

State of Florida



Public Service Commission

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DATE: JUNE 21, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF SAFETY AND ELECTRIC RELIABILITY (HARLOW, WOODALL) *mk5*
DIVISION OF LEGAL SERVICES (STERN, ELIAS) *JDT*

RE: DOCKET NO. 010827-EI - PETITION BY GULF POWER COMPANY FOR APPROVAL OF PURCHASED POWER ARRANGEMENT REGARDING SMITH UNIT 3 FOR COST RECOVERY THROUGH RECOVERY CLAUSES DEALING WITH PURCHASED CAPACITY AND PURCHASED ENERGY

AGENDA: 06/25/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\SER\WP\010827.RCM

CASE BACKGROUND

By petition filed March 15, 1999, Gulf Power Company (Gulf) sought a Determination of Need for Smith Unit 3, a 575 megawatt combined cycle generating unit. On August 16, 1999, the Commission issued Order No. PSC-99-1478-FOF-EI, in Docket No. 990325-EI, approving the need determination for Smith Unit 3. Gulf received final approval for Smith Unit 3 from the Power Plant Siting Board in July 2000. The unit is currently under construction, with an expected in-service date of June 2002.

By petition filed June 8, 2001, Gulf seeks Commission approval for cost recovery through the recovery clauses for a purchased power arrangement with the Southern Power Company (Southern Power). Southern Power is an operating company subsidiary of Southern Company. The purchased power arrangement anticipates the transfer of Smith Unit 3 to Southern Power from Gulf. Gulf will then

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purchase capacity and energy from Smith Unit 3 under a 10-year contract with Southern Power. The contract also entitles Gulf to call upon the output of Smith Unit 3 for voltage support in the Panama City area for a 20-year term.

It should be noted that Gulf is currently operating under a revenue sharing plan approved in Commission Order No. PSC-99-2131-S-EI, on October 28, 1999. This revenue sharing plan resulted from a Stipulation and Settlement entered into by Gulf, the Office of Public Counsel, The Florida Industrial Power Users Group, and the Coalition for Equitable Rates. The stipulation includes: 1) a restriction on Gulf from requesting a base rate increase; 2) a reduction in base rates by \$10 million per year; 3) the sharing of revenues between certain levels between Gulf and its customers; and, 4) the refund of revenues in excess of the sharing level to customers. The ending date for the revenue sharing plan and other matters set forth in the stipulation is the commercial in-service date of Smith Unit 3, or December 31, 2002, whichever occurs first.

Simultaneously with its June 8, 2001 petition, Gulf filed a Motion for Expedited Treatment and Request for Procedural Schedule and a copy of the purchased power arrangement with a Notice of Intent to Request Confidential Classification. In its Motion, Gulf is requesting a final ruling on its petition regarding whether the purchased power arrangement is appropriate for cost recovery through the cost recovery clauses no later than August 14, 2001. Gulf has proposed a hearing during the week of July 23, and a final Commission decision on its petition no later than the August 14, 2001 Agenda Conference. Gulf's proposed procedural schedule is included as Attachment A. This recommendation will address Gulf's Motion for Expedited Treatment only.

DISCUSSION OF ISSUES

ISSUE 1: Should Gulf Power Company's (Gulf) Motion for Expedited Treatment and Request for Procedural Schedule regarding Docket No. 010827-EI be approved?

RECOMMENDATION: No. Staff recommends that an October hearing would: 1) allow interested persons a reasonable period of time to prepare for hearing; 2) allow adequate time for the necessary discovery; 3) address Gulf's concerns; and, 4) provide time for Gulf to complete negotiations with Southern Power. Setting a schedule with a hearing in the October time frame does not preclude a settlement or disposition by Proposed Agency Action if the parties reach agreement or if it appears that the issues have been resolved.

STAFF ANALYSIS: In its Motion for Expedited Treatment, Gulf lists two reasons why a decision on its Petition is time sensitive. Gulf states that a decision prior to August 14, 2001 is necessary in order "to allow the Company to consider the results in the upcoming projection filings due in September and also to provide an opportunity to obtain approval of the agreement by the FERC prior to the cost recovery hearings set for November in Docket No. 010001-EI."

Staff held a meeting with Gulf, The Florida Industrial Power Users Group, and the Office of Public Counsel on June 19, 2001. At the meeting, Gulf stated that if a decision on its petition is delayed, Gulf will need to evaluate whether it is necessary to petition the Commission for rate relief such that a decision would be rendered prior to the expected June 1, 2002 in-service date of Smith Unit 3.

