

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for rate increase by Gulf
Power Company.

Docket No. 160186-EI
Dated: March 1, 2017

**GULF POWER COMPANY'S
COMMENTS ON PROPOSED ISSUES**

Pursuant to direction from the Florida Public Service Commission Staff ("Staff") Gulf Power Company ("Gulf" or "the Company") submits these comments on additional issues proposed by the Office of Public Counsel ("OPC"), the Florida Industrial Power Users Group ("FIPUG") and Wal-Mart Stores East, LP and Sam's East, Inc. ("Walmart") as related to the tentative list of issues for this docket. As addressed in detail below, Gulf objects to the inclusion of several issues proposed by the foregoing parties.

On February 14, 2017, Staff circulated its final preliminary issues list to the parties and directed the parties to utilize that list when preparing their Prehearing Statements. To the extent that parties desired to introduce additional issues, they were directed to include the issues in their Prehearing Statements for consideration at the March 6, 2017 Prehearing Conference. These comments are directed to three new issues which were raised separately by OPC, FIPUG and Walmart.

I. OPC's New Issue

OPC included the following new issue in its Prehearing Statement:

In the event federal legislation is passed and signed into law between now and a reasonable period after new base rates become effective that results in a change in the corporate income tax rate to which Gulf is subject, or changes in the depreciation allowance for tax purposes associated with plant additions incorporated in test year rate base, what adjustments or provisions, if any, should the Commission make to address such changes? Should the Order in this case require a limited reopening within a reasonable period after new base rates become effective to address income tax expense as well

as the accumulated deferred income taxes in the capital structure in the event such legislation is passed that would impact Gulf's revenue requirements?

OPC's new issue seeks a limited reopening of these proceedings to *reduce* Gulf's revenue requirements if, within an unstated period of time in the future, federal legislation is enacted which reduces Gulf's income tax expense. Notably, no such federal legislation has been proposed, let alone enacted. Instead, as reflected in OPC's position on the proposed issue, OPC speculates that such legislation might be enacted given "credible statements from highly placed officials."

OPC's new issue is unnecessary, one-sided and inconsistent with fundamental ratemaking principles, including the use of a test year for setting base rates. "The function of a test year in a rate case is to provide a set period of utility operations that may be analyzed so as to allow the Commission to set reasonable rates for the period the rates will be in effect." *In Re: Petition of Florida Power Corporation to Increase Its Rates and Charges*, Docket No. 820100-EU, Order No. 11628 (issued Feb. 17, 1983). Consistent with this Commission's long standing practice of approving projected test years, Gulf's test year in this case is based upon a "set period of utility operations" consisting of calendar year 2017. There is no indication that the referenced legislation will come to fruition at all, let alone in calendar year 2017. Moreover, even if such legislation was enacted, there is no indication how it might impact Gulf's earnings at the time. There are myriad other factors beyond the test year that could impact Gulf's earnings. For example, forecasted revenues could be lower than projected or expenses could be higher than projected. Gulf has not proposed a "limited reopening" of this proceeding to *increase* its revenues in such event. If Gulf were to make such a proposal, there is no doubt it would be met

with fierce objection from OPC. Yet, OPC is essentially asking for the same treatment, albeit in the opposite direction.

Putting aside the fact that OPC's proposal is asymmetric and inconsistent with fundamental ratemaking principles, it is also wholly unnecessary. There is no need at this juncture for OPC or this Commission to speculate based upon "credible statements from highly placed officials." If such legislation is enacted, there are mechanisms in place which would enable the Commission and OPC to review its impacts on Gulf's revenue requirements.

Chapter 366, Florida Statutes, is very clear in that regard: Section 366.06(2), Florida Statutes provides as follows:

Whenever the commission finds, *upon request made or upon its own motion*, that the rates demanded, charged, or collected by any public utility for public utility service, or that the rules, regulations, or practices of any public utility affecting such rates, are unjust, unreasonable, unjustly discriminatory, or in violation of law; that such rates are insufficient to yield reasonable compensation for the services rendered; *that such rates yield excessive compensation for services rendered*; or that such service is inadequate or cannot be obtained, the commission shall order and hold a public hearing, giving notice to the public and to the public utility, and shall thereafter determine just and reasonable rates to be thereafter charged for such service and promulgate rules and regulations affecting equipment, facilities, and service to be thereafter installed, furnished, and used.

