

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 110138-EI

PETITION FOR INCREASE IN RATES
BY GULF POWER COMPANY.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 5

COMMISSIONERS
PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, June 19, 2012

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

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
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P R O C E E D I N G S

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3 **CHAIRMAN BRISÉ:** Now we're moving on to
4 Item Number 5, which is Docket Number 110138-EI, Gulf
5 Power Motion for Reconsideration.

6 **MS. KLANCKE:** Good morning, Commissioners.
7 Caroline Klancke from Commission legal staff.

8 Item Number 5 addresses Gulf Power Company's
9 Motion for Reconsideration and Request for Oral
10 Argument. Concurrently with its Motion for
11 Reconsideration, Gulf filed a Request for Oral Argument
12 which is addressed in Issue 1. Although staff
13 recommends that the Request for Oral Argument should be
14 denied in this case as the legal standard and factual
15 basis for the motion is clear, staff notes that the
16 Commission has discretion to grant or deny oral
17 argument.

18 In the event that the Commission wishes to
19 grant oral argument, staff recommends that the
20 Commission limit oral argument to ten minutes per side.
21 The Motion for Reconsideration is addressed in Issue 2.
22 Staff is available to answer any questions you may have.

23 **CHAIRMAN BRISÉ:** Okay. Thank you.

24 Commissioner Edgar.

25 **COMMISSIONER EDGAR:** Mr. Chairman, with your

1 allowance, I would ask that we go ahead and hear oral
2 argument from all of the parties who would like to speak
3 to us on this issue. And I would defer to your
4 direction as to amount of time allotted.

5 **CHAIRMAN BRISÉ:** Okay. Commissioner Graham.

6 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.
7 I guess it doesn't matter to me one way or the other as
8 far as oral arguments. I, I think I was the one that
9 pulled this off of the move staff because I wanted to
10 see if there was some way that we could -- I want, I
11 guess I want to talk more to staff and to the Commission
12 as a whole about this to see if there was some way we
13 could come to some sort of agreement because I think the
14 need for that land is there. It's just a matter of I
15 have a problem of putting this into rate base on top of
16 the land, the other 22 acres in Caryville -- 2,200 acres
17 in Caryville that they've already had in rate base for
18 the past, I guess, I want to say it's about 30 years or
19 so.

20 And I guess one of the things that we didn't
21 talk about last time I guess I want to talk about this
22 time: If there was the ability to take the Caryville
23 site out of rate base and put this into rate base, maybe
24 some sort of a swap, because that way you can cover
25 everything you need with the North Escambia site and not

1 necessarily have to hold on to the Caryville site as
2 well. And staff would have to tell me how financially
3 that works out, and I guess you need to make sure that
4 the ratepayers are all protected with that. And there
5 may be other things, but if we're going to listen to
6 oral arguments, I'll continue my conversation after that
7 goes.

8 **CHAIRMAN BRISÉ:** Okay. Commissioner Edgar.

9 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
10 I hope I'm not jumping too far ahead, but I would like
11 to hear from, from the company and certainly have our
12 staff respond to, to any points that are raised and to
13 any comments or questions from the bench.

14 I, I always try not to too much put people on
15 the spot, but I guess I had kind of expected OPC to
16 maybe speak to us on this issue. I don't know if
17 they're here or not. If they are and would like to, I
18 would hope that they would avail themselves of that of
19 course.

20 So if you would prefer to hear from the
21 company first and then questions or questions from the
22 bench to staff, either way is, of course, fine with me.

23 **CHAIRMAN BRISÉ:** Sure. I think that this
24 requires a motion. So is that a motion?

25 **COMMISSIONER EDGAR:** Mr. Chairman, I would

1 move that we give the company five minutes to address us
2 on whatever points they would like to raise or are
3 prepared to raise, and then I would ask that we come to
4 the bench for questions and discussion with our staff.

5 **CHAIRMAN BRISÉ:** All right. Is there a
6 second?

7 **COMMISSIONER GRAHAM:** Second.

8 **CHAIRMAN BRISÉ:** Okay. It's been --

9 **COMMISSIONER BROWN:** Mr. Chairman, I would
10 also request that OPC be given the opportunity to have
11 five minutes as well.

