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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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COMMISSION
CLERK

In re: Petition on behalf of Citizens of)
the State of Florida to require Progress)
Energy Florida, Inc. to refund customers)
\$143 million)
_____)

DOCKET NO. 060658-EI
Filed: November 13, 2006

DIRECT TESTIMONY

OF

STEPHEN A. STEWART

ON BEHALF OF AARP

CMP _____
COM 5
CTR DTG
ECR 1
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1 DIRECT TESTIMONY OF STEPHEN A. STEWART

2 ON BEHALF OF AARP

3 PROGRESS ENERGY FLORIDA, INC.

4 DOCKET NO. 060658-EI

5

6 **Q. Please state your name, address and occupation?**

7 A. My name is Stephen A. Stewart. My address is 2904 Tyron Circle, Tallahassee,
8 Florida, 32309. I am testifying as a consultant to AARP in this docket.

9

10 **Q. Please describe your educational background and business experience?**

11 A. I graduated from Clemson University with a Bachelor of Science degree in
12 Electrical Engineering in December 1984. I received a Master's degree in
13 Political Science from Florida State University in August 1990.

14

15 From January 1985 to October 1988, I was employed by Martin Marietta
16 Corporation and Harris Corporation as a Test Engineer. In July 1989, I accepted
17 an internship with the Science and Technology Committee in the Florida House of
18 Representatives. Upon expiration of the internship I accepted employment with
19 the Office of the Auditor General in August 1990, as a program auditor. In this
20 position I was responsible for evaluating and analyzing public programs to
21 determine their impact and cost-effectiveness.

22

1 In October 1991, I accepted a position with the Office of Public Counsel (“Public
2 Counsel”) with the responsibility for analyzing accounting, financial, statistical,
3 economic and engineering data of Florida Public Service Commission
4 (“Commission”)-regulated companies and for identifying issues and positions in
5 matters addressed by the Commission. I left the Public Counsel in 1994 and
6 worked as a consultant for the Florida Telephone Association for one year.

7
8 Since 1995 I have been employed by two privately held companies, United States
9 Medical Finance Company (“USMED”) and Real Estate Data Services Inc. I
10 worked with USMED for approximately four years as Director of Operations. I
11 founded Real Estate Data Services in 1999 and I am currently its President and
12 CEO. In June 2006 I purchased Commercial Print and Copy, a business located
13 in Tallahassee, Florida.

14
15 Over the last ten years I have worked for the Public Counsel on a number of
16 utility related issues. In the last several years I have also served as a consultant to,
17 and provided testimony for, AARP.

18
19 **Q. Have you previously testified before the Florida Public Service Commission?**

20 **A.** Yes. I have filed testimony with the Commission on ten occasions.

21
22
23

1 **Q. Have you prepared an exhibit detailing your qualifications and experience?**

2 A. Yes. I have attached Exhibit _____ (SAS-1) which details my qualifications and
3 regulatory experience.

4 **Q. What is the purpose of your testimony?**

5 A. The purpose of my testimony is two-fold. First, I provide a brief analysis of the
6 case relying on the evidence that has been filed to date. My analysis indicates that
7 the Office of Public Counsel, through the testimony of its witness Dr. Robert L.
8 Sansom, has made a compelling, and seemingly incontrovertible, case that
9 Progress Energy Florida, Inc. ("PEF") charged its customers at least \$143 million
10 in unnecessary, imprudent and therefore excessive fuel charges during the period
11 1996-2005.

12
13 Second, I provide a recommendation that urges this Commission to impose upon
14 PEF a financial penalty in an amount sufficiently large to discourage it in future
15 cases from intentionally benefiting its parent/affiliate companies at the expense of
16 its customers and in violation of its statutory obligation to provide the most
17 efficient service to its monopoly customers. I believe this Commission should
18 provide PEF, and all Commission price-regulated companies, with a clear
19 disincentive to conduct that intentionally harms their customers to the financial
20 advantage of affiliates or their own shareholders. If utilities are merely required
21 to return the financial fruits of their intentionally imprudent behavior when it is
22 later found out, I would argue that there is, in fact, an economic incentive for

1 **Q. What does your analysis of the evidence indicate?**

2 A. After reviewing the case materials, I have concluded that the evidence
3 shows PEF built two coal plants in 1984 and 1985 specifically designed to burn
4 two different types of coal: bituminous and sub-bituminous. However, when one
5 type of coal, Powder River Basin sub-bituminous, later became the clearly lower
6 priced alternative, PEF failed to take advantage of the power plants' design fuel
7 specification so it could pass the fuel savings associated with the sub-bituminous
8 coal on to its ratepayers. Instead, PEF intentionally continued to purchase higher
9 cost bituminous and synthetic fuel, to the clear advantage of its corporate parent
10 and affiliates. According to OPC witness Sansom, the excessive fuel cost
11 resulting from the failure to purchase the least-cost coal was \$143.5 million,
12 excluding interest.

13
14 **Q. What evidence indicates PEF built two plants in the early 1980s
15 designed to burn two types of coal?**

16 A. First, the operating instructions authored by the manufacture of CR4 and
17 CR5 indicate that the plants were specifically designed to burn a 50/50 mix of
18 bituminous and sub-bituminous coal. See Exhibit _____ (SAS-2) And second,
19 numerous correspondences addressing the site certification of CR 4 and 5
20 reference the ability of the plants to burn the two types of coal. For example, in a
21 letter from a principal engineer with Electric Fuels Corporation, dated April 14,
22 1978, the engineer shares with Mr. Vierday of the Environmental & Licensing

1 Affairs Department of PEF comments about the site certification of CR 4 and 5 by
2 PEF submitted to EPA. The comments include the following:

3 Our plan has always been, and continues to be, to diversify our coal
4 supply by bringing it from different geographical areas of the country. For
5 the subject supply of low-sulfur coal, this includes both eastern and
6 western coals. The bituminous coals from the Appalachian area from the
7 Eastern United States and from the Western States of Utah and Colorado,
8 and the sub-bituminous coals from Wyoming currently appear to be the
9 most attractive from a cost and availability standpoint.

10
11 The complete document is at Exhibit _____ (SAS-3).
12
13

14 **Q. Did PEF's motion to dismiss OPC's petition in this case argue that the**
15 **plants in question were not designed to burn two types of coal?**

16 A. No.

17

18 **Q. What evidence indicates that PEF should have switched to the lower**
19 **cost Powder River Basin (PRB) sub-bituminous coal in 1996?**

20 A. The most convincing evidence that PEF should have taken advantage of
21 the low cost PRB coal is that it was less expensive on a delivered, BTU-basis than
22 the bituminous coal and synfuel it was purchasing from its affiliates and others.
23 The wisdom of switching to PRB coal in 1996 is reinforced by the actions of
24 other utilities during this time period. Data from the filed FERC Forms 423 show
25 that Georgia Power, Alabama Power, Gulf Power, Mississippi Power, and TECO
26 all were purchasing PRB coal and passing the cost savings to their customers
27 during this period of time in question here. Exhibit _____ (SAS-4) shows the
28 information reported in the FERC Forms 423. Additionally, it is important to

1 note that many of these other utilities had to make capital improvements to
2 existing plants so that the PRB coal could be used. PEF had no such impediment
3 to burning the PRB coal because CR 4 and 5 were specifically designed for these
4 fuels.

5
6 **Q. Did PEF's motion to dismiss OPC petition argue that PRB coal was**
7 **not the lower cost alternative during the time period in question?**

8 A. No.

9
10 **Q. Given your analysis, what do you think the Commission should do in**
11 **this case?**

12 A. I think the Commission should do for consumers exactly what it has done
13 for utilities over the last three years. Over the last three years utilities have
14 petitioned the Commission to pass through significantly increased fuel costs that
15 have been blamed on market forces that are out of the control of the utilities. Now
16 we find that for 10 years when the free-market favored the consumers, PEF failed
17 to look out for the consumers' best interest for reasons that appear solely related to
18 increasing the bottom lines of its parent corporation and several affiliates. I
19 believe basic fairness, and fundamental regulation, dictate that the PEF ratepayers
20 receive a refund equal to the excessive fuel costs, plus accrued interest, as well as
21 the imposition of a penalty large enough to deter PEF from engaging in this type
22 of self-serving fuel purchasing practice in the future.

1 **Q. How much of refund should the PEF ratepayers receive?**

2 A. I have not conducted an independent analysis on the required refund.
3 However, I have reviewed the amount testified to by OPC witness Sansom
4 Merchant and I am comfortable with his recommendation.

5

6 **Q. Do you have any basis for challenging the interest calculation made by**
7 **OPC witness Merchant?**

8 A. No. The interest calculation for fuel adjustment under and over recoveries
9 is fairly straightforward and simply involves applying the applicable commercial
10 paper rate of interest to whatever the outstanding balance is for the successive
11 time frames being considered. The appropriate level of interest is essentially a
12 “fallout” number that is dependent upon the level of overcharges the Commission
13 finds. I do not have any basis, however, for criticizing Ms. Merchant’s
14 calculations.

15

16 **Q. Do you believe that paying interest on the overcharges that are alleged by Dr.**
17 **Sansom is a sufficient inducement for PEF not to engage in the similar**
18 **behavior in the future of overcharging its customers by not buying the least-**
19 **cost fuels available to it?**

20 A. No, I do not. The payment of interest merely recognizes the time value of money
21 and is integral to virtually all situations in which the Commission finds that a
22 regulated utility appropriately either overcharged or undercharged its customers
23 during the course of a cost-recovery clause hearing. If PEF is not required to pay

1 interest on whatever the overcharges are found to be in this case, then it still
2 would have benefited itself, at the expense of its customers, by receiving an
3 interest-free loan from those customers. The payment of interest cannot be
4 considered a “penalty.”

5 On the other hand, if the Commission finds that PEF either (1) intentionally
6 overcharged its customers by buying affiliated-supplied bituminous coal or
7 synfuel instead of lower-cost sub-bituminous coal, which I believe is the case, or
8 (2) that the overcharges resulted by more benign PEF mismanagement, then I
9 believe the Commission must impose a financial penalty of sufficient size to deter
10 PEF from engaging in behavior resulting in these overcharges again. In my
11 opinion, the requirement for a penalty, and its amount, should be significantly
12 greater if PEF’s self-serving behavior was intentional, not just inept. Again, I
13 believe PEF’s decision to continue purchasing affiliated coal instead of the less
14 expensive PRB sub-bituminous coal was clearly intentional and that its decision
15 was motivated by a desire to increase its corporate parent’s and its affiliates’
16 profits.

17
18 **PEF’S IMPRUDENCE**

19 **Q. Please summarize the key findings of Dr. Sansom that you believe**
20 **demonstrate PEF’s imprudence and the resulting need for a penalty to deter**
21 **future such behavior.**

22 A. First, I believe Dr. Sansom’s testimony and supporting exhibits conclusively
23 demonstrate that the CR 4 and 5 units were specifically designed to burn a

1 “design basis” fuel consisting of a 50/50 blend of bituminous and sub-bituminous
2 coals. Dr. Sansom’s exhibits supporting this finding consist primarily of
3 engineering documents stating this fuel specification, as well as the Department of
4 Environmental Regulation’s (“DER”) operating permit requiring it. There should
5 be no doubt by this Commission with respect to the fact that CR 4 and 5 have
6 always been physically and operationally capable of burning 50/50 blend of
7 bituminous and sub-bituminous coals.

8
9 I accept Dr. Sansom’s expert opinion that PEF’s decision not to burn the 50/50
10 design basis fuel blend in the 1980’s had no adverse economic consequences on
11 the utility’s customers because bituminous coal was then more economical than
12 sub-bituminous coal.

