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

Re: Docket No. 030159-EU

Dear Ms. Bayó:

Enclosed for filing on behalf of Gulf Power Company are the original and fifteen copies of **Revised Pages 21 and 22** to its Motion to Dismiss, or in the alternative, Response in Opposition to City of Parker's Petition for Declaratory Statement ("Response") previously filed in this docket on March 10, 2003.

In reviewing the Response, we discovered that Paragraphs 27 and 28 contained a slight inaccuracy in the description of the Commission's 1992 rulemaking proceeding on distribution facility undergrounding. The Revised Pages present a more accurate description of that proceeding. We apologize for any inconvenience or confusion that the inaccuracy may have caused.

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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Id.

Despite the “broad range of evidence” considered by the Commission during its cost-effectiveness investigation, *id.* at 2, it found insufficient evidence to require undergrounding of any transmission or distribution lines. Instead, the Commission directed the opening of a rulemaking docket to focus specifically on undergrounding of distribution lines in new residential subdivisions, the only case in which it appeared that undergrounding might be feasible. *Id.* at 16-17.

27. At the conclusion of the subsequent rulemaking proceeding, which was expanded to include undergrounding of distribution facilities outside new residential subdivisions, the Commission determined that it could not require across the board undergrounding, since “the data did not demonstrate it to be cost-effective on a statewide-basis.” *In re: Adoption of Rule 25-6.0115, Underground Electric Facility Costs*, Docket No. 910615-EU, Order No. PSC-92-0975-FOF-EU (issued September 10, 1992). Nevertheless, to “better accommodate applicants’ requests for underground facilities,” the Commission did adopt Rule 25-6.0115 (subsequently renumbered as 25-6.115) which allows underground installation of electric distribution facilities outside new residential subdivisions, ***provided that*** the cost of such underground installation is paid by the person requesting the undergrounding. The Commission made no change to Rules 25-6.74 to 25-6.82 (subsequently renumbered as 25-6.074 to 25-6.082) relating to distribution facilities in new residential subdivisions. These undergrounding rules, and subsequent tariff filings by the utilities, make it clear that the Commission does not permit a utility to install underground facilities at its own expense at the request of a local government – the person requesting the underground installation must bear the incremental cost of underground versus overhead facilities.

28. Rules 25-6.074 to 25-6.082 and 25-6.115 do not provide for the undergrounding of transmission lines in any situation. The Commission has never found that it is cost-effective

to underground transmission lines – which involve much greater cost and technical issues than distribution lines – and has never exercised its exclusive jurisdiction to require the undergrounding of such a line.¹³

29. The City of Parker relies on *In re: Complaint against Florida Power & Light Company regarding placement of power poles and transmission lines by Amy & Jose Gutman, Teresa Badillo, and Jeff Lessera*, Docket No. 010908-EI, Order No. PSC-02-0788-PAA-EI (issued June 10, 2002) (*Gutman*) as evidence of what it calls “limits on the PSC’s jurisdiction.” (Petition, p. 11) The Commission’s findings in the *Gutman* order arose in the context of a customer complaint asking the Commission to require relocation of a transmission line, not in the context of an effort by local government to apply local regulations to prohibit or restrict construction of a line. The Commission merely found that it did not have jurisdiction to adjudicate property-owner claims for diminution of property values or loss of enjoyment from the aesthetic impacts of the transmission line, nor to resolve a property law issue regarding FPL’s right to place the line on SFWMD property. *Id.* at 6-7. None of these issues, however, involved a local government seeking to apply local regulations to prohibit or restrict the placement of a line, or to require its undergrounding. Moreover, the Commission’s finding in *Gutman* that it lacked jurisdiction to adjudicate claims reserved for the judicial branch supports Gulf’s motion to dismiss the instant Petition.

30. The City of Parker is seeking to mandate a special service – the installation of underground transmission facilities – that it would ultimately expect to be paid for by Gulf and Gulf’s general body of ratepayers. If the City succeeds in this effort, it will result in Gulf’s

¹³ After the Commission found that undergrounding of transmission and distribution lines was not cost-effective, and would not be required except where the applicant pays the added cost, its work under Section 366.04(7) was complete. Accordingly, that section was removed from the statute as obsolete by a Reviser’s Bill enacted in 1995. *See* §13, Chapter 95-146, Laws of Florida.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served by Hand Delivery (*), or facsimile and U.S. Mail (**), this 8th day of April, 2003 on the following:

Marlene Stern (*)
Office of General Counsel
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