12 **CHAIRMAN BRISÉ:** Okay. Thank you. So, so we
13 have a motion and a second. And it seems that we have a
14 desire for five minutes for the company, and I don't
15 know if five minutes would be sufficient for the other
16 side.

17 **COMMISSIONER EDGAR:** I would just suggest that
18 we use that to get us started off.

19 **CHAIRMAN BRISÉ:** And move into discussion.

20 **COMMISSIONER EDGAR:** And with your direction,
21 of course, see where that takes us.

22 **CHAIRMAN BRISÉ:** All right. Okay. So we have
23 a motion and a second. All in favor, say aye.

24 (Vote taken.)

25 Okay. Any opposed? Okay. Seeing none, so at

1 this time, Gulf, Mr. Stone, you have the floor.

2 **MR. STONE:** Mr. Chairman, before I begin with
3 my presentation I have a one-page handout that I would
4 like to distribute to the parties, and I have it blown
5 up on a poster board if we could do it, if it would save
6 some time.

7 **MS. KLANCKE:** Staff would like to caution that
8 in this evidentiary hearing the record is closed and
9 this is not an evidentiary proceeding. Here we're
10 dealing with the four corners of the pleadings as they
11 exist, the motion and the response from the Intervenors,
12 and thus I would caution the Commissioners with respect
13 to this handout in the event that it contains any
14 information that is outside of the record.

15 **CHAIRMAN BRISÉ:** Thank you very much,
16 Ms. Klancke.

17 **MR. STONE:** For clarification of the record,
18 the handout is simply an excerpt from our motion and an
19 excerpt from your order. It has some highlights that
20 were not in the order but they correspond to the motion,
21 and it was just to help clarify what we're asking for
22 today.

23 I apologize to some of the Commissioner's
24 aides. The aid is going to block some of their view,
25 but I think it's important that you have the blowup.

1 And, Commissioners, I want to thank you for
2 the opportunity to speak. Our motion is strictly
3 limited to the decision made on February 27 with regard
4 to Issue 24, and specifically that portion related to
5 conventional rate base recovery of property held for
6 future use. At that Agenda Conference the discussion of
7 Issue 24 was combined with the discussion of Issue 1,
8 and based on the course of that discussion, we believe
9 some of the questions asked by Commissioners prior to
10 the vote and the way the answers by the staff to those
11 questions were framed caused a very important
12 distinction between the two issues to be blurred.

13 To be clear, the nuclear cost recovery statute
14 has nothing to do with the portions of Issue 24 that we
15 are addressing through our motion. If the nuclear cost
16 recovery statute had never been enacted, we would still
17 have Issue 24 in this rate case.

18 Issue 24 primarily deals with Gulf's planning
19 for the future needs of its retail customers and its
20 associated requests for conventional recovery through
21 base rates of property as purchased for future use as a
22 generation site, and it is that aspect of Issue 24 we
23 are addressing through our motion in today's discussion.

24 The portions of Issue 24 related to
25 Issue 1 are not up for reconsideration today and we

1 limited our motion accordingly, and that's what the
2 handout is intended to demonstrate

3 This Commission has a long history of
4 recognizing the value of such planning by the Florida
5 investor-owned electric utilities on behalf of their
6 customers, and also encouraging the purchase of land
7 held for future use. And this recognition and
8 encouragement occurs through allowing such purchases to
9 be included in rate base and recovered through rates as
10 property held for future use. Such conventional rate
11 base treatment has been recognized as being in the
12 long-term best interest of the utilities' customers.

13 Now Gulf's purchase of the North Escambia
14 property and its request for conventional recovery
15 through base rates is based on the established
16 precedence of past decisions by the Commission over more
17 than 40 years, both in Gulf's prior rate cases and in
18 the prior rate cases of other Florida utilities.

19 Now many of those cases are discussed and
20 quoted in significant detail in our Motion for
21 Reconsideration, so I won't go into them here. But the
22 fact of the matter is that through our research we have
23 not found a single incidence prior to February 27th
24 where the Commission has disallowed land purchased to
25 serve as a future generation site from property held for

1 future use in rate base. Your decision on February 27th
2 therefore is without precedent.

