

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Investigation into the earnings and authorized
return on equity of Gulf Power Company.

DOCKET NO. 990250-EI

IN RE: Petition for a full revenue requirements rate case
for Gulf Power Company by the Citizens of the State of
Florida.

DOCKET NO. 990947-EI

IN RE: Request by Gulf Power Company for approval of
prospective reduction to authorized return on equity.

DOCKET NO. 991487-EI

COPY

BEFORE:

CHAIRMAN JOE GARCIA
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER E. LEON JACOBS

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

45** and 45A**PAA

DATE:

October 5, 1999

PLACE:

4075 Esplanade Way, Room 148
Tallahassee, Florida

ACCURATE STENOGRAPHY REPORTERS, INC.
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(850) 878-2221

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APPEARANCES:

JACK SHREVE, Esquire, representing OPC
JEFF STONE, Esquire, representing Gulf Power Company

STAFF RECOMMENDATION

Issue 1: Should the Commission approve Gulf Power Company's Request for Approval of Prospective Reduction to Authorized Return on Equity?

Recommendation: Yes. Gulf's request should be approved.

Issue 2: Should Docket No. 991487-EI be closed?

Recommendation: Yes. If no person whose substantial interests are affected files a request for a Section 120.57(1), Florida Statutes, hearing within 21 days of the order, the order will become final and effective upon the issuance of a consummating order. Because no further action will be required, this docket should be closed.

1 P R O C E E D I N G S

2 CHAIRMAN GARCIA: We will take Item 45 and 45A,
3 we will take them up together?

4 MR. ELIAS: Yes.

5 COMMISSION STAFF: Item 45 is staff's
6 recommendation on a stipulation and settlement that
7 was entered into by Gulf Power Company, the Office of
8 Public Counsel, the Florida Industrial Power Users
9 Group, and the Coalition for Equitable Rates. The
10 stipulation and settlement is designed to resolve all
11 the issues raised in Public Counsel's petition for a
12 rate case. Do you want to go through issue-by-issue
13 or would you like to hear from the parties?

14 CHAIRMAN GARCIA: Parties, do you want to say
15 anything or was there a general stipulation? Jack.

16 MR. SHREVE: Very little. I think it can be very
17 short. We think we have a good stipulation here, a
18 good settlement. We appreciate the opportunity to
19 work with Gulf Power. They have been excellent to
20 work with. And FIPUG and the Coalition the same.

21 As you know, we have about a \$10 million rate
22 reduction with an agreement of sharing above a certain
23 amount of revenues that has been determined. Beyond
24 that I don't know that there is really any controversy
25 anywhere in this. We think we have a settlement that

1 is beneficial to the customers and to Gulf Power. It
2 is set up so that if and when the plant comes on-line
3 that they are planning they will have the opportunity
4 to come in and make changes at that point. Beyond
5 that, it has been a pleasure to work this out.

6 CHAIRMAN GARCIA: Great. Staff, do you want to
7 just go through the agreement really quickly so that
8 we have got it on the record just in case someone is
9 listening in.

10 MR. MAILHOT: Yes. On Page 3 of the
11 recommendation the agreement is summarized. First of
12 all, it reduces base rates by \$10 million per year
13 effective 30 days following the Commission vote. It
14 allows or requires that revenues between certain
15 levels be shared between Gulf and its customers,
16 basically, over the next three-year period
17 approximately, with one-third of those revenues being
18 retained by Gulf and two-thirds being refunded to the
19 customers.

20 It allows Gulf discretion to record additional
21 storm damage accrual of up to \$5 million per year and
22 to record up to \$1 million of write-off on certain
23 regulatory assets that they have on their books. And
24 it essentially -- outside of the \$10 million rate
25 reduction, it more or less freezes Gulf's rates during

1 the period of the stipulation for approximately three
2 years.

3 CHAIRMAN GARCIA: Very good. Commissioners, any
4 questions or comments?

5 COMMISSIONER DEASON: I have a few questions.
6 Just a few clarifying questions. The first question
7 deals with the discretion given to Gulf to make
8 entries concerning the property insurance reserve
9 accrual and the deferred return on the third floor of
10 the corporate office. That is not in any way tied to
11 an earnings level or a revenue level, that is strictly
12 at the discretion of management?

