

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of : DOCKET NO. 991834-EI
Petition for approval of :
deferred accounting :
treatment for the Gulf Coast :
Ozone Study Program by Gulf :
Power Company :

PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 9**PAA

BEFORE: CHAIRMAN JOE GARCIA
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER E. LEON JACOBS, JR.

DATE: Tuesday, February 15, 2000

TIME: Commenced at 1:10 p.m.
Concluded at 2:10 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JOY KELLY, RPR

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ITEM 9PAA**

Docket No. 991834-EI, Petition for approval of deferred accounting treatment for the Gulf Coast Ozone Study Program by Gulf Power Co.

Issue 1: Should Gulf Power Company's petition approval of deferred accounting treatment for the Gulf Coast Ozone Study program be approved?

Recommendation: No. The Gulf Coast Ozone Study Program costs should be expensed as incurred.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of issuance of the order, this docket should be closed upon the issuance of a consummating order.

P R O C E E D I N G S

(Hearing convened at 1:10 p.m.)

CHAIRMAN GARCIA: Item 9, I believe, is what is next up. Good morning, Mr. Stone. Staff.

MS. MERTA: Commissioners, Item 9 is the petition of approval of deferred accounting treatment for the Gulf Coast Ozone Study program by Gulf Power Company.

Staff is recommending that the petition be denied and we will answer any questions.

MR. STONE: Commissioners, if I may?

COMMISSIONER DEASON: Go ahead.

MR. STONE: Thank you, Commissioners. I'm Jeff Stone of the law firm Beggs & Lane from Pensacola representing Gulf Power Company.

Responding to Staff's recommendation, I first want to point out that Gulf's petition for deferred accounting treatment of the costs associated with the Gulf Coast Ozone Study was invited by the Staff as a way to resolve the Commission's dilemma about how to treat the GCOS project that resulted from the suspension of the eight hour ozone air standard that the EPA had promulgated back in 1997 and was suspended pending appeal sometime during 1999.

1 As some background, the GCOS project was
2 initiated in response to the EPA's promulgation
3 of the new eight hour ambient ozone air standard.
4 And at the time that Gulf entered into a contract
5 with the Florida Department of Environmental
6 Protection, and others committing to this
7 modeling effort, the eight hour standard was an
8 effective rule existing on the books, and we now
9 have a contract that is enforceable.

10 Your Staff stated in November that if there
11 was a rule on the books today, even if the
12 compliance date was out in the future, then it
13 would be recommending approval of these costs for
14 ECRC recovery. Specifically, at Page 255 of the
15 transcript of the hearing in the environmental
16 cost recovery clause on November 22nd, 1999, at
17 page 255 a statement was made, "In other words,
18 if there was a rule in the books, okay, even if
19 the compliance date was 2003 or 2010, and the
20 modeling proposal was before us in that
21 environment, I would be recommending approval of
22 those costs."

23 Elsewhere in that hearing, the costs were
24 recognized as though -- as they are being
25 prudently incurred. The dilemma that was before

1 the Commission in November that led to the
2 deferral of the issue concerning this project, in
3 order to allow briefs by the parties, was whether
4 the Commission had discretion to allow these
5 costs to be recovered through the ECRC under the
6 circumstances presented given that the eight hour
7 standard has been suspended or overturned on
8 appeal.

9 I remind you that there's still -- that
10 process is ongoing. The EPA has asked for review
11 by the Supreme Court. We do not know whether the
12 original eight-hour standard will be reimposed or
13 whether they will be remanded and come up with
14 another ambient ozone air standard, but something
15 is going to happen at the end of this process.

16 I submit to you that the Public Service
17 Commission has sufficient discretion available to
18 it to allow recovery of these costs through ECRC.
19 There's absolutely nothing in the statute,
20 Section 366.8255, that precludes recovery of
21 costs through the clause simply on the basis that
22 they are voluntarily incurred. That has been a
23 policy of the Commission but it's been a policy
24 adopted with regard to pure research and pure
25 research and development. That is not what's

1 happening in this case. This is a modeling
2 effort in order to develop an effective
3 compliance strategy.

4 Your Staff in November expressed concern
5 that allowing these costs to be recovered through
6 the clause when the status of EPA's new eight
7 hour standard is uncertain would represent a
8 major policy shift for the Commission relative to
9 ECRC. I disagree with that characterization.

10 But going on from there,
11 Commissioner Deason, both you and Commissioner
12 Clark expressed concern that not allowing
13 recovery of these costs through the clause would
14 send a signal to the utilities that they should
15 not engage in these type of activities, and
16 perhaps would indirectly cause an increase in the
17 ultimate cost that customers would have to bear
18 at some future time. It was against this
19 backdrop that the matter was deferred to allow
20 the parties to brief the question.

21 Commissioner Clark, when you asked that the
22 matter be briefed you specifically asked whether
23 this modeling would be applicable to a future
24 standard, and the answer you received from your
25 Staff was yes.

1 Commissioner Deason, you agreed with
2 Commissioner Clark's proposal that the issue be
3 deferred for briefs by the parties and stated --
4 and I'm referring to page -- starting at Page 265
5 in the transcript, "I am concerned that we don't
6 send the wrong signal, because even our own Staff
7 is in agreement that these type studies probably
8 are the prudent thing to do. And I think they
9 have -- if not the likelihood, at least the
10 possibility, of minimizing costs in the future,
11 and hopefully tailoring compliance strategies so
12 as to get the most compliance with the least
13 amount of dollars expended. So from that
14 standpoint, I think there's a lot of -- these
15 types of expenditures probably are worthwhile.
16 If we're going to have it briefed, I would
17 appreciate the parties giving some thought to,
18 and perhaps making proposals as to how these
19 costs should be accounted for in the interim.
20 Period. And what would trigger their inclusion
21 in the clause for recovery. So that I would not
22 want these costs to somehow get lost in the
23 shuffle, and that it needs to be a proper
24 accounting so that Staff is comfortable that if
25 something triggers to have them included, that

1 the amount is readily available."

2 It was against this backdrop, and those
3 statements that you made at the hearing, that
4 Staff came to Gulf and suggested that we petition
5 for deferred accounting treatment. That
6 invitation came in a conversation outside of this
7 hearing room while the proceedings that day in
8 the fuel cost recovery clause were underway.
9 Staff representatives from AFAD, Electric and Gas
10 and Legal Services encouraged Gulf
11 representatives to file for deferred accounting
12 treatment in lieu of briefing the issue that had
13 just been deferred by the Commission. The clear
14 indication was that Staff viewed deferred
15 accounting as a means to resolve the Commission's
16 dilemma about how to treat these costs until the
17 uncertainty over the standard was resolved.

18 Now Staff comes to you and says that ECRC
19 recovery should be denied. In part because there
20 are adequate earnings to cover these costs and in
21 part because of a perception that there are
22 environmental studies already provided for in
23 existing base rates. Both of these arguments by
24 Staff clearly represent major policy shifts for
25 the Commission regarding ECRC.

1 I think it's ironic that it was a Staff
2 concern about a possible major policy shift over
3 this type of cost that led to the matter to be
4 deferred for briefs, and yet here it is in this
5 context, Staff is asking for two major policy
6 shifts recording ECRC recovery.

7 With regards to the earnings test --

8 **COMMISSIONER CLARK:** Mr. Stone, would you
9 say again what the policy shift is?

10 **MR. STONE:** The policy shift is -- that the
11 Staff is asking for today -- they are imposing an
12 earnings test for ECRC recovery, and they are
13 changing the mechanism for determining what is in
14 base rates.

15 **COMMISSIONER CLARK:** Okay.

16 **MR. STONE:** With regard --

17 **COMMISSIONER DEASON:** How is it changing the
18 mechanism?

