BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Power Sales Contract Settlement Agreement between Gulf Power Company (Southern Company) and Gulf States Utilities Company	)	DOCKET NO. 900621-EG ORDER NO. PSC-92-1372-FOF-EG ISSUED: 11/24/92

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING ALLOCATION OF SETTLEMENT AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

In 1982, the Southern Companies (including Gulf Power Company) were parties to contracts with Gulf States Utilities Company (GSU) providing for the sale to GSU of unit power capacity from specific coal-fired generating units and other long-term power from fossil units on a system availability basis. Under these contracts, GSU agreed to purchase certain power during the period January 1, 1985 through May 31, 1992. The unit power capacity was to be supplied, in part, from Gulf Power Company's (Gulf) ownership interests in Plant Daniel and Plant Scherer. In 1985, however, GSU requested that negotiations commence and proceed quickly for consideration of the elimination or suspension of capacity sales and purchases.

The ensuing negotiations failed to resolve the matter and GSU filed suit in the U.S. District Court for the Eastern District of Texas on July 2, 1986. The suit was filed against The Southern Companies, including Gulf. The complaint sought a judgement declaring that GSU be excused from further obligation under its unit power and other long-term power sales contracts with the Southern Companies and an award for unspecified damages. Among other things, GSU alleged that the Southern Companies had failed to

negotiate and renegotiate in good faith to reduce the amount of capacity purchases under the contracts and had engaged in fraudulent conduct in entering into the contracts. The court permitted GSU to make escrow payments under the contracts pending the outcome of the lawsuit.

Subsequently, GSU received orders from the Texas and Louisiana commissions disallowing the recovery of the capacity charges under these contracts. As a result of these actions, GSU refused to make any further escrow payments. Due to GSU's refusal to pay, the Federal Energy Regulatory Commission allowed the Southern Companies to suspend performance under these contracts effective July 1, 1988. On December 5, 1988, the Southern Companies filed a counterclaim against GSU seeking recovery of all past due payments and damages for breach of the contracts.

In December 1990, the Southern Companies (including Gulf) entered into a settlement agreement with GSU setting forth the terms and conditions of the settlement to resolve the pending litigation. After receiving all of the requisite regulatory and court approvals, the settlement agreement documents were executed on November 7, 1991.

As a result of the Settlement Agreement, The Southern Company received cash, a promissory note and GSU common stock with a net present value of approximately $300 million. The net present value of Gulf's portion of the settlement is $27.9 million.

This docket was opened at the conclusion of Gulf's last rate case in Docket No. 891345-EI to monitor the progress and resolution of the Proposed Settlement Agreement.

The $27,883,613 settlement that was received by Gulf was allocated to the following components of the GSU contract:

Unit Power Sales - Scherer	$10,574,048
Unit Power Sales - Daniel	9,411,484
Unit Power Sales - Energy	2,002,098
Schedule E	3,474,935
Interest	2,421,048
Total	$27,883,613

In determining whether the retail ratepayers are entitled to any of the settlement, we examine the various components.

PLANT SCHERER

The first component is the $10.6 million related to Plant Scherer. Plant Scherer has never been included in the jurisdictional rate base or NOI, and the retail ratepayers have never provided a return on Plant Scherer. Therefore, the retail ratepayers should not receive any benefit from the settlement attributable to Plant Scherer. In addition, page 13 of Order No. 23573 in Docket No. 891345-EI states that, "All profits and losses derived from unit power sales of Scherer, and any costs or benefits accruing from any settlement with Gulf States Utilities are to go to the stockholders of Gulf Power Company."

PLANT DANIEL

The next component to be considered is Plant Daniel. In mid 1970, Gulf committed to purchase a 50% ownership interest of Plant Daniel Units 1 and 2 with its sister company Mississippi Power. In 1981, upon completion of Unit 2, Gulf's ownership interest in Daniel was approximately 511 Megawatts (MW) of coal capacity. The Commission has made a series of adjustments in Gulf's rate cases to separate the amount of capacity needed for territorial customers from the excess capacity used for Unit Power Sales (UPS), sales to the Southern Company Intercompany Interchange Contract (IIC), and Schedule E sales.

