

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental Cost Recovery Clause

Docket No. 20190007-EI

Filed: October 11, 2019

SIERRA CLUB'S PREHEARING STATEMENT

Sierra Club hereby submits its prehearing statement concerning Issue 14 in accordance with the Order Establishing Procedure, Order No. PSC-2019-0072-PCO-EI.

1. WITNESSES

A. Direct

Concerning Issue 14, Sierra Club reserves its right to call any witness deposed in this case; any other witness called by another party in this case; and any other witness necessary for authentication, impeachment, or rebuttal.

2. EXHIBITS

Concerning Issue 14, Sierra Club reserves its right to use all exhibits listed by any other party to this case, including, but not limited to, demonstrative, rebuttal, and expert exhibits. Sierra Club further reserves its right to use, as necessary for impeachment, the deposition transcript, or deposition excerpts, and deposition exhibits of any witness deposed in this case.

3. STATEMENT OF BASIC POSITION

Certain costs associated with Gulf Power Company's projects to clean up waste from a coal-burning power plant in Mississippi, known as the "Plant Daniel CCR projects," should be disapproved. Under the Environmental Cost Recovery Clause, the Commission can approve costs only if they meet a two-prong test: (1) the costs are necessary for compliance with environmental laws or regulations, and (2) the costs were prudently incurred.<sup>1</sup> The burden of proof is on the utility. The standard of proof is a preponderance of the competent, substantial evidence presented at the hearing.<sup>2</sup> While discovery is still ongoing, it appears that Gulf cannot carry its burden of proof with respect to Plant Daniel CCR projects.

Gulf expects to spend more than \$23 million on the Plant Daniel CCR projects in 2020, and more than \$62 million by 2026. But in its petition and pre-filed testimony and exhibits, the Company makes mere conclusory statements that these projects and their associated costs are necessary and prudent. The Company does not even cite the specific regulatory provisions that

<sup>1</sup> § 366.8255, Fla. Stat. (2019).

<sup>2</sup> See *Beshore v. Dep't of Financial Servs.*, 928 So. 2d 411 (1st DCA 2006); *Ameristeel Corp. v. Clark*, 691 So.2d 473, 477 (Fla. 1997).

would require such projects. Nor does it identify, much less substantiate, any steps taken to minimize their costs. Clearly, this falls far short of the required evidence, because in cases that, like this one, involve multi-million-dollar cost-recovery requests, the Commission has held and the Florida Supreme Court has affirmed that a utility should substantiate its conclusions with detailed analysis.<sup>3</sup>

Moreover, the Company's reliance on the U.S. Environmental Protection Agency's coal combustion residuals (CCR) rule in *general* appears to be misplaced. This rule includes exemptions for power plants that cease coal-burning operations by October 2023.<sup>4</sup> Gulf itself admits that it should "retire" its undivided interest in Plant Daniel "as early as practicable" and no later than January 15, 2024.<sup>5</sup> And Plant Daniel's co-owner, Mississippi Power Company, has developed a schedule to cease coal-burning operations before October 2023.<sup>6</sup> It is undisputed that this schedule could qualify for the CCR rule exemptions and largely obviate any need for the Plant Daniel CCR projects. As such, the projects and their associated costs do not meet the two-prong test under the Environmental Cost Recovery Clause, because they appear to be neither necessary nor prudent; a reasonable utility manager certainly would not spend *tens of millions of dollars* to needlessly extend coal-burning operations by four months (from October 2023 to January 2024). The Plant Daniel CCR projects and their associated costs should be disapproved.

#### 4. STATEMENTS OF ISSUES AND POSITIONS

ISSUE 14: Should the Commission approve the 2020 expenditures for Gulf's ownership portion of the Plant Daniel CCR projects for recovery through the Environmental Cost Recovery Clause?

Sierra Club's position is stated above as its basic position in this case.

#### 5. STIPULATIONS

None at this time.

#### 6. PENDING MOTIONS

None at this time.

#### 7. PENDING CONFIDENTIALITY CLAIMS

None at this time.

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<sup>3</sup> *Gulf Power Co. v. Fla. Pub. Serv. Comm'n*, 453 So.2d 799, 804–805 (Fla. 1984).

<sup>4</sup> 40 C.F.R. § 257.103.

<sup>5</sup> Gulf Power Company's Response to Citizens' First Request for Production of Documents (Nos. 1-4) and Citizens' First Set of Interrogatories (Nos. 1-4) at 4, No. 20190007-EI (Sept. 10, 2019).

<sup>6</sup> MPC response to MPUS 1-9 Supp, MPSC Docket No. 2019-UA-116.

8. OBJECTIONS TO EXPERT WITNESS' QUALIFICATIONS

None at this time.

9. REQUESTS FOR WITNESS SEQUESTRATION

None at this time.

10. CONFLICTS WITH ORDER ESTABLISHING PROCEDURE

None at this time.

Respectfully submitted this 11th day of October, 2019.

*/s/ Diana A. Csank*

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served electronically on this 11th day of October, 2019 on:

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