19 **MR. STONE:** Commissioner, the mechanism is
20 that -- previously is whether or not there was a
21 new activity. And what has happened is they have
22 broadened the definition of environmental study.
23 They are using such a broad term, "environmental
24 study" to capture the very narrow activity of the
25 modeling effort that's represented by GCOS, to

1 say if we were doing any environmental studies
2 when we had raised rates last set in the 1990
3 test year, that whatever environmental studies
4 were included in that test year, they would cover
5 these costs.

6 **COMMISSIONER JACOBS:** What type of
7 environmental study was included in the 1990 test
8 year?

9 **MR. STONE:** There were -- and I'll have to
10 pull the interrogatory responses, but there were
11 four or five broad categories of research and
12 development-type environmental studies that were
13 associated, I believe, with -- at the time
14 possible legislation on the federal front with
15 regard to electromagnetic fields and with regard
16 to acid rain. But there was not -- it was my
17 understanding that was nothing with regard to
18 something specific with regard to compliance to
19 an existing standard. And certainly there was
20 nothing along the lines of modeling an ozone --
21 the ambient air ozone process to determine what
22 sort of compliance strategies should be
23 implemented.

24 **COMMISSIONER DEASON:** Are you still
25 incurring costs associated with studies on acid

1 rain and electromagnetic fields?

2 MR. STONE: As indicated in our response to
3 those interrogatories, there were none of those
4 studies going on in 1999.

5 COMMISSIONER DEASON: So you are recovering
6 \$178,000 in base rates that are designed to
7 compensate you for studies of some sort.

8 MR. STONE: Commissioner, there were
9 \$178,000 worth of studies embedded in our base
10 rates. I disagree with the characterization that
11 we were recovering \$178,000 worth of costs to
12 achieve those studies.

13 Taking that argument to the extreme, Staff,
14 in their recommendation, said that there were
15 \$61,000 incurred for GCOS in 1990, that because
16 we have elected not to pursue those through ECRC,
17 that those were recovered through base rates.
18 That would imply to you that we could go and
19 raise the amount of money, spending without
20 affecting our earnings or anything else -- you
21 know, we'd have more money to spend on those
22 other studies and that's simply not the case.
23 Obviously, every dollar we spend has an impact on
24 earnings.

25 The point of what we're trying to say is

1 that what Staff is really doing is imposing an
2 earnings test on the ECRC, a concept that has
3 been rejected twice by this Commission. At least
4 twice by this Commission. As recently as the
5 November 1998 cost recovery hearings.

6 Specifically, it was rejected initially back
7 in Docket 930613. That was the first docket
8 involving Gulf where we petitioned to establish
9 an ECRC. In Order No. PSC-940044-FOF-EI the
10 Commission specifically noted that Public Counsel
11 made an argument in favor of an earnings test for
12 ECRC recovery, and that that order specifically
13 rejected that argument after discussion of the
14 arguments raised by the other parties and the
15 relevant statutory provisions.

16 The basic premise of the Commission was that
17 there is no earnings test with regard to other
18 clauses. The legislature obviously considered
19 that history with clauses, and, therefore, it did
20 not impose an earnings test since it didn't
21 specifically mention one in the statute.

22 But I would go on to refer to the 1998 cost
23 recovery clause hearings when Public Counsel
24 again raised the issue. Again, after hearing
25 oral argument on Public Counsel's issue, the

1 Commission reaffirmed its position, that an
2 earnings test for ECRC recovery was
3 inappropriate. Specifically at Page 2, of Order
4 No. PSC-981764-FOF-EI, the Commission stated,
5 "During the pendency of the proceeding an issue
6 was raised by the Office of Public Counsel
7 regarding the utility's return on equity. The
8 issue asked should the Commission consider
9 whether approval of environmental cost recovery
10 factors will enable electric utilities to earn
11 excessive returns on equity under currently
12 prevailing financial market conditions. In their
13 prehearing statements Gulf and TECO responded in
14 the negative, stating that the issue was decided
15 in Docket No. 930613-EI, Order
16 No. PSC-940044-FOF-EI, issued January 12, 1994,
17 thereafter referred to as the Order.

18 "At the hearing FPL expressed its position
19 on this issue which concurred with those of Gulf
20 and TECO. OPC responded to the issue in the
21 affirmative, stating that both Section 366.8255
22 subparagraph 5, Florida Statutes, and the Order,"
23 meaning the old '94 Order, "enabled the
24 Commission to evaluate whether approval of the
25 environmental cost recovery factors will enable a

1 utility to earn an excessive return on equity.
2 FIPUG agreed with the OPC's position."

3 Further quoting from the Order, you stated,
4 "During the hearing we heard oral argument from
5 the parties on the return on equity issue. In
6 addition, Staff provided an oral recommendation.
7 A bench decision was rendered to deny the issue
8 for the reasons set forth herein.

9 "We have established an authorized return on
10 equity for each utility. The return on equity is
11 presumed reasonable until it is changed in a base
12 rate proceeding. If, as a result of a base rate
13 proceeding, the return on equity is adjusted, the
14 adjustments are made for all regulatory purposes,
15 and is not specific to any cost recovery clause
16 proceeding." Then for emphasis, further stating,
17 "Therefore, we find that the recovery clauses are
18 not the proper forum to evaluate a utility's
19 earnings on a current market basis for the
20 purpose of determining whether projects should be
21 removed from recovery under a clause."

22 I mentioned earlier that the Commission's
23 policy for determining whether an activity is
24 already provided for in base rates is determined
25 by whether it is a new activity, or an old

1 activity that has significantly increased in
2 scope due to changes in regulatory requirements
3 since the last rate case proceeding.

4 The GCOS project clearly meets this test.
5 It was a new activity. It was begun in 1999,
6 pursuant to a contract entered into between Gulf,
7 the Florida Department of Environmental
8 Protection and other parties from several states,
9 and it was entered into when the relevant eight
10 hour ambient ozone air standard was still in
11 effect.

12 So that brings us to the question before the
13 Commission today, should Gulf be allowed to
14 recover GCOS expenditures through the ECRC on a
15 current basis as originally proposed, or in the
16 alternative, should Gulf's petition for deferred
17 accounting treatment of these expenditures, until
18 such time as the EPA finalizes a new ambient
19 ozone standard, be approved.

20 I submit to you that it is within your
21 discretion, your authorized discretion, to
22 approve either our original request for current
23 recovery or our request, as encouraged by Staff,
24 for deferred accounting treatment.

25 Now, although the new eight hour ambient

1 ozone air standard has been suspended, that does
2 not mean there is no applicable ambient ozone air
3 standard. To the contrary. The previously
4 imposed one hour standard remains in effect. In
5 fact, the Escambia-Santa Rosa County area is in
6 danger of becoming a non-attainment area under
7 the existing one hour ambient ozone standard.
8 We're only allowed three exceedences of the
9 standard within a three calendar year period.
10 And we already have two in the relevant period.

11 If Pensacola becomes a non-attainment area
12 under the one hour ambient ozone standard, then
13 there will be modifications to the state
14 implementation plan that are designed to bring
15 the area back into compliance. The GCOS modeling
16 effort will be effective in developing such
17 modifications to the state implementation plan if
18 non-attainment of the existing standard were to
19 be declared. That alone provides ample
20 justification for proceeding with the effort, and
21 ample justification for the Commission to allow
22 immediate recovery of these costs through ECRC.

23 There simply is no likelihood that the
24 modeling effort of GCOS will go unused in
25 environmental compliance. This modeling effort

1 will not be in vain. It is a prudent activity
2 that is part of Gulf's environmental compliance
3 efforts, and as such, the company should not be
4 penalized for its efforts in the manner suggested
5 by the Staff in the recommendation before you
6 today. There is nothing in Section 366.8255 that
7 requires you to reject recovery of these costs
8 through the clause.