13 MR. MAILHOT: That is my understanding.

14 COMMISSIONER DEASON: And by making that entry,
15 if they choose to make that entry it in no way reduces
16 any potential refund under revenue sharing?

17 MR. MAILHOT: That is correct.

18 COMMISSIONER DEASON: Okay. The other question I
19 have concerns when we were -- several months ago when
20 we were contemplating some type of an earnings plan,
21 the company agreed to make an additional accrual to
22 their property insurance reserve of 3 million
23 annually, and that was in lieu of putting money
24 subject to refund. Has the company been making those
25 accruals on a monthly basis or what is the status of

1 that?

2 MR. MAILHOT: It is my understanding they have
3 been up to this point.

4 COMMISSIONER DEASON: Okay. How does the
5 settlement address that up to this point? I know that
6 it would no longer be in effect going-forward, that
7 there are other mechanisms in place. Does it effect
8 the accruals that have already taking place for '99 in
9 any way.

10 MR. MAILHOT: I believe you need to ask the
11 parties.

12 MR. STONE: Commissioner Deason, Jeff Stone on
13 behalf of Gulf Power Company. The negotiated position
14 of the parties is that the discretion that you
15 mentioned about the \$5 million is in lieu of that
16 additional accrual, and so it would replace it in its
17 entirety.

18 COMMISSIONER DEASON: I understand that on a
19 going-forward basis. But is it retroactive in the
20 sense that what you have already booked for 1999 would
21 be taken off of the books?

22 MR. STONE: We would have that discretion, yes,
23 Commissioner. That is part of how we got to where we
24 were on the total numbers that worked out for the
25 customers.

1 COMMISSIONER DEASON: I didn't read that in the
2 stipulation, so can you show me where the stipulation
3 provides for that.

4 COMMISSION STAFF: I believe on Page 16 of the
5 recommendation, in Paragraph 5.

6 COMMISSIONER DEASON: There is the language in
7 lieu of the 3 million additional accrual for 1999
8 previously ordered. So that has the effect of
9 basically wiping that off of the books.

10 MR. MAILHOT: I believe so. I believe that is
11 their intention, yes.

12 COMMISSIONER DEASON: But the rate reduction is
13 just prospective from this point forward?

14 MR. MAILHOT: That is correct.

15 COMMISSIONER DEASON: Okay. Well, I've got a
16 question for Gulf, then, because it was my
17 understanding that you all agreed that you would make
18 that entry and you wouldn't reverse it. That was part
19 of the agreement of not putting money subject to
20 refund.

21 MR. STONE: Commissioner, that was the agreement
22 at that time, yes, sir. And what we have presented to
23 you is a settlement that part of the funding for the
24 rate reduction that we have made incorporated backing
25 away from that number, but allowing us the discretion

1 on the \$5 million. So that was part of the negotiated
2 package. So it is not as though we have made a
3 unilateral change in our position that we stated to
4 you on March 16th, but rather as part of the
5 negotiated settlement we have reached that compromise
6 with all the parties.

7 COMMISSIONER DEASON: So you are saying the fact
8 that you get to reverse this 3 million on an annual
9 basis is what is, helping fund the revenue reduction
10 on a going-forward basis, or the rate reduction on a
11 going-forward basis?

12 MR. STONE: Commissioner, we understood that \$3
13 million to be basically a stopgap measure while this
14 case was pending. We did not expect that that was
15 going to be a permanent \$3 million annual accrual. We
16 thought it was just a temporary measure until these
17 matters could be resolved.

18 COMMISSIONER DEASON: And I agree with that. And
19 I have no problem with it ceasing from this point
20 forward, because we have -- this stipulation provides
21 for a reduction on a going-forward basis beginning
22 with the implementation date or 30 days after. That
23 is no problem. My question is for the nine months in
24 1999, or ten months, or whatever it works out to be,
25 there was an accrual that was on your books and now

1 you are going to reverse that. And I just want to
2 make sure that is what your position is.