13
14 I also accept Dr. Sansom’s expert opinion that by the early 1990’s certain
15 developments in the mining of sub-bituminous coal led to it becoming a more
16 economical choice than bituminous coal. I likewise accept Dr. Sansom’s
17 conclusion that this shift in pricing for sub-bituminous coal and its transportation
18 was (1) “widely disseminated within the coal and utility markets and industries at
19 the time;” (2) “that numerous utilities in the Midwest and Southeast shifted from
20 bituminous coal to sub-bituminous coal to take advantage of the clear opportunity
21 to lower fuel costs that sub-bituminous coal afforded them;” (3) that PEF knew, or
22 should have known, about the price shift at the time other utilities were taking
23 advantage of it; (4) that “for a full decade after it should have shifted to a 50%

1 Powder River Basin (PRB) sub-bituminous coal blend with bituminous coal, PEF
2 continued to burn bituminous coal and a product of bituminous coal treated with
3 oil called synthetic fuel or ‘synfuel’,” which synfuel PEF frequently purchased
4 “from companies in which its parent, Progress Energy, Inc. held ownership
5 interests;” and (5) that during the 1996-2005 time frame, “sub-bituminous coal
6 was available from the Powder River Basin of Montana and Wyoming at
7 delivered prices via the water route to Crystal River Units 4 and 5 cheaper than
8 either the bituminous coal or the synfuel that PEF purchased.”

9
10 **Q. Earlier you said you believed PEF’s fuel overcharges were intentional, which**
11 **conduct you said compelled a significant penalty. What basis do you have**
12 **for concluding that PEF’s overcharges were the result of intentional acts?**

13 A. I believe PEF had a continuing obligation to provide its customers with electric
14 service based on the least-cost fuels reasonably available to it. As demonstrated
15 by the recent fuel adjustment hearings, generating fuels comprise a very large
16 percentage of both a utility’s operating costs and its customers’ total monthly
17 bills. Competent utility management must necessarily always be alert to
18 opportunities to reduce its fuel costs consistent with fuel supply security. As
19 demonstrated by Dr. Sansom’s testimony and independent documents I have
20 examined, PEF either knew, or reasonably should have known, that it could have
21 purchased PRB sub-bituminous coals for CR 4 and 5 at a lower delivered cost
22 than what it was paying for either the bituminous coal or synfuel it was
23 purchasing primarily from affiliates during the 1996-2005 time frame. At least as

1 early as 1996, PEF essentially came to an economic, ethical, and regulatory fork
2 in the road where it was required to test the interests of its customers versus those
3 of its affiliated companies. In simple terms, PEF was faced with either
4 purchasing the lower cost PRB sub-bituminous coals for CR 4 and 5 to the clear
5 benefit of its customers or with continuing the practice of fueling those units with
6 higher cost coal and synfuel purchased from, and often transported by, affiliated
7 companies. Unfortunately, PEF chose to benefit its affiliates by continuing to
8 purchase the higher cost fuels. As I said earlier, PEF's course of action was
9 contrary to that of many other utilities that elected to switch to the less expensive
10 sub-bituminous coal, even when doing so required expensive capital
11 improvements to their generating units to accommodate burning the sub-
12 bituminous coal. Again, PEF designed CR 4 and 5 to sub-bituminous coal and
13 could have burnt it immediately with no plant modifications. It appears to me that
14 PEF was playing a "zero-sum" game and that it chose to ignore its customers'
15 interests in order to help itself.

16
17 **Q. What do you mean?**

18 A. As best I can tell from the evidence contained in the prefiled testimony
19 and discovery to date, PEF could have exclusively bought its affiliates'
20 bituminous coal and synfuel during the 1996-2005 time frame, or it could have
21 bought lower-cost sub-bituminous coal from non-affiliated companies sufficient
22 to provide the 50/50 design fuel mix, but it could not simultaneously do both.
23 PEF's fuel purchasing alternatives did not present it with a "win-win" situation

1 whereby it could continue buying from its affiliates, while at the same time
2 benefiting its customers. Rather, buying bituminous coal and synfuel from its
3 affiliates benefited them by giving the sales revenues to those companies, as well
4 as the transportation revenues to the affiliated companies carrying or handling
5 these fuels, while also providing substantial synfuel federal tax credits to PEF's
6 parent and other affiliates. This situation, in my view, was somewhat like
7 dividing a dessert pie: The more PEF took for itself by way of affiliate fuel
8 purchases, the less there was available for the benefit of its customers.

9 I believe PEF had an ethical and legal obligation to provide its customers with the
10 least-cost electrical service possible by seeking out the lowest-cost fuels for CR 4
11 and 5 that it could safely burn. In order to help its corporate parent and affiliates,
12 PEF had to hurt its customers, and it elected to do so. Instead of serving its
13 customers first, I believe PEF elected to serve its shareholders and affiliates by
14 continuing to buy the higher cost fuels.

16 **PEF PENALTY**

17 **Q. Do you have any recommendations on a penalty for PEF?**

18 A. Yes. I think the Commission should significantly penalize PEF for their
19 actions in this case. To simply return to consumers the monies that were taken in
20 the circumstances of this case will provide no incentive for this utility to change
21 its behavior in the future. No penalty in this case may actually encourage PEF
22 and other utilities regulated by this Commission to be less aggressive in pursuing
23 lower cost fuel alternatives. I would recommend that the Commission impose a

1 penalty equal to 10 percent of the overcharges it ultimately finds should be
2 refunded to PEF's customers.

3 **Q. Do you believe the Commission has the legal authority to levy a**
4 **penalty against PEF?**

5 A. Yes, I do. I recall the Commission used its authority under Section
6 366.095, Florida Statutes, to penalize Gulf Power Company for mismanagement
7 during the early 1990s. That statute states:

8 The commission shall have the power to impose upon any entity
9 subject to its jurisdiction under this chapter that is found to have
10 refused to comply with or to have willfully violated any lawful rule
11 or order of the commission or any provision of this chapter a penalty
12 for each offense of not more than \$5,000, which penalty shall be
13 fixed, imposed, and collected by the commission. Each day that such
14 refusal or violation continues shall constitute a separate offense.
15 Each penalty shall be a lien upon the real and personal property of
16 the entity, enforceable by the commission as a statutory lien under
17 chapter 85.

18
19
20 **Q. What did the Commission do in the Gulf Power Company case and**
21 **how do you think that decision is applicable to this case?**

22 A. In 1990 Gulf Power Company ("Gulf") filed a rate case with this
23 Commission asking for an additional \$26.3 million in annual revenues and a
24 return on equity of 13 percent. In its final order the Commission found Gulf's
25 reasonable range of return on equity lay between 11.75 and 13.50 percent with a
26 mid-point of 12.55 percent. However, the Commission determined that Gulf's
27 mismanagement in a number of areas warranted a fifty basis point reduction in the
28 equity mid-point used to establish annual revenues. The Commission discussed
29 the mismanagement issues, saying:

1 The record is clear: Gulf Power Company admitted that corrupt
2 practices took place at Gulf Power Company from the early 1980s
3 through 1988, including but not limited to theft of company
4 property, use of company employees on company time to perform
5 services for management personnel, utility executives accepting
6 appliances without payment, and political contributions made by
7 third parties and charged back to Gulf Power Company. The
8 majority of the unethical/illegal activities involved Jacob Horton, the
9 Senior Vice President of Gulf Power Company. Mr. Horton was
10 killed in a plane crash on April 10, 1989.
11

12 The Commission went on to conclude that:

13 This record reflects a disregard for the ratepayers and public service,
14 however. Accordingly, we will reduce Gulf Power Company's ROE
15 by fifty (50) basis points for a two year period. This results in a
16 final ROE of 12.05%.

17
18 This final ROE is well within the parameters established as fair and
19 reasonable by expert testimony of record. This reduction in the
20 authorized ROE for a two year period is meant as a message to
21 management that the kind of conduct discussed above, which was
22 endemic for at least eight years at this company, will not be tolerated
23 for public utilities which operate in Florida. We have limited the
24 reduction to a two year period to reflect our belief that Gulf Power
25 has turned the corner on dealing with the extensive and long-
26 standing illegal/unethical behavior within the company.
27

28 (Emphasis supplied.) I have attached relevant pages of the Commission order
29 imposing the penalty as Exhibit _____ (SAS-5) and the Florida Supreme Court
30 decision upholding the penalty as Exhibit _____ (SAS-6).

31 **Q. Do you believe PEF's conduct in this case rises to the level that it**
32 **warrants a financial penalty comparable to that imposed by this Commission**
33 **on Gulf Power Company?**

34 A. Yes I do. In fact, I believe the PEF's behavior and the resulting financial
35 harm to its customers is substantially greater than that involved in the Gulf Power

1 Company case and that, therefore, the need for a penalty is even greater. It is my
2 view that the evidence clearly indicates PEF intentionally chose to use a higher
3 priced fuel when a lower priced fuel was available. While a competent, well
4 managed utility would have purchased the least-cost coal, the fact that PEF's
5 parent company profited from the decision introduces a profit motive for its
6 actions that trumps mere incompetence and leads me to believe the decision was
7 indeed intentional. As demonstrated by Dr. Sansom's testimony and exhibits,
8 while other utilities were retrofitting plants to take advantage of PRB coal, PEF
9 was "retrofitting" its permit for CR 4 and 5 by excluding the ability to burn the
10 less expensive design fuel, while specifying the more expensive, affiliate-supplied
11 synfuel. This allowed the parent company to profit at the expense of PEF's
12 customers.

13 **Q. Why do you believe this case is more egregious than the Gulf Power**
14 **Company case?**

15 A. While this Commission found that Gulf Power Company's management
16 engaged in a number of "corrupt practices" that could not be tolerated and had to
17 be penalized, the fact is that Gulf's behavior had very little quantifiable direct
18 adverse economic consequences on its customers. By contrast, the evidence in
19 this case shows that PEF directly harmed its customers in the amount of \$143.5
20 million, if you accept Dr. Sansom's calculation, in order to benefit its parent and
21 affiliates by a comparable amount. If ever a case cried out for penalty to send
22 management a message that conduct disregarding its ratepayers and public service

1 will not be tolerated, this is it. I believe a ten percent penalty would send that
2 message.

3 **Q. Does this conclude your testimony?**

4 A. Yes.

5

Stephen A. Stewart
2904 Tyron Circle
Tallahassee, FL 32309
850-893-8973

Docket No. 060658-EI
Stephen Stewart, Ex. No. ___
Document No. SAS -1,
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Qualifications & Exp.

SUMMARY

Over the last eleven years I have private sector business experience through the entrepreneurial development of two companies. Prior to my entrance into the private sector, I spent approximately five years with the Florida Legislature where I was responsible for the analysis and evaluation of financial and economic data. After graduating with an engineering degree in 1985, I spent four years as a test engineer with government defense contractors.

PROFESSIONAL EXPERIENCE

COMMERCIAL PRINT & COPY, Tallahassee, FL

6/06-Present

As sole owner of 15 employee business my responsibility is to ensure that all functions of the business are successfully implemented by the employees. These functions include production, customer service, and sales and marketing.

REAL ESTATE DATA SERVICES, INC., Tallahassee, FL

11/99-Present

As President of this start-up real estate marketing company, my responsibility is to ensure that all functions of the business are successfully implemented by the employees. These functions include production, customer service, and sales and marketing. In addition, I have a fiduciary responsibility to the shareholders.

UNITED STATES MEDICAL FINANCE COMPANY, Tallahassee, FL

1/95 - 8/98

During my employment at USMed I was involved in all major business functions of this private label credit card company. The last two years I served as the Director of Operations reporting directly to the CEO. My responsibilities in this position included liaison with credit card processing vendor, on-site program implementation, financial analysis, client support, business development and supervision of operations staff.

REGULATORY SERVICES, Tallahassee, FL

3/94- Present

As the owner of this sole proprietorship, my activities included the development and production of *Utility News*, a news information service, consulting services, and real estate appraisals.

