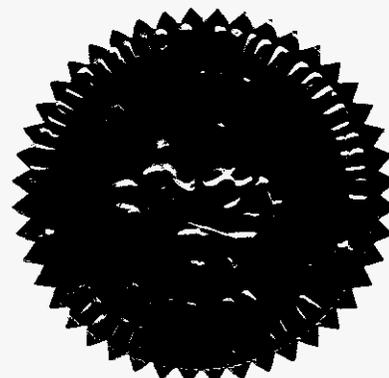


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010827-EI

In the Matter of

PETITION BY GULF POWER COMPANY FOR
APPROVAL OF PURCHASED POWER
ARRANGEMENT REGARDING SMITH
UNIT 3 FOR COST RECOVERY CLAUSES
DEALING WITH PURCHASED CAPACITY
AND PURCHASED ENERGY.



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PROCEEDINGS: STATUS CONFERENCE

BEFORE: COMMISSIONER BRAULIO L. BAEZ
Prehearing Officer

DATE: Wednesday, August 1, 2001

TIME: Commenced at 9:30 a.m.
Concluded 9:39 a.m.

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

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

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FPSC-COMMISSION CLERK

1 APPEARANCES:

2 JEFFREY A. STONE and RUSSELL BADDERS, Beggs & Lane,
3 700 Blount Building, 3 West Garden Street, Post Office Box
4 12950, Pensacola, Florida 32576-2950, appearing on behalf of
5 Gulf Power Company.

6 VICKI GORDON KAUFMAN, McWhirter, Reeves, McGlothlin,
7 Davidson, Dekker, Kaufman, Arnold & Steen, 117 South Gadsden
8 Street, Tallahassee, Florida 32301, appearing on behalf of
9 Florida Industrial Power Users Group.

10 ROB VANDIVER, Associate Public Counsel, and ROGER
11 HOWE, Associate Public Counsel, Office of Public Counsel, 111
12 West Madison Street, Room 812, Tallahassee, Florida 32399-1400,
13 appearing on behalf of the Citizens of the State of Florida.

14 MARLENE STERN, FPSC Division of Legal Services, 2540
15 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870,
16 appearing on behalf of the Commission Staff.

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P R O C E E D I N G S

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2 COMMISSIONER BAEZ: COMMISSIONER BAEZ: We are going
3 to call the status conference to order.

4 Counsel, can you read the notice, please.

5 MS. STERN: At the conclusion of the status
6 conference that was held on July 13th, 2001, this time and
7 place were announced for the continuation of that status
8 conference in Docket 010827-EI. The status conference was
9 noticed in the FAW on July 6th, 2001.

10 COMMISSIONER BAEZ: Thank you. And we will retake
11 appearances. Mr. Stone.

12 MR. STONE: I'm Jeffrey A. Stone with the law firm of
13 Beggs and Lane in Pensacola, representing Gulf Power Company.

14 MS. KAUFMAN: Good morning, Commissioner. Vicki
15 Gordon Kaufman from the McWhirter Reeves law firm. I'm here on
16 behalf of the Florida Industrial Power Users Group.

17 MR. HOWE: Roger Howe with the Public Counsel's
18 Office.

19 MR. VANDIVER: Rob Vandiver with the Public Counsel's
20 Office.

21 COMMISSIONER BAEZ: Welcome all. As you heard, this
22 is a continuation of a status conference held on July 13th,
23 2001, and we are reconvening for purposes of evaluating our
24 status along the lines and trying to come up with a
25 determination as to whether the dates that were suggested at

1 the previous status conference are still viable, namely the
2 September 5th hearing date. And I guess, staff counsel, do you
3 want to give us staff's evaluation of how the progress has come
4 about?

5 MS. STERN: Yes. Staff recommends that we go with
6 the hearing date on September 5th. We think that Gulf has been
7 very responsive in providing the information we need and we
8 have been able to get it very quickly. So assuming that things
9 continue this way, we think we can go with the hearing on
10 September 5th.

11 COMMISSIONER BAEZ: Okay. Ms. Kaufman, do you have
12 any comments to add?

13 MS. KAUFMAN: Well, Commissioner, we are still
14 concerned, as we have been throughout the case, about the very
15 expedited nature of how this process is going. We don't feel
16 that we have had sufficient time to prepare, so I would just
17 like those comments on the record. But we will do the best we
18 can if it is your decision to go to hearing on September 5th.

19 COMMISSIONER BAEZ: Thank you, Ms. Kaufman.
20 Public Counsel.

21 MR. HOWE: We would echo Ms. Kaufman's sentiments.
22 We are also very concerned, in particular the way we are
23 viewing it right now if we are to file testimony, it is only
24 going to address the company's prefiled direct testimony.

25 COMMISSIONER BAEZ: Thank you, Mr. Howe. And I want

1 to tell you, I mean, as you both have registered your concerns,
2 I think that the Commission and the Staff has gone into this
3 with a relative level of concern, as well. This is not us
4 barreling forward. But I think that we have got an
5 opportunity here that certainly the Commission thought
6 worthwhile to explore. And I think we share, at least to some
7 extent, your concerns, and let that be on the record, as well.