3 MR. STONE: We have the discretion under the
4 settlement. Obviously if we were to exercise the
5 discretion within the \$5 million it would have the
6 effect of what -- I mean, if we chose, depending on
7 circumstances that the company faced, then maybe it
8 would not necessarily be reversed depending on what
9 the circumstances are throughout the remainder of the
10 year.

11 COMMISSIONER DEASON: I have a question for staff
12 concerning the recommendation on Issue 2 to terminate
13 the investigation into the CISR contracts. Let me
14 preface my question by stating that I don't have a
15 problem with the recommendation to terminate that
16 investigation as long as it is understood that we
17 always have the ability to look at these contracts at
18 any time on a going-forward basis.

19 MS. KUMMER: That was my understanding. The
20 recommendation is based on -- one of the paragraphs,
21 it was Paragraph 18 in the original stipulation which
22 said that the agreement settled all issues in those
23 two dockets and the investigation was an issue in that
24 docket which would affect the revenues. But, yes, it
25 is only -- my understanding would be only for the

1 period of the stipulation that would exist.

2 COMMISSIONER DEASON: You are saying then by the
3 stipulation this Commission is prevented from looking
4 at those contracts if for some reason we feel that we
5 are -- by their reporting requirements we feel like
6 there is some activity that warrants further
7 investigation? Mr. Elias.

8 MR. ELIAS: That was not my take on it at all.
9 That investigation was looking toward, to the prudence
10 of the contracts based on 1998 earnings. What the
11 Commission did concerning the CISRs would play out
12 under the current stipulation is something -- given
13 that it is a revenue sharing rather than an
14 earnings-based formula, but I think the Commission
15 retains the jurisdiction to look at those contracts
16 for prudence on a prospective basis anytime it deems
17 appropriate.

18 COMMISSIONER DEASON: And the reporting
19 requirements, the company still has to report when
20 they enter --

21 MR. ELIAS: On a quarterly basis with respect to
22 the requirements of the order that was issued in the
23 '96 docket, yes. Those are not obviated by this
24 stipulation.

25 COMMISSIONER DEASON: And let me make this

1 observation, that I think it -- if we are going to be
2 under a revenue sharing plan which this stipulation
3 provides for, it may be even more important to look at
4 those contracts because it could effect the sharing
5 points. Because if contracts are entered into which
6 substantially effects the revenue stream coming to the
7 company it could effect the sharing points.

8 MS. KUMMER: And, Commissioner, that is the basis
9 that my language on Page 18, Paragraph 8 of the
10 stipulation it says that -- it talks about that this
11 termination and closing of Docket -- I'm about halfway
12 down that paragraph -- 990250, to the extent that such
13 docket may affect Gulf Power's authorized return on
14 equity, retail base rates, revenue credits, and level
15 of Gulf's jurisdictional expenses or level of
16 jurisdictional revenues.

17 Because our only recourse on the CISR
18 investigation would be to impute revenues that we
19 found imprudent. And if you accept the stipulation,
20 it sounded to me like we could not do that during the
21 period of the stipulation because it would effect the
22 revenues.

23 COMMISSIONER DEASON: Well, I think that needs to
24 be clarified. What does this language mean?

25 MR. STONE: Commissioner, speaking on behalf of

1 Gulf Power Company, we did not intend to restrict the
2 Commission's ability to look at the prudence of those
3 contracts.

4 MS. KUMMER: But looking at the prudence would
5 involve a possible adjustment to their jurisdictional
6 revenues. Are you also agreeing that that would be
7 possible?

8 MR. STONE: Well, first of all, we believe the
9 contracts are prudent, and we believe --

10 COMMISSIONER DEASON: I'm sure you do.

11 MR. STONE: It would probably be getting ahead of
12 ourselves to talk about what the remedy would be if
13 there was a concern about it.

14 COMMISSIONER DEASON: See, when I read staff's
15 recommendation, they indicated that if we have
16 jurisdiction we cannot relinquish that jurisdiction
17 simply because the parties reach an agreement.

18 MR. ELIAS: That is correct.

19 COMMISSIONER DEASON: And if we have got
20 jurisdiction to review these CIS contracts, which I'm
21 sure that we do, and if -- and I'm not saying that it
22 is going to happen, but if a questionable contract is
23 entered into which substantially affects your revenue
24 stream and that could affect a sharing point, I think
25 we have an obligation to take a look at it. Would you

1 agree with that?