FLORIDA TELEPHONE ASSOCIATION, Tallahassee FL

3/94 - 2/95

I was responsible for developing and evaluating policy positions during rewrite of the Florida Telecommunications statute. This included bill analysis and development of presentations to be made at legislative committee meetings. Reported to the Executive Director of the FTA.

OFFICE OF PUBLIC COUNSEL – FLORIDA LEGISLATURE, Tallahassee, FL

10/91 - 2/94

I assisted the Public Counsel in representing the interests of the citizens of Florida before the Florida Public Service Commission. Duties included analyzing financial, economic, and engineering data of investor owned utilities. Represented the Public Counsel before the Public Service Commission as a Class B Practitioner and have prepared and filed testimony on a number of occasions.

OFFICE OF AUDITOR GENERAL – FLORIDA LEGISLATURE, Tallahassee, FL

8/90 - 10/91

I assisted the Office of the Auditor General with applying auditing, management, and social science research methods for the review and analysis of public programs to evaluate their impact, effectiveness, and operating efficiency.

HARRIS CORPORATION and MARTIN MARIETTA CORPORATION, Orlando, FL

1/85 - 10/88

I was responsible for engineering tasks associated with the development of Test Program Sets for digital and analog avionics. My duties included the development of test strategy reports, diagnostic flow charts, interface requirements, and computer source code.

EDUCATION

M.S., Political Science, 1991; **Florida State University, Tallahassee, FL**
Principles and Practices of Appraisal, AB - I, October 1998; **The Real Estate School, Tallahassee, FL**
House of Representatives Internship Program, 1990; **Florida Legislature, Tallahassee, FL**
B.S., Electrical Engineering, December 1984; **Clemson University, Clemson, SC**

**Utility Regulation Experience
Stephen A. Stewart**

Florida Public Service Commission, Docket No. 060038-EI: Florida Power & Light Company's Petition for Issuance of a Storm Recovery Financing Order.

Provided testimony on behalf of AARP and the Office of Public Counsel. The testimony disputed the level of Storm Damage Reserve being requested by the utility.

Resolution: The case went to full hearing and I provided testimony before the Commission.

Florida Public Service Commission, Docket No. 050078-EI: Petition for rate increase by Progress Energy Florida, Inc.

Provided testimony on behalf of AARP. The testimony disputed the ROE being requested by the utility and argued for a lower storm damage reserve than being requested.

Resolution: The case was settled by the parties prior to hearing.

Florida Public Service Commission, Docket No. 050045-EI: Petition for rate increase by Florida Power & Light Company.

Provided testimony on behalf of AARP. The testimony disputed the ROE being requested by the utility and argued for a lower storm damage reserve than being requested.

Resolution: The case was settled by the parties prior to hearing.

Florida Public Service Commission, Docket No. 050001-EI: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor.

Provided testimony on behalf of AARP. The testimony disputed FPL's entitlement to between \$25 million and \$30 million in steam generator sleeving repairs as "fuel related" and, thus, recoverable through the fuel clause.

Resolution: The matter went to hearing and the Commission denied FPL recovery of the monies sought for the steam generator sleeving repairs.

Florida Public Service Commission, Docket No. 041272-EI: Petition for approval of storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan, by Progress Energy Florida, Inc.

Provided testimony on behalf of SugarMill Woods Civic Association. The testimony supported an approach that would have resulted in a sharing of prudently incurred expenses between the utility and consumers.

Resolution: The case went to full hearing and I provided testimony before the Commission

Florida Public Service Commission, Docket No. 001148-EI: Review of Florida Power & Light earnings.

As a consultant for the Office of Public Counsel, I developed direct testimony addressing the operation and maintenance expenses requested by FPL.

Resolution: The Office of Public Counsel and FPL settled the case before testimony was filed with the FPSC.

Florida Public Service Commission, Docket No. 010503-WS: Investigation of Aloha Utilities rates.

As a consultant for the Office of Public Counsel, I provided direct testimony filed with the FPSC that addressed the methodology used by Aloha Utilities to project test year water consumption.

Resolution: The case went to full hearing and I provided testimony before the Commission.

Florida Public Service Commission, Docket No. 000824-EI: Review of Florida Power Corporation Earnings.

As a consultant for the Office of Public Counsel, I provided direct testimony filed with the FPSC that addressed the prudence of the Operation and Maintenance (O&M) expenses requested by Florida Power Corporation (FPC).

Resolution: Testimony was filed with FPSC. The Office of Public Counsel and FPC settled the case before hearing.

Florida Public Service Commission, Docket No. 930001-EI: Tampa Electric fuel cost recovery case.

As an employee of the Office of Public Counsel, I assisted lead counsel with negotiations between TECO and the Office of Public Counsel. The case centered around TECO's cost recovery from consumers of fuel purchased by a TECO affiliate.

Resolution: The Office of Public Counsel and TECO settled the case before testimony was filed with the FPSC.

Florida Public Service Commission, Docket No. 920655-WS: Investigation of Southern Utilities rates.

My responsibilities as an employee of the Office of Public Counsel included providing direct testimony, assisting counsel with formulation of cross examination questions for utility witnesses, and assisting utility customers during the hearing.

Resolution: The case went to full hearing and I provided testimony before the Commission.

Florida Public Service Commission, Docket No. 920324-EI: Investigation into Tampa Electric rates.

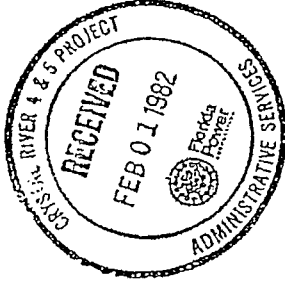
My responsibilities as an employee of the Office of Public Counsel included providing direct testimony, assisting counsel with formulation of cross examination questions for utility witnesses, and assisting utility customers during the hearing.

Resolution: The case went to full hearing and I provided testimony before the Commission.

Florida Public Service Commission, Docket No. 910890-EI: Review of Florida Power Corporation earnings.

My responsibilities as an employee of the Office of Public Counsel included providing direct testimony, assisting counsel with formulation of cross examination questions for utility witnesses, and assisting utility customers during the hearing.

Resolution: The case went to full hearing.



Instructions

for the

Care and Operation

of

Babcock & Wilcox
Equipment

furnished on Contract

RB-588

for

Florida Power Corporation
Crystal River Plant
Unit 4



Progress Energy

PEF-FUEL-001944

UNIT DESCRIPTION

PLANT

This unit is installed as Unit No. 4 at the Crystal River Plant located near Crystal River, Florida. Plant elevation is 11 feet above sea level.

The unit supplies steam to a GE turbine rated at 665 MW. The consulting engineer is Black & Veatch, Kansas City, Missouri.

BOILER

This is a semi-indoor, balanced draft Carolina Type Radiant Boiler designed for pulverized coal firing. The unit has 54 Dual-Register burners arranged in three rows of nine burners each on both the front and rear walls. Furnace dimensions are 79 feet wide, 57 feet deep, and 201 feet from the centerline of the lower wall headers to the drum centerline. The steam drum is 72 inches ID.

The maximum continuous rating is 5,239,600 lb/hr of main steam flow at 2640 psig and 1005° F at the superheater outlet with a reheat flow of 4,344,700 lb/hr at 493 psig and 1005° F with a normal feedwater temperature of 546° F. This is a 5% overpressure condition. The full load rating is 4,737,900 lb/hr of main steam flow at 2500 psig and 1005° F with a reheat flow of 3,959,800 lb/hr at 449 psig and 1005° F with a normal feedwater temperature of 535° F. Main steam and reheat steam temperatures are controlled to 1005° F from MCR load down to half load (2,368,900 lb/hr) by a combination of gas recirculation and spray attemperation.

The unit is designed for cycling service and is provided with a full boiler by-pass system. The unit can be operated with either constant or variable turbine throttle pressure from 63% of full load on down.

The design pressures of the boiler, economizer, and reheater are 2975, 3060, and 750 psig respectively.

Steam for boiler soot blowing is taken off the primary superheater outlet header. Steam for air heater soot blowing is taken off the secondary superheater outlet.

SCOPE OF SUPPLY

The major items of equipment supplied by B&W include:

- RBC unit pressure parts including boiler, primary and secondary superheater, economizer, and reheater.
- Fifty-four Dual-Register burners and lighters.
- Six MPS-89GR pulverizers and piping to burners.
- By-pass system including valves and piping.
- Two stages of superheat attemperators (first stage tandem) and one stage of reheat attemperation (2 nozzles); nozzles only, no block or control valves or spray water piping.
- Three Rothemuhle air heaters (one primary and two secondary).
- Ducts from secondary air heaters to windbox.



PEF-FUEL-001945

RB-588 Sept 81

- Primary air system: two TLT centrifugal PA fans and ducts from fans to pulverizers.
- Gas recirculation system: one TLT centrifugal GR fan, one dust collector and flues.
- Six Stock gravimetric coal feeders and drives.
- Bailey burner controls.
- Safety valves and ERV.
- Brickwork, refractory, insulation and lagging (BRIL).
- Seal air piping and fans.
- Erection.
- Recommended spare parts.

FUEL

The guarantees for this unit are based on firing a 50/50 blend of Eastern bituminous and Western sub-bituminous coal. The performance coal is classified as high slagging and medium fouling. Performance was also checked on Illinois deep-mined coal which is classified as severe slagging and high fouling. The furnace and convection pass are designed for a severe slagging and severe fouling coal.

Ultimate Analysis: % by Weight

	Performance	Illinois
Ash	7.90	13.00
Sulfur	0.49	4.20
Hydrogen	3.90	4.40
Carbon	58.80	62.00
Chlorine	0.03	0.02
Water	18.50	10.00
Nitrogen	1.10	1.38
Oxygen	9.28	5.00
Total	100.00	100.00
Higher Heating Value	10285 Btu/lb	11000 Btu/lb



PEF-FUEL-001946

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 Operating Instructions

PBF-FUEL-003738

EQUIPMENT PER UNIT		PRECISED PERFORMANCE		PRECISED PERFORMANCE		PRECISED PERFORMANCE	
TYPE	SIZE	DESIGN PRESSURE - 2.9/5 PSIG	DESIGN PRESSURE - 2.9/5 PSIG	DESIGN PRESSURE - 2.9/5 PSIG	DESIGN PRESSURE - 2.9/5 PSIG	DESIGN PRESSURE - 2.9/5 PSIG	DESIGN PRESSURE - 2.9/5 PSIG
1	RADIANT	79	79	79	79	79	79
2	TYPE	79	79	79	79	79	79
3	SIZE	Rdg 57 Hb	Rdg 57 Hb	Rdg 57 Hb	Rdg 57 Hb	Rdg 57 Hb	Rdg 57 Hb
4	TYPE OF FUEL	BC	BC	BC	BC	BC	BC
5	LOAD CONDITION	CONT.	CONT.	CONT.	CONT.	CONT.	CONT.
6	EXCESS AIR LEAVING ECON.	20	20	20	20	20	20
7	NO. OF BURNERS IN OPERATION	54	54	54	54	54	54
8	FUEL INPUT, MBH/HR	6886	6886	6886	6886	6886	6886
9	HEAT WALL, MBH/HR (FUEL & HEATED AIR)	3615	3615	3615	3615	3615	3615
10	HEAT WALL, MBH/HR (FUEL & HEATED AIR)	3378	3378	3378	3378	3378	3378
11	FUELS (HEAT, GAS)	225.5	225.5	225.5	225.5	225.5	225.5
12	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
13	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
14	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
15	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
16	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
17	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
18	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
19	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
20	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
21	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
22	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
23	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
24	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
25	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
26	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
27	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
28	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
29	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
30	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
31	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
32	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
33	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
34	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
35	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
36	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
37	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
38	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
39	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
40	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
41	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
42	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
43	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
44	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
45	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
46	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
47	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
48	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
49	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
50	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
51	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
52	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
53	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
54	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
55	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
56	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
57	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
58	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
59	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
60	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5
61	FUELS (HEAT, GAS)	325.5	325.5	325.5	325.5	325.5	325.5