9 In closing, I would like to once again quote
10 Mr. Breman from the November 22, 1999, ECRC
11 hearing. "In other words, if there was a rule on
12 the books, okay, even if the compliance date was
13 2003 or 2010, and the modeling proposals before
14 us in that environment, I would be recommending
15 approval of these costs."

16 The one hour ambient ozone standard is on
17 the books today. The GCOS cost should be
18 approved for immediate recovery through the ECRC.
19 At a minimum, the concept of deferred accounting
20 treatment for the GCOS project initially proposed
21 by Staff, and subsequently formalized by Gulf's
22 petition, should be authorized and approved.
23 Thank you for your consideration.

24 **CHAIRMAN GARCIA:** Staff, do you want to
25 address some of the points?

1 **MS. JAYE:** Yes. I believe Staff wants to
2 address both the legal points and technical
3 points brought up. I have Sam Merta here with me
4 from AFAD to address the accounting treatment
5 questions.

6 But first of all, I'd like to revisit some
7 of the legal questions that Staff has had with
8 the GCOS since we first began dealing with it in
9 preparation for the 990007 docket.

10 Early on we determined that there is not a
11 regulation that will be violated if GCOS is not
12 put into place now. Yes, it's a good idea. If
13 there were a regulation it would be a prudent
14 thing to do under the statute. But if we return
15 to the transcript from the 990007 docket hearing,
16 on Page 133, Lines 19 through 21, we have Witness
17 Vick from Gulf responding to a question about
18 whether Gulf would be in violation of some sort
19 of a regulation if they did not participate in
20 the GCOS. Mr. Vick says, "There is not an
21 environmental regulation or rule out there that
22 says we have to participate in GCOS." And if we
23 return to the statute, that's 366.8255, under
24 (1)(C), environmental laws or regulations, those
25 include all federal, state or local statutes,

1 administrative regulations, orders, ordinances
2 resolutions or other requirements that apply to
3 electric utilities and are designed to protect
4 the environment.

5 There just is not one of those here. There
6 is a one hour standard. GCOS was, as I
7 understand it from all of the discovery that we
8 have conducted, designed to meet the eight hour
9 standard, not the one hour standard.

10 Now, if there is an amendment now to say
11 well, no, it's going to apply to the one hour
12 standard instead of the eight-hour standard, we'd
13 need to go back and look at that again.

14 If you have questions, Commissioners, I'll
15 be glad to entertain them. Otherwise, I'll turn
16 it over to Sam Merta.

17 **COMMISSIONER CLARK:** Do you want to respond
18 to that? Does it have validity on the one hour
19 standard as well?

20 **MR. STONE:** Yes, I would like to.

21 **COMMISSIONER JACOBS:** First, I noted that
22 Ms. Jaye referred to that provision "other
23 requirements" as quoted from the statute. I
24 submit to you that a contract with the
25 environmental regulatory authority of Florida

1 could be construed as the other requirement, and
2 we do have that contract.

3 **MS. JAYE:** Excuse me. I understood it was a
4 MOU.

5 **CHAIRMAN GARCIA:** Hang on. Hang on. Let
6 Mr. Stone finish.

7 **MR. STONE:** You can refer to it as a
8 Memorandum of Understanding. You can refer to it
9 a number of ways. But there is consideration.
10 There is a contract. And both parties have
11 obligations to the other. I believe it's a
12 contract. But that's a matter of contract law.
13 And that's going beyond my argument.

14 My point is that language in the statute,
15 about what it is, an environmental compliance
16 activity, could be broad enough to be construed
17 to include a contract. And a Memorandum of
18 Understanding with the environmental regulatory
19 authority could very well provide you that basis.
20 But going beyond that, the GCOS modeling effort
21 is not designed to comply with any specific
22 standard, but rather is to provide information
23 that would be used in complying with whatever
24 standard is imposed. And the reason I bring up
25 the existing one hour ambient standard is

1 although we have not -- that we have been an
2 attainment area for that standard up until now,
3 it only takes two more violations in this
4 calendar year and we will be a non-attainment
5 area. At that point, the state implementation
6 plan will have to be modified to bring us into
7 compliance with that existing standard. And the
8 GCOS -- the information derived through the GCOS
9 modeling effort will be used in order to design
10 that state implementation plan to meet the
11 existing standard.

12 The modeling effort is not to meet a
13 standard, but rather is to provide information
14 that's used to meet any standard. And that's
15 what -- the point I'm trying to get across. So
16 it's not an amendment to our petition but rather
17 a clarification to understand what is meant by
18 the GCOS modeling effort. It will lead to
19 compliance activities as well.

20 **COMMISSIONER CLARK:** Well, does that square
21 with what Mr. Vick said in his testimony?

22 **MS. JAYE:** What Mr. Vick said in response to
23 a question that I had asked that -- whether the
24 Gulf Coast Ozone Study was determined pursuant to
25 an MOU, he did say yes, that is correct. There

1 was a Memorandum of Understanding between the
2 five major parties that originally started the
3 study. I told you the four states. There was
4 also the Southern Company acting on behalf of
5 Alabama Power and Mississippi Power and Gulf
6 Power. So there's a Memorandum of Understanding.
7 However, it was never clarified that this,
8 indeed, is something where the environmental
9 authorities are going to impose some sort of a
10 penalty or threaten litigation if there's no
11 participation.

12 **COMMISSIONER CLARK:** Well, you previously
13 read something quoting Mr. Vick in the
14 transcript. Would you do that again?

15 **MS. JAYE:** That is also on the same page,
16 Page 133. "There is not an environmental
17 regulation or rule out there that says we have to
18 participate in the Gulf Coast Ozone Study." And
19 that was after I asked about the MOU.

20 **COMMISSIONER DEASON:** His testimony was not
21 there was not an obligation to participate in the
22 study.

23 **MS. JAYE:** Yes. His words were, "There is
24 not an environmental regulation or rule out there
25 that says we have to participate in the Gulf

1 Coast Ozone Study."

2 COMMISSIONER DEASON: But Gulf volunteered
3 to engage in this study or participate in this
4 study pursuant to a Memorandum of Understanding
5 in that there's an obligation under that
6 memorandum; is that correct?

7 MS. JAYE: As I understand it.

8 COMMISSIONER DEASON: Okay.

9 COMMISSIONER CLARK: Now, Mr. Stone, you
10 said the information with this study will be
11 useful in -- if you become a non-attainment zone.
12 What if the rule isn't adopted, the one on appeal
13 and what's there stays?

14 MR. STONE: Okay. Let's assume for a moment
15 that the eight hour standard that was originally
16 promulgated that provided the motivation to go
17 ahead and enter into this modeling effort, let's
18 say that never happens. I don't think that's
19 realistic but let's say that never happens. And
20 let's say we continue to operate under the
21 existing one hour ambient ozone air standard. I
22 know that's a mouthful and I apologize for --

23 COMMISSIONER CLARK: One hour ambient --
24 okay.

25 MR. STONE: If we continue to operate under

1 that standard, and let's say that there were two
2 more exceedences of that standard this calendar
3 year, we will be a non-attainment area in
4 Pensacola; the Department of Environmental
5 Protection will be modifying the state
6 implementation plan in order to bring us back
7 into compliance. We will be using the
8 information gained from the GCOS modeling effort
9 to design that state implementation plan.

10 **COMMISSIONER CLARK:** Let me ask -- don't
11 make that second assumption, that you don't
12 attain it for two days. Then what happens?

13 **MR. STONE:** The information will also --
14 well, therein lies the problem. We have the
15 standard that we have to be in compliance with,
16 you know --

17 **COMMISSIONER CLARK:** Which is the one hour
18 standard.

