

Diamond Williams

From: Keating, Beth [BKeating@gunster.com]
Sent: Friday, July 29, 2011 2:07 PM
To: Filings@psc.state.fl.us
Cc: Pauline Robinson; Schef Wright; 'fbondurant@embarqmail.com'; Robert Graves; christensen.patty@leg.state.fl.us
Subject: Docket No. 110041-EI
Attachments: 20110729140117644.pdf

Attached for electronic filing, please find a copy of a letter agreement between FPUC and Gulf Power Company extending the date for regulatory approval set forth in the subject Amendment No. 1. Please do not hesitate to contact me if you have any questions.

Beth Keating
bkeating@gunster.com
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a. Person responsible for this electronic filing:

Beth Keating
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b. Docket No. 110041-EI – Petition for Approval of Amendment No. 1 to Generation Services Agreement with Gulf Power Company, by Florida Public Utilities Company.

c. On behalf of: Florida Public Utilities Company

d. Total Number of Pages: 4

e. Description: Copy of Letter Agreement between Gulf Power Company and Florida Public Utilities Company, for informational purposes



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July 29, 2011

VIA ELECTRONIC FILING - FILINGS@PSC.STATE.FL.US

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: **DOCKET NO. 110041-EI - Petition for Approval of Amendment No. 1 to
Generation Services Agreement with Gulf Power Company, by Florida Public
Utilities Company.**

Dear Ms. Cole:

Attached for electronic filing, please find an executed letter agreement between Florida Public Utilities Company ("FPUC") and Gulf Power Company ("Gulf") extending the "Approval Deadline" set forth in Section B.1 of Amendment No. 1 from July 31, 2011 to December 31, 2011, and addressing other related modifications. This letter agreement is submitted for informational purposes only, as the letter agreement does not modify any substantive portion of Amendment No. 1 that is pertinent to the Commission's review and approval of Amendment No. 1 for purposes of fuel cost recovery calculations.

Thank you for your assistance with this filing. As always, please do not hesitate to contact me if you have any questions.

Sincerely,



Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

MEK
Cc: Parties of Record
Staff Counsel

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Vice President
Southern Wholesale Energy

Southern Company Generation
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Tel 205.257.7275
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July 21, 2011

Mr. Jeff Householder
Florida Public Utilities Company
401 S. Dixie Highway
West Palm Beach, FL 33401

Re: Amendment No. 1 to the Agreement for Generation Services
between Gulf Power Company ("Gulf Power") and Florida Public
Utilities Company ("FPUC").

Dear Mr. Householder:

Gulf Power and FPUC have previously entered into Amendment No. 1 ("Amendment No. 1") to the Generation Services Agreement dated as of December 28, 2006 ("Agreement"). Pursuant to Section B.1 of Amendment No. 1, the amendments and modifications to the Agreement set forth in such amendment are expressly conditioned upon the receipt of a Final Order from the FPSC approving the amendment by no later than July 31, 2011, which date is defined as the "Approval Deadline". Under Amendment No. 1, a "Final Order" is an order of the FPSC that is no longer subject to appeal or further review by a court or other governmental authority.

On June 21, 2011, the FPSC issued a Notice of Proposed Agency Action approving Amendment No. 1 ("NPAA"). The NPAA provided appropriately interested persons an opportunity to protest the FPSC's proposed approval of Amendment No. 1. Absent such protest, the NPAA would have been followed by the issuance of a consummating order rendering the FPSC's approval of Amendment No. 1 as final agency action, subject to possible appeal or further review by the Florida Supreme Court. Subsequent to the issuance of the NPAA, the City of Marianna, Florida filed a protest to the NPAA with the FPSC ("Protest"). Because the Protest has been filed, it is anticipated that the FPSC proceeding involving Amendment No. 1 will continue for a period greater than originally anticipated by the Parties and, accordingly, there will not be a Final Order approving Amendment No. 1 by July 31, 2011.

Notwithstanding the Protest and the further FPSC proceedings that may result therefrom, the Parties desire to allow for additional time in which to obtain a Final Order approving the modifications to the Agreement that are set forth in Amendment No. 1. Accordingly, the Parties agree that the deadline for receipt of a Final Order from the

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FPSC approving the amendment is hereby extended until December 31, 2011, which date shall be referred to as the "Revised Approval Deadline."

The Parties further recognize that it is possible that an order approving the amendment issued by the FPSC prior to the Revised Approval Deadline ("FPSC Approval Order") may not become a Final Order prior to the Revised Approval Deadline because of the filing of a notice of appeal or other document seeking further review of the FPSC Approval Order by a court or other governmental authority (such circumstance being referred to as an "Order Appeal"). Provided that an FPSC Approval Order is issued prior to November 30, 2011, the Parties desire to provide for the continued operation of Amendment No. 1 during the pendency of an Order Appeal. Accordingly, the Parties agree as follows:

In the event that the FPSC issues an FPSC Approval Order on or before November 30, 2011 but such FPSC Approval Order does not become a Final Order by the Revised Approval Deadline due to an Order Appeal, then the following shall apply:

1. The termination provision of Section B.3 of Amendment No. 1 shall be superseded and replaced by paragraph 4 below.

2. Notwithstanding Section C.1 of Amendment No. 1, commencing with the payment for capacity for January 2012 and for all subsequent Months until a Final Order is obtained (each such Month being referred to as an "Appeal Month"), Gulf Power shall calculate the Monthly Capacity Payment utilizing a Capacity Purchase determined in accordance with Section D of Appendix A of the Agreement as originally executed by the Parties and without taking into account the revisions to Section D of Appendix A that are contemplated by this Amendment No. 1.

3. If the FPSC Approval Order subsequently becomes a Final Order, then: (i) the condition set forth in the third sentence of Section B.1 of Amendment No. 1 shall be deemed satisfied; (ii) Monthly Capacity Payments shall thereafter be determined in accordance with Section D of Appendix A as modified by Amendment No. 1; and (iii) FPUC shall be entitled to invoice, and Gulf Power shall pay, an amount (with interest at the Interest Rate) equal to the difference of (A) the sum of the Monthly Capacity Payments paid by FPUC for each Appeal Month determined pursuant to paragraph 2 above, less (B) the sum of what the Monthly Capacity Payments would have been for each Appeal Month if they had been determined in accordance with Section D of Appendix A as modified by Amendment No. 1.

4. If the FPSC Approval Order is subsequently reversed, vacated, modified, or otherwise rendered ineffective (in whole or in part) by action of any court or governmental authority, then the Amendment No. 1 shall immediately terminate and be rendered null and void, *ab initio*, without further action of the Parties; provided, however, that in such event, Gulf Power shall be entitled to invoice, and FPUC shall pay, amounts as provided in Section C.2 of Amendment No. 1. If Amendment No. 1 so terminates, the Agreement shall continue in full force and effect as it existed prior to the execution by the Parties of Amendment No. 1.

Except as set forth above, this letter agreement does not modify any other provision of Amendment No. 1 or the Agreement. Unless otherwise specifically provided in this letter agreement, capitalized terms in this letter agreement shall have the meanings assigned to such terms in Amendment No. 1 and the Agreement.

Please confirm FPUC's agreement to the terms of this letter agreement by signing your name in the space provided below and returning an executed copy to me.

Sincerely,



Murry Weaver

Vice President
Southern Company Services, Inc.
As agent for Gulf Power Company

AGREED AND ACCEPTED:

FLORIDA PUBLIC UTILITIES COMPANY

By: _____

Name: _____

Title: _____

Jeff Householder
President