

Hopping Green & Sams

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ORIGINAL

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March 10, 2003

BY HAND DELIVERY

Blanca Bayó
Director, Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RECEIVED FPSC
03 MAR 10 PM 12:07
COMMISSION
CLERK

Re: Docket No. 030159-EU
(City of Parker Declaratory Statement Petition)

Dear Ms. Bayó:

Enclosed for filing on behalf of Gulf Power Company are the original and fifteen copies of the following:

- 1) Petition to Intervene
- 2) Motion to Dismiss, or in the alternative, Response in Opposition to City of Parker's Petition for Declaratory Statement
- 3) Request for Oral Argument, to Address the Commission at Agenda, and/or Section 120.57(2) Hearing

By copy of this letter, this document has been furnished to the parties on the attached certificate of service. Please stamp and return the enclosed extra copy of this filing. If you have any questions regarding this filing, please give me a call at 425-2313.

Very truly yours,

Richard D. Melson

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Enclosures
cc: Certificate of Service

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FPSC-BUREAU OF RECORDS

PETITION To Intervene
Motion to Dismiss

Request for ORAL ARGUMENT
DOCUMENT NUMBER-DATE

02361 MAR 10 03

02359 MAR 10 03 02360 MAR 10 03

FPSC-COMMISSION CLERK

Done 3/12/03

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by City of Parker for declaratory statement concerning City's application of its Comprehensive Plan, Land Development Regulations, and City Codes and Ordinances to Gulf Power Company's proposed aerial power transmission line planned to travel from private property located within the City, crossing the shoreline of the City, and running across St. Andrew Bay.

Docket No. 030159-FU
Filed: March 10, 2003

COMMISSION CLERK

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GULF POWER COMPANY'S PETITION TO INTERVENE

Gulf Power Company ("Gulf," "Gulf Power," or the "Company"), by and through its undersigned counsel, submits its petition to intervene in the instant proceeding pursuant to Rules 25-22.039, 28-106.201(2) and 28-106.205, Florida Administrative Code, and Section 120.565, Florida Statutes, and as grounds therefor states:

- 1. The name, address and telephone number of the Petitioner is:

Gulf Power Company
One Energy Place
Pensacola, FL 32520-0780
Telephone: (850) 444-6231
Facsimile: (850) 444-6209

- 2. Copies of all pleadings, notices and orders in this Docket should be provided to:

Jeffrey A. Stone
Russell A. Badders
Beggs & Lane
P. O. Box 12950
Pensacola, FL 32591-2950

Richard D. Melson
Douglas S. Roberts
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Tallahassee, FL 32314

Susan D. Ritenour
Assistant Secretary and Assistant Treasurer
Gulf Power Company
One Energy Place
Pensacola, FL 32520-0780

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DOCUMENT NUMBER-DATE

02359 MAR 10 3

FPSC-COMMISSION CLERK

Statement of Substantial Interests

3. Since the 1996 amendments to Section 120.565, *Fla. Stat.*, the courts have held that any substantially affected party can intervene in a declaratory statement proceeding before an agency. *Chiles v. Department of State, Division of Elections*, 711 So.2d 151, 155 (Fla. 1st DCA 1998), approved in *Florida Department of Business and Professional Regulation v. Investment Corp. of Palm Beach*, 747 So.2d 374 (Fla. 1999). The Commission has granted petitions to intervene in declaratory statement proceedings when a party shows that it has a substantial interest in the proceeding. *E.g., In re: Petition of BellSouth*, Order No. PSC-02-0859-PCO-TL (Docket No. 020415-TL, June 24, 2002).

4. Gulf Power has a substantial interest in the outcome of this proceeding. On February 11, 2003, the City of Parker filed a Petition for Declaratory Statement (“Petition”) with the Florida Public Service Commission (“FPSC” or “Commission”). Gulf learned of the Petition from its review of the FPSC’s web site on February 12, 2003. The City subsequently mailed a copy of the Petition to Gulf Power’s Panama City office by letter dated February 19, 2003.

5. The Petition asks whether the Commission’s jurisdiction under Chapter 366 preempts the City of Parker’s application of its Comprehensive Plan, Land Development Regulations, and City Codes and Ordinances (collectively, “local regulations”) to Gulf Power Company's proposed aerial power transmission line planned to travel from private property located within the City, crossing the shoreline of the City, and running across St. Andrew Bay.

6. Gulf Power will own and operate the proposed transmission facilities that are the subject of the Petition. The “private property” from which the proposed transmission line segment will originate is a narrow parcel of land owned by Gulf Power on the shore of St.