19 **MR. STONE:** One hour standard. We certainly
20 don't want to become a non-attainment area. So
21 we will use the information in the modeling
22 effort to help us design compliant strategies
23 that will help us stay in compliance with
24 whatever standard is in effect.

25 So, I mean, we're trying to meet the

1 existing standard. No question about it. It's
2 the concern about a change in requirements that
3 would come about by becoming a non-attainment
4 area under the existing standard, or the change
5 in requirements that would come about as a result
6 of the new standard.

7 And as I indicated, it's not realistic to
8 assume there not be a change in the standard.
9 There will be some change. It may take the form
10 of the original promulgated eight hour ambient
11 ozone air standard. It may take the form of some
12 sort of modification of that newly promulgated
13 standard. But there will be a change. The one
14 hour standard will not stand in perpetuity. It
15 will be a more stringent standard sometime in the
16 near future.

17 **COMMISSIONER DEASON:** Mr. Stone, let me ask
18 you a question. I tend to be -- from what I
19 understand at this point, I tend to be in
20 agreement that these costs should be subject to
21 accumulation under some type of a deferred
22 account. I don't understand your argument,
23 though, as to why they should not be offset from
24 what you recover currently in base rates. I need
25 further explanation on that.

1 **MR. STONE:** I'll try, Commissioner. And I
2 have to go back in history to what we proposed
3 originally in the '93 docket.

4 At that time we had proposed a mechanism --
5 and I'm a little rusty on this so please bear
6 with me. At that time we proposed a mechanism
7 that took into account changes in levels of
8 spending from the test year, both increases and
9 decreases. And the Staff rejected, and the
10 Commission rejected, that methodology and came up
11 with the language that says we're talking about
12 new activities since the test year, or -- well, I
13 guess I need to quote from the Order would
14 probably be better.

15 **COMMISSIONER DEASON:** It has to be a new
16 activity.

17 **MR. STONE:** It has to be a new activity.

18 **COMMISSIONER DEASON:** But where does it say,
19 though, that the new activity can't be offset by
20 costs included in base rates which you are no
21 longer incurring.

22 **MR. STONE:** It doesn't say that. In fact,
23 there are two categories of costs, I believe, in
24 our water quality and general solid and hazardous
25 waste where there were activities going on at the

1 test year. There was a significant change in the
2 scope of those activities subsequent to the test
3 year as a result of change in environmental
4 requirements, and you are offsetting for those
5 specific activities.

6 What I'm suggesting to you is this concept
7 of making the category so broad to say all
8 environmental studies is capturing something so
9 broad it would be almost like saying all
10 environmental compliance activities. We were
11 engaged in environmental compliance in 1990.
12 Therefore, any change, it offset anything. And
13 that's taking us back to the very same argument
14 that Gulf originally proposed and was rejected in
15 favor of new activities, or activities that
16 changed significantly in scope as a result of
17 change in environmental requirements. And so
18 that's what we have been operating under for the
19 past seven years, six years.

20 And that's what I'm suggesting to you, is if
21 you're going to broaden the dragnet, if you will,
22 so the definition of environmental study captures
23 something like GCOS, then that's really changing
24 it back to what Gulf originally proposed in some
25 sense, although it's different in that respect

1 also.

2 But my point is, if you define it to be
3 environmental studies, yes, you can capture GCOS
4 in it. But that's not what your intention was,
5 at least as I understood it. And it certainly
6 was not the Legislature's intention to be that
7 broad. We're talking about new activity that was
8 not underway --

9 **COMMISSIONER DEASON:** I think the
10 Legislature does not want you to recover dollars
11 both in base rates and in a cost recovery clause.

12 **MR. STONE:** I agree with you on that.

13 **COMMISSIONER DEASON:** We all agree on
14 principle. I guess it's how you implement that
15 principle where we disagree perhaps.

16 **MR. STONE:** Well, and you specifically -- I
17 really get back to the earnings test. Because
18 specifically you rejected the concept that you
19 manage -- you check the earnings of the company
20 to determine whether they get ECRC recovery.

21 **COMMISSIONER DEASON:** I'm not concerned
22 about -- I'm in agreement with you on the
23 earnings test. That's really irrelevant for
24 this. The question is are you recovering in your
25 base rates dollars for environmental studies, if

1 you want to define it that broadly, which you are
2 no longer incurring, and, therefore, it would be
3 fair to have an offset for the Ozone Study Cost?

4 MR. STONE: And because you put the word
5 "fair" back into it, I don't think there's any
6 way to answer that question without getting back
7 into an earnings test. That's the problem I
8 have, which is why I think the two are related.

9 If you're talking about -- if you stick with
10 your new activity standard, which is what you
11 imposed back in the 1994 Order, then we can
12 implement that without going into an earnings
13 test. But if you add the element of fair, and
14 you use a broad dragnet like the term
15 "environmental studies," it would be instructive
16 to go back and look at the type of environmental
17 studies that were underway in 1990, or in the
18 test year 1990.

19 They were an acid rain study -- this, I
20 believe, was taken from one of our MFR filings --
21 electric and magnetic fields, atmospheric
22 fluidized bed combustion, Living Lakes,
23 Incorporated, which, again, was related to acid
24 rain, acid rain monitoring, the Florida Seepage
25 Lake Study. Three of those four were

1 environmental studies relating to acid rain and
2 the prospect of acid rain legislation. The
3 electric and magnetic fields, of course, were
4 EMF, and the atmospheric fluidized bed
5 combustion, I think we showed that as an
6 environmental study, but that's really just
7 research and development costs. So I submit to
8 you that those five studies don't come anywhere
9 near GCOS.

10 Now, if you define it so broadly to say
11 environmental studies, then you can drag GCOS in
12 that. But GCOS is a specific modeling activity.
13 It's really not an environmental study, except in
14 a broad sense of the word. It's a modeling
15 activity to determine what kinds of compliance
16 activities make sense. What kinds of efforts can
17 be undertaken to meet ambient ozone air
18 standards, whatever they may be; trying to
19 understand the science behind the transport of
20 ozone.

21 **COMMISSIONER DEASON:** Mr. Stone, I think --
22 you're aware that in a base rate proceeding you
23 have a test year. And it's not to say that every
24 expense that you incur in that test year is what
25 you're going to incur in the future; that you

1 have to categorize things. And that it's
2 reasonable to assume if we allowed in base rates
3 \$178,000 for environmental studies, which we
4 think is probably consistent with a prudently run
5 company, and consistent with your obligations to
6 comply with requirements, that whatever develops
7 in the future, whether it be ozone or something
8 else that we don't even know today that we're
9 going to have to be required to do a study,
10 that's what that \$178,000 is for. Or do you
11 think it's just to recover those specific studies
12 concerning acid rain and electromagnetic fields?
13 And if you think that's it, when you cease those
14 studies, then you ought to volunteer to reduce
15 your base rates.

16 **MR. STONE:** And that's not what I'm
17 suggesting at all, Commissioner Deason. What I'm
18 suggesting to you is those particular studies
19 were not designed for environmental compliance
20 and GCOS is. Those particular environmental
21 studies were more in the category of the type of
22 research and development that caused Staff the
23 type of concern about allowing recovery through
24 the ECRC. GCOS is not that category of research
25 and development.

1 And I submit to you that we -- and in our
2 original filing back in the '93 case, we talked
3 about that there are some matters of expenses
4 that go up. Some that go down. And we
5 originally proposed a mechanism that took that
6 into account. That mechanism was rejected
7 because it was thought, I believe -- the way your
8 Order describes it -- it was thought would be too
9 close to a true-up mechanism which is what no one
10 wanted to implement.

11 And so that's what we're trying to avoid, is
12 creating a true-up mechanism here. If there is
13 concern that there's \$178,000 embedded in our
14 base rate structure that is causing the company
15 to overearn because it's no longer being
16 incurred, then it's a base rate proceeding that
17 deals with that.

