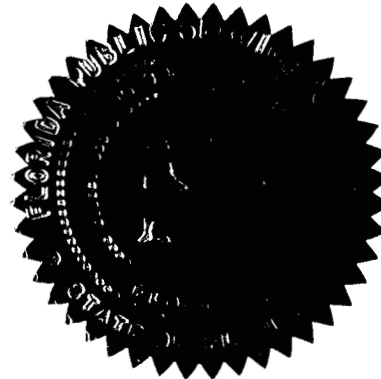


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 990325-EI

Petition of Gulf Power :
 Company to determine :
 need for proposed :
 electrical power plant :
 in Bay County. :



PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER J. TERRY DEASON
Prehearing Officer

DATE: Monday, May 17, 1999

TIME: Commenced at 1:30 p.m.
Concluded at 1:50 p.m.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: KIMBERLY K. BERENS, CSR, RPR
FPSC Commission Reporter

DOCUMENT NUMBER - DATE

990325-EI MAY 21 99

FPSC-RECORDS/REPORTING

1 **APPEARANCES:**

2 **JEFFREY A. STONE** and **RUSSEL BADDERS**, Beggs &
3 Lane, 700 Blount Building, 3 West Garden Street, Post
4 Office Box 12950, Pensacola, Florida 32576-2950; and
5 **RICHARD D. MELSON**, Hopping Green Sams & Smith, Post
6 Office Box 6526, Tallahassee, Florida 32314,
7 appearing on behalf of **Gulf Power Company**.

8 **GAIL KAMARAS**, Legal Environmental Assistance
9 Foundation, 1114 Thomasville Road, Suite E,
10 Tallahassee, Florida 32303, appearing on behalf of
11 **Legal Environmental Assistance Foundation (LEAF)**.

12 **GRACE A. JAYE**, Florida Public Service
13 Commission, Division of Legal Services, 2540 Shumard
14 Oak Boulevard, Tallahassee, Florida 32399-0870,
15 appearing on behalf of the **Commission Staff**.

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1 this morning, Commissioner, and she had indicated she
2 would be here.

3 **COMMISSIONER DEASON:** Okay.

4 **MR. MELSON:** I understand she's been seen in
5 the building, although I have not seen her personally.

6 **COMMISSIONER DEASON:** Okay. Shall we recess
7 and see if we can locate her? There she is.

8 **MS. KAMARAS:** Gail Kamaras.

9 **COMMISSIONER DEASON:** Okay. Are there any
10 preliminary matters?

11 **MS. JAYE:** Yes, they are, Commissioner.
12 Pursuant to new directives concerning the handling of
13 confidential information, Staff has been informed that
14 an issue must be added to the issues contained in the
15 prehearing statement.

16 Staff believes that the issue should be
17 added immediately preceding the current Issue 9 and
18 should be numbered Issue 9. And the current Issue 9
19 which is, "should this docket be closed," should be
20 renumbered as Issue 10. The new Issue 9, Staff
21 believes, should read, "Have all requests for
22 confidential classification been ruled upon in this
23 docket?"

24 **COMMISSIONER DEASON:** Okay. Why is it
25 necessary to add this as an issue?

1 **MS. JAYE:** It is a directive that Staff has
2 received from the Director of Legal Services.

3 **COMMISSIONER DEASON:** Okay. Is there any
4 problem with adding this to the proposed issues?

5 **MR. STONE:** Commissioner, the wording
6 implies that all the confidentiality requests have to
7 be dealt with by ruling, and I think there is still
8 leave that if documents are returned to the parties
9 after the review that there would not necessarily need
10 to be an order.

11 **COMMISSIONER DEASON:** Okay. Staff, do you
12 have a response?

13 **MS. JAYE:** We can get with the parties and
14 work out a suitable language as long as we can
15 maintain the gist of the issue, which is, that any
16 request for confidential classification has been, in
17 some manner, dealt with before we actually go to the
18 hearing.

19 **COMMISSIONER DEASON:** Well, I'm sorry. I
20 guess I'm missing something. What is the necessity of
21 this? This seems to be a departure from normal
22 procedure.

23 **MS. JAYE:** Yes, sir, I understand. We had a
24 bureau meeting about two weeks ago in which it was
25 disclosed to us by the Director of Legal Services that

1 Staff would from now on in hearings where there would
2 be confidential information, include such an issue.
3 Evidently in certain hearings that have come through,
4 confidential information has not been ruled upon in a
5 timely manner resulting in a lot of post-hearing
6 problems.