In the 1984 rate case, as shown on the attachment, 241 MW of UPS sales out of Plant Daniel were removed from jurisdictional investment and expenses. The remaining 270 MW of Plant Daniel capacity were allocated to jurisdictional customers. In the years 1984 through 1988, increasing amounts of the jurisdictional 270 MW were committed to UPS contracts and Schedule E sales. Profits from the Daniel UPS contracts enured to the benefit of the stockholders. Capacity purchases from the power pool were made to replace the MW sold to GSU from the 270 MW amount whose cost was included in retail rates.

The pool capacity priced at average embedded cost was cheaper than the Daniel capacity which it replaced. The substitution of pool capacity had the effect of increasing NOI resulting in a higher tax savings refund to the ratepayers in 1987. As a result of this, the tax savings for the first half of 1988 were also greater. In addition, the Settlement only allowed Gulf to recoup 30 cents on the dollar of its investment in the 105 MW of Plant Daniel dedicated to GSU during the first half of 1988 while it was excluded from the jurisdictional rate base. However, the inclusion of the additional 105 MW of Plant Daniel in the jurisdictional rate base beginning in July 1988 served to reduce the 1988 tax savings refund for the second half of 1988. On an overall basis for 1988, it appears that these two factors offset

each other. In 1989, Gulf's earnings were below the stipulated 13.75% return on equity; therefore, the Company did not have a 1989 tax savings refund.

For rate of return surveillance purposes, the Plant Daniel GSU UPS capacity was removed from the jurisdictional rate base and the associated expenses were removed from the jurisdictional income statement. These adjustments reduced the jurisdictional rate base and increased the jurisdictional NOI, thereby increasing the reported return on equity. Despite the fact that the base rates still included the revenue requirement for 270 MW of Plant Daniel capacity, Gulf did not exceed its authorized ROE during that time. Therefore, the retail ratepayers are not entitled to any of the settlement related to Plant Daniel.

UPS ENERGY

Since the UPS Energy is related to Plant Scherer and Plant Daniel, this $2,002,098 component should also enure to the benefit of Gulf's stockholders.

SCHEDULE E

Schedule E Sales are firm capacity and energy contracts with a take or pay provision requiring a capacity payment regardless of the purchasing utility's utilization. Schedule E sales are negotiated on a total Southern Company price which reflects the age, price and dispatch order of the various units within the Southern Company system. Availability of units is calculated based on MW which are in excess of the territorial and UPS amounts. In Gulf's 1984 rate case, a test year Schedule E revenue credit of approximately $ 6,975,000 was included in the calculation of the jurisdictional revenue requirement for the ratepayers. The Schedule E revenue credit was used to calculate rates on a going foreword basis until the next rate case in 1990. These revenues increased and decreased during this period in a manner similar to most other expenses and revenues between rate cases. Gulf reported the actual monthly Schedule E revenues in the surveillance reports when calculating their earnings and tax savings refunds in 1987 and 1988. The retail customers are not entitled to the settlement related to Schedule E sales because these amounts did not cause Gulf to over earn during these periods.

INTEREST

Since the interest is related to the other components, this component should also enure to the benefit of the stockholders.

Therefore, we find that no portion of the $27,883,613 received by Gulf Power Company as a result of the Power Sales Contract

Settlement Agreement with Gulf States Utilities Company should be refunded to Gulf's retail ratepayers.

Based on the foregoing, it is

ORDERED that no portion of the $27,883,613 received by Gulf Power Company as a result of the Power Sales Contract Settlement Agreement with Gulf States Utilities Company should be refunded to Gulf's retail ratepayers. It is further

ORDERED that this Order shall become final and this docket shall be closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission this 24th day of November, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

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by: Kay Flynn
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on December 15, 1992.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.