

**Ruth Nettles**

090169-EI

**From:** John W. McWhirter [johnmac@tampabay.rr.com]  
**Sent:** Thursday, August 20, 2009 3:56 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Jennifer Brubaker; Jeffrey Stone, Esq.; Russell Badders, Esq.; Steven Griffin; Susan D. Ritenour (Gulf Power); J R Kelly ; Patty Christensen, Esq.; Gregg S. Roden  
**Subject:** Quantum Resource Management's Protest to PSC-09-0534-PAA-EI  
**Attachments:** 09820 QRM Petition to Intervene filed.doc

1. John W. McWhirter, Jr., PO Box 3350 Tampa, FL 33601, [jmcwhirter@mac-law.com](mailto:jmcwhirter@mac-law.com) is the person responsible for this electronic filing;
2. The filing is to be made in Docket 090169-EI, In re: Fuel Adjustment Clause
3. The filing is made on behalf of Quantum Resources Management, LLC
4. The total number of pages is 6 and
5. The attached document is Quantum Resource Management's Petition to Intervene and Protest to PSC-09-0534-PAA-EI

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for approval of purchased power agreement between Gulf Power Company and Shell Energy North America (US), L.P., dated March 16, 2009. | DOCKET NO. 090169-EI  
FILED:

**THE QUANTUM RESOURCES MANAGEMENT'S  
PROTEST TO PSC-09-0534-PAA-EI AND PETITION TO INTERVENE**

Pursuant to sections 120.569, 120.57 Florida Statutes; rules 25-22.039, 28-106.201 and 28-106.205, Florida Administrative Code, Quantum Resources Management, LLC (QRM), through its undersigned counsel, files its Protest and Petition to Intervene. In support thereof, QRM states

1. Name and address of agency. The affected agency is the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

2. Name and address of Petitioner. The name and address of the Petitioner is:

Quantum Resources Management, LLC  
c/o Gregory S. Roden  
Vice President and Legal Counsel  
5 Houston Center  
1401 McKinney Street, Suite 2700  
Houston, TX 77010  
[groden@qracq.com](mailto:groden@qracq.com)

3. Petitioner's representatives. Copies of all pleadings, notices, and orders in this docket should be provided to:

John W. McWhirter, Jr.  
P.O. Box 3350  
Tampa, Florida 33601-3350  
Telephone: (813) 224-0866  
Facsimile: (813) 221-1854  
[jmcwhirter@mac-law.com](mailto:jmcwhirter@mac-law.com)

4. Notice of docket. Petitioner received notice of this docket by a review of the

Commission's website.

5. Statement of Substantial Interests. Prior to suspending Jay Oil Field operations in December 2008 due, among other drivers, to high operating costs and low oil prices, QRM was one of Gulf Power Company's 20 largest customers. Purchased electricity is QRM's largest single operating expense, constituting 30% of total costs. The high operating costs at Jay, which has produced approximately 467 million barrels of oil since its inception in 1972, are primarily the result of the horsepower required to process and inject large volumes of low quality gas and water into a deep reservoir (15,000+ feet) as part of a tertiary process designed to enhance oil production. QRM has suspended operations from the field in order to develop and implement initiatives to reduce the field's cost structure. The future of this project is dependent upon successful cost reductions relative to the price of crude oil. Like Gulf, which revises its prices annually to track the cost of a volatile commodity, fuel, QRM must revise its costs from time to time to track the price of a related commodity, crude oil, to remain economically viable. QRM has and continues to make sizeable capital investments in an effort to economically restart the Jay facility. QRM estimates that its current and planned energy efficiency measures will conserve more electrical consumption each year than Gulf's proposed conservation goals through the year 2014 according to Gulf's goals under consideration in FPSC Docket 080410-EG. These measures currently receive no conservation incentive from Gulf. The success of these investments is reliant upon a transparent understanding of its electricity costs and the projections for future costs.

6. Gulf increased its charges to QRM in 2008 and again in 2009.

7. In this case, the Commission has entered a Proposed Agency Action that (a) approves a confidential agreement between Gulf and Shell Energy North America (US) L. P. and (b) authorizes rate increases to QRM and Gulf's retail customers and (c) approves the

pass-through of these costs per a capacity cost recovery clause beginning in 2010. Importantly, the amount of these costs are unspecified in the Commission's Proposed Agency Action.