3 Our premise in purchasing the North Escambia
4 property and the request in this rate case is a
5 recognition of the future need for new generation
6 resources in the western portion of Gulf's service area,
7 a need that cannot be served as effectively or as
8 efficiently by other property held for future use
9 already in Gulf's rate base, including potential new
10 generation at the Caryville site.

11 As valuable as the Caryville site is to Gulf
12 and its customers, it simply is not comparable to the
13 value of future generation planning purposes provided by
14 the North Escambia property. The evidence in the record
15 regarding the value of North Escambia is essentially
16 uncontroverted. First, it's the only property Gulf owns
17 that is suitable for all forms of future generation.
18 And, second, it is located near the load centers at the
19 western end of our service area. It's in close
20 proximity to fuel transportation infrastructure and the
21 transmission corridors associated with those load
22 centers. And these are advantages that North Escambia
23 enjoys over Caryville, and they make North Escambia the
24 best strategic alternative for what is clearly an
25 uncertain future.

1 Remember, the value provided by an option for
2 the future is greatest during times of uncertainty.
3 Options provide flexibility to adapt to changes in
4 circumstances. The fuel cost reduction that you have
5 approved when you moved staff earlier today was made
6 possible by such an option. An option is available to
7 Gulf because it made an early reservation of capacity in
8 the Central Alabama combined cycle facility when you
9 approved the PPA by which we obtained that capacity in
10 2009.

11 Now we recognize that we're not before you on
12 the initial decision on Issue 24 and that the standard
13 is different today than it was on February 27th. But
14 based on our understanding of the law, you are on firm
15 footing to reconsider your vote today, and you can
16 correct what we perceive to be a mistake made on
17 February 27th, a mistake we believe stemmed from the
18 potential for confusion that came from considering Issue
19 24 in conjunction with Issue 1.

20 The mistake we perceive is that tying the
21 discussion of the two issues together may have led you
22 to inadvertently base your decision on Issue 24, the
23 conventional recovery of property held for future use,
24 on the legal issue that relates solely to the nuclear
25 cost recovery statute. And, again, this motion has

1 nothing to do with that statute.

2 Our answers to the questions that were asked
3 of you at agenda would have been different, and if I had
4 sufficient time, I would go through that. But in the
5 interest of time I will dispense with trying to go
6 through how we perceived that the questions asked and
7 the answers given led to a potential for mistake. But
8 the type of mistake that occurred is precisely the type
9 of error that a Motion for Reconsideration is available
10 to correct. And as I indicated, our motion is on sound
11 legal foundation.

12 If the relief requested is granted, we believe
13 it would withstand a legal challenge if it is properly
14 documented in your order. I'm not sure how much time I
15 have left.

16 **CHAIRMAN BRISÉ:** About 30 seconds.

17 **MR. STONE:** You spoke in terms of prudence in
18 planning and fairness on February 27th. Well, it is
19 prudent to allow for the consideration of all potential
20 generation technologies, it is prudent to acquire land
21 in advance of actual need to keep options open at
22 today's costs, and it's prudent to avoid the cost
23 increases and potential unavailability of the North
24 Escambia site that may come from future development in
25 the area before the actual need for generation

1 materializes. Fairness dictates that Gulf's prudent
2 actions be compensated for at these rates and not
3 discouraged.

4 Upholding your decision on February 27th does
5 discourage utilities. As a consequence of your
6 February 27 decision, utilities may delay acquisition of
7 sites until plans are sufficiently definite to support a
8 Power Plant Siting Act need determination and site
9 certification process and they may divest themselves of
10 sites that are not allowed to earn a current return.
11 Either action is not in the long-term interest of
12 customers. A prior need determination for the actual
13 generation to be built on property such as North
14 Escambia has not been and should not be a prerequisite
15 to such recovery. Thank you.

16 **CHAIRMAN BRISÉ:** Thank you.