FLORIDA POWER CORP.
 CRYSTAL RIVER, UNIT #4

NO. IN USE PER BOILER
 TOTAL POWER, KW/HR/TON MOTOR OUTPUT
 5 TWIN 200 U.S.S. STEPS

PRECISED PERFORMANCE IS BASED ON COMBUSTION AIR ENTERING UNIT WITH 0.0% TO MOISTURE/LB DRY AIR.
 ON CONDITIONS & EQUIPMENT GIVEN ON THIS SUMMARY SHEET &
 #12-4657-16X0

EXCLUDING VALVES AND STATIC HEAD.
 H₂ & H₂O IN FUEL
 MOISTURE IN AIR
 UNBURNED COMBUSTIBLE
 RADIATION
 LOSS FOR 1 MFT. MARGIN

TOTAL HEAT LOSS
 EFFICIENCY OF UNIT

PRECISION PERFORMANCE SUMMARY
 BY RLG
 APPRO. DATE

THE BARCOCK & WILCOX COMPANY
 #12-4657-16X0-180

UTILITY BOILER PERFORMANCE SUMMARY
 EXCLUDING VALVES AND STATIC HEAD

PRECISION PERFORMANCE SUMMARY
 BY RLG
 APPRO. DATE

THE BARCOCK & WILCOX COMPANY
 #12-4657-16X0-180

UTILITY BOILER PERFORMANCE SUMMARY
 EXCLUDING VALVES AND STATIC HEAD

PRECISION PERFORMANCE SUMMARY
 BY RLG
 APPRO. DATE

THE BARCOCK & WILCOX COMPANY
 #12-4657-16X0-180

UTILITY BOILER PERFORMANCE SUMMARY
 EXCLUDING VALVES AND STATIC HEAD

PRECISION PERFORMANCE SUMMARY
 BY RLG
 APPRO. DATE

THE BARCOCK & WILCOX COMPANY
 #12-4657-16X0-180

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Operating Instructions

Please find enclosed excerpts from Florida Power Corporation Application for site certification in Crystal River 4 and 5.

Table 3.2-2 Alternative Florida Power Corporation Performance Coals Weight Blends, 50/50 Basis

Type Coal	1 & 2	1 & 6	1 & 7*	2 & 4	2 & 6	2 & 7	6 & 7
Moisture, %	7.0	11.0	18.5	14.5	11.0	18.5	22.5
Volatile Matter, %	34.9	32.7	31.0	36.1	37.6	36.0	33.7
Fixed Carbon, %	49.1	45.9	42.6	42.4	42.0	38.6	35.5
Ash, %	9.0	10.4	7.9	7.0	9.4	6.9	8.3
Carbon, %	69.1	62.3	58.8	62.3	62.4	58.8	52.1
Hydrogen, %	4.7	4.3	3.9	4.5	4.6	4.2	3.7
Nitrogen, %	1.4	1.2	1.1	1.1	1.2	1.1	0.9
Chlorine, %	0.05	0.03	0.03	0.05	0.03	0.03	0.02
Sulfur, %	0.60	0.55	0.49	0.60	0.65	0.59	0.54
Oxygen, %	8.15	10.22	9.28	9.95	10.72	9.88	11.94
Gross Calorific Value, Btu/lb	12,225	11,075	10,285	10,825	10,850	10,060	8,910
Hardgrove Grindability Index	45	45	48	47	45	48	48
<u>Ash Analysis, %</u>							
SiO ₂	46.0	49.0	40.2	48.4	50.9	40.7	44.3
Al ₂ O ₃	23.3	23.3	18.2	19.8	22.5	17.8	18.1
TiO ₂	1.0	1.0	1.0	0.8	1.0	1.1	1.0
Fe ₂ O ₃	7.0	6.6	7.1	6.3	5.6	5.9	5.7
CaO	10.5	7.1	15.3	9.5	6.8	15.2	11.8
MgO	1.5	1.7	3.7	2.6	1.2	3.4	2.6
Na ₂ O	2.28	1.31	1.50	2.48	3.01	3.67	2.38
K ₂ O	1.01	1.28	1.20	0.43	0.82	0.60	0.96
SO ₃	6.1	6.2	9.3	8.1	6.3	9.9	9.8
P ₂ O ₅	0.44	0.24	1.1	0.55	0.28	1.24	1.00

*Performance guarantee shall be based on this blend.

Source: Black and Veatch, 1978.

FUELS CORPORATION

Docket No. 060658-EI
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Page 1 of 6
Response to EPA

3201 FOURTH STREET SOUTH, P. O. BOX 15708 ST. PETERSBURG, FLORIDA 33733. (813) 866-5307

April 14, 1978

Mr. W. W. Vierday
Environmental & Licensing Affairs Department
Florida Power Corporation
P. O. Box 14042
St. Petersburg, Florida 33733

Dear Bud:

SUBJECT: Crystal River 4 and 5
Information Needs

Attached please find further information relating to previous comments on Chapter 8 of the Site Certification/EIS document. This is in response to your request of April 12, 1978, and I have been in contact with Project Engineering through Frank Fusick. Please advise if there are any questions.

Very truly yours, _____

ELECTRIC FUELS CORPORATION

Richard L. Bourn
Richard L. Bourn
Principal Engineer

RLB/jc
Attachment

cc: Mr. E. A. Upmeyer, III
Mr. J. C. Hobbs, Jr.

INPUT INFORMATION FOR FPC'S RESPONSE
TO EPA'S COMMENTS ON CHAPTER 8
File Code: ENVIRON 2-10

Question #1 - When in full operation, the total annual coal requirements for Crystal River Units 4 and 5 will be approximately 3,300,000 tons per year depending on the heating value of the coal. Coal will generally be provided for under contracts of annual volumes no less than that required to meet a unit train movement. This may be as low as 350,000 tons annually from a single source, depending on its geographical location.

We are only now in the process of requesting firm bids for coal supplies and only those parties with the ability to demonstrate proven economically recoverable reserves and mining capability will be considered seriously as suppliers.

In addition to our discussions with suppliers on contractual agreements, we will consider the possibility of taking an equity position in the ownership of reserves and/or joint ventures in mining and preparation facilities.

Our plan has always been, and continues to be, to diversify our coal supply by bringing it from different geographical areas of the country. For the subject supply of low-sulfur coal, this includes both eastern and western coals. The bituminous coals from the Appalachian area from the Eastern United States and from the Western States of Utah and Colorado, and the sub-bituminous coals from Wyoming currently appear to be most attractive from a cost and availability standpoint. Information concerning typical prospects we are pursuing are as follows:

I. Area - Appalachia

Seams - 5-Block, Clarion, Stockton, Coalburg
Reserves - Inplace: 120,000,000 tons
Raw Recoverable: 91,000,000 tons
Clean Coal: 46,000,000 tons

Sulfur and BTU (As Received) Washed

5-Block: 0.54% S; 13,080 BTU/Lb; 0.83 #SO₂/10⁶ BTU
Clarion: 0.70% S; 12,580 BTU/Lb; 1.11 #SO₂/10⁶ BTU
Stockton: 0.66% S; 12,840 BTU/Lb; 1.03 #SO₂/10⁶ BTU
Coalburg: 0.73% S; 12,670 BTU/Lb; 1.15 #SO₂/10⁶ BTU

Weighted Average 0.71% S; 12,717 BTU/Lb; 1.12 #SO₂/10⁶ BTU

II. Area - Powder River Basin

Reserves - Over 400,000,000 tons

Sulfur and BTU (As Received) Raw Coal

0.33% S; 8,156 BTU/Lb; 0.81 #SO₂/10⁶ BTU

III. Area - Powder River Basin

Seams - Roland, Upper Smith, Lower Smith, Anderson, Deitz
Reserves - 160,000,000 tons Controlled (More possibly available)

Sulfur and BTU (As Received) Raw Coal

0.36% S; 8,164 BTU/Lb; 0.88 #SO₂/10⁶ BTU

IV. Area - Central Utah

Seams - Upper and Lower O'Connor
Reserves - 98,000,000 tons Controlled (More available)

Sulfur and BTU (As Received) Raw Coal

0.70% S; 11,870 BTU/Lb; 1.18 #SO₂/10⁶ BTU

V. Area - Somerset, Colorado

Seams - D and E
Reserves - Approximately 70,000,000 tons

Sulfur and BTU (As Received)

Raw 0.48% S; 11,430 BTU/Lb; 0.84 #SO₂/10⁶ BTU
Washed 0.57% S; 12,327 BTU/Lb; 0.92 #SO₂/10⁶ BTU

VI. Area - Appalachia

Seam - Pond Creek
Reserves - 40,000,000 tons recoverable

Sulfur and BTU (As Received) Washed Coal

0.76% S; 13,148 BTU/Lb; 1.16 #SO₂/10⁶ BTU

All of the examples listed are from reputable companies, and analyses and reserves can be supported by engineered exploration data and/or actual production data. These are typical of several supplies from which the principals have agreed to discuss firm offerings of production, sale of reserves, or joint participation in mining.

Question #3 - Along with discussions of coal availability and quality from the various areas, we have also talked price. Although we have not asked for firm quotations yet, we do know within a very close tolerance what the bid prices would be. Evaluation of blocks of reserves to be considered for purchase have included detail study of mining costs, investment costs, preparation costs, and transportation costs. Florida Power Corporation's subsidiary, Electric Fuels Corporation, is involved in the construction and ownership of a transfer terminal, ocean going coal barges; ocean going tugs, and coal cars for rail delivery. Through these connections and studies, very accurate estimates of transportation costs can be developed.

Obviously, there are many factors which will influence the spread of cost between low sulfur and high sulfur coals. The major considerations in assuming the uniform percentage spread in this cost differential is as follows:

- a) Transportation costs for coal delivered into Florida are a substantial portion of the delivered cost and will, in some cases, exceed the cost of the coal itself. For our situation then; the future cost of any delivered coal will be nearly as

much dependent on rates of escalation on transportation, applicable to both high and low sulfur coals, as to the mine cost of the coal itself.

- b) We are looking at both underground and surface mining for both high sulfur and low sulfur coals. Mining costs for similar type operations will escalate at uniform rates independent of sulfur level.
- c) Many people feel that the cost of low sulfur coal will increase very rapidly due to demand. While coal of less than 0.6 pounds of sulfur per million BTU is in scarce supply relative to all other coals with sulfur levels higher than this, enactment of the 1977 Clean Air Act will greatly reduce the demand for compliance quality coals. There is evidence now that the availability of very economically recoverable low sulfur coals from the West is exceeding demand. This over commitment to supply and lack of market will help keep down the prices of very low sulfur coals.

During the course of our discussions with producers, we have from time to time received copies of pro forma contracts. It is not unusual to find that producers of either high sulfur or low sulfur coals will suggest the use of common indices for cost escalation.

Even though the referenced fuel study used equal escalation rates for both high and low sulfur coals, the economic choice of low sulfur coal has been reaffirmed starting with 1978 cost differentials as high as

13.75 percent and reaching a differential as high as 25.25 percent over a twenty year period.

Question #4 - Escalation rates used to project any costs into the future are highly speculative, and only time can verify or disprove the accuracy of any assumed escalation factor. We believe that escalation over the next two years will be high, about 10 percent, as the full impact of the recent UMWA contract settlement, the Federal Surface Mining Control and Reclamation Act of 1977, and The Black Lung Benefits Revenue Act of 1977 are added to the cost of coal. These increases will affect cost of coals at different rates depending on mining technique and are not related to sulfur content.

Beyond the two year time frame, we believe there will be a leveling off and reduction in the rates of escalation. This is predicated on a belief that most of the effects of recent regulations will have already been realized, and the coal industry will have stabilized beyond its current level of activity. We believe this will result in escalation rates of about 5 percent annually.

