNSEL
ELIZABETH C. BOWMAN
REX D. WARE

Writer's Direct Dial No.
(850) 425-2313

April 5, 2002

BY HAND DELIVERY

Blanca Bayo, Director
Division of Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RECEIVED FPSC
02 APR -5 PM 2:59
COMMISSION
CLERK

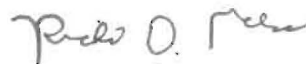
Re: Docket No. 010949-EI

Dear Ms. Bayo:

Enclosed are the original and fifteen copies of Gulf Power Company's Reply to Citizens' Response and Objection to Gulf's Exhibit 25 and Associated Request for Oral Argument, to be filed in the above docket.

Please let me know if you have any questions regarding this filing.

Very truly yours,



Richard D. Melson

RDM/mee
Enclosures

cc: Certificate of Service
Susan Ritenour, Gulf Power
Jeffrey Stone, Beggs & Lane

AUS _____
CAF _____
CMP _____
COM 5
CTR _____
ECR _____
GCL _____
OPC _____
MMS _____
SEC 1
OTH _____

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
03873 APR-5 02
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition of Gulf Power Company for
an increase in its retail rates and charges.

Docket No. 010949-EI
Date Filed: April 5, 2002

**GULF POWER COMPANY'S REPLY TO
CITIZENS' RESPONSE AND OBJECTION TO GULF'S EXHIBIT 25
AND ASSOCIATED REQUEST FOR ORAL ARGUMENT**

Gulf Power Company ("Gulf Power", "Gulf", or "the Company"), by and through its undersigned attorneys, hereby replies to the response and objection to Gulf's Exhibit 25 ("Exhibit 25") and the associated request for oral argument filed by the Office of Public Counsel ("OPC").¹ Contrary to the argument advanced by OPC and others, there are at least two issues identified in this proceeding to which Exhibit 25 is both material and relevant.

OPC's response and objection to Gulf's Exhibit 25 fails to state a legal basis for excluding Exhibit 25 from the record. The admissibility of Exhibit 25 rests on materiality and relevancy. The well-established test for materiality is whether the evidence bears on a fact to be proved in a proceeding. The Florida Evidence Code defines relevancy as whether the evidence tends to prove or disprove a material fact. [§90.401 Fla. Stat. (2001)] As a general rule, all relevant evidence is admissible. [§90.402 Fla. Stat. (2001)] The weight or sufficiency of the evidence is not at issue in the determination of admissibility. The Commission has broad discretion in determining the relevance of evidence and such determination will not be disturbed absent an abuse of discretion. See Sexton v. State, 697 So 2d 833 (Fla. 1997).

¹ The Florida Industrial Power Users Group ("FIPUG") set forth an objection to Exhibit 25 in its post-hearing brief rather than in a separate pleading as permitted by Order No. PSC-02-0364-PCO-EI. The objection lodged by FIPUG essentially tracks the argument set forth in OPC's response and objection. As a result, the discussion of admissibility set forth herein is equally applicable to FIPUG's objection.

Exhibit 25 is relevant to Issues 3 and 37. Issue 3 addresses a proposed “incentive” mechanism related to distribution reliability. Through the testimony of Mr. Breman, an “incentive” plan consisting of a penalty tied to not meeting a specified performance measure was proposed. Exhibit 25 sets forth a proposed incentive plan that ties an incentive reward to more than one performance measure. In addition, the mechanism for implementing the reward was expanded from that proposed by Mr. Breman. The testimony of Mr. Breman and Exhibit 25 both address incentive mechanisms. The former contains a proposal that is a narrow incentive plan while the latter contains a proposal that is broader in scope. Exhibit 25 tends to prove or disprove the material fact of whether the penalty avoidance mechanism proposed by Mr. Breman is appropriate by providing a more broad based incentive reward plan as an alternative. The proposal set forth in Exhibit 25 provides evidence upon which the Commission can rely in reviewing the Breman proposal.

Issue 37 addresses the appropriate authorized range on ROE to be used by Gulf for regulatory purposes on a prospective basis. The appropriate authorized range is a material issue in this proceeding. Traditionally the Commission has used an authorized range of 200 basis points. Evidence that shows what this range should be and how the range should be structured is clearly relevant. Other evidence regarding the appropriate authorized range was admitted into the record of this proceeding. For example, the Commission admitted Exhibit 11 without objection from any party. Exhibit 11 at page 17 discusses the December 20, 2001 order of the Georgia Public Service Commission in Docket No. 14000-U in which an authorized range of 295 basis

points was established for Georgia Power Company. Exhibit 25 addresses the question of the appropriate authorized ROE range and offers a proposal on how that range should be structured in an effort to provide an incentive to Gulf for continued excellence and at the same time provide benefits to the ratepayer that are not available when using the traditional 200 basis point range. Exhibit 25 clearly addresses the question of the appropriate authorized ROE range.