2 MR. STONE: Yes, Commissioner, we do agree with
3 that.

4 MS. KUMMER: Then do you wish to continue the
5 investigation or the prudence reviews of these
6 contracts?

7 COMMISSIONER DEASON: I don't have a problem
8 terminating the investigation, but realizing that we
9 have an on-going responsibility to review these. And
10 I think especially in light of the fact that we are
11 now in a revenue sharing plan that if new contracts
12 are entered into which we feel could materially affect
13 the sharing point that we may have an obligation to
14 take a look at it.

15 We may look at it and say it is perfectly fine.
16 But I think that we need to be cognizant here and now
17 when we approve this that we still have that
18 obligation and that the parties agree and understand
19 that when these contracts are entered into and we
20 think there are some questions that need to be
21 answered, we have the ability -- in fact, not only the
22 ability, probably the responsibility to take a look at
23 it.

24 MS. KUMMER: The problem we have with that,
25 Commissioner, is these are all confidential. The

1 utility does not file them with us, and so the only
2 way we have of reviewing them is to institute an
3 investigation as we have on-going right now.

4 COMMISSIONER DEASON: And what is wrong with
5 that?

6 MS. KUMMER: Nothing. It's just that we won't
7 know unless we conduct an investigation whether or not
8 there is anything questionable. And so that is why
9 I'm asking do you want us to continue the
10 investigation. We are in a Catch-22, I guess, is what
11 I'm saying. We won't know if there is something wrong
12 unless we do an investigation.

13 COMMISSIONER CLARK: I just wanted to clarify
14 with Mr. Stone that you don't dispute that we have the
15 opportunity to investigate those things. And should
16 we find them imprudent, one of the remedies may be to
17 impute the revenues that would otherwise be there, and
18 that would affect the revenues used under this
19 agreement.

20 MR. STONE: That is certainly a possibility,
21 Commissioner. I think what we were getting at is we
22 were trying to close the existing dockets and at least
23 start from here. We have two contracts under that CIS
24 rider tariff at this time, and I believe under the
25 terms of the order of approving that pilot program,

1 that the program itself expires without further action
2 sometime next year. And so, you know, whether there
3 will be more contracts entered into is speculation at
4 this point. And certainly we may come before you and
5 ask for a renewal of the program on a pilot basis or a
6 permanent program or something based on the experience
7 to date. I think you will have opportunity to look at
8 those and make sure we administer them within the
9 framework that you have laid out for us.

10 COMMISSIONER DEASON: And that's fine. I don't
11 have a problem with that. And I don't have a problem
12 as far as the existing contracts, terminating the
13 investigation into those. My primary concern are new
14 contracts that are entered into after the effective
15 date of this revenue sharing, because I think it is
16 even more important because of the fact there is going
17 to be revenue sharing. And if a contract is entered
18 into we know it is going have an affect on revenues.

19 And at that point, if -- and if it needs to be an
20 open investigation just to get the preliminary
21 information to determine whether another step should
22 be taken, so be it. I want to make sure the parties
23 agree that we continue to have the ability to do that.
24 And basically put the parties on notice that if we
25 have the ability, and if that happens we are probably

1 going to review it. And I don't think there is any
2 objection by any of the parties in doing that.

3 MR. SHREVE: Commissioner, not just on this
4 subject, but we have discussed this with Gulf in our
5 discussions and with other companies when we have
6 entered into settlements, and we all realize that we
7 are really not in a position to impair or restrict
8 your abilities to carry out whatever duties you feel
9 are necessary. We can't bind you in that way and we
10 understand that. And that pretty well is talked about
11 and taken care of we feel in every one of our
12 settlements.

13 CHAIRMAN GARCIA: Any other questions?

14 COMMISSIONER JACOBS: I think we had this
15 discussion with a prior agreement, and it goes to the
16 idea that we will look to earnings to measure the
17 company rather than ROE. And you stated here, as you
18 did before, that this is a fundamental alteration of
19 how we look at the companies. Are there some
20 assumptions, are there some benchmarks that we should
21 look to, because otherwise earnings can say anything.
22 And the numbers that you have given us could be taken
23 to be reasonable.