7 **COMMISSIONER DEASON:** Well, Mr. Stone just
8 indicated that in the event there's not a ruling
9 within, it's just the procedure of the Commission to
10 return the information after the conclusion of the
11 hearing. That's not a sufficient remedy?

12 **MS. JAYE:** Well, perhaps we could modify the
13 language to say, "Have all requests for confidential
14 classification been dealt with in this docket."

15 **MR. STONE:** That language would -- we'd be
16 comfortable with that modified language.

17 **COMMISSIONER DEASON:** Ms. Kamaras, do you
18 have a position on whether this issue should be added?

19 **MS. KAMARAS:** No, we don't.

20 **COMMISSIONER DEASON:** Mr. Stone, you don't
21 have a problem with the modified language?

22 **MR. STONE:** I'm satisfied with it. Yes,
23 Commissioner.

24 **COMMISSIONER DEASON:** Okay. All right. We
25 will show then that the modified language will be

1 inserted as Issue 9, and the currently numbered Issue
2 9 will be renumbered Issue 10.

3 Okay. Other preliminary matters?

4 **MS. JAYE:** Yes, sir. Staff also requests
5 that the issue for which witnesses have filed
6 testimony would be indicated so that Staff may include
7 those in the prehearing order when it is issued.

8 **COMMISSIONER DEASON:** Okay.

9 **MR. MELSON:** And we're prepared to identify
10 those today.

11 **COMMISSIONER DEASON:** Can you do that on the
12 record at this time?

13 **MR. MELSON:** Yes, if you'd like us to.

14 I'm on Page 4 of the Draft Prehearing Order.
15 Witness Moore is Issues 1, 2, 6, and 8.

16 The panel of witnesses Neyman and Marler is
17 Issues 1, 2, 7, and 8.

18 Witness Pope is Issues 1, 2, 4, 5, 6, 7 and
19 8.

20 Witness Burke is Issues, 2, 3, 6, and 8.

21 And Witness Howell is all issues. I guess
22 that actually should be Issues 1 through 8.

23 **COMMISSIONER DEASON:** Okay. Other
24 preliminary matters?

25 **MR. STONE:** Commissioner, earlier today we

1 filed supplemental direct testimony of witnesses
2 Robert G. Moore and Maria F. -- Maria Jeffers Burke
3 and William F. Pope, and you have a copy of that
4 supplemental direct testimony in front of you and
5 parties, Ms. Jaye and Ms. Kamaras, have been served
6 copies of those supplemental direct filings.

7 In addition, we have filed by separate
8 letter some changed pages. There are three pages of
9 either testimony or the need study document that have
10 been changed and the revised pages have also been
11 provided to counsel and to the prehearing officer.
12 All of that has been filed with the Clerk's office
13 earlier today.

14 **COMMISSIONER DEASON:** Very well. What was
15 the necessity for the supplemental direct?

16 **MR. STONE:** Ongoing engineering work since
17 the filing of the need case on March 15th has
18 identified some additional capacity that we can
19 satisfy with this unit by making some modest design
20 changes, and so the capacity of the proposed unit has
21 changed from 540 megawatts to 574 megawatts and that's
22 what's detailed in the supplemental testimony.

23 The revised pages correct an area of
24 class -- provide a clarification on some testimony
25 with regard to transmission improvements that we

1 discovered in the course of re-reading it.

2 **COMMISSIONER DEASON:** And so the additional
3 capacity is design modifications and impacts on the
4 transmission system?

5 **MR. STONE:** No. The two are unrelated to
6 each other. But we referred to the unit as a 540
7 megawatt unit in the original filing and it's actually
8 a 574 megawatt unit and that was the purpose of the
9 supplement.

10 The reason for the revision is we discovered
11 some confusing wording on the transmission
12 improvements and we provided that clarification. We
13 felt it was appropriate to provide those revised pages
14 at this time rather than waiting until the hearing.

15 **COMMISSIONER DEASON:** I understand. Thank
16 you. Are there any comments from either Staff or Ms.
17 Kamaras concerning the revised testimony -- I'm
18 sorry -- the revised pages in the supplemental direct?

19 **MS. KAMARAS:** Not at this time.

20 **MS. JAYE:** Not at this time, Commissioner.

21 **COMMISSIONER DEASON:** Very well. Other
22 preliminary matters? (No response.) None. Very
23 well.

24 It is my intention then to proceed through
25 the Draft Prehearing Order. I anticipate that it will

1 go rather quickly. If I do move too quickly over any
2 of the items or issues, please let me know and we will
3 back up and address whatever needs to be addressed.