RLB
EFC
4/14/78

**PRB Shipments To Southeast Plants
 (000 Tons)**

Year	Georgia Power Scherer	Alabama Power Miller	Gulf/Miss. Power Daniel	Mississippi Power Watson ³	TECO To ⁴ Electro Coal Terminal For Gannon
1994	2,600	0	0		
1995	5,700	2,700	1,200		
1996	6,800	3,600	2,100		590
1997	5,300	5,200	3,200		970
1998	6,200	6,000	2,800	464	1,064
1999	6,800	10,200	2,000	201	430
2000	9,150	11,300	450	285	617
2001	6,600	10,800	54 ²		632
2002	6,400	10,300			337
2003 ¹	8,400	10,100			Gannon
2004 ¹	14,200	11,000			Closed

Source: FERC Form 423.

- 1 Scherer 1&2 converted to PRB.
- 2 Daniel, not designed for PRB coal suffers a derate when burning PRB coal. In 2001 it shifted to 100% western bituminous (Colorado) coal.
- 3 Not designed for PRB coal. Received PRB by BNSF single-haul rail to McDuffie Terminal at Mobile then via barge to Watson for blending.
- 4 PRB coal BNSF rail to Cook Terminal on lower Ohio River then via TECO barge to TECO's Terminal in New Orleans.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Gulf Power Company) DOCKET NO. 891345-EI
for an increase in its rates and)
charges.) ORDER NO. 23573
)
)
) ISSUED: 10/3/90

The following Commissioners participated in the disposition of this matter:

- MICHAEL MCK. WILSON, Chairman
- THOMAS M. BEARD
- BETTY EASLEY
- GERALD L. GUNTER

Pursuant to duly given notice, the Florida Public Service Commission held public hearings in this docket on April 5, 1990, in Panama City, Florida; April 4, 1990, in Pensacola, Florida; and June 11 through June 21, 1990, in Tallahassee, Florida. Having considered the record herein, the Commission now enters its final order.

- APPEARANCES:
- G. EDISON HOLLAND, JR. and JEFFREY A. STONE, Esquires, Beggs and Lane, P. O. Box 12950, Pensacola, Florida 32576
On behalf of Gulf Power Company
 - JACK SHREVE and STEPHEN C. BURGESS, Esquires, Office of the Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida
 - GARY A. ENDERS, Major, USAF, HQ USAF/ULT, Stop 21, Tyndall AFB, Florida 32403-6001
On behalf of the Federal Executive Agencies
 - JOSEPH A. MCGLOTHLIN and JOHN W. MCWHIRTER, JR., Esquires, Lawson, McWhirter, Grandoff & Reeves, 522 East Park Avenue, Suite 200, Tallahassee, Florida 32301
On behalf of the Industrial Intervenors
 - RONALD C. LaFACE and WILLIAM L. HYDE, Esquires, Roberts, Baggett, LaFace and Richard, P. O. Drawer 1838, Tallahassee, Florida 32302
On behalf of the Florida Retail Federation

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Order No. 891345-EI

ROBERT VANDIVER, MARSHA RULE and MICHAEL PALECKI,
Esquires, Legal Division, Florida Public Service
Commission, 101 East Gaines Street, Tallahassee,
Florida 32399-0850
On behalf of the Staff of the Florida Public
Service Commission

PRENTICE P. PRUITT, Esquire, Office of the General
Counsel, Florida Public Service Commission, 101
East Gaines Street, Tallahassee, Florida 32399-
0850
On behalf of the Commissioners

ORDER GRANTING CERTAIN INCREASES

BY THE COMMISSION:

On December 15, 1989, Gulf Power Company (Gulf or Company) filed its petition for permanent and interim increases to its rates and charges. In its petition, Gulf requested a permanent increase in its rates and charges designed to generate an additional \$26,295,000 of gross annual revenues. This request was based upon a projected 1990 test year and a 13-month average jurisdictional rate base of \$923,562,000. Gulf requested an overall rate of return of 8.34%, which assumed an allowed rate of return on common equity of 13.00%. The most significant basis for the requested increase, according to Gulf, was the commitment of over 500 MW of additional capacity from its Plants Daniel and Scherer to territorial service and the O&M expenses associated with this capacity. Additionally, the utility claimed an increase in net operating income resulting from substantial capital additions in the transmission, distribution, and general plant areas as well as increased O&M expenses.

Pursuant to Section 366.06(3), Florida Statutes, Order No. 22681, issued on March 13, 1990, suspended Gulf's permanent rate schedules and granted Gulf an interim rate increase of \$5,751,000 in annual revenues.

The Federal Executive Agencies (FEA), and Industrial Intervenor (II) were granted intervention status in this docket by Orders Nos. 22363 and 22878, respectively. Order No. 22953, issued on May 18, 1990, granted intervention status to the Florida Retail Federation (FRF). The Office of the Public Counsel (OPC) is a party to this docket pursuant to Section 350.0611, Florida Statutes.

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I. SUMMARY OF DECISION

We authorize Gulf an increase in gross annual revenues of \$11,838,000 for two years beginning September 13, 1990. Thereafter, we authorize Gulf an increase in gross annual revenues of \$14,131,000.

We have set the rate of return on common equity capital at 12.55%. The reduced increase in gross annual revenues for the two years beginning September 13, 1990, reflects a 50 basis point penalty on return on equity imposed for mismanagement.

II. REVENUE REQUIREMENTS DETERMINATION

The revenue requirements of a utility are derived by establishing its rate base, net operating income (NOI) and fair rate of return. A test year of operations, traditionally based upon one year of operations, is used to derive these factors. Multiplying the rate base by the fair rate of return provides the net operating income the utility is permitted to earn. Comparing the permitted net operating income with the test year net operating income determines the net operating income deficiency or excess. The total test year revenue deficiency or excess is determined by adjusting the deficiency or excess by the revenue expansion factor.

III. THE TEST YEAR

The test year in a rate case provides a set period of utility operations that may be analyzed so the Commission can set reasonable rates for the period the rates will be in effect. A test period may be based upon an historic test year, adjusted to reflect typical conditions in the immediate future, which should make it reasonably representative of expected future operations. Alternatively, a test period may be based upon a projected test period which, if appropriately developed and adjusted, may reasonably represent expected future operations. We approved Gulf's choice of calendar year 1990 as a projected test year.

IV. TEST YEAR RATE BASE

To establish the Company's overall revenue requirements, we must determine its rate base. The rate base represents that investment on which the Company is entitled to earn a reasonable return. A utility's rate base is comprised of various components. These include: 1) net utility plant-in-service, which is comprised of plant-in-service less accumulated depreciation and amortization; 2) total net utility plant, which is comprised of net utility plant-in-service, Construction Work in Progress (CWIP) (where appropriate) and plant held for future use; and 3) working capital.

and capital components, the appropriate capital structure for Gulf Power is as follows:

COMPONENT	AMOUNT	PERCENT OF TOTAL CAPITAL	COST RATE	WEIGHTED COST
Long Term Debt	311,950	36.22%	8.72%	3.16%
Short Term Debt	3,971	0.46%	8.00%	0.04%
Preferred Stock	51,358	5.96%	7.75%	0.46%
Customer deposits	14,134	1.64%	7.65%	0.13%
Common Equity	264,857	30.76%	12.55%	3.86%
Accumulated Deferred Income Taxes	175,796	20.41%	0.00%	0.00%
Deferred ITC - Zero Cost	823	0.10%	0.00%	0.00%
Deferred ITC - Weighted Cost	38,270	4.44%	10.26%	0.46%
	<u>861,159</u>	<u>100.00%</u>		<u>8.10%</u>

For a complete breakdown of Gulf's 13-month average capital structure see Attachment 2.

VI. MISMANAGEMENT

The record is clear: Gulf Power Company admitted that corrupt practices took place at Gulf Power Company from the early 1980s through 1988, including but not limited to theft of company property, use of company employees on company time to perform services for management personnel, utility executives accepting appliances without payment, and political contributions made by third parties and charged back to Gulf Power Company. The majority of the unethical/illegal activities involved Jacob Horton, the Senior Vice President of Gulf Power Company. Mr. Horton was killed in a plane crash on April 10, 1989.

The question then becomes whether the management of the power company knew or should have known of the illegal and/or unethical conduct that was taking place. At this point it is incumbent upon the Commission to note that there is no record evidence to indicate that Mr. Douglas McCrary, President of Gulf Power Company from May of 1983 through the present, knew that illegal or unethical conduct was taking place as it happened. Mr. McCrary testified under oath as to his lack of contemporaneous knowledge of the activities.

We do believe that Gulf Power's senior management should have known of some of these activities and should have acted sooner and with sterner measures with regard to Mr. Horton's activities. This inaction constitutes mismanagement. As a totally independent ground, the activities of Mr. Horton and his subordinates as Senior Vice President alone constitute mismanagement. This recommendation is premised upon the structure of Gulf Power management with four vice presidents reporting to the president. As one of those vice presidents, Mr. Horton's actions are those of Gulf Power management.

We believe that there were many early warning signals which indicated that illegal or unethical conduct was present. In December of 1983 Mr. McCrary received anonymous letters concerning employee misappropriation of goods. Mr. McCrary commissioned an independent investigation by security personnel from a sister company to avoid one peer investigating another. The result of this investigation was the "Baker-Childers report", which was Exhibit 391 at the hearing. This report focused on warehouse thefts directed by Kyle Croft. Also contained in this report were allegations of company personnel performing personal services for Gulf Power executives, including Mr. Horton, on company time with company materials. When Mr. Horton was asked about these allegations, Mr. Horton denied them, and no further action was taken. (R169) This incident did, however, raise suspicions about Mr. Horton. (R168)

With regard to the principal allegations contained within the Baker-Childers report, Mr. Croft was fired on a Sunday morning in late January 1984. However, Mr. Horton intervened and persuaded the president to rescind the firing decision and allow Mr. Croft to resign. Unknown to others in senior management at the time, Mr. Horton arranged for Mr. Croft's attorneys fees and health insurance to be paid and billed back to Gulf Power. Gulf's senior management learned of this payment in 1988. (R197) As part of Mr. Croft resigning from Gulf Power, Mr. Croft executed a promissory note for \$15,986.62 to Gulf Power Company. This represented an estimate of the property Mr. Croft had stolen from Gulf Power. Concurrent with the execution of this note, Mr. Horton stated that Gulf Power would not enforce the note, and Mr. Horton executed a note payable to Mr. Croft for the same amount. (Ex. 396 at p. 55) This was done to protect Mr. Croft if Gulf Power decided to enforce the note. When the senior management learned of Mr. Horton's note in 1986 it also heightened suspicion of Mr. Horton. (R199)

In June of 1984 it was learned that Gulf Power had delivered approximately \$10,000 worth of appliances to Mr. Ed Addison, former

president of Gulf Power Company and now head of the Southern Company, the parent company of Gulf Power. Mr. Addison was not billed for these goods, and it was the intent of Gulf Power employees to give the appliances to Mr. Addison. (R183) The president learned of this arrangement and discussed the matter with Mr. Addison. Mr. Addison was billed and then promptly paid for the appliances. (R184) The employees involved reported to Mr. Horton which again raised suspicion concerning Mr. Horton. (R186) No further investigation of the appliance division was made. (R187)

In July of 1984 Mr. Horton instructed a Gulf Power employee to solicit a \$1,000 political contribution from a local architect that worked with Gulf Power Company. The president learned of this several days later. (R223) He spoke to Mr. Horton and "reemphasized" that pressure would not be placed on vendors to make political contributions. (R223) Mr. McCrary conceded that he was very much suspicious about Mr. Horton by July of 1984. (R225) Unknown to the president at the time was the fact that Gulf Power in fact reimbursed the architect for the political contribution. (Ex. 396 at p. 21) In the fall of 1986, the president learned that Gulf Power had reimbursed Mr. Graves (the architect), and had Mr. Graves reimburse Gulf Power Company, and then had Mr. Horton reimburse Mr. Graves. Any suspicion created in 1984 by this situation should have been greatly increased by the 1986 transactions.

