

**Collin Roehner**

---

**From:** Office of Commissioner Brown  
**Sent:** Thursday, July 28, 2016 11:26 AM  
**To:** Commissioner Correspondence  
**Subject:** Fwd: Docket 160134, Sierra Club comments  
**Attachments:** 2016 07 27 Sierra Club Comments re Docket No. 160134 vfin.pdf; ATT00001.htm

Please place the following in Docket Correspondence, Consumers and Their Representatives, in Docket No. 160134.

Thank you.

Sent from my iPhone

Begin forwarded message:

**From:** Diana Csank <[diana.csank@sierraclub.org](mailto:diana.csank@sierraclub.org)>  
**Date:** July 27, 2016 at 6:59:46 PM EDT  
**To:** <[chairman.brown@psc.state.fl.us](mailto:chairman.brown@psc.state.fl.us)>, <[Commissioner.Brise@psc.state.fl.us](mailto:Commissioner.Brise@psc.state.fl.us)>, <[Commissioner.Edgar@psc.state.fl.us](mailto:Commissioner.Edgar@psc.state.fl.us)>, <[Commissioner.Patronis@psc.state.fl.us](mailto:Commissioner.Patronis@psc.state.fl.us)>, <[commissioner.graham@psc.state.fl.us](mailto:commissioner.graham@psc.state.fl.us)>  
**Cc:** JR Kelly <[KELLY.JR@leg.state.fl.us](mailto:KELLY.JR@leg.state.fl.us)>, "Morse, Stephanie" <[MORSE.STEPHANIE@leg.state.fl.us](mailto:MORSE.STEPHANIE@leg.state.fl.us)>, <[benglish@psc.state.fl.us](mailto:benglish@psc.state.fl.us)>, Ana Ortega <[AOrtega@psc.state.fl.us](mailto:AOrtega@psc.state.fl.us)>, <[kflemin@psc.state.fl.us](mailto:kflemin@psc.state.fl.us)>, Jim Varian <[jvarian@psc.state.fl.us](mailto:jvarian@psc.state.fl.us)>, <[rwest@psc.state.fl.us](mailto:rwest@psc.state.fl.us)>, "Robert L. McGee" <[rlmcgee@southernco.com](mailto:rlmcgee@southernco.com)>, "Steven R. Griffin" <[srg@beggslane.com](mailto:srg@beggslane.com)>, <[djanjic@psc.state.fl.us](mailto:djanjic@psc.state.fl.us)>, Tom Ballinger <[TBalling@psc.state.fl.us](mailto:TBalling@psc.state.fl.us)>  
**Subject:** Docket 160134, Sierra Club comments

Dear Commissioners:

Attached please find the Sierra Club's comments on Gulf's proposal in the above referenced docket to add Georgia coal-burning generation to rate base.

Regards,  
Diana

--

*I check email infrequently. Please call me if you need a quick reply.*



**Diana Csank**  
Staff Attorney  
Environmental Law Program  
50 F Street NW, Eighth Floor  
Washington, DC 20001  
Phone: 202-548-4595  
E-mail: [Diana.Csank@sierraclub.org](mailto:Diana.Csank@sierraclub.org)

**CONFIDENTIAL LEGAL COMMUNICATION/WORK PRODUCT**

This e-mail may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this e-mail inadvertently, please notify me and delete all versions from your system.



July 27, 2016

Chairman Brown, Comm'rs. Brisé, Edgar, Graham, and Patronis  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

**Re: Docket 160134**

Dear Commissioners:

On behalf of the Sierra Club and its members in Gulf Power Company's service territory, we respectfully urge you to deny Gulf's proposal in the above referenced docket to add Georgia coal-burning generation to rate base ("the Proposal"). Gulf failed to provide a proper evidentiary foundation, much less cite any authority under Florida law for Commission approval. In fact, the record is silent on the need for or the benefits of serving in-state customers with out-of-state coal-burning generation. These are grave omissions, especially given the overwhelming, national coal divestment trend. The Commission should not allow Gulf to obscure this trend, or the costs and risks to customers of pursuing the Proposal instead of clean, low cost, low risk alternatives. As we discuss below, based on the record before it, the Commission has every reason to deny the Proposal, or at least to defer deciding the merits pending further record development.

### **A. Background**

In its letter of May 5, 2016, Gulf set out the Proposal to add to rate base essentially all costs associated with 25% of the coal-burning operations of Georgia Plant Scherer Unit 3, as well as undefined "related common facilities" at the Plant.<sup>1</sup> Here we refer to these operations and facilities as "the Scherer coal-burning generation." They amount to 223 MW of capacity<sup>2</sup> that Gulf's customers have not needed since Unit 3 came online in 1987.