OPC's response and objection does not address the admissibility of Exhibit 25. The entirety of OPC's response and objection discusses the sufficiency and weight of the evidence contained in Exhibit 25.² It is well-settled that sufficiency and weight are not at issue in determining admissibility. Though OPC begins its objection by discussing whether the Commission can exercise continuing jurisdiction over Gulf's earnings above the top of the authorized range, this has no bearing on the issue of admissibility and serves to divert attention from the real issue at hand. Likewise, the due process argument is not pertinent in a determination of admissibility. Incentive plans were the subject of questions during the hearing and Exhibit 25 addresses the due process issue by providing time for discovery and a hearing to allow the parties to fully explore the proposed incentive plan.

² OPC's starts its response with an erroneous representation that Gulf's proposal appears to rely on the principle that the Commission has the authority outside of a rate case setting to order refunds of overearnings from a previous period. OPC's statement to the contrary notwithstanding, Gulf does not concede that the Commission can exercise continuing jurisdiction over the Company's earnings and order refunds of historical earnings above an established level absent a plan accepted and agreed to by the Company. See, e.g. Order No. PSC-99-1047-PAA-EI (May 24, 1999) Resolution of this question is not necessary to determine the admissibility of Exhibit 25.

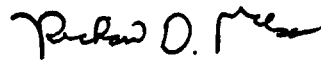
OPC's request for oral argument should not be granted. OPC has requested oral argument because, in its opinion, "it is clear that the cited testimony does not support the proposal, and therefore the exhibit should be inadmissible."³ Again, weight and sufficiency are not at issue with regard to admissibility. Therefore oral argument is not necessary on this point. The primary thrust of OPC's request for oral argument is to expand the time frame for responding to the filing of Exhibit 25 in order to address the exhibit's references to prefiled testimony of Gulf's witnesses. By Order No. PSC-02-0364-PCO-EI, the parties were given until March 28, 2002 to file any response to Exhibit 25. Use of oral argument as an opportunity to expand the timeframe for OPC's response is neither necessary nor appropriate.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

³ It should not come as a surprise that Gulf disagrees with OPC's assertion. To the contrary, Gulf believes that the references to the pre-filed testimony detailed in Part II of Exhibit 25, on pages 5 through 9, clearly support each of the elements of the proposal set forth in Part I of the Exhibit 25, on pages 2 through 4.

WHEREFORE, the Office of Public Counsel having failed to state a legal basis for excluding Exhibit 25 from the evidentiary record in this case, Gulf Power Company respectfully requests that Exhibit 25 be admitted into evidence on the basis that it is both material and relevant to issues identified in this proceeding and discussed in the pre-filed testimony of various Staff and Company witnesses.

Respectfully submitted this 5th day of April, 2002.



JEFFREY A. STONE
Florida Bar No. 325953
RUSSELL A. BADDERS
Florida Bar No. 007455
R. ANDREW KENT
Florida Bar No. 342830
Beggs & Lane
P. O. Box 12950
(700 Blount Building)
Pensacola, FL 32576-2950
(850) 432-2451

RICHARD D. MELSON
Florida Bar No. 201243
Hopping Green & Sams, P.A.
123 South Calhoun Street
P.O. Box 6526
Tallahassee, FL 32314
(850) 222-7500

Attorneys for Gulf Power Company

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition of Gulf Power Company for
an increase in its retail rates and charges.

Docket No. 010949-EI

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 5th day of April, 2002 by U.S. Mail to the following:

Marlene Stern, Esquire
Staff Counsel
FL Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0863

John W. McWhirter, Esquire
McWhirter Reeves, P.A.
400 N. Tampa Street, Suite 2450
Tampa, FL 33601-3350

Stephen Burgess, Esquire
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison St., Room 812
Tallahassee, FL 32399-1400

Douglas A. Shropshire, Lt. Col., USAFR
AFCESA/Utility Litigation Team
6608 War Admiral Trail
Tallahassee, FL 32309

Vicki Kaufman, Esquire
McWhirter Reeves, P.A.
117 S. Gadsden Street
Tallahassee, FL 32301

Michael A. Gross
Vice President
Florida Cable Telecommunications Assn.
246 East 6th Avenue, Suite 100
Tallahassee, FL 32303



Richard D. Melson
Florida Bar No. 201243
Attorneys for Gulf Power Company