8 But we do recognize, at least this Commissioner
9 recognizes, that Gulf has made sufficient effort for the time
10 being in order to be responsive to staff's request and to try
11 and keep this moving. In the prehearing officer's opinion, I
12 think they have at least borne the burden of not delaying an
13 expedited time schedule. So they have at least in my -- they
14 have met my expectations of allowing this to move forward as we
15 have decided.

16 So let the record show that we will set the hearing
17 officially for September 5th. Counsel, does anything have to
18 issue from this status conference -- any order has to issue
19 from this status conference in particular?

20 MS. STERN: Yes. We should do an order. The last
21 order from the last status conference said that we were setting
22 aside September 5th and September 19th, and that we would
23 decide today which of those hearings dates. So we should issue
24 an order saying we will go with the September 5th hearing date.

25 COMMISSIONER BAEZ: Are there any other pending

1 matters?

2 MR. STONE: Commissioner.

3 COMMISSIONER BAEZ: Yes.

4 MR. STONE: With regard to the notice that will come
5 out, we continue to be concerned about any delays beyond
6 September 5th. And we, again, re-emphasize our desire and need
7 for a bench decision. I just want to be sure that the notice
8 that comes out at least provides for that opportunity for the
9 Commission.

10 COMMISSIONER BAEZ: It is my understanding, and I
11 guess that is a question that I had, counsel, what is the -- I
12 know that Mr. Elias had said that Legal staff would at least
13 look into the matter. Because, as I recall, Mr. Vandiver's
14 suggestion was that the rules may not allow for a bench
15 decision. Now I don't know what the status of that research is
16 or what your opinion on that is, but I think we need to take
17 Mr. Stone's suggestion under advisement.

18 MS. STERN: Yes. Well, the notice will definitely
19 say -- if we are going to have a bench decision, it should be
20 in the notice. We have found nothing that precludes the
21 Commission from making a bench decision in the uniform rules or
22 the APA.

23 COMMISSIONER BAEZ: So far so good then. Thank you,
24 Mr. Stone. Anything else?

25 MR. STONE: Just one other matter, Commissioner. And

1 that is that the parties, Staff and Public Counsel have
2 requested the other supporting documents; the transfer and sale
3 agreement, the operating agreement and the interconnection
4 agreement. We had not intended to develop those documents
5 before the approval of the PPA had been granted. But because
6 of the request of the parties to have an opportunity to review
7 those documents as part of this proceeding, we have moved the
8 timetable up for those documents.

9 And I am pleased to report that we are able to file
10 those today. And that will be in response to sort of an
11 informal request from staff and a formal request of production
12 from the Office of Public Counsel. We will be filing those
13 documents as attachments to 13 pages of supplemental direct
14 testimony from two witnesses which is intended to sponsor these
15 documents and also sponsor the confidential document that was
16 filed with the Commission back on June 29th.

17 I had already indicated in previous proceedings that
18 we intended to sponsor that as an exhibit to this proceeding.
19 And then, finally, yesterday we completed the second of two
20 issue ID meetings. And I think we have come very close to
21 finalizing the list of issues, subject to some objections that
22 will be presented to you at the prehearing conference. And as
23 a result of those issues, that 13 pages of testimony addresses
24 any additional issues that were raised in the course of those
25 two issue ID sessions. And, again, we will have that

1 testimony -- they are collocating it now. We finished it also
2 night, and they are collocating it now to give to the parties
3 and to staff and file with the clerk's office this morning.

4 COMMISSIONER BAEZ: The wheels turn as we speak. Mr.
5 Howe, you were propping up to say something.

6 MR. HOWE: Yes, Commissioner Baez. I would want to
7 say on the record that this is the first notice that I have
8 gotten that there is going to be supplemental direct testimony.
9 I thought we were faced with direct testimony that had been
10 prefiled.

11 COMMISSIONER BAEZ: And in your request for the
12 documents that Mr. Stone described, and forgive me, I heard
13 agreement in there somewhere, but can you clarify what they
14 are?

15 MR. STONE: Yes. It is the asset purchase and sale
16 agreement that will be executed by Southern Power and Gulf
17 Power once this whole process is approved, if it is approved;
18 the operating agreement under which Gulf will be operating
19 Smith Unit 3 for Southern Power; and the interconnection
20 agreement by which Smith Unit 3 will be interconnected with
21 Gulf's system. And there are some other significant documents
22 that are referenced in those documents that are also part of
23 this filing.

24 COMMISSIONER BAEZ: Mr. Howe, was it -- I'm sorry,
25 was it your expectation that those documents will be produced

1 without a sponsoring witness?

2 MR. HOWE: Well, discovery is just that. It is
3 discovery. It is information that we are interested in that
4 has not been provided. I'm not familiar with any case where
5 discovery necessarily leads to the Respondent providing
6 testimony on that discovery. What we seek in discovery is for
7 our own purposes and our own reasons.