On May 20, 2016—just two weeks after the May 5 letter—Gulf reported falling demand in its territory and projections that demand will continue to fall:

---

<sup>1</sup> Gulf letter of May 5, 2016, Document No. 02768-16, at 1 [hereinafter "Gulf Proposal Letter"].

<sup>2</sup> Gulf Proposal Letter, at 9 (measured on a generation maximum nameplate capacity basis).

Total retail electricity use per customer growth in 2015 was -1.1%, compared to the average annual growth rate of -0.7% from 2011 to 2014. Total retail use per customer is projected to decline at an average annual rate of -1.1% from 2015 to 2018.<sup>3</sup>

Gulf's May 5 letter, however, does not address falling demand, or offer any evidence of customers needing the Scherer coal-burning generation now or in the future. This is true for the entire record. Gulf did not provide, for instance, any Commission need determination, demand forecast, or other evidence to support Gulf's assertion that "Unit 3 is effectively the long-term replacement" for Gulf's recently retired Florida generation.<sup>4</sup> Instead, Gulf provided additional conclusory statements that the Proposal is, somehow, "in the long-term best interest of Gulf's retail customers,"<sup>5</sup> and "necessary to avoid significant deterioration of Gulf's financial integrity, to the ultimate detriment of the retail customers."<sup>6</sup> Nothing in the record reconciles these statements, much less explains them, leaving basic questions unanswered, such as:

- ◊ How long is "long-term"?
- ◊ How does Gulf define the "best interest" of its customers and the "significant deterioration" of its financial integrity?
- ◊ Throughout its duration, what specific impacts will the Proposal have on Gulf's customers and financial integrity? Will those impacts change over time?
- ◊ What alternatives did Gulf consider, and how do their costs and benefits compare to those of the Proposal?
- ◊ How does the Proposal factor in Gulf's other existing and planned power purchases, such as the wind power purchase in Docket No. 160158 described by Gulf as yielding "multiple benefits" to customers, including "substantial cost savings" and "reduced exposure to future fuel cost increases and fuel cost volatility"?<sup>7</sup>

Gulf's letter also emphasizes the past in a misleading way. Specifically, Gulf asserts "[t]his Commission, through its numerous decisions related to Plant Scherer from 1978 through 1990, established a clear and binding regulatory compact with Gulf regarding the Company's

---

<sup>3</sup> Gulf Response to Staff Data Request No. 10 (May 20, 2016), on file with the Commission.

<sup>4</sup> Gulf Proposal Letter, at 9.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Id.* at 1.

<sup>7</sup> Gulf Petition of June 27, 2016, Document No. 04035-16, at 3.

investment in Plant Scherer.”<sup>8</sup> Yet the only binding decisions cited by Gulf are not on point; they concern (1) the series of off-system power sales from Unit 3 that Gulf proposed and the Commission approved due to slumping demand growth in Gulf’s territory over the past several decades, and (2) the cancelation, also several decades ago, of the Caryville plant. As for Gulf’s citations to the 1970’s era “informal workshop”<sup>9</sup> and more recent, annual ten-year site plans, these are neither decisions nor binding.

**B. The Commission should deny the Proposal because Gulf failed to show any need for the Scherer coal-burning generation.**

When the Commission reviews proposals to add utility services to rate base, need is a commonsense starting point, because whether or not customers need a particular service generally determines the service’s value to them. Florida Statutes codify this, first, by enumerating standards for the Commission to assess the need for electric generation<sup>10</sup> and, second, by expressly authorizing the Commission’s ratemaking to consider the “value of [utility] service to the public,”<sup>11</sup> which of course includes customers and their need for the service at issue. Florida Statutes also prohibit utilities from charging customers for new service unless they “demonstrate and the commission finds” such charges are “fair, just, and reasonable and are collected from the ultimate utility customer of record at such time as or after permanent electric service is provided.”<sup>12</sup> This too is essentially a need test. It protects customers from paying for services that they do not need and that the utility has not actually “provided” them.<sup>13</sup>

The Commission also expressly affirmed that a need test applies here. The Commission did so in its final order in the 1990 rate case while notably deciding to exclude from rate base a smaller portion of the Scherer coal-burning generation because the latter was not needed.<sup>14</sup> At the time, the Commission emphasized Gulf’s burden to show need, as follows:

If the utility can demonstrate, through competent evidence, that their cash balances or temporary cash investments are *necessary*

---

<sup>8</sup> Gulf Proposal Letter, at 3.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> See Florida Electrical Power Plant Siting Act, Sections 403.501–.518, F.S.