Andrew Bay. Any action by the City to prohibit Gulf Power's installation of the transmission facilities across the bay, or to require that the transmission facilities be installed underground/subaqueous, would directly impact Gulf Power and affect both the cost and reliability of service to Gulf's customers. Gulf's interests in this matter are not adequately represented by any other party.

7. The courts have held that a person seeking to participate in an administrative proceeding can demonstrate standing by showing:

- (i) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing; and
- (ii) that his substantial injury is of a type or nature which the proceeding is designed to protect.

Agrico Chemical Co. v. Dept. of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981), *rev. denied* 415 So.2d 1359 (Fla. 1982). Gulf Power meets both prongs of this test.

8. Injury in Fact. Gulf's interests will be immediately and adversely affected unless the Commission determines that any action the City of Parker to apply local regulations to prohibit the placement of the proposed transmission facilities or to require that they be placed underground would interfere and conflict with the Commission's exclusive jurisdiction over Gulf Power's rates and service under chapter 366. Such facilities are required at the present time in the proposed location to provide reliability and integrity for Gulf Power's transmission system and to provide service directly to critical governmental customers, including Tyndall Air Force Base and the Bay County Advanced Wastewater Treatment Plant. If granted, the declaratory relief sought by the City of Parker would immediately adversely impact Gulf's ability to complete the lines in a timely manner and result in Gulf being unable to economically plan,

construct and operate its electric utility system. As shown by its Petition and through other actions, the City of Parker's intent is to apply local regulations to require Gulf Power to place the proposed transmission facility underground (underwater) at Gulf Power's expense. If Gulf were to underground the facility, it would substantially increase the costs required to be borne by the Company and its general body of ratepayers, and would also result in a substantial delay (estimated at a minimum of 18 months from completion of permitting) in the construction of the facilities that are needed to serve Tyndall Air Force Base and other Gulf customers.

9. Type of Interest. Gulf's interest is of the type that this proceeding is designed to protect. Under Chapter 366, the FPSC exercises exclusive jurisdiction over Gulf Power's rates and service. This particular declaratory statement proceeding has been initiated to seek a declaration as to the extent of that power. Gulf's interest in ensuring the integrity of the regulatory process by which it is governed, and ensuring that its ability to provide cost-effective, reliable service to its customers is not improperly impaired, is the type of interest this proceeding is designed to protect.

Issues of Material Fact and Ultimate Facts Alleged

10. Gulf believes that the Petition asks the Commission to make a declaration concerning a matter – the preemptive effect of its authority under Chapter 366 – which is beyond its subject matter jurisdiction. Gulf therefore is filing concurrently herewith a Motion to Dismiss the Petition.

11. Gulf further believes that the Petition presents primarily a legal issue as to the extent of the Commission's exclusive jurisdiction over Gulf's rates and service. The City's Petition omits a number of facts which are important to the context and particular set of

circumstances in which the declaratory statement is sought, as well as to the potential impact of granting the City's request. To facilitate a complete and fully informed decision on the issue, Gulf will therefore fully state these background facts in the Alternative Response in Opposition to Petition for Declaratory Statement ("Response") that Gulf is filing concurrently herewith, and which Gulf asks the Commission to consider in the event it denies the Motion to Dismiss.

Gulf's Ultimate Position and Relief Sought

11. As developed more fully in the Motion to Dismiss and Response filed concurrently herewith, Gulf submits that the FPSC lacks jurisdiction to determine the preemptive effect of its jurisdiction on the local regulations of the City of Parker. If the FPSC reaches the merits of the dispute, the Commission should declare that the application to the proposed transmission facilities of any local regulations of the City of Parker to prohibit construction of the line and associated structures within its municipal boundaries unless the line is installed underground (subaqueous) at Gulf Power's expense would interfere and conflict with the Commission's exclusive jurisdiction over Gulf's rates and service under chapter 366.

WHEREFORE, Gulf Power Company requests that the Florida Public Service Commission enter an order authorizing it to intervene with full party status in this proceeding for purposes of filing a Motion to Dismiss, in the alternative to address the merits of the Petition, and for all other purposes.

RESPECTFULLY SUBMITTED, this 10th day of March, 2003.

Jeffrey A. Stone / RDR

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Attorneys for Gulf Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served by Hand Delivery this 10th day of March, 2003 on the following:

Marlene Stern
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Timothy J. Sloan
Harmon & Sloan, P.A.
427 McKenzie Avenue
Panama City, Florida 32402



Attorney