On October 31, 1989 Gulf Power Company entered guilty pleas to two felony counts in the United States District Court for the Northern District of Georgia, Atlanta Division. Gulf Power paid a \$500,000 fine for these crimes. (Ex. 413) This negotiated plea agreement grew out of Gulf Power activities from 1981-1988. Over 120 counts were detailed in Exhibit 413. Basically Gulf Power management, through Mr. Horton and his subordinates, "systematically, repeatedly and willfully instructed its outside vendors, such as its advertising agencies, to submit false or inflated invoices to Gulf Power Company for payment by Gulf Power Company in order to reimburse those vendors for payments they had made to political candidates and others at the direction of Gulf Power Company." (Ex. 413 at p. 13) These illegal acts were not isolated cases and are factually indistinguishable from the Graves contribution which the senior management knew of 1984 and learned more about in 1986.

We believe that the explicit warnings the senior management received concerning Mr. Horton, coupled with the Baker Childers Report in early 1984, the Addison appliances in June of 1984, the Graves contribution in July of 1984, the 1986 Kyle Croft lawsuit

revealing more information concerning Mr. Croft's resignation and the subsequent information in 1986 regarding the 1984 Graves contribution all indicate that Gulf's senior management should have been aware of Mr. Horton's activities. This is especially true in light of the close business relationship between the two senior executives (CR 219; 231; 236; 245, 246). An investigation of Mr. Horton's activities was clearly indicated by 1986.

In the fall of 1988 senior management became aware of the Appleyard ledgers. It was known at that time that violations of the law were involved. (R244) These accounts were handled by the organization reporting to Mr. Horton. Mr. Horton was informed that he was to be separated from the company on April 10, 1989. (R4192) As of May 1, 1989, the company had not undertaken an investigation of Mr. Horton, despite the events described above. See Exhibit 382 at p. 16A. We believe that the lack of action regarding Mr. Horton constitutes mismanagement because management should have been aware of Mr. Horton's activities or started an investigation into Mr. Horton's activities based on the events discussed above.

Not only did management fail to initiate an investigation of Mr. Horton, but Mr. Horton has never received a written reprimand. (R4186-87) This lack of written reprimands is troubling considering management's subsequent knowledge of Mr. Horton's promissory note, the Graves Contribution, and paying Mr. Croft's legal and insurance costs. In one case (the Graves situation) Mr. Horton lied to the president in 1984 and the president knew he lied in 1986. In another case (paying the legal and insurance costs for Mr. Croft) Mr. Horton directly disobeyed the president's explicit instructions. (R197) Mr. Horton also received Productivity Improvement Program payments for his job performance in 1983, 1984, 1985, 1986, and 1988 and his base salary rise each year from 1983-1988. (Ex. 547)

Although we believe Gulf's lack of action regarding Mr. Horton constitutes mismanagement, we believe that given Mr. Horton's position, his actions alone constitute mismanagement regardless of senior management's inaction. Gulf Power has over 1600 employees. Mr. McCrary is the leader of these employees, and four executives reported directly to him, as well as the director of Public Relations. (See R192; Ex. 414) Thus all policy decisions and supervision of all Gulf Power personnel are vested in this management team. We do not use the term "management team" loosely. The president expressed it this way:

I did that [consulted the vice-presidents on the decision to fire Mr. Croft] because we operate that

company on a-- in a manner such that all very important decisions that we make, we try to do as a group, so that all vice presidents are satisfied that they have had their input and they agree with the decision.

(R193; See R217; 3050)

Given this management philosophy and practice, we believe it totally appropriate to find Mr. Horton's actions as those of Gulf Power management. Mr. Horton was one of the five people who management Gulf Power. In carrying out his duties as Senior Vice President, he committed illegal and unethical acts on behalf of the utility. Therefore, Gulf Power Company was guilty of mismanagement.

In terms of the scope of the corruption taking place at Gulf Power Company, several company programs were initiated to deal with the problem. Among these programs were adoption of a company Code of Ethics in August of 1984 and the implementation of an amnesty program around the same time. The Code of Ethics was adopted in response to the "myriad of things that had been going on in the early 1980s." (R204) The president agreed that every large well run utility should have a Code of Ethics and he couldn't say why Gulf Power lacked a Code of Ethics prior to that time. (Id.) All existing and new employees were required to sign a compliance statement. To implement the Code, Gulf Power had a series of meetings to explain the Code and the reason for it. The president was unable to point to anything Gulf Power did to further implement the Code from August of 1984 through January 5, 1989. On January 5, 1989, the Audit Committee of the Gulf Power Board of Directors adopted a resolution to reiterate the Code of Ethics and ordered management to take certain actions to implement the Code. (R206) The president explained the action as follows:

We thought it was in -- that what we should do is to reemphasize the Code of Ethics; to have an educational program; to have a program of ethics awareness, and to generally have employees focus on the Code of Ethics being a real and living document. (R206)

The Code of Ethics was adopted in 1984 to combat the embezzlement of Gulf Power property and by 1989 different sorts of ethical violations were apparent, indicating that some employees ignored the Code or failed to take it seriously. (R214-15) We believe the 1989 measures should have been in effect in 1984 and there was haphazard enforcement of the Code from 1984 to 1988.

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Gulf Power's amnesty program was initiated in the summer of 1984. This program was implemented in response to numerous allegations against Gulf Power personnel in the Baker-Childers Report. (R128) An outside law firm administered the program in order to shield the identity of the participants from the company. (Ex. 396 at p. 40-41) The program was designed to allow company employees that had improperly obtained goods or services from the company to make restitution to the company and then be subject to no further action. (R128) Gulf Power had no way of knowing whether the amounts collected under the amnesty program were correct. (R136; 140) A total of \$13,124.23 was collected pursuant to this program. Of this amount, \$10,500 (80%) came from two individuals in leadership positions at Gulf Power Company. (R138; 201; See Ex. 414)

On January 1, 1988, one of the persons who reported directly to the president was involved in three automobile accidents while driving a company vehicle. He was charged with D.U.I. and a number of traffic violations at the scene of the third accident. The president believed it would be very damaging to Gulf Power if the incident were reported in the media and he made a conscious decision not to have the accident reported as required by company procedures. (Ex. 396 at p. 66) Although this activity constituted a violation of the Code of Ethics, the individual involved received no written reprimand. (R180) He was orally reprimanded, although it is not clear by whom. (R181) Two points concerning this incident appear relevant to our analysis. First, it would appear that this incident supports the lack of commitment to enforcement of the Code of Ethics from 1984 to 1988. Second, it also raises the issue of Gulf Power treating executives differently concerning ethical violations than other employees. This is buttressed by the lack of investigation of allegations concerning personal use of company materials involving an ex-president of the Southern Company. (R134) Discriminatory enforcement is further indicated by considering that a lower-level employee was fired for stealing a gallon of gas and certain other unspecified violations. (R107; 128; 182)

Gulf Power also did business in 1983 with Scott Addison, the son of Ed Addison, the Chief Executive Officer of the Southern Company. Although this specific transaction does appear prudent in and of itself, we do question the propriety of doing business with relatives of the parent company personnel. This is especially true when the transaction was not handled in the normal manner and Gulf Power conceded that absent the family connection, the person would probably not have received the same treatment. (See R3841-3844)

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To summarize, we believe the events described above support a finding of mismanagement on the part of Gulf Power Company. The finding of mismanagement is premised on the activities of Mr. Horton, the president's lack of knowledge of those activities despite the incidents discussed above, the lack of investigation of Mr. Horton, the lack of written reprimands to Mr. Horton, the circumstances relating to the readoption of the Code of Ethics, the uneven enforcement of same, the various executives accepting goods or services without payment and the other factors discussed above. These factual circumstances as well as the fact that the illegal activity continued for at least eight years, lead us to agree with Ms. Bass, "that the corporate culture was such that employees believed these types of illegal activities were, at the least, condoned by top management." (R2994; See Ex. 391 at p. 10; 28; 33) This is particularly true when one considers that illegal activity continued for at least eight years.

Given the foregoing discussion, the issue becomes what action the Commission should take. Gulf Power argues that the Commission lacks authority to lower the return on equity in absence of a demonstrable impact on rates or service from the mismanagement. (Gulf Power Brief at 110; See Id. at 107-138) In United Telephone Co. of Florida v. Mann, 403 So.2d 962, 966 (Fla. 1981), the court stated that after the rate of return is calculated, "the commission can make further adjustments to account for such things as accretion, attrition, inflation and management efficiency." (Emphasis supplied) We believe this case, in conjunction with the fact that public utility regulation is an exercise of the police power (See Section 366.01, Florida Statutes) and other statutory provisions (See Sections 350.117, 366.041, 366.07, and 366.075, Florida Statutes) grant this Commission ample authority to take management efficiency into account in setting rates.

The statutory provisions cited above give the Commission authority to consider management efficiency in setting rates. In consideration of relative efficiency, the Commission should reward the more efficient and give less relief to those operating in a less efficient manner. As the court stated in Deltona Corp. v. Florida Public Service Commission, 220 So.2d 905, 907 (Fla. 1969):

A statutory grant of power or right carries with it by implication everything necessary to carry out the power or right and make it effectual and complete.

We believe the proper method of dealing with mismanagement is through the return on equity. The New Hampshire Public Utilities Commission has acted in conformity with this principle:

The method of addressing managerial inefficiency which is most soundly rooted in proper regulatory principles and is most appropriate to the instant situation is a reduction in the allowed return on common equity. Re: Public Service Commission of New Hampshire, 57 PUR4th 563, 594

In the instant case there were various ongoing criminal conspiracies reaching to the highest levels of management. These events, widely reported in the media, have hurt the company's relationship with its customers, as was made clear from the testimony customers gave at the service hearings. It is axiomatic that the involvement of managerial personnel in criminal activities lessened the efficiency of management in providing electric service.

As previously discussed, expert testimony of record established that a fair rate of return on equity (ROE) for this utility lies between 11.75% and 13.50%. Analysis of the cost of equity is a subjective process and an exact figure is impossible to measure precisely. The Commission must evaluate the testimony presented and then utilize its expertise to arrive at a fair rate of return for the particular utility at issue. As previously discussed, we believe the appropriate ROE for Gulf Power Company to be 12.55%. Were the previous pages recounting Gulf Power mismanagement not in the record of this proceeding, we could stop there. This record reflects a disregard for the ratepayers and public service, however. Accordingly, we will reduce Gulf Power Company's ROE by fifty (50) basis points for a two year period. This results in a final ROE of 12.05%.

This final ROE is well within the parameters established as fair and reasonable by expert testimony of record. This reduction in the authorized ROE for a two year period is meant as a message to management that the kind of conduct discussed above, which was endemic for at least eight years at this company, will not be tolerated for public utilities which operate in Florida. We have limited the reduction to a two year period to reflect our belief that Gulf Power has turned the corner on dealing with the extensive and long-standing illegal/unethical behavior within the company.

H. Total Net Operating Income

The net operating income is determined by subtracting total operating expenses from operating revenues. For 1990 Gulf's net operating income is \$61,085,000 (\$255,688,000 - \$194,603,000). For a complete breakdown of Gulf's net operating income see Attachment 3.