Staff believes that Gulf's petition raises fundamental and significant issues which require full and fair opportunity to conduct discovery, prepare testimony, and consider evidence in a more reasonable time frame. Gulf's petition raises significant concerns regarding the impact on: 1) the cost effectiveness of the proposed purchased power arrangement; 2) earnings; 3) rates; and, 4) the prior Determination of Need for Smith Unit 3.

Staff believes that parties requesting expedited treatment should file a fully developed case. Gulf's testimony was filed on June 18, 2001. However, the testimony fails to provide evidence regarding the cost effectiveness and the rate impact of the proposed transfer of Smith Unit 3 and the proposed purchased power

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agreement. According to Gulf, negotiations are still in progress with Southern Power regarding the transfer of the assets and the operation of the facilities. These negotiations are expected to result in two documents: 1) a Sales and Transfer Agreement, and 2) an Operating Agreement. Staff believes that the full impact on ratepayers cannot be determined without access to these documents. Gulf was unable to predict whether these documents would be completed and made available to the parties prior to Gulf's proposed July 27 hearing date.

Approval of Gulf's petition will shift cost recovery from base rates to the cost recovery clauses, potentially resulting in a more immediate rate impact. If Smith Unit 3 is not recovered through base rates as previously anticipated, it appears to staff that Gulf could be overearning at the expiration of the revenue sharing plan. A determination of the rate impact will require a significant level of analysis. In addition, because the transfer of an asset is involved, the type of analysis exceeds the scope of that required for a typical purchase power agreement. Gulf's proposed schedule will not allow for the degree of analysis and consideration required to assess the rate impact. Staff also notes that the Commission's 1999 determination that Smith Unit 3 was needed was based on the expectation that this plant would be fully committed to serve Gulf's retail customers for the thirty year expected life.

Furthermore, neither Gulf's Petition nor its testimony provide information useful to assessing the rate impact. Staff must obtain the needed information through discovery, and Gulf's proposed schedule will not allow time for meaningful discovery.

Gulf has not shown why its proposed schedule is appropriate or necessary. Gulf will not be harmed if its Petition is approved for cost recovery after the November hearing in Docket No. 010001-EI. The Commission has in the past, approved cost recovery factors contingent upon the ultimate resolution of other pending issues. Gulf's fuel factors could also be adjusted at a later date to reflect the costs of the purchased power agreement in the true-up process or as a mid-course correction. In addition, it appears to staff, and Gulf agrees, that state approval of Gulf's petition is not a prerequisite to getting FERC's approval. See Public Utilities Holding Company Act, Section 32 [79z-5a]. Therefore, Gulf need not wait for state approval before filing with FERC.

At the June 19 meeting, staff suggested two reasonable alternatives to Gulf's proposed schedule. Staff suggested that a hearing could be held in October, with a final decision in December 2001. Staff also suggested that the Petition could be handled as

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a PAA. Gulf stated that the Company was only willing to alter its proposed schedule by days, rather than months. Gulf also expressed concern about utilizing the PAA process because of the uncertainty of the final date of the decision. However, staff believes that these alternatives will allow for the necessary discovery while addressing the concerns raised by Gulf in its Motion for Expedited Treatment and in the June 19, 2001 meeting. Staff's proposals also allow time for Gulf to complete negotiations with Southern Power. Staff also notes that setting a schedule with a hearing in the October time frame does not preclude a settlement or disposition of Proposed Agency Action if the parties reach agreement or if it appears that the issues have been resolved.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should not be closed.

STAFF ANALYSIS: This docket should remain open pending the outcome of a hearing on the merits of the case.

EXHIBIT "A"

PROPOSED EXPEDITED PROCEDURAL SCHEDULE

<u>Event/Activity</u>	<u>Date</u>
Petition filed	6/08/01
Issue ID Meeting	6/13/01
Direct Testimony of GPC Due	6/18/01
Responses to Discovery Complete	7/02/01
Intervenor/Staff Testimony Due	7/09/01
Rebuttal Testimony Due	7/12/01
Prehearing Statements Due	7/12/01
Prehearing Conference	7/20/01
Prehearing Order	7/25/01
Hearing	7/27/01
Closing Arguments/Bench Decision	7/27/01
Staff Recommendation if no Bench Decision	8/02/01
FPSC Decision at Agenda Conference	8/14/01
Final Order Issued	8/24/01, or earlier if bench decision