<sup>11</sup> Section 366.041, F.S.

<sup>12</sup> *Ibid.*

<sup>13</sup> We recognize there may be cases where customers receive service even though they do not “need” it in the strict sense. As we discuss below, the record does not indicate that this is such a case.

<sup>14</sup> See *In re: Petition of Gulf Power Company for an Increase in Its Rates and Charges*, Order No. 23573 (Oct. 2, 1990)[hereinafter “1990 Order”].

for the provision of regulated utility service, they should remain in rate base and earn at the utility's overall rate of return. . . . The burden of proof however is on the Company to demonstrate through competent evidence that their temporary cash investments are *necessary* for the provision of utility service.<sup>15</sup>

To our best knowledge, since issuing this order, the Commission has not wavered on this point, or otherwise waived Gulf's burden of proving the need for the Scherer coal-burning generation before adding that generation to rate base.

Yet Gulf failed to prove need here by not presenting any evidence on need. Gulf's vague point that the Scherer coal-burning generation is "effectively the long-term replacement" for other, retiring generation falls far short of the required showing. The rest of the record, paltry as it is, indicates the opposite—Gulf admits customers did not need the Scherer coal-burning generation over the past 29 years, and Gulf did not—and perhaps cannot—specify the date when new demand will materialize.

This glaring omission regarding need may stem from Gulf misreading the Commission's past orders and the Florida Electric Power Plant Siting Act. The Commission, however, should not sanction this. First, there can be no honest dispute regarding Gulf's burden to prove need,<sup>16</sup> as the Commission affirmed it and Gulf has not cited any contrary authority. Second, the Siting Act allows utilities to "elect" to pursue a need determination for exempt, out-of-state power plants.<sup>17</sup> Gulf could have availed itself of this, thereby gaining certainty on the viability of its plans for the Scherer coal-burning generation. For no apparent reason, Gulf failed to do so in the past and now fails again to show need in this docket.

The Commission should therefore deny the Proposal for Gulf's unexcused and inexcusable failure to show need.

**C. The Commission should deny the Proposal because Gulf failed to disclose the costs, risks, and benefits (if any) to customers/the public under the Proposal.**

Beyond need, the costs, risks, and benefits of utility service help inform the Commission's ratemaking. Specifically, these factors go to the value of the service to

---

<sup>15</sup> 1990 Order, at 14.

<sup>16</sup> *Id.* at 16.

<sup>17</sup> Section 403.503(14), F.S.

customers/the public. Yet the record here says almost nothing about them. The two following examples show the gravity of Gulf's omissions.

First, Gulf failed to address the overwhelming, national coal divestment trend,<sup>18</sup> and its counterpart—rapidly growing investments in clean, low cost, low risk alternatives.<sup>19</sup> Nothing in the record shows that, despite this trend, any exceptional circumstances here make the Proposal a good deal for customers. In fact, the record shows the opposite, as the utilities that currently purchase Scherer coal-burning generation from Gulf apparently no longer want to do so, and no other buyers have come forward. If no else wants this aging coal-burning generation, why should Gulf's customers want it? Especially when Gulf itself has shown, in other dockets,<sup>20</sup> clean, low cost, low risk alternatives are abundantly available.

Second, Gulf failed to disclose or justify the costs and risks facing customers under the Proposal. This starts with the Proposal's omission of even such basic information as the identity of the covered facilities and operations at Plant Scherer. These omissions, alone, preclude a meaningful, independent assessment of customers' exposure. Nonetheless, what we do know makes us particularly wary of the undisclosed regulatory compliance costs and risks. For example, Gulf reports, again not in this docket but elsewhere, that Unit 3 may require costly operational changes due to regulatory requirements. These include changes due to the Coal Combustion Residuals Rule and the Cooling Water Intake Structure Rule,<sup>21</sup> as well as "planned outages" "during the 2016 through 2025 period."<sup>22</sup> Gulf should disclose the scope and all the costs and risks associated with these changes and outages. Gulf should also provide a full accounting of other applicable regulations, including the Clean Power Plan, the Effluent Limitations Guidelines, and the Startup, Shutdown, and Malfunction Rule.

To be sure, other aspects of the Proposal's costs, risks, and benefits, if any, are missing from the record, but those above are ample grounds for the Commission to deny the Proposal.

---

<sup>18</sup> See, e.g., EIA, *Coal made up more than 80% of retired electricity generating capacity in 2015* (Mar. 8, 2016) available at <https://goo.gl/b0xcAq>; see also Sierra Club, *Open Letter To Coal Industry: United States And The World Are Moving Away From Coal, Toward Clean Energy* (Apr. 21, 2016) available at <http://goo.gl/kE94J6>.