X. REVENUE EXPANSION FACTOR

The purpose of the revenue expansion factor (NOI multiplier) is to gross up or expand the Company's net operating income deficiency to compensate for income taxes and revenue taxes that the Company will incur as the result of any revenue increase. All parties agree that the appropriate revenue expansion factor in this case is 1.631699 developed as follows:

Revenue Requirement	100.000000
Uncollectible Accounts	(0.113300)
Gross Receipts Tax	(1.500000)
Regulatory Assessment Fee	(0.125000)

Net Before Income Taxes	98.261700
State Income Tax Rate	5.5000%

State Income Tax	5.404394

Net Before Federal Income Taxes	92.857307
Federal Tax Rate	34.000%

Federal Income Tax	31.571484

Net Operating Income	61.285822
	=====
Net Operating Income Multiplier	1.631699
	=====

XI. REVENUE REQUIREMENTS

Having determined the Company's rate base, the net operating income applicable to the test period, and the overall fair rate of return, it is possible to calculate any excess/deficiency of revenues. Multiplying the rate base value for 1990 of \$861,159,000 by the fair overall rate of 8.10% yields an NOI requirement for 1990 of \$69,746,000. The adjusted net operating income for the test year amounted to \$61,085,000 resulting in an NOI deficiency of

\$8,660,000. Applying the appropriate NOI multiplier of 1.631699 to this figure yields a deficiency of \$14,131,000 in gross annual revenues.

As discussed earlier, we have reduced Gulf's return on equity by fifty (50) basis points for a two year period as a penalty for corporate mismanagement. After applying the fifty basis point penalty, Gulf's authorized annual revenue increase is reduced to \$11,838,000 the calculation of which is detailed below:

(000s)

		<u>After 50 Basis Point Reduction</u>
Adjusted Jurisdictional Rate Base	\$861,159	\$861,159
Required Rate of Return	8.10%	7.94%
	-----	-----
Required Net Operating Income	69,746	68,341
Adjusted Achieved Test Year Jurisdictional Net Operating Income	61,085	61,085
	-----	-----
Jurisdictional NOI Deficiency	8,660	7,255
Revenue Expansion Factor	1.631699	1.631699
	-----	-----
Revenue Increase	14,131	11,838
	=====	=====

In view of the above, we authorize Gulf an increase in gross annual revenues of \$11,838,000 for two years beginning September 13, 1990. Thereafter, we authorize Gulf an increase in gross annual revenues of \$14,131,000.

XII. INTERIM INCREASE

Order No. 22681 issued on March 13, 1990, granted Gulf an interim rate increase of \$5,751,000 pursuant to Section 366.071, Florida Statutes. The interim increase was calculated based on a test year consisting of the twelve (12) month period ending September 1989 (October 1988 - September 1989). We approved the interim rate increase for collection, subject to refund, pending the outcome of further evaluation of the Company's request for permanent rates. Now that the evaluation is complete, the appropriate level of interim relief must be calculated.

In 1981 and 1982 the Commission eliminated special rates for sports fields, poultry farms and other uses. Addition of a special rate for sports fields is philosophically at odds with these past actions.

In spite of these problems, we will allow the rate design for OS-IV to be implemented. This is because the estimated OS-IV kilowatt hours have not been broken down into summer and winter components, and thus cannot be added to the kilowatt hours for GS and GSD to determine an accurate energy rate for those classes. In addition, the OS-IV as designed will not vary significantly from the GS rate. However, when the company files its next rate case they will be required to transfer their sports field customers to the appropriate GS or GSD rate schedules.

XV. CONCLUSIONS OF LAW

1) Gulf Power Company is a public utility within the meaning of Section 366.02, Florida Statutes, and is subject to the jurisdiction of the Commission.

2) This Commission has the legal authority to approve and use a projected test period for ratemaking purposes. Calendar year 1990 is an appropriate base test period.

3) The adjustments to rate base made herein are reasonable and proper. The value of the Company's 1990 rate base for ratemaking purposes is \$861,159,000.

4) The adjustments made to the calculation of net operating income are proper and appropriate. For ratemaking purposes, Gulf's net operating income for 1990 is \$61,085,000.

5) The fair rate of return on the equity capital of Gulf is 12.55%.

6) As a result of our finding of corporate mismanagement, Gulf's return on equity has been reduced by fifty (50) basis points for a two year period. This results in a return on equity of 12.05% for two years beginning September 13, 1990.

7) Gulf Power Company should be authorized to increase its rates and charges by \$11,838,000 in annual gross revenues effective September 13, 1990. Gulf Power Company should be authorized to increase its rates and charges by \$14,131,000 beginning September 13, 1992.

8) The rate schedules prescribed and approved herein are fair, just and reasonable within the meaning of Chapter 366, Florida Statutes.

9) The new rate schedules shall be reflected upon billings rendered for meter readings taken on or after September 13, 1990.

Accordingly, it is

ORDERED by the Florida Public Service Commission that the findings of fact and conclusions of law set forth herein are approved. It is further

ORDERED that the petition of Gulf Power Company for authority to increase its rates and charges is granted to the extent delineated herein. It is further

ORDERED that Gulf Power Company is hereby authorized to submit revised rate schedules consistent herewith designed to generate \$11,838,000 in additional gross revenues annually for two years beginning September 13, 1990. The Company shall include with the revised rate schedules all calculations and workpapers used in deriving the revised rates and charges. It is further

ORDERED that the revised schedules authorized herein for the \$11,838,000 revenue increase shall be reflected upon billings rendered for meter readings taken on or after September 13, 1990. It is further

ORDERED that Gulf Power Company is hereby authorized to submit revised rate schedules consistent herewith designed to generate \$14,131,000 in additional gross revenues annually for two years beginning September 13, 1992. The Company shall include with the revised rate schedules all calculations and workpapers used in deriving the revised rates and charges. It is further

ORDERED that the revised schedules authorized herein for the \$14,131,000 revenue increase shall be reflected upon billings rendered for meter readings taken on or after September 13, 1992. It is further

ORDERED that Gulf Power Company shall return to its ratepayers on a "per KWH basis" that portion of its interim increase set forth in the body of this order. It is further

ORDERED that Gulf Power Company shall include in each customer's bill, in the first billing of which the increase is

effective, a bill staffer explaining the nature of the increase, average level of the increase, a summary of tariff charges, and the reasons therefore. The bill staffers shall be submitted to the Division of Electric and Gas of the Florida Public Service Commission for approval before implementation. It is further

ORDERED that in its next rate case Gulf Power Company shall file a cost of service study with LP/LPT and PXT each broken into SE and non-SE classes, with totals calculated for LP/LPT and PX/PXT. It is further

ORDERED that when Gulf Power Company files its next rate case that it transfer its sports fields customers from the OS-IV rate to the appropriate GS or GSD rate schedules. It is further

ORDERED, Gulf shall take the steps necessary to determine the quantity of street and outdoor lighting facilities dedicated to additional facilities prior to the filing of the next rate case, in order that cost-based rates can be developed for these facilities.

ORDERED that this docket be closed should no petition for reconsideration or notice of appeal be timely filed.

DISSENTING VOTES

Commissioner Beard dissented as follows:

- 1) From the Commission's allowance of the total cost of Gulf's Bonifay and Graceville Offices in rate base.
- 2) From the Commission's allowance of 90% of the Caryville site as land held for future use. Commissioner Beard would have disallowed the amount budgeted for the Caryville site because there are no plans to use the site for 20 years.
- 3) From the Commission's approval of \$457,390 for the Good Cents Improved and \$1,023,995 for the Good Cents New Home Programs. Commissioner Beard would have disallowed these expenses as an unnecessary cost to ratepayers to assure compliance with the state building code.

4) I respectfully dissent from the majority opinion on the mismanagement issue. My disagreement stems from a different interpretation of evidence before the Commission. This interpretation results in my belief that the reduction to the return on equity should have been greater than fifty basis points. I would reduce the return on equity to 11.75%, the minimum amount necessary for Gulf Power Company to achieve a fair rate of return according to the record.

At page 19, the majority states that there is no record evidence to indicate that the president of Gulf Power knew that illegal or unethical conduct was taking place as it happened. (Emphasis in original) The Order then goes into various incidents from 1983 through 1988 involving the president and Mr. Jacob Horton, Executive Vice President of Gulf Power. There is no need to recount those incidents again here. Suffice to say that in this case repeated instances of unethical/illegal activity over the years by a close business associate give rise to knowledge in my view. This is particularly true in light of the warnings Mr. McCrary had received concerning Mr. Horton's mode of operation and the repeated warnings given by Mr. McCrary to Mr. Horton. I also have serious reservations concerning disparate disciplinary treatment between executives and lower-level employees. See majority opinion at pages 23-24.

The unfortunate pattern of conduct present in this case should not be analyzed in terms of legal abstractions, but rather how a utility conducts its business in the real world. In my mind, the proper analysis holds Gulf Power management responsible for the activities here and then reduces the return on equity in conformity with that responsibility. I would set the return on equity at 11.75%.

Commissioner Wilson dissented as follows:

- 1) From the Commission's approval of Gulf's 1990 material and supply level. Commissioner Wilson would leave materials and supplies at the 1989 level.
- 2) From the Commission's approval of a 12.55% return on equity. Commissioner Wilson favored a 12.8% ROE.
- 3) From the Commission's reduction of the GS class to 1.45 times parity. Commissioner Wilson favored a greater reduction.

4) From the Commission's vote to eliminate seasonal rates for the RS and GS rate classes. Commissioner Wilson favored retaining seasonal rates.

Commissioner Easley dissented as follows:

1) From the Commission's vote setting the coal inventory as the lesser of 90 days burn or the amount maintained at the plant.

2) From the Commission's classification of fuel stock as energy-related. Commissioner Easley would classify fuel stocks as demand-related.

Commissioner Gunter dissented as follows:

1) From the Commission's disallowance of \$31,813 for acid rain research.

By ORDER of the Florida Public Service Commission, this 3rd
day of OCTOBER, 1990.

STEVE TRIBBLE, Director
Division of Records & Reporting

(S E A L)

MAP/RDV

by: Kay J. [Signature]
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative

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hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

P


Supreme Court of Florida.
GULF POWER COMPANY, Appellant,
 v.
 Michael McK. WILSON, etc., et al., Appellees.
 No. 77153.

April 9, 1992.

Utility filed rate schedules with **Public Service Commission** to increase return on equity. The **Public Service Commission** authorized rate increase, but reduced increase for **mismanagement**, and utility appealed. The Supreme Court, Overton, J., held that: (1) **Public Service Commission** was authorized to adjust rate of return for utility within reasonable range to adjust for **mismanagement**, and (2) reduction in utility's rate of return did not violate fundamental principles of rate making.

Affirmed.

West Headnotes

[1] Electricity  **11.3(5)**

145k11.3(5) Most Cited Cases

The Public Service Commission's adjustment of utility's rate of return, within fair rate of return range, to reduce the rate of return for mismanagement was inherent in the Commission's authority to adjust for management efficiency and did not violate provision in State Constitution restricting imposition of penalties by administrative agencies. West's F.S.A. Const. Art. I, § 18; West's F.S.A. § 366.095.

[2] Public Utilities  **129**


317Ak129 Most Cited Cases

Regulated public utility is only entitled to an opportunity to earn fair or reasonable rate of return on its invested capital, and the Public Service Commission must be allowed broad discretion in setting utility's appropriate rate of return.

[3] Public Utilities  **129**

317Ak129 Most Cited Cases

After setting the rate of return range for regulated public utility, Public Service Commission can make further adjustments to account for such things as accretion, attrition, inflation and management efficiency.

[4] Electricity  **11.3(5)**

145k11.3(5) Most Cited Cases

Public Service Commission's reduction in utility's rate of return within reasonable rate of return range did not violate rate-making principles, though reduction was based on past management inefficiency.

***271 Alan C. Sundberg**, Tallahassee, and **Sylvia H. Walbolt** and **E. Kelly Bittick, Jr.**, of Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A., Tampa, and **G. Edison Holland, Jr.**, **Jeffrey A. Stone** and **Teresa E. Liles of Beggs & Lane**, Pensacola, for appellant.

Robert D. Vandiver, Gen. Counsel, and David E. Smith, Director of Appeals, Florida **Public Service Com'n**, Tallahassee, and Jack Shreve, **Public Counsel**, and **John Roger Howe**, Asst. **Public Counsel**, Tallahassee, on behalf of the Citizens of the State of Florida, for appellees.