17 Mr. McGlothlin.

18 **MR. MCGLOTHLIN:** Good morning. I'm Joe
19 McGlothlin with the Office of Public Counsel. I'll
20 begin by reminding the Commissioners of the procedural
21 posture of this case. Gulf Power's request to include
22 the North Escambia site in plant held for future use was
23 a high profile part of its presentation. That request
24 was the subject of competing evidence at the hearing.
25 It was the subject of a thorough analysis by your staff.

1 It was the subject that was considered by you in your
2 deliberations, and your decision was memorialized with
3 an order.

4 At this point Mr. Stone is correct, the
5 standard is a very limited one. The problem is Gulf has
6 ignored that standard in its Motion for Reconsideration.

7 The standard says that a Motion for
8 Reconsideration is not the opportunity to reweigh the
9 evidence that's been previously considered, and yet Gulf
10 Power devotes 29 pages to exactly that. And in devoting
11 29 pages, the length and the elaborate nature of their
12 presentation does not overcome the limited standard. It
13 represents a more severe violation of the limited
14 standard.

15 Now the case law that Gulf and the Intervenors
16 cite stands for the proposition that the Motion for
17 Reconsideration is not an opportunity to reweigh the
18 evidence. And when you look beyond just simply the
19 citations and read the cases, the message is we mean it.

20 And, in fact, in the *Stewart Bonded Warehouse*
21 case that's cited by most everyone who comes to the PSC
22 in this type of posture, the Supreme Court reversed the
23 PSC when it attempted to reweigh the evidence after the,
24 after the order had been issued.

25 But the precedent I think is most apt is the

1 *Sherwood* case in which, when quoting from another court,
2 the *Sherwood* court said the motion pending in front of
3 that court was practically a joinder of issue with the
4 court -- now here read the Commission -- as to the
5 correctness of its conclusions, and the litigant was
6 arguing or quarreling with the court over the
7 correctness of its conclusions on points it has
8 considered and decided in contravention of the scope of
9 the motion.

10 And that's exactly what we have here. In 29
11 pages Gulf is saying -- it's essentially quarreling with
12 the decision that's been made. In fact, Gulf tees up 25
13 separate pages of the transcript, puts them in front of
14 the Commission and says look at this again. And in the
15 same paragraph virtually it says, "We understand that
16 some of these were the subject of your staff's
17 recommendation and some of it was actually in your
18 order." Well, that's proof positive that Gulf is
19 exceeding the narrow scope of the appropriate purpose of
20 a Motion for Reconsideration.

21 Now with respect to some of the things that
22 were said this morning, you've heard them before. It
23 was part of the initial presentation. Again, proof that
24 this is not part of an appropriate Motion for
25 Reconsideration.

1 With respect to the claimed mistake, if you
2 look closely, that's a mischaracterization of your
3 order, and your, your staff has appropriately pointed
4 that out in its thorough recommendation.

5 There is -- unlike the claim by Gulf Power,
6 there is no misapprehension about the nature of the
7 Caryville site, there is no mistake in believing that it
8 was a nuclear site. That is reflected elsewhere in your
9 order.

10 With respect to the claim that this is
11 unprecedented, that's wrong because the precedent stands
12 for the proposition that each time the Commission
13 reviews plant held for future use, it is a fact-specific
14 analysis. And in this case an analysis of the facts
15 demonstrates that, that Gulf Power does not need the
16 North Escambia site. In fact, one of the exhibits in
17 this case was an excerpt from its Ten-Year Site Plan in
18 which it enumerated the next likely sites for generation
19 expansion. And even though Caryville has been part of
20 its plant held for future use for decades, the Caryville
21 site didn't even make the top four. Gulf listed four
22 other sites that it presently has in inventory available
23 for generation expansion. That is further proof that
24 your determination was correct when you decided that
25 there is -- the company cannot justify adding this very

1 expensive parcel of land to plant held for future use in
2 view of the surplus, the surplus of property already
3 there.

4 So for those reasons we contend that your
5 staff is correct in its analysis and that you should
6 deny the motion. And I would just like to point out
7 with respect to the remarks about regulatory policy, in
8 its motion Gulf Power tries to invoke the concept of the
9 regulatory compact. And make no mistake, that term does
10 not refer to an actual bargain or contract on paper. It
11 refers to the fact that the regulation involves both
12 advantages to the utility in the form of no competition
13 and the ability to come to the Commission for ratemaking
14 and obligations.