18 I submit to you that the company is not in
19 an overearning situation. So even if those
20 studies are no longer taking place, it's because
21 there have been other expenditures of the company
22 that have taken their place, whether they be
23 environmental studies or otherwise. And it's the
24 existence of that category of expenditure in the
25 1990 test year that has allowed us to maintain a

1 level of service without coming in for rate
2 relief.

3 So that's why I say to you that you cannot
4 answer the question about whether it's embedded
5 in base rates without dealing with the earnings
6 question in this context. And that's why I
7 submit to you that it is -- it does represent a
8 major policy shift; that is, the statements that
9 are made in the Staff recommendation before you
10 today.

11 If there is concern that \$178,000 worth of
12 expenditures for environmental studies was
13 occurring or was budgeted to occur in 1990, and
14 those are no longer occurring today, and if we
15 were overearning to the tune of \$178,000, I could
16 understand the concern. But that is not -- that
17 is specifically rejected as part of the ECRC
18 recovery clause. That is a mechanism for base
19 rate determination, not for ECRC.

20 **COMMISSIONER CLARK:** Those studies you named
21 in 1998, they were not -- it's your
22 representation they were not designed to meet any
23 specific requirement that you had to comply with?

24 **MR. STONE:** That is my understanding. I
25 have to acknowledge, I am not an expert on what

1 was involved in these studies. And one of the
2 things -- because we're talking about going back
3 and looking at an MFR, it's a very high level
4 view of it and I certainly don't want to be
5 caught in a position where my lack of information
6 is misleading you.

7 **COMMISSIONER CLARK:** Well, as I understand
8 your argument here, it's that this study needs --
9 will need to be done to meet -- assuming the
10 requirements that are on appeal were in effect,
11 you would have to do this study.

12 **MR. STONE:** Let me put it to you a different
13 way, and I apologize --

14 **COMMISSIONER CLARK:** It's information you
15 would need to determine what you need to do to
16 comply with the requirements.

17 **MR. STONE:** It's information that we
18 prudently need.

19 **COMMISSIONER CLARK:** Right.

20 **MR. STONE:** Even if the new eight hour
21 standard were still on the books today and was
22 effective, you could not look at that standard
23 and see a requirement that says Gulf Power
24 Company needs to enter into an agreement to do a
25 Gulf Coast Ozone Study. It's no different in

1 that sense than we don't have to do fuel
2 switching to comply with the SO2 guidelines. We
3 could have chosen to scrub instead of fuel
4 switch.

5 COMMISSIONER CLARK: But you do the study to
6 determine what is the prudent step to take.

7 MR. STONE: Exactly.

8 COMMISSIONER CLARK: Okay. And your
9 argument for including it in the ECRC was that it
10 was a prudent cost incurred in preparation for
11 compliance with a law or regulation.

12 MR. STONE: Exactly.

13 COMMISSIONER CLARK: And it's your view that
14 those other things that you mentioned are not the
15 same; the other things that were in the base
16 rates in '93.

17 MR. STONE: That is my understanding. And,
18 again, I'm talking about knowledge that is at a
19 different level. I really don't have the details
20 of what these studies are. I know more about
21 GCOS than I know about these five studies.

22 COMMISSIONER CLARK: But for the appeal
23 here, we would have allowed those costs in rates,
24 it's your view.

25 MR. STONE: That's my --

1 **COMMISSIONER CLARK:** And that's Staff's view
2 also, as I understand it. If that regulation
3 were in effect and was applicable, you would
4 recommend that it be included in the ECRC.

5 **MR. BREMAN:** We would have recommended that
6 an amount would be recoverable through the ECRC
7 subsequent on discovery as shown this amount to
8 be incremental to base rates and we should net
9 the two.

10 **COMMISSIONER CLARK:** And you would not
11 have -- I'm sorry?

12 **MR. BREMAN:** We should net the two. We
13 should net the level of expenditure cost for
14 these expenses for studies -- the interrogatory
15 question --

16 **COMMISSIONER CLARK:** With the 178?

17 **MR. BREMAN:** Yes, ma'am. Or with whatever
18 the current balance is.

19 **COMMISSIONER CLARK:** Then it strikes me that
20 his argument is correct. That what -- you're
21 undertaking something you said we have decided we
22 would not undertake.

23 **MR. BREMAN:** No. What I heard you ask is if
24 there was a requirement to comply with
25 something --

1 **COMMISSIONER CLARK:** Right.

2 **MR. BREMAN:** -- would we be recommending
3 something to be recovered through the
4 environmental cost recovery clause.

5 **COMMISSIONER CLARK:** Yes.

6 **MR. BREMAN:** And my answer was, yes, we
7 would be recommending something to be recovered
8 through the environmental cost recovery clause.

9 **COMMISSIONER CLARK:** Okay.

10 **MR. BREMAN:** And that's what we -- that's
11 what I recommended in the November hearing. I
12 haven't changed my mind.

13 What I am stating today is that we have
14 information indicating that Gulf Power has an
15 allocation in base rates for -- and the question
16 reads, "Please list all environmental studies and
17 their associated costs which were included in
18 Gulf's current base rates." This is question
19 No. 18. It was initially issued under Docket
20 990007. It was responded to appropriately, in my
21 opinion, in this docket, 991834. The amount is
22 \$178,000. This is an expense. And I'm not the
23 appropriate accountant -- I'm not an accountant,
24 and I'm not the appropriate person --

25 **COMMISSIONER CLARK:** You're changing your

1 recommendation, then, because of what -- of
2 recovery in the ECCR clause, because you're
3 categorizing this as the same type of expense
4 that was included in base rates in the 178,000.

5 **MR. BREMAN:** No, ma'am. There's a whole
6 series of things that must be maintained.

7 First of all, you're saying there's an
8 environmental requirement. I must have that
9 assumption before I make a recommendation that
10 something be approved. The level is the second
11 question. So the second part of the question is
12 the level of recovery that should be recommended
13 for recovery.

14 In looking at that, okay, in looking at that
15 question, we have information indicating that
16 there is a level of recovery for this type of
17 activity in base rates. And it needs to be
18 netted out pursuant to the definition stated very
19 plainly in the statute.

20 **COMMISSIONER CLARK:** Well, let me just
21 indicate -- the way I interpret what you are
22 saying is that it is not eligible for ECRC
23 because it is in the category of expenses that
24 are in base rates, and, therefore, it's not
25 allowed under the statute.

1 **MR. BREMAN:** I think I'm hearing you say an
2 all or nothing.

3 **COMMISSIONER CLARK:** Well, let's just pursue
4 that. If it's -- I had understood 178,000 to be
5 an annual figure?

6 **MR. BREMAN:** Yes.

7 **COMMISSIONER CLARK:** What is the 61,000?

8 **MR. BREMAN:** The 61,000 level of expense was
9 for 1999.

10 **COMMISSIONER CLARK:** Well, then it's an
11 annual figure, too, and if you net the two --

12 **COMMISSIONER DEASON:** Well, no, it's just
13 the first year. It's going to be 250,000
14 afterwards.

15 **MR. BREMAN:** The projections are for a
16 three-year stream, and the level of expenditure
17 will be 200,000 or more. Next year's projection
18 are 253,000, I believe.

19 **COMMISSIONER CLARK:** Is that per year?

20 **MR. BREMAN:** Yes, ma'am.

21 **COMMISSIONER CLARK:** It's 250,000 per year.

22 **MR. BREMAN:** The projections are 253,000 for
23 the year 2000. And future years are
24 approximately 200,000.

25 **COMMISSIONER CLARK:** How long does this go

1 on?

2 **MR. BREMAN:** Three years, according to the
3 discovery I have. Five years. Sam corrected me.