8 Commissioner Baez, I would remind you that the
9 company filed their petition, I believe, on June 8th.

10 COMMISSIONER BAEZ: Yes.

11 MR. HOWE: We are close to two months into this
12 process that they want to expedite. And we are now being told
13 that we are going to see additional prefiled direct testimony,
14 and you have just announced we are going to go ahead with the
15 September 5th hearing. I think this an extreme constraint to
16 expect anybody to respond to reasonably.

17 COMMISSIONER BAEZ: Thank you, Mr. Howe. Staff.

18 MS. STERN: I guess we would have to see. It could
19 be an extreme constraint on the 9/5 hearing. It depends, in my
20 mind, on the content of the supplemental direct testimony. Is
21 it something that there is a lot of it and it's --

22 MR. STONE: As I have indicated, it is 13 pages
23 between two witnesses, and then it has the documents attached
24 to it. The bulk of it is the documents.

25 COMMISSIONER BAEZ: Mr. Howe, just a question. Are

1 you raising a formal objection to the filing of this
2 supplemental testimony, or would you like to hold --

3 MR. HOWE: I would say at this point I am preserving
4 an objection. This is something I have not seen.

5 COMMISSIONER BAEZ: I agree. I mean, that is what I
6 thought you were doing. Ms. Kaufman, you --

7 MS. KAUFMAN: Well, I would want to preserve my
8 objection, too. As we said earlier, you know, this has been a
9 very expedited process. We are scrambling just to find someone
10 that can help us deal with what has already been filed. I
11 realize 13 pages of testimony doesn't sound like much. We
12 don't know what it will say, but certainly --

13 COMMISSIONER BAEZ: It sounds like a cover page
14 almost.

15 MS. KAUFMAN: Right. The documents will be, I
16 imagine, voluminous and complicated. And I think it is beyond
17 extraordinary to expect us -- I believe our rebuttal testimony
18 is due in about two weeks, and that is just very difficult.

19 COMMISSIONER BAEZ: Now you are on the record. And I
20 guess the suggestion here is let's wait to see what the
21 supplemental testimony brings, and we will evaluate whether you
22 all want to move on with more formal objections to it. Yes?

23 MR. VANDIVER: At the appropriate time we would also
24 like the opportunity to argue the merits of the bench decision
25 and the appropriateness of the bench decision, be that at the

1 prehearing conference or otherwise.

2 COMMISSIONER BAEZ: I was going to ask, I mean, is
3 that something that we can entertain at the prehearing
4 conference and that will give everyone time to prepare? I
5 think that is what we are going to do, Mr. Vandiver. Thank
6 you.

7 Is there anything else?

8 MR. STONE: The only other thing, Commissioner, and
9 it may not be pertinent to this conference, but I thought I
10 would bring it to your attention. The staff has asked for, as
11 they are entitled to, an opportunity to depose Gulf's
12 witnesses. And we are working with staff on finding a suitable
13 date. And we expect -- I wanted to let Ms. Stern know that she
14 had asked about our availability on the 15th, and we have
15 determined that our witnesses are available on the 15th.

16 We had previously announced to staff in response to a
17 request for dates between August 6th and August 15 that our
18 witnesses would be available on the 7th and 8th. Evidently
19 those dates are not convenient for the staff, and so they asked
20 for us to check on the 15th, and we have determined that those
21 witnesses would be available on the 15th.

22 MS. STERN: That is true. We didn't ask specifically
23 for the 15th. If the Gulf witnesses weren't available on the
24 7th or 8th, Gulf said the only time that they would be
25 available, it seemed, was on the 15th and now that has been

1 verified. We had staff members, key staff members, who
2 wouldn't be available for the depositions at the earlier time.

3 COMMISSIONER BAEZ: What are you saying? Are we okay
4 with the 15th?

5 MS. STERN: Yes, we are okay with the 15th.

6 COMMISSIONER BAEZ: Great. Progress. Thank you, Mr.
7 Stone. Is there anything else?

8 MR. STONE: None from us, Commissioner.

9 COMMISSIONER BAEZ: Ms. Kaufman? Mr. Vandiver?
10 Staff, any other pending, anything else pending?

11 MS. STERN: No.

12 COMMISSIONER BAEZ: Not at this time. Great, we can
13 go back and discuss when the order can issue. Great. Thank
14 you everyone for coming. We are adjourned.

15 (Whereupon, the status conference concluded at 9:39
16 a.m.)

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1 STATE OF FLORIDA)

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CERTIFICATE OF REPORTER

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COUNTY OF LEON)

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5 I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter
6 Services, FPSC Division of Commission Clerk and Administrative
7 Services, do hereby certify that the foregoing proceeding was
8 heard at the time and place herein stated.

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10 IT IS FURTHER CERTIFIED that I stenographically
11 reported the said proceedings; that the same has been
12 transcribed under my direct supervision; and that this
13 transcript constitutes a true transcription of my notes of said
14 proceedings.

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

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DATED THIS 8TH DAY OF AUGUST, 2001.

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