15 But it's counterintuitive for Gulf Power to
16 invoke regulation in the regulatory compact and then
17 argue that this means it should be free from regulatory
18 constraints. That's wrong. Regulation means that you
19 look at what the company is doing and the costs it's
20 incurring for the purpose of protecting ratepayers from
21 having to bear unnecessary and unreasonable costs. And
22 based upon the evidence that you've already considered,
23 you've determined that the North Escambia site belongs
24 in that category of unnecessary, unreasonable costs.
25 Thank you.

1 **CHAIRMAN BRISÉ:** Thank you. Mr. McGlothlin
2 exhausted the five minutes -- well, seven minutes, as a
3 matter of fact, so try to balance that out.

4 **MR. STONE:** Mr. Chairman, I don't know if you
5 would entertain a brief reply.

6 **MR. McGLOTHLIN:** I would object to that.

7 **CHAIRMAN BRISÉ:** I think Commissioner Graham
8 has a question, so we'll go there first.

9 **COMMISSIONER GRAHAM:** I was going to wait to
10 hear from staff before I chimed in.

11 **CHAIRMAN BRISÉ:** Okay. Is staff ready to make
12 a comment? Because I have a light from Commissioner
13 Balbis.

14 **COMMISSIONER BALBIS:** That's all right.

15 **CHAIRMAN BRISÉ:** Okay.

16 **MS. KLANCKE:** Staff is available to answer
17 questions; however, the oral argument is with respect to
18 the utility party as well as the Intervenors which
19 collectively filed their response. Staff's opinions and
20 thoughts on this matter are reflected in our
21 recommendation which is before you. However, we are
22 willing to -- we are excited to answer any questions
23 that you may have.

24 (Laughter.)

25 **CHAIRMAN BRISÉ:** Commissioner Graham.

1 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.

2 Fellow Commissioners, I want to start off by
3 saying I'm not here to question staff's recommendation.
4 And after I'm done, staff may decide or you may decide
5 that this is not the appropriate place or time to bring
6 this up. And I would have brought it up last time but
7 it was my understanding, because I -- it was my
8 understanding that we were going through the nuclear
9 clause, nuclear cost recovery, and that they had to have
10 the determination of need done. And since that wasn't
11 done, it was just quick and simple and there's no sense
12 in me going down this path.

13 It seems since then things have changed, and I
14 just want to have this conversation because I guess I
15 don't want to see this opportunity go by the wayside.
16 You know, I think we're all here because we all come
17 with our past experiences and things that we've done.
18 And I can tell you from working in large businesses like
19 paper mills and also working in local government, I
20 know, and you've all heard me say this before,
21 residential intrusion is a, is something that you want
22 to try to avoid at all costs because trying to shoehorn
23 in a nuclear plant after you have houses moving around
24 is almost an impossibility.

25 And I also want to put on my local government

1 hat. When you start looking at the economic impact of
2 building a nuclear plant, the thousands of jobs that go
3 into that, both the building of it and running the plant
4 and the tax base that's generated from having a nuclear
5 plant.

6 Now my concern is, as my concern was before,
7 about, as Mr. McGlothlin said earlier, the land that
8 they currently have that they're sitting on right now,
9 some of it has been for, and I can't remember off the
10 top of my head, but I want to say 25, 30 years, which I
11 don't think it makes sense for that land to be sitting
12 there all this time in rate base and nothing happen to
13 that, and then adding another 4,000 acres on top that.

14 Now if we are to do something to remove some
15 of that other land that they've been holding on and then
16 just bring the North Escambia piece in there, then I
17 think that piece can hold basically all their options
18 for anything that they want to do moving forward,
19 putting nuclear on top and everything else that goes
20 along with that. And, you know, I don't know what
21 happens if they decide to sell that land that's been in
22 rate base all this time or, or what happens with that.
23 That's something that staff would have to answer. But,
24 you know, I need to make sure that the ratepayers are,
25 are protected as we move forward. And I'm sure if the

1 nuclear plant were to go forward, that the bulk of that
2 energy generated will be going outside the State of
3 Florida, which is fine, I don't have a problem with that
4 at all. I just want to make sure our ratepayers are
5 protected on having carried the load for that property
6 for a while, that somehow that gets refunded back to
7 them or rebated back to them or however that works.