4 **COMMISSIONER CLARK:** What you're
5 recommending then is only a part of it? A part
6 of it go to the ECCR clause and part of it be
7 considered as base rates, in base rates?

8 **MR. BREMAN:** Yes, ma'am, assuming across the
9 first threshold saying there's an environmental
10 requirement.

11 This is very similar to -- and this is
12 identical in the practice that the Commission has
13 used ever since the first Order came out on the
14 environmental cost recovery clause.

15 **COMMISSIONER CLARK:** Well, maybe I've
16 misinterpreted this. Then why are you suggesting
17 it not be a deferred accounting treatment?

18 **MS. MERTA:** We're suggesting it not be
19 deferred, Commissioner, because normal accounting
20 for this type of expense is to expense it. It's
21 a study. It's not, in our opinion, related to a
22 specific project at this time. The standard is
23 uncertain. The study could be out of date by the
24 time the, you know, projects are being
25 considered.

1 **COMMISSIONER CLARK:** Well, I thought your
2 recommendation is you must first determine that
3 the costs are recoverable prior to creating a
4 regulatory asset.

5 **MS. MERTA:** That's correct.

6 **COMMISSIONER CLARK:** And we have not made
7 that determination.

8 **MS. MERTA:** That's correct.

9 **COMMISSIONER CLARK:** But Mr. Breman's
10 recommendation, apparently, is that some of it
11 should be recovered.

12 **MS. MERTA:** That's only if it's allowed to
13 be recovered through ECCR. In this petition --

14 **COMMISSIONER CLARK:** I'm getting confused.
15 Because what I hear him saying is that at least
16 some part of it -- if it's over the 178,000, some
17 part of it should be recovered by ECRC; is that
18 correct?

19 **MR. BREMAN:** Well, that is the past practice
20 by this Commission. And I guess my problem is
21 that past practices are frustrating.

22 If TECO -- if Gulf Power were still involved
23 in electromagnetic fields research, let's make
24 that assumption, or studies, or even the acid
25 rain monitoring program, and the costs for that

1 activity was in the millions.

2 **COMMISSIONER CLARK:** Was what?

3 **MR. BREMAN:** Was in the millions. The
4 question would then be whether or not those
5 million dollars in excess of \$178,000 be
6 recoverable through the ECCR. And I would
7 suggest to you that probably past practices would
8 tend to suggest it should be. But that seems to
9 violate the basic definition of base rates. I
10 believe Mr. Deason touched on that. Base rates
11 is considerably fungible. You set a level, and
12 the specific projects that are in base rates are
13 not an issue on a going-forward basis.
14 Unfortunately, because we were close to a test
15 year, we used the test year --

16 **COMMISSIONER CLARK:** Just wait a minute.
17 But that's what the statute says we should look
18 at. Are they included in base rates? If they
19 are not, then they can come under the ECCR
20 clause?

21 **MR. BREMAN:** Right. And the scenario I have
22 posed to use, if a specific project that is named
23 in the test year budget exceeds the level of
24 expenditure, would the incremental amount be
25 allowed through the recovery clause.

1 **COMMISSIONER CLARK:** And we've taken the
2 position that it would not, as I understand what
3 Mr. Stone said.

4 **MR. BREMAN:** I hope so. But I would point
5 out to you that past practices indicate that if
6 the amount exceeds, that incremental amount is
7 probably recoverable through the clause, which
8 creates a problem.

9 **COMMISSIONER CLARK:** Has that been done?

10 **MR. BREMAN:** I don't know.

11 **MR. STONE:** Commissioner, I might be able to
12 shed some light on that.

13 If you look at the context -- and
14 Ms. Ritenour is with me, she may have a better
15 handle on how to describe this than I would.

16 But if you look at -- there are two
17 categories of expenses that Gulf has approved
18 through ECCR recovery; that there is an offset
19 associated with those based on base rates. But
20 in both cases, there was a significant change in
21 scope that was related to a change in
22 environmental requirements subsequent to the test
23 year. I submit to you that if there was that
24 incremental change in the electric and magnetic
25 field study, but it was not tied to a change in

1 environmental requirements, it was just rather
2 changed to just an increase in cost, that
3 increment would not be allowed for recovery
4 through the ECRC.

5 COMMISSIONER CLARK: I'm sorry, say that
6 again.

7 MR. STONE: Taking EMF as an example. There
8 was \$39,000 for that particular study in the 1990
9 test year. Let's say today we were spending
10 \$78,000. If we could not show that that increase
11 was attributable -- that increased scope was
12 attributed to a change in environmental
13 requirements, then we could not recover the
14 increment through the clause, because it was a
15 base rate item. And I submit to you, that purely
16 research and development such as those five
17 items, we would have a hard time doing -- showing
18 you that the increased activity was due to a
19 change in environmental requirements. Unlike the
20 GCOS project, which is a new activity and it was
21 specifically designed -- it was specifically
22 undertaken because of the change in requirements.
23 All those requirements have been put in limbo, to
24 quote Mr. Vick, from back in November.

25 And so that is the difference, the

1 distinction I would draw between the broad
2 category of environmental studies that have been
3 identified in response to the interrogatories
4 submitted to us by Staff, and the GCOS project,
5 which is what we petitioned for recovery of.

6 **MR. BREMAN:** Commissioners, I'm not
7 interjecting any kind of different definition
8 than Gulf Power hasn't already defined. The
9 simple fact that Gulf Power decided to credit
10 this category with the 1990 expenditures for GCOS
11 tends to suggest there is similarity and
12 appropriateness for netting, at a minimum,
13 netting the two. Because Gulf Power itself
14 recognized it needed to credit the \$61,000 to
15 base rates.

16 **MR. STONE:** I'm sorry. I don't understand
17 where he's coming from on that. We never made
18 that determination; have never made that
19 representation. The only reason we didn't
20 petition for the \$61,000,000 through ECRC
21 recovery is because of your requirement that they
22 be projected expenditures. And at the time that
23 we filed our projection for 2000, that \$61, 000
24 or at least some portion of it, had already been
25 spent. And in a effort to make a cleaner issue,

1 if you will, we elected to forgo ECCR recovery
2 for that \$61,000 not because we believe it was an
3 offset for these environmental studies that have
4 been identified in this interrogatory response,
5 but rather because we waited too late to petition
6 for them. And we felt like under your rules and
7 procedures -- or rather rules is broad term -- in
8 terms of your incipient policy that's been
9 developed through the ECRC clause -- it's
10 redundant -- the ECRC, we knew that we could not
11 win the case for that \$61,000 and did not pursue
12 that. But that is not -- we never elected to
13 offset it against these costs. I'm sorry that
14 Mr. Breman had that misunderstanding.

15 **COMMISSIONER DEASON:** Mr. Chairman, I'm
16 prepared to make a motion.

17 **COMMISSIONER JACOBS:** I have one brief
18 question. Earlier Commissioner Deason asked
19 whether or not the costs were still being
20 incurred for the MF in the ambient air research.
21 Is it -- are those tests ongoing and are there
22 cost being incurred for those?

23 **MR. STONE:** It's my understanding when we
24 went back through, in order to answer this
25 interrogatory -- I'm sorry. There was a

1 subsequent interrogatory. Question 18 was,
2 "Please list all environmental studies and their
3 associated costs which were included in Gulf's
4 current base rates," and those were the five
5 studies. A subsequent interrogatory said,
6 "Please list all environmental studies and their
7 associated costs which were included in Gulf's
8 current Monthly Surveillance Report." And our
9 answer to that one was, "No costs for
10 environmental studies are reflected in Gulf's
11 current Surveillance Report, which is for the
12 period ending November 1999. In December it was
13 discovered that the costs associated with the
14 GCOS had not been properly included in the
15 Surveillance Reports. This error was corrected
16 in December and those costs will be included in
17 the Surveillance Report filed for the period
18 ending December 1999."