§366.06(2), *Fla. Stat.* (emphasis added)

Similarly, section 366.07, Florida Statutes, states:

Whenever the commission, after public hearing *either upon its own motion or upon complaint*, shall find the rates, rentals, charges or classifications, or any of them, proposed, demanded, observed, charged or collected by any public utility for any service, or in connection therewith, or the rules, regulations, measurements, practices or contracts, or any of them, relating thereto, are unjust, unreasonable, insufficient, *excessive*, or unjustly discriminatory or preferential, or in anywise in violation of law, or any service is inadequate or cannot be obtained, the commission shall determine and by order fix the fair and reasonable rates, rentals, charges or classifications, and reasonable rules, regulations, measurements, practices, contracts or service, to be imposed, observed, furnished or followed in the future.

§366.07, *Fla. Stat.* (emphasis added)

For all of the foregoing reasons, Gulf Power maintains that OPC's issue is not proper for inclusion in this proceeding and should be rejected.

II. FIPUG's New Issue

FIPUG included the following new issue in its Prehearing Statement:

What need exists, if any, for Scherer Unit 3 to serve Gulf's retail customers?

Gulf Power objects to inclusion of this issue in the Prehearing Order. FIPUG's new "issue" is not an issue at all. It represents FIPUG's position concerning the inclusion of Gulf's ownership interest in Plant Scherer Unit 3 (Scherer 3) in rate base, which the Commission will review under Staff's Issue 19. Issue 19 reads as follows:

Should the Commission allow recovery through retail rates of any portion of Scherer Unit 3? If so, what adjustments, if any, should be made to the treatment of Scherer Unit 3 in the Company's filing?

Gulf Power supports and has adopted Staff's proposed wording for Issue 19. FIPUG's new issue is clearly subsumed within Issue 19 and it is both unnecessary and inappropriate to make it a separate issue. If FIPUG truly believes that "need" is relevant to the Scherer 3 issue, it is clear that FIPUG will have ample opportunity to advocate for its position within the framework of Staff Issue 19. Stated another way, FIPUG's due process rights are firmly protected under the current framework. A party is not entitled to a separate issue simply because it desires a separate issue. There are already 107 approved issues in this proceeding which is scheduled to last less than five days. Adding yet another issue, particularly when the matter fits cleanly within an existing issue, would be counterproductive at best.

III. Walmart's New Issue

Walmart included the following new issue in its Prehearing Statement:

Should the Commission require Gulf to initiate a stakeholder process involving Gulf and its customers with the purpose of collaboratively developing additional energy supply options for Gulf and its customers, with particular emphasis on renewable energy measures and initiatives?

Gulf Power objects to inclusion of Walmart's new issue in the Prehearing Order.

Walmart's request for a "stakeholder process" to develop renewable energy supply options is outside the proper scope of this statutory electric utility base rate proceeding. The purpose of this proceeding is to determine whether Gulf's proposed rates are fair, just and reasonable. See section 366.06, Florida Statutes, which states in relevant part as follows:

All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and *the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service.* The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, less accrued depreciation, and shall not include any goodwill or going-concern value or franchise value in excess of payment made therefor. In fixing fair, just, and reasonable rates for each customer class, the commission shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures.

§366.06, *Fla. Stat.* (emphasis added)

Walmart is certainly free to engage in discussions with Gulf Power regarding renewable energy supply options and is equally free to separately petition this Commission to open a docket for consideration of such options. However, in any event,

this docket is not the appropriate venue for consideration of such matters. Gulf therefore requests that the Commission reject Walmart's request to include its new issue in the Prehearing Order.

Respectfully submitted this 1st day of March, 2017

/s/ Steven R. Griffin

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By Gulf Power Company)
)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail this 1st day of March, 2017 to the following:

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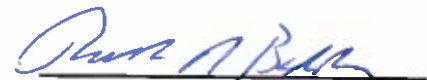
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