<sup>19</sup> See, e.g., Sierra Club letter of Dec. 15, 2015, available at <http://goo.gl/6OaOd4> ["2015 TYSP Comments"]; see also Georgia Public Service Commission Docket No. 40161, *Georgia Power Company's 2016 Integrated Resource Plan*, Stipulation of June 23, 2016, at 1 (Gulf's sister operating company will procure 1.2 GW of renewable energy resources by 2021) available at <http://goo.gl/0DBKbL>.

<sup>20</sup> See, for example, Docket Nos. 160158 (94 MW wind purchase), 150049 (178 MW wind purchase), and 150035 (120 MW solar power plant development).

<sup>21</sup> See Gulf Responses to Staff Data Requests on 2016 TYSP, nos. 55 and 57.

<sup>22</sup> *Id.*, no. 50.

**D. The Commission should deny the Proposal because Gulf failed to address alternatives.**

The Commission’s consideration of alternatives is a vital part of ratemaking. Florida Statutes expressly authorize the Commission to consider alternatives, including “alternative energy resources,” “conservation,” and “efficiency,” and a utility’s “ability to improve its services and facilities.”<sup>23</sup> As a practical matter, the Commission must do so to ascertain whether proposed additions to rate base are, in fact, “fair, just, and reasonable” and a good value to customers.

Consideration of alternatives is particularly important here for two reasons—first, because aging coal-burning generation is fraught with costs and risks, and, second, because such generation has not kept up with the rapid cost and performance improvements of clean energy alternatives, such as solar, wind, energy efficiency, storage and batteries. Indeed, this is precisely why we advocate for the Commission to require utilities to submit alternatives analyses whenever they seek Commission approval of their resource plans and procurement proposals.<sup>24</sup>

Here, Gulf failed to disclose or discuss in any way the alternatives to the Proposal. In Gulf’s letter, the few references to alternatives in the context of past, non-binding exchanges with the Commission do not count.<sup>25</sup> They are irrelevant. This docket is the Commission’s very first opportunity to decide the Proposal’s merits, and the present and prospective alternatives to the Proposal are relevant here. Unfortunately, Gulf failed to discuss them, even though extra-record evidence suggests they may be far better deal than the Proposal.<sup>26</sup>

Given the critical importance of alternatives, Gulf’s failure to address them at all is also grounds for the Commission to deny the Proposal.

**E. The Commission should at least defer deciding the Proposal’s merits pending further record development.**

While we maintain the Commission has every reason to deny the Proposal for the above reasons, we recognize its prerogative to develop the record before deciding the merits. There is certainly time to do so as Gulf has not identified any deadline for the Commission’s decision.

---

<sup>23</sup> Section 366.041(1), F.S.

<sup>24</sup> *See, e.g.*, 2015 TYSP Comments.

<sup>25</sup> Gulf Proposal Letter, at 3 and 9.

<sup>26</sup> See discussion in Section C, above, including note 20; see also the 2015 TYPS Comments (note 15, above) and Sierra Club’s comments of June 3, 2016, Document No. 03359-16, *available* at <http://goo.gl/HN9qD2>.



Moreover, Gulf failed to disclose the implications of the Proposal's timing. This is odd given the evolving regulatory compliance obligations for coal-burning generation, and the electric utility industry's oft-cited interest in maximizing flexibility in resource planning and procurement. The Proposal seems to conflict with both. Why the rush to lock customers into aging, risky coal burning generation now, especially as the Clean Power Plan is in litigation? Why not wait at least until need materializes in Gulf's territory and Gulf completes and discloses a comprehensive regulatory compliance analysis, as well as a comprehensive alternatives analysis?

Given these serious concerns, we respectfully submit that, as an alternative to denying the Proposal now, the Commission should at least schedule a hearing and allow discovery. Doing so would allow the Commission to develop the record and reach an informed decision on the merits in accordance with its duty to fix fair, just, and reasonable rates, and its authority to consider customer value and alternatives.

Thank you for your consideration.

Respectfully submitted,

/s/  
Diana Csank  
Staff Attorney  
Sierra Club  
50 F St. NW, 8th Floor  
Washington, DC 20001  
202-548-4595 (direct)  
Diana.Csank@SierraClub.org

Cc: J.R. Kelly, OPC  
Stephanie Morse, OPC  
Robert L. McGee, Jr., Gulf  
Jeffrey A. Stone, Beggs & Lane