4 Before we proceed let me -- before I forget,
5 let me ask a question and if I cannot get an answer
6 right at this moment, perhaps the parties can think
7 about it and before we can conclude today give me some
8 indication.

9 My question is, is there a possibility that
10 the Commission -- if it is the Commission's desire, is
11 there a possibility this matter can be dealt with with
12 a bench decision, and obviously, that would be up to
13 the Commissioners and what their desires are. And if
14 that is to be a possibility, the parties need to
15 consider whether they want to have closing argument
16 before the Commission entertains a motion to have a
17 bench decision. So think about that and we'll address
18 that before we conclude today.

19 Beginning with the Draft Prehearing Order,
20 Section 1 directs -- is the Conduct of Proceedings and
21 Section 2, the Case Background. Any changes or
22 questions? (No response.)

23 Section 3, Procedure for Handling
24 Confidential Information, which is standard.

25 Section 4 addresses post-hearing procedures.

1 Also standard.

2 Section 5 addresses prefiled testimony and
3 exhibits.

4 Section 6 addresses the order of witnesses.
5 We now have modified that to include the issues which
6 are going to be addressed by each of the witnesses.
7 Are there any changes or questions concerning the
8 order of witnesses as stated?

9 **MR. MELSON:** No, sir. I wonder if it might
10 help, though, to identify direct and supplemental
11 direct for those witnesses who have it so that the
12 Commissioners will be aware there is two pieces of
13 testimony they should be reviewing?

14 **COMMISSIONER DEASON:** I think we can make
15 that change. Okay.

16 Section 7 addresses basic positions. Any
17 changes or corrections to that?

18 **MR. MELSON:** We've got one typographical
19 correction about five or six lines down. 575
20 megawatts should be 574 megawatts.

21 **COMMISSIONER DEASON:** Okay. Any other
22 changes or corrections? Very well.

23 Section 8 addresses specific issues and
24 positions to those issues. We'll begin with Issue 1.
25 Changes or corrections? (No response.)

1 Issue 2. (No response.)

2 Issue 3. (No response.)

3 Issue 4. (No response.)

4 Issue 5. (No response.)

5 Issue 6.

6 **MR. MELSON:** Two changes, Commissioner, to
7 Issue 6. On the second line, the number that reads
8 \$282 should read \$274, and on the following line the
9 \$495 should be \$496.

10 **COMMISSIONER DEASON:** Okay. Issue 7. (No
11 response.)

12 Issue 8. (No response.)

13 Issue 9. New Issue 9. Are we going to have
14 positions stated in the Prehearing Order concerning
15 that issue which seems to be more of a procedural-type
16 issue? What is Staff's preference?

17 **MS. JAYE:** Staff does not have a preference
18 as we have not dealt with this particular issue
19 before. If the parties wish to take positions, then
20 we would support that.

21 **MR. STONE:** Our position would be no
22 position at this time.

23 **COMMISSIONER DEASON:** We don't know until
24 you get further into the proceeding, because if -- let
25 me ask this. Has all discovery been submitted or are

1 we still in the discovery process?

2 **MR. STONE:** There's still some questions
3 outstanding.

4 **COMMISSIONER DEASON:** So there may be
5 further requests for confidential classification.

6 **MR. STONE:** Indeed. In fact, there likely
7 will be.

8 **COMMISSIONER DEASON:** Okay. So it seems to
9 me it's premature to take a position at this time.

10 Okay. And Issue 10. (No response.)

11 Section 9 addresses exhibit list. Any
12 changes or corrections?

13 **MR. MELSON:** Commissioner Deason, as a
14 result of filing the supplemental testimony we've got
15 three additions to the exhibit list. They're now --
16 for Mr. Moore is an RGM-2, which has been labeled
17 Schedule 3, Installed Cost Estimate for Smith Unit 3.

18 **COMMISSIONER DEASON:** Other changes?

19 **MR. MELSON:** For Mr. Pope, there is now an
20 Exhibit WPF-2 which has been labeled Schedule 3,
21 Gulf's Future Reserves Beginning in 2002 With The
22 Addition of Smith Unit 3.

23 And similarly for Ms. Burke -- okay. Time
24 out just a minute.

25 (Slight pause in the proceedings was taken.)

1 **MR. MELSON:** On Ms. Burke's we need to
2 correct the numbering of the two exhibits that are
3 shown now. There is a Schedule 1 that is MJB-1.

4 Schedule 2 has actually been labeled in her
5 testimony as MJB-2.

6 And then we have a new schedule -- a new
7 MJB-3, which is labeled Schedule 3, RFP Relative
8 Ranking-Detailed Evaluation.