8 And as I said to staff yesterday, this is a
9 lot like what happened with Progress where they're
10 looking about building a new nuclear plant knowing that
11 they're looking for outside investors and that it wasn't
12 going to all go within Progress rate base -- Progress
13 ratepayers, that it was going to be generated -- now
14 granted in that case the bulk of it was going to be
15 Progress, but some of it is going to be on the outside
16 and there needs to be some mechanism to make sure in
17 that case that the Progress ratepayers are protected for
18 not having -- for having to carry that load the entire
19 time.

20 That's pretty much what I had to say. I just
21 want to tee that up so we can have that conversation.
22 It's unfortunate that I can't sit down with both the
23 companies, the Intervenors, and everybody else and have
24 these conversations in a forum other than this, but this
25 is where I have to have it.

1 So I guess the first question, to go back to
2 staff, is this the right time and right place to be
3 having this conversation? Is there something else we
4 should be doing? Or tell me how I falter.

5 **MS. KLANCKE:** Although I believe that in the
6 spirit of compromise this suggestion, though novel, is a
7 good one, in the instant case, unfortunately we had to
8 make determinations based on the case before us as
9 crafted and proffered by the application of the utility.
10 In this case, we had two pieces of land, both large,
11 both asserting -- in which the utility asserted would be
12 used for property, property for service related
13 purposes. We had both the Caryville site in Issue 24
14 and the North Escambia site in Issue, in Issue -- the
15 Caryville site in Issue 23 and the North Escambia site
16 in Issue 24, and that was the framework of the basis of
17 our decision.

18 Perhaps a change in the application would have
19 been more ideal for the purposes of our deliberations.
20 But in the instant case and at hearing and as contained
21 in the order, we have to deal with their application as
22 it exists. And that contains two pieces of land, both
23 which they are seeking to be included: One continued
24 for inclusion in rate base and one for newly inclusion
25 in rate base.

1 **COMMISSIONER GRAHAM:** Can I --

2 **CHAIRMAN BRISÉ:** Sure.

3 **COMMISSIONER GRAHAM:** Mr. Chairman, can I hear
4 back from Gulf?

5 **MR. STONE:** Commissioner Graham, as I've
6 indicated, we did request and we do see value in both
7 parcels of land. But if you were to ask me which land
8 is more likely to be developed sooner, it would be the
9 North Escambia land if it's still, if it's still
10 available us to. But if we're not allowed to have
11 current earnings on the North Escambia land, then we're
12 faced with pressure to dispose of that land. And so it
13 may not be available and that may force a less efficient
14 decision to go to land that we already owned that is not
15 as valuable to us for a future generation site as, as
16 the North Escambia land. I hope that answers your
17 question.

18 But if we were, if we were to choose between
19 the two which is the most valuable for our future
20 customers, I would say the North Escambia land because
21 of the strategic location.

22 **MR. WRIGHT:** Mr. Chairman, I object to that.
23 That was new testimony as to the priority of the North
24 Escambia site that is contradicted by Gulf's evidence in
25 the case.

1 **MR. STONE:** Mr. Chairman, Mr. Wright is well
2 aware that attorneys do not testify. We argue.

3 **CHAIRMAN BRISÉ:** Thank you.

4 **MR. McGLOTHLIN:** May I respond to Mr. Stone,
5 please?

6 **CHAIRMAN BRISÉ:** Yes, Mr. McGlothlin. Go
7 ahead.

8 **MR. McGLOTHLIN:** I would respond this way.

9 First of all, because of the procedural
10 posture that I've identified to you, this, this idea of
11 a new initiative to consider a swap is not available to
12 you.

13 Secondly, the idea of a swap is, even if it
14 were to be considered, has to take into account that the
15 price tag on the North Escambia property is something
16 like \$28 million compared to the Caryville site, which
17 was orders of magnitude less. And so it isn't a simple
18 matter of exchanging. The cost comes into, comes into
19 play even if it were an appropriate point in time for
20 this to be considered.