8. QRM's interests are of the type that this proceeding is designed to protect. *See, Agrico Chemical Company v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2nd DCA 1981). The purpose of the proceeding is to determine if the purchase of electrical capacity from an out of state independent power producer has merit. This proceeding should determine the merit of each of the various components of the proposal including, without limitation, the purchase cost under the contract, the additional cost of transmitting the power into Florida, and the merit of allowing Gulf to directly pass through the costs to retail customers through a guaranteed cost recovery clause rather than including the cost in base rates. Thus, the purpose of the proceeding coincides with QRM's substantial interests, which are to ensure that the rates it pays to Gulf are just and reasonable.

9. Disputed Issues of Material Fact. Disputed issues of material fact include, but are not limited to,<sup>1</sup> the following:

- a. Is Gulf's application for guaranteed cost recovery, which will result in guaranteed annual rate increases, just and reasonable?
- b. Is it in the public interest to approve charges attributable to a power purchase contract with an unusually long term and, if so, is the public interest better served if the costs are recovered through base rates in which risk is shared between Gulf and its customers rather than through a guaranteed cost recovery clause in which retail customers bear all the risk?
- c. Would collecting the capacity costs attributable to the Tenaska plant through base rates still allow Gulf to return a reasonable return on equity?
- d. Is it in the public interest to partially satisfy Gulf's retail capacity

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<sup>1</sup> In a rate case, issues are generally delineated and refined in a number of issue identification meetings. Further, QRM has not had the opportunity to review confidential agreements filed in the proceeding and has yet to receive and review appropriate documentation regarding Gulf's filing and anticipates that there will be additional numerous disputed issues of material fact which the Commission will be required to resolve.

requirements by terminating Gulf's existing wholesale unit power sales agreements? Under these contracts, Gulf has sold the generating capacity it previously testified that it needed to meet the forecasted demand of its retail customers.

- e. Should base rates and current fuel charges be reduced to reconcile the foregoing wholesale capacity sales with the forthcoming Tenaska capacity purchases?
- f. Is there any credible evidence in the record to substantiate the claim that natural gas purchases from competitive suppliers in Alabama will generate fuel cost savings?

10. Disputed Legal Issues. Disputed legal issues include, but are not limited to, the

following:

- a. Has Gulf carried its burden of proof in support of the proposed power purchase agreement?
- b. Has Gulf provided adequate proof that retail customers will receive any benefit from the proposed agreement?
- c. Should a multi million dollar purchased power agreement be approved with no supporting sworn petition or testimony?
- e. Are the contemplated capacity charges based on original cost principles as required by §366.06?
- f. Is an acquisition adjustment warranted in developing the appropriate capacity charge rate increase that Order PSC09-0534-PPA authorizes?

11. Statement of Ultimate Facts Alleged. Ultimate facts include, but are not limited

to, the following:

- a. The principal facts upon which the proposed agency action is based are deemed to be trade secrets. QRM cannot address the facts until they are disclosed.

12. Rules and statutes justifying relief. The rules and statutes that entitle QRM to

intervene and participate in this case include, but are not limited to:

- a. Section 120.569, Florida Statutes;
- b. Section 120.57, Florida Statutes;
- c. Section 366.041, Florida Statutes;
- d. Section 366.06, Florida Statutes;

- e. Rule 25-22.039, Florida Administrative Code;
- f. Rule 28-106.201, Florida Administrative Code;
- g. Rule 28-106.205, Florida Administrative Code.

13. Relief. QRM protests PSC-09-0534-PAA-EI; demands a formal hearing with sworn testimony providing full disclosure of all the relevant facts supporting the challenged purchased power agreement under the provisions of §120.57 *Florida Statutes* and further requests that the Commission:

- 1. Enter an order allowing QRM to intervene and participate as a full party in this docket;
- 2. Order Gulf to disclose the confidential information upon which its petition is based to QRM's representatives;
- 3. Conduct a full hearing on the merits of the purchase power agreement; and
- 4. Reduce base rates in a limited proceeding that will disallow any further return from power plants dedicated exclusively to the wholesale market in order to offset in whole or in part the rate increase attributable to the Tenaska wholesale purchase agreement if the Commission determines the contract is prudent after a full hearing on the merits.

s/ John W. McWhirter, Jr.  
Attorney for QRM

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing pleading has been furnished to the following by electronic mail and regular mail, in addition to fax transmission to Gulf Power representatives this 20 th day of August, 2009,

**Beggs & Lane Law Firm (09)**

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**Gulf Power Company**

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