OVERTON, Justice.

Gulf Power Company appeals the Florida **Public Service Commission's** Order No. 23573, which authorized a rate increase for **Gulf Power**. In authorizing the rate increase, the **Public Service Commission (Commission)** found that **Gulf Power's** fair rate of return on equity was between 11.75% and 13.50%. The **Commission** determined that ordinarily it would have approved **Gulf Power's** rate of return at 12.55%, but found that it should reduce the return to 12.05% because, as it stated in detailed findings, **Gulf Power** was guilty of **mismanagement**. In this appeal, **Gulf Power** challenges the reduction, asserting that the **Commission** has no authority to make the reduction and, further, that this reduction violated the basic principles of rate-making. We have jurisdiction **[FN1]** and, for the reasons expressed, affirm the **Commission's** order.

FN1, Art. V, § 3(b)(2), Fla. Const.

This matter commenced in December of 1990 when **Gulf Power** filed rate schedules with the **Commission** which, if fully implemented, would have allowed **Gulf Power** an additional \$26.3 million in revenue based upon a requested return on equity of 13%. An interim rate increase, which provided an additional \$5,751,000 was also awarded pending

formal hearings on the petition.

In its prehearing statement, the **Commission** noted that it would consider whether the authorized return on equity should be reduced if it was determined that **Gulf Power** had been **mismanaged** during the 1980s due to various instances of misconduct by one of **Gulf Power's** management officials.

*272 After hearing expert testimony, the **Commission** determined that **Gulf Power's** reasonable rate of return on equity lay between 11.75% and 13.50%. The **Commission** then set **Gulf Power's** return on equity at 12.55%, but determined that its findings of **mismanagement** justified a reduction in **Gulf Power's** return on equity of fifty basis points. This placed **Gulf Power's** rate of return at 12.05%, thirty points above the minimum allowable rate of return.

In its order, the **Commission** summarized its findings of **mismanagement** as follows:

The record is clear: **Gulf Power** Company admitted that corrupt practices took place at **Gulf Power** Company from the early 1980s through 1988, including but not limited to theft of company property, use of company employees on company time to perform services for management personnel, utility executives accepting appliances without payment, and political contributions made by third parties and charged back to **Gulf Power** Company. The majority of the unethical/illegal activities involved Jacob Horton, the Senior Vice President of **Gulf Power** Company. Mr. Horton was killed in a plane crash on April 10, 1989.

The **Commission** concluded:

This record reflects a disregard for the ratepayers and public service, however. Accordingly, we will reduce **Gulf Power** Company's ROE by fifty (50) basis points for a two year period. This results in a final ROE of 12.05%.

This final ROE is well within the parameters established as fair and reasonable by expert testimony of record. This reduction in the authorized ROE for a two year period is meant as a message to management that the kind of conduct discussed above, which was endemic for at least eight years at this company, will not be tolerated for public utilities which operate in Florida. We have limited the reduction to a two year period to reflect our belief that **Gulf Power** has turned the corner on dealing with the extensive and long-standing illegal/unethical behavior within the company.

[1] **Gulf Power** asserts that this is a penalty not authorized by Florida Statutes and is the type of penalty prohibited by article I, section 18, of the Florida Constitution. Article I, section 18, provides that "[n]o administrative agency shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law." **Gulf Power** contends that, because chapter 366, Florida Statutes, constitutes the general grant of authority to the **Commission** to regulate utilities and contains no express authority to impose a penalty for the type of corporate conduct involved in this case, the **Commission** has exceeded its authority. Section 366.095, Florida Statutes (1989), which authorizes the **Commission** to impose penalties, provides:

The commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter *that is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission* or any provision of this chapter a penalty for each offense of not more than \$5,000, which penalty shall be fixed, imposed, and collected by the commission.

(Emphasis added.) **Gulf Power** relies largely on our decisions in Florida Tel. Corp. v. Carter, 70 So.2d 508 (Fla.1954), and Deltona Corp. v. Mayo, 342 So.2d 510 (Fla.1977). In Carter, the **Commission** reduced the utility's rate of return below the reasonable rate of return range on the grounds that the services provided were inadequate and insufficient. This Court quashed the order of that **Commission**, holding that its statute did not authorize it to impose a penalty because of poor or inadequate service that denied the utility a rate increase "which it found to be just." Carter, 70 So.2d at 510. In Mayo, the **Commission** denied **Deltona** Corporation a rate increase for sewer and water services based on **Deltona's** allegedly fraudulent land sales practices. This Court held that "[i]f **Deltona** has engaged in an unfair business practice or committed fraud, however, it may be a concern of other state agencies or the basis for private law suits ... but it is not a matter of statutory concern to the *273 Public Service **Commission**." Mayo, 342 So.2d at 512.

Gulf Power asserts that these cases establish that the only "penalties" that the **Commission** may impose are those expressly authorized by statute, i.e., section 366.095, Florida Statutes. **Gulf Power** argues that, because it has not violated or refused to comply with any rule or order of the **Commission**, the fifty basis point reduction violates article I, section 18, of the Florida Constitution. We disagree.

The reduction in Carter resulted in a rate of return

well below the range found by the Commission as being fair and reasonable. The effect of that Commission's action was to completely deny the utility a rate increase within the range it found to be reasonable. Similarly, the Commission in *Mayo* completely denied Deltona a reasonable rate of return. In this case, however, the Commission did *not* deny Gulf Power a rate increase or impose a penalty that would deny Gulf Power a reasonable rate of return. On the contrary, the return on equity set by the Commission, 12.05%, is well within the range found to be fair and reasonable. The reduction was neither a penalty, as in *Deltona* and *Carter*, nor confiscatory.

[2][3] It is well established that all a regulated public utility is entitled to is "an opportunity to earn a fair or reasonable rate of return on its invested capital." *United Tel. Co. v. Mann*, 403 So.2d 962, 966 (Fla.1981). See also *Gulf Power Co. v. Bevis*, 289 So.2d 401 (Fla.1974). What constitutes a fair rate of return for a utility depends upon the facts and circumstances of each utility, and this Court has expressly recognized that the Commission must be allowed broad discretion in setting a utility's appropriate rate of return. *United Tel. Co. v. Mayo*, 345 So.2d 648 (Fla.1977). In *Mann*, we explained the purpose of setting a rate of return range:

By establishing a rate of return range in addition to establishing a specific rate of return, the commission is acknowledging the economic reality that a company's rate of return will fluctuate in the course of a normal business cycle. Earnings in excess of the authorized rate of return could possibly be offset by lower earnings in later years. Thus the purpose of having a range is to give the commission some flexibility in deciding whether a public utility's rates should be changed. *The existence of the range does not limit the commission's authority to adjust rates even though a public utility's rate of return may fall within the authorized range.* For example, if a public utility is consistently earning a rate of return at or near the ceiling of its authorized rate of return range, the commission may find that its rates are unjust and unreasonable even though the presumption lies with the utility that the rates are reasonable and just. *The commission's discretion in this matter is not annulled by the establishing of a rate of return range.*

403 So.2d at 967-68 (emphasis added). Furthermore, this Court explained that, after setting the rate of return range, "the commission can make further adjustments to account for such things as accretion, attrition, inflation and management

efficiency." *Id.* at 966 (emphasis added). Accordingly, we find that the Commission's adjustment of Gulf Power's rate of return within the fair rate of return range falls within those powers expressly granted by statute or by necessary implication. *City of Cape Coral v. GAC Utilities*, 281 So.2d 493 (Fla.1973). This Court has previously recognized that this authority includes the discretion to *reward*, within the reasonable rate of return range, for management efficiency. In fact, **Gulf Power** has in the past received a ten basis point reward for efficient management through its energy conservation efforts. *Gulf Power Co. v. Cresse*, 410 So.2d 492 (Fla.1982). We find that, inherent in the authority to adjust for management efficiency is the authority to reduce the rate of return for **mismanagement**, as long as the resulting rate of return falls within the reasonable range set by the **Commission**. This concept of adjusting a utility's rate of return on equity based on performance of its management is *274 by no means new to Florida or other jurisdictions. [FN2]

FN2. LaSalle Tel. Co. v. Louisiana Pub. Serv. Comm'n, 245 La. 99, 157 So.2d 455 (1963) (court increased rate of return as reward for good management); *State ex rel. Utilities Comm'n v. General Tel. Co.*, 285 N.C. 671, 208 S.E.2d 681 (1974) (court affirmed commission's refusal to grant otherwise justifiable increase in return where indifference of top management and personnel caused deterioration of service); see also *In re Pacific Tel. & Tel. Co.*, 16 Pub.Util.Rep.4th (PUR) 384 (Cal.P.U.C.1976) (commission reduced telephone company's rate of return for unreasonable budget management); *In re West Fla. Natural Gas Co.*, 86 F.P.S.C. 9:74 (1986) (commission reduced rate of return fifty basis points due to management's failure to inform commission of material changes affecting validity of rate applications); *In re Florida Power Corp.*, 73 Pub.Util.Rep.3d (PUR) 295 (Fla.P.S.C.1968) (electric utility held to lower range of return for inability to achieve satisfactory degree of efficiency in controlling level of rates); *In re General Tel. Co.*, 44 Pub.Util.Rep.3rd (PUR) 247 (Fla.P.S.C.1962) (commission found utility operated efficiently and deserved recognition through increase in return); *In re South County Gas Co.*, 53 Pub.Util.Rep.4th (PUR) 525 (R.I.

P.U.C.1983) (commission imposed penalty on electric utility's rate of return to indicate commission's outrage over utility's neglect of public service obligation).

In a competitive market environment, the market would provide the necessary incentives for management efficiency and corresponding disincentives for mismanagement. However, for a utility that operates as a monopoly, this discretionary authority to reward or reduce a utility's rate of return within a reasonable rate of return range is the only incentive available. A commentator on public utility regulation has explained:

While exceptional management is rarely explicitly rewarded, and mediocrity infrequently penalized, it suggests more systematic and deliberate efforts on the part of regulating agencies to distinguish, somewhat as competition is presumed to do, in favor of companies under superior management and against companies with substandard management. The distinction might take the form of an explicit and publicly recognized differential in the allowed rate of return. There is ground for the conviction that the opportunity of a well-managed utility to earn a return *liberally* adequate to attract capital is in the public interest as encouraging rapid technological progress and long-run policies of operation. Objection might be raised to a substandard rate of return on the grounds that it would make bad matters worse, but one might hope that the restriction of a company, by virtue of a commission finding of inferior management, to a minimum rate of return measured, say, by a bare bones estimate of the cost of capital, could become so intolerable to the stockholders that they would enforce a change of management.

James C. Bonbright et al., *Principles of Public Utility Rates* 366-67 (2d ed. 1988).

[4] Gulf Power's final argument is that the Commission's reduction in its rate of return violates the fundamental principles of rate-making. Gulf Power asserts that the Commission was impermissibly setting future rates based on past matters that are not part of the test year relied upon by the Commission in projecting Gulf Power's future expenses and operating costs. Gulf Power argues that the Commission may only reward or reduce the rate of return for management efficiency to the extent it impacts future service, facilities, or rates. That philosophy would effectively exonerate the utility for all past management inefficiency, eliminate the underlying purpose for consideration of this factor in

setting a utility's specific rate of return within the reasonable rate of return range, and require this Court to recede from *Mann*. **Gulf Power** has benefitted from this management efficiency factor in the past, and now must accept a reduction for its **mismanagement**.

The order of the **Public Service Commission** is hereby affirmed.

It is so ordered.

SHAW, C.J., and McDONALD, BARKETT, GRIMES, KOGAN and HARDING, JJ., concur.

597 So.2d 270, Util. L. Rep. P 26,183, 17 Fla. L. Weekly S232

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