9 And in each case, Commissioner, the Schedule
10 3s are updates of the prior Schedule 2s to reflect the
11 impact of the increase in the number of megawatts.

12 **COMMISSIONER DEASON:** Very well. You may
13 wish to get with Staff counsel and make sure that it's
14 correctly stated in the prehearing order.

15 **MR. MELSON:** We will do that. Thank you.

16 **COMMISSIONER DEASON:** Okay. Section 10
17 addresses proposed stipulations and there are no
18 stipulations indicated.

19 Section 11, Pending Motions. There are no
20 pending motions at this time, is that correct?

21 **MR. STONE:** Confidential classification.

22 **COMMISSIONER DEASON:** Very well.

23 And Section 12 addresses rulings. And it
24 indicates there that there are requests outstanding
25 for confidential classification. And there may be

1 more as we proceed?

2 **MR. STONE:** Yes, Commissioner.

3 **COMMISSIONER DEASON:** Okay. Do the parties
4 have any questions or clarifications on the prehearing
5 order that we did not cover?

6 **MR. MELSON:** No, sir.

7 **COMMISSIONER DEASON:** Very well. Let me
8 then proceed to my question that I asked earlier, and
9 that being the possibility of a bench decision.

10 I asked the question because we've had some
11 recent history with need determinations, some of the
12 less controversial need determinations which have been
13 dealt with in that manner. This -- it may be possible
14 to deal with this one in a similar manner. It may not
15 be. I'm interested in feedback from the parties and
16 what Staff's position is, and if it is indicated that
17 we -- the possibility exists, what procedural steps we
18 need to take so that everyone is put on notice.

19 And I will just open it up. Anyone have any
20 comments about that?

21 **MR. MELSON:** Commissioner, Gulf Power would
22 welcome a bench vote if after the hearing the
23 Commission is in a position to desire to do that. I
24 think if you did vote from the bench, we would like
25 the opportunity for a brief closing argument. And it

1 seems to me that simply providing in the prehearing
2 order that a bench vote is a possibility would provide
3 the parties adequate notice in the event the
4 Commission made that decision.

5 **COMMISSIONER DEASON:** Okay. How much time
6 would you need as a closing argument?

7 **MR. MELSON:** Ten minutes.

8 **COMMISSIONER DEASON:** Ten minutes.

9 Ms. Kamaras.

10 **MS. KAMARAS:** I'm not sure I share Gulf's
11 views on the bench decision. I think there's maybe a
12 little bit more to this case than meets the eye,
13 particularly with the amended petition or supplemental
14 information that's just been filed. And I'd like the
15 opportunity to think about that. So, it does not give
16 me a comfort zone.

17 **COMMISSIONER DEASON:** Okay. Staff.

18 **MS. JAYE:** One Staff member has -- one Staff
19 member has gone to seek some guidance from
20 Mr. Jenkins. However, the initial indication I have
21 from Staff collectively is that Staff believes it
22 needs to present a rec. to the Commission rather than
23 go with a bench vote, but we certainly could provide
24 that, you know, should things prove to be less
25 controversial than maybe everyone may seem to think at

1 this point. Or at least, you know, there would be a
2 less need for a later recommendation. We could put
3 something in the Prehearing Order to that effect.

4 **COMMISSIONER DEASON:** Let's do this then.
5 Let's indicate in the Prehearing Order that the
6 possibility exists and that parties would be afforded
7 ten minutes in closing arguments if the Commission
8 chose to do so.

9 But also indicate in there that LEAF, at
10 least at this point, opposes that procedure to at
11 least advise the other Commissioners and they can take
12 that under advisement and we'll -- at the conclusion
13 of the hearing, we can make a -- ask the question as
14 to how we should proceed at this point.

15 And I guess it would be necessary then for
16 parties to at least be prepared to present their
17 closing argument. And that way everyone is put on
18 notice and one should not be caught by surprise. And
19 then if the Commission so desires to have a Staff
20 recommendation, well, it would be handled in manner,
21 and we would not have closing argument. Is that
22 sufficient?

23 **MS. KAMARAS:** Yes.

24 **MR. MELSON:** Fine.

25 **COMMISSIONER DEASON:** Okay. Very well. Any

1 other matters to come before the prehearing officer at
2 this time? Hearing none, this prehearing conference
3 is concluded. Thank you all.

4 **MR. MELSON:** Thank you, Commissioner.

5 **MR. STONE:** Thanks.

6 (Thereupon, the hearing concluded at
7 1:50 p.m.)

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