19 **COMMISSIONER JACOBS:** But there are no costs
20 for the others?

21 **MR. STONE:** As best we could determine from
22 going back -- and, again, part of the problem is
23 that we're looking at -- for 1990 we're looking
24 at MFR data and that's all that is available to
25 us at this point.

1 **COMMISSIONER JACOBS:** You'd agree, though,
2 that -- with the premise that was raised by --
3 earlier that in the event -- and I don't know.
4 Let me understand how this happens. In the event
5 where there is a test year item and no longer is
6 adding to the expenses of the company, what do we
7 do in that instance? Until they come into it for
8 another rate case, they continue to recover
9 those?

10 **MS. MERTA:** Yes, through base rates.

11 **COMMISSIONER JACOBS:** We have no discretion
12 to review that at all.

13 **COMMISSIONER CLARK:** We generally don't so
14 long as they are within their earnings test.

15 **COMMISSIONER JACOBS:** What I saw -- what you
16 said here they are above. I thought you said
17 they were twelve-nine something, six months.

18 **MS. MERTA:** Yes. Let's see. That was the
19 November 1999 Earnings Surveillance Report, Gulf
20 was earning 12.97 percent, which is over its
21 allowed 10.50 to 12.50 rate of return range.
22 That's a new range that was effective
23 November 3rd, 1999.

24 **COMMISSIONER JACOBS:** So what's our
25 discretion in the event -- in the event of those

1 circumstances to deal with --

2 **COMMISSIONER DEASON:** Really, if they are
3 overearning, it has nothing to do with whether we
4 allow or disallow these costs. If we think they
5 are overearning, we bring them in for a rate
6 case. But there are other considerations. In
7 fact, there's a stipulation in effect with this
8 company, so --

9 **CHAIRMAN GARCIA:** You had a motion?

10 **COMMISSIONER DEASON:** Yes, I do.

11 Mr. Chairman, I move that we deny Staff's
12 recommendation and that we allow the deferred
13 accounting. And the reason that I make that
14 suggestion is that I want to make it clear that
15 I'm not trying to open up cost recovery to any
16 type of environmental expenditure that the
17 company volunteers to make. But I think that
18 this study is in a special category. While it
19 may not be specifically to comply with a very
20 specific rule or other requirement, we know that
21 there is a one hour standard that is in effect
22 now, there's a proposed eight hour standard and
23 that this study is going to be utilized
24 regardless of which standard is adopted in that
25 there is an obligation, pursuant to the

1 Memorandum of Understanding with DEP, which
2 obligates this company to engage in this study.

3 And I think we all agree that it's a good
4 business practice for companies to engage in such
5 studies because it potentially can minimize or,
6 perhaps, optimize future environmental compliance
7 costs.

8 So for all of those reasons, I think that we
9 should allow the deferred accounting. However,
10 I'm in agreement with Staff that it should be
11 offset by the \$178,000 included in base rates.
12 So that's my motion.

13 **CHAIRMAN GARCIA:** Okay.

14 **COMMISSIONER CLARK:** Let me ask a question.
15 I guess -- I certainly think it should be allowed
16 for deferred accounting. It's the second part
17 that I'm concerned about and it is for this
18 reason.

19 We have previously, as I understood it,
20 taken the position that the only way you can
21 get -- you cannot get -- what you have in your
22 base rates is the amount you're allowed to
23 recover for specific projects that were in the
24 base rates. And regardless of whether it turns
25 out that you need to expend more for it, you

1 can't get to that through the ECR clause and you
2 have to live with what you projected. You can't
3 get more.

4 **COMMISSIONER DEASON:** I guess --

5 **COMMISSIONER CLARK:** What I'm asking is are
6 we saying that in the case where you have a new
7 activity -- and I agree with you, I think it's
8 going to be something that will either --
9 whatever standard comes out, it will be useful
10 for that standard either by, you know,
11 demonstrating something else is appropriate and
12 thereby saving money, or demonstrating the
13 prudent way to comply with the standard.

14 But by making that netting, are we saying
15 that it cuts one way and not the other? And I
16 haven't -- I'm concerned that it is saying that.

17 **COMMISSIONER DEASON:** Yes. The way I look
18 at it is that we're making -- with the enactment
19 of the environmental cost recovery clause, we're
20 engaging in a new way of recovering costs.
21 Before it would have been in base rates.

22 **COMMISSIONER CLARK:** Right.

23 **COMMISSIONER DEASON:** Okay. Now we have a
24 mechanism which identifies those costs and allows
25 those costs to be flowed through. And it's

1 consistent with the law and the policy of this
2 state.

3 **COMMISSIONER CLARK:** Right.

4 **COMMISSIONER DEASON:** The problem is how do
5 you make that transition? We have some costs
6 right now that were in the previous rate case
7 which were for environmental studies. Obviously,
8 they weren't for an ozone study. But they were
9 nor environmental studies. Those costs are no
10 longer being incurred specific, but there is an
11 allowance in base rates.

12 I think it's contemplated within the
13 statute, and it is fair to recognize that and to
14 offset that given that we've got a new mechanism.
15 If we didn't have this new mechanism, what would
16 happen is is that the company would be spending
17 \$250,000 when they only have 178,000 in base
18 rates, but that's the way that mechanism works.

19 **COMMISSIONER CLARK:** Right. Then you're
20 saying the category is environmental studies that
21 were allowed and they just happen to be listed
22 there, and this comes within that category.

23 **COMMISSIONER DEASON:** Right. And I also
24 believe, though, that if, for example, the acid
25 rain studies were continuing and electromagnetic

1 field studies were continuing, or if there were
2 some other study that was continuing that, say,
3 equalled 178,000, there would be no offset.

4 COMMISSIONER CLARK: Right.

5 COMMISSIONER DEASON: But if it exceeded
6 \$178,000, we wouldn't add more to the 250 just
7 because they had exceeded 178. So in that regard
8 I guess it does work in one direction.

9 But the fact of the matter is, if it were --
10 if they were incurring study costs which met the
11 requirements of the clause, well, then they would
12 be getting recovery of those, even though they
13 may be exceeding the 178. So it doesn't cause me
14 any concern.

15 COMMISSIONER CLARK: Say that again.

16 COMMISSIONER DEASON: I don't know if I can.

17 What I'm trying to do is make the transition
18 from the way things are recovered in base rates
19 to the way we're doing it now.

20 COMMISSIONER CLARK: Right.

21 COMMISSIONER DEASON: Maybe in a future rate
22 case, if we ever have one, and I'm not asking for
23 one, we can take all the environmental costs
24 completely out of base rates and we don't have
25 this problem anymore.

1 But the fact remains that the company is
2 recovering \$178,000 in costs for studies which
3 are no longer being undertaken. That's fine.
4 That's the way base rates work. But now there is
5 a study that's being undertaken and the company
6 is asking specific recovery of those dollars
7 through the clause. And I think that we need --
8 we have an obligation to go back and look what's
9 being recovered in base rates and offset that.

10 **COMMISSIONER CLARK:** You see this as a
11 transition.

12 **COMMISSIONER DEASON:** Yes.

13 **COMMISSIONER CLARK:** Okay. I'll second the
14 motion.

15 **COMMISSIONER DEASON:** And if -- I've just
16 explained, if Staff disagrees -- I know you
17 disagree with the deferred accounting. But I'm
18 talking about the discussion of what's in base
19 rates and the offset. If you are in disagreement
20 with that, let me know. Because I think what I'm
21 moving here is consistent with the way we
22 interpret the law and what we've done in previous
23 cases. I'm getting some nods but I don't get any
24 verbal --

25 **MR. MAILHOT:** Right. I agree with what

1 you're saying. I mean, it's a reasonable way to
2 approach it.