24 Can you give any guidance, prospectively, how we
25 should look at these numbers that are in the

1 stipulation to determine whether or not any review is
2 necessary? Because what you said is that we have the
3 -- in regard to concerns that the company might be
4 earning outside of its range, we have the opportunity
5 to go back in and look at the company's performance at
6 that time. What I see the stipulation saying is if
7 they are in these particular clauses they are okay.

8 MR. ELIAS: And as the recommendation says, the
9 stipulation binds the parties and not the Commission.
10 The Commission still has the affirmative duty to set
11 reasonable rates on a prospective basis. What has
12 historically been defined as reasonable is rates which
13 are designed to achieve a return on equity that
14 permits the company to attract -- that is sufficiently
15 high to attract capital for its operations. That is
16 not a statutory definition. I mean, statutorily we
17 don't have to measure the reasonableness of rates in
18 terms of return on equity. However, the Commission
19 has available to it the full range of remedies under
20 Chapter 366. We are not giving up any authority to
21 look at anything on a prospective basis by virtue of
22 this settlement.

23 COMMISSIONER JACOBS: Okay.

24 COMMISSIONER DEASON: Commissioners, I would like
25 to make a motion. First of all, let me say I want to

1 congratulate the parties by being able to reach this
2 agreement. I have looked at it, I think that it is
3 certainly in the public interest and that we should
4 approve it. I had some questions concerning the
5 property insurance reserve and what was agreed to
6 earlier, but I know that it was -- the discussion that
7 I had, it was part of the negotiated package and the
8 parties have reached an agreement on that and that
9 there is a certain amount of discretion and
10 flexibility which is being given to Gulf Power, and it
11 is part of the revenue sharing mechanism.

12 On balance, I think that it is certainly -- this
13 is a worthwhile stipulation and it is definitely in
14 the public interest and we are going to see
15 significant and immediate benefits to the customers of
16 Gulf Power.

17 And I would move that we would approve our
18 staff's recommendation to approve the stipulation
19 consistent with our discussion here today.

20 COMMISSIONER CLARK: Second.

21 CHAIRMAN GARCIA: There is a motion, and I
22 likewise want to concur with Commissioner Deason's
23 comments. Jack.

24 MR. SHREVE: On the last point that was
25 discussed, and I know you already realize this, we

1 were unable to reach an agreement on return on equity.
2 So this settlement is couched in a way that for
3 purposes of this settlement it's not necessary,
4 because we are dealing with a revenue sharing. Also,
5 I would like to also, if I may, take this opportunity
6 to say it was really a good opportunity to work with
7 Gulf and President Bowden, Arlen Scarborough, Gary
8 Limsky (phonetic) and Jeff Stone. It was a good
9 relationship in trying to put everything together and
10 there was a lot of give and take throughout it. Also,
11 working with Ron Laface from the Coalition and John
12 McWhirter and Vicki Kaufman of FIPUG were all in
13 accord on this. And I would just like to take the
14 opportunity, if you don't mind, to thank Roger Howe,
15 who once again -- and Billy D. Smith. Without their
16 expertise from our standpoint we would not have been
17 able to do this. But thank you for your
18 consideration.

19 CHAIRMAN GARCIA: Very good. We have a motion
20 and a second. All those in favor signify by saying
21 aye.

22 (Unanimous affirmative vote.)

23 CHAIRMAN GARCIA: All opposed. It passes
24 unanimously. Thank you very much.

25 COMMISSION STAFF: Commissioners, Item 45A

1 addresses Gulf Power Company's request for approval of
2 reduction in its authorized return on equity.

3 COMMISSIONER CLARK: I move staff.

4 COMMISSIONER DEASON: Second.

5 CHAIRMAN GARCIA: All those in favor signify by
6 saying aye.

7 (Unanimous affirmative vote.)

8 CHAIRMAN GARCIA: Very good. Thank you, staff.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceedings was taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages number 1 through 20 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 19th day of October, 1999.



JANE FAUROT, RPR
ACCURATE STENOGRAPHY REPORTERS
100 Salem Court
Tallahassee, Florida