21 **COMMISSIONER GRAHAM:** I had just teed that up
22 for the rest of the Commissioners.

23 Thank you, Mr. Chairman.

24 **CHAIRMAN BRISÉ:** No problem.

25 Commissioner Balbis.

1 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman,
2 and thank you, Commissioner Graham. I do appreciate the
3 discussion of, you know, additional options. I'm not
4 sure if this is the right place for it, but I think it's
5 good to bring those up.

6 What I'd like to focus on is what is before
7 us, and it's the Motion for Reconsideration, which has
8 very specific standards of review, again, whether or not
9 there's a point of fact or law which was overlooked.
10 And Gulf's opening statements indicated that part of it
11 was that we considered more for the nuclear clause
12 rather than plant held for future use. And on top of
13 the fact that there was evidence in the record handling
14 both of those situations that, that I know I considered
15 and I believe we considered, and even in review of the
16 transcripts, during our decision there was a discussion
17 of the nuclear, handling it through the nuclear clause
18 and also discussions with staff and amongst us on plant
19 held for future use. So I believe we adequately
20 considered both options and did not overlook a fact or
21 law considering this.

22 There was also discussion during that decision
23 with staff on different options that Gulf could come
24 forward at any time with a petition for us to consider
25 with exactly those options that, Commissioner Graham,

1 you discussed. And if that happens, I would be more
2 than happy to consider that. But at this time we have
3 our, our Motion for Reconsideration, and I could not
4 find any point of fact or law which we overlooked. I
5 think we discussed it in detail. I think there's
6 opportunity that exists for Gulf to move forward in the
7 future and I would look forward to that. But at this
8 time I'm leaning toward staff's recommendation on this.

9 **CHAIRMAN BRISÉ:** Commissioner Brown.

10 **COMMISSIONER BROWN:** Thank you. I think the
11 crux of the issue at hand has always been the
12 reasonableness of including this in rate base and
13 whether the customers should bear the burden of the
14 costs associated with Escambia.

15 Mr. Stone raised the issue of combining Issues
16 1 and 24 and I did want an opportunity for staff to
17 respond to make -- to clarify whether that would be
18 perceived or is in fact a mistake of law or mistake of
19 fact.

20 **MS. KLANCKE:** We appreciate the opportunity to
21 clarify. I would caution you that although we did take
22 the two up together, a review of the transcript clearly
23 indicates that we analyzed these things separately based
24 on the arguments that were provided by the parties at
25 that time.

1 The carrying costs which Gulf asserted were
2 authorized by the nuclear cost recovery statute and rule
3 were embedded in the rate base request that they were
4 seeking in Issue 24. So, by necessity, staff and the
5 Commission addressed that argument.

6 I would counsel you to look at the utility's
7 post-hearing brief on Issue 24 which does the same. In
8 addition to, to addressing that argument in Issue 24
9 with respect to their assertion that those carrying
10 costs in the amount of 2 million, almost \$3 million were
11 preconstruction costs, we also had a lengthy and
12 informative discussion with respect to plant held for
13 future use standards whether it was reasonable at this
14 time to include in rate base the \$26 million associated
15 with the North Escambia site in plant held for future
16 use.

17 Yes, it was a multifaceted discussion, but it
18 covered each one of the items and arguments that were
19 raised by the parties, including the traditional
20 arguments as well as the novel arguments which were
21 raised by the utility. And so staff is confident that
22 it would not -- that the utility's characterization of
23 our deliberations as a mistake of fact or law is
24 erroneous.

25 **COMMISSIONER BROWN:** Thank you.

1 And I like Commissioner Graham's proposal
2 about Caryville and Escambia. And I just want to be
3 absolutely clear that at this juncture we cannot
4 consider the option proposed by Commissioner Graham.

5 **MS. KLANCKE:** Unfortunately, yes, in this
6 instance we have a very limited standard: Whether the
7 utility has identified a mistake of fact or law in the
8 instant case. It is clear from the case law in Florida
9 as well as Florida Supreme Court law that we cannot use
10 this as