3 My question, though, is are you voting to
4 allow deferred accounting or are you voting to
5 allow recovery through the ECRC?

6 **COMMISSIONER DEASON:** Deferred accounting.
7 Deferred accounting. They can -- in all honesty,
8 I would be -- I think it would be consistent to
9 go ahead and allow recovery through the clause
10 netting the two. But I was concerned, when we
11 first discussed this at the fuel adjustment
12 hearings, there was some concern about whether
13 there was going to be some final rule that would
14 be in place that this study would be utilized to
15 comply with. So that's the reason we -- I
16 think -- we discussed the possibility of deferred
17 accounting so the company would not be penalized
18 for engaging in the study. They could accumulate
19 the dollars. And once a final standard was
20 adopted, then they'd have something to say,
21 "Well, we expended these dollars to be in
22 compliance with this standard," or at least
23 provide the information that was conducive to
24 developing the standard. But we do have a --
25 it's obvious that there is an obligation under a

1 DEP agreement which, under Mr. Stone's
2 interpretation, there's an obligation to comply
3 with and it could be interpreted to be the same
4 as complying with the rule.

5 I think we need to do one or the other. We
6 need to allow recovery or implement deferred
7 accounting, net it with the 178.

8 **MR. MAILHOT:** Okay. That's why I just
9 wanted to be clear on which we were doing.

10 **COMMISSIONER DEASON:** And if Staff has any
11 thoughts on whether -- given that we're going to
12 do one or the other, does Staff have a
13 preference? Do we just go ahead and allow
14 recovery or do the deferred accounting?

15 **COMMISSIONER CLARK:** Can we do that? I
16 mean, the ECRC clause is in effect. To do
17 anything we'd be waiting for the next time around
18 and doing a true-up, right?

19 **MR. MAILHOT:** Right. Then when you do the
20 true-up calculations, those expenses as they
21 spend them during the year 2000 would fall into
22 the clause calculations. That's how they would
23 get their recovery and their interest and
24 everything. So you wouldn't have deferred
25 accounting. It wouldn't be necessary. So that's

1 why you kind of go one way or the other.

2 **COMMISSIONER DEASON:** Mr. Stone, does the
3 company have a preference?

4 **MR. STONE:** Yes. The company would prefer
5 immediate recovery, and we would do that through
6 the true-up mechanism. So if you authorized it,
7 we would be passing that through the clause
8 starting immediately, and it would be reflected
9 in the true-up. It's not sufficient to change
10 the factors more than a point or two per class so
11 it would not justify the 10%.

12 **COMMISSIONER DEASON:** So if we made a
13 decision that these dollars that you expend on
14 this study should be recovered through the
15 clause, you could true that up in the next
16 proceeding and then account for them on a
17 going-forward basis, in that manner.

18 **MR. STONE:** Only difference would be that we
19 would not have reflected the projection in our
20 factors that are in place today. But we see no
21 need to change the factors if you decide to allow
22 immediate recovery. We would just deal with that
23 in the true-up mechanism. And in fact, the
24 netting may be such that it wouldn't change the
25 factors anyway. I don't remember what the

1 threshold was for changing the factors.

2 COMMISSIONER DEASON: And I know you
3 disagree with the netting. And this a PAA and we
4 can have a hearing on it too.

5 COMMISSIONER JACOBS: What about the
6 finality of the standard? Is that a concern
7 here?

8 COMMISSIONER CLARK: Finality of?

9 COMMISSIONER JACOBS: The standard is not
10 final, is it?

11 MS. JAYE: No, it is not.

12 COMMISSIONER JACOBS: So when do you know
13 that you've done enough of a study? How will you
14 know that?

15 MR. STONE: The study is to -- I believe the
16 study is to develop a model. And so you will
17 know when you've completed the study when you've
18 got the model.

19 COMMISSIONER JACOBS: The model -- is the
20 model intended to achieve what the disputed rule
21 provides?

22 MR. STONE: The model is to give you
23 computer simulation, if you will, so that when a
24 new standard is changed you can then plug that
25 standard into the model and you know what is

1 likely to happen as a result of the changes.

2 **COMMISSIONER JACOBS:** So whether it would be
3 a one-day, eight-day, ten-day, whatever, your
4 model is going to handle that.

5 **COMMISSIONER DEASON:** It will allow you to
6 optimize the way you comply with the new standard
7 so you can minimize your cost and still meet
8 compliance.

9 **MR. STONE:** Yes. But in terms of the cost
10 of the Gulf Coast Ozone Study, it will be
11 complete when it's complete regardless of whether
12 there's a change in the standard.

13 **COMMISSIONER DEASON:** That's why this study
14 is going to be useful, regardless of whether it's
15 the old standard or whether it's a new standard.

16 **MR. STONE:** Exactly.

17 **CHAIRMAN GARCIA:** We have a motion.

18 **COMMISSIONER DEASON:** I would make the
19 motion that we just allow recovery through the
20 clause.

21 **COMMISSIONER CLARK:** Of the net amount.

22 **COMMISSIONER DEASON:** With the net amount.

23 **MS. JAYE:** If I can just interject something
24 for a moment here. No determination has been
25 made about how this can be recovered through the

1 clause because we did not have a hearing on it in
2 November. So I don't know how we can make that
3 determination --

4 **COMMISSIONER DEASON:** This is a PAA. This
5 whole thing is a PAA.

6 **MR. STONE:** Commissioner, I respectfully
7 disagree. Mr. Vick took the stand. He was
8 subjected to cross examination. We were given an
9 opportunity to brief the issues.

10 I submit to you that the oral argument today
11 is in the form of a brief, and you still have
12 jurisdiction over that issue that was deferred
13 for briefs of the parties. I believe that you
14 can, in fact, vote that issue out.

15 **CHAIRMAN GARCIA:** Go ahead, Mr. Elias.

16 **COMMISSIONER CLARK:** If we do it PAA, it's
17 sort of moot anyway.

18 **MR. ELIAS:** Yes.

19 **COMMISSIONER DEASON:** If we do it PAA, and
20 then if Public Counsel or FIPUG want to
21 protest --

22 **MR. ELIAS:** And then, you know --

23 **CHAIRMAN GARCIA:** We've got you. We have a
24 motion.

25 **COMMISSIONER CLARK:** Second.

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CHAIRMAN GARCIA: A second. All those in favor signify by saying "aye." Aye.

COMMISSIONER CLARK: Aye.

COMMISSIONER DEASON: Aye.

COMMISSIONER JACOBS: Aye.

CHAIRMAN GARCIA: Thank you very much.

- - - - -

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

CERTIFICATE OF REPORTER

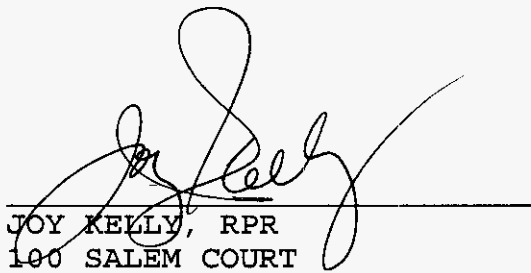
5 STATE OF FLORIDA:

6 COUNTY OF LEON:

7 I, JOY KELLY, RPR, do hereby certify that the
8 foregoing proceedings were taken before me at the
9 time and place therein designated; that my shorthand
10 notes were thereafter translated by me; and the
11 foregoing pages numbered 4 through 62 are a true and
12 correct record of the aforesaid proceedings.

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

17 DATED this 21st day of February, 2000.

18
19
20 
21 JOY KELLY, RPR
22 100 SALEM COURT
23 TALLAHASSEE, FLORIDA 32301
24 (850) 878-2221
25

Docket 991834-EI 2-15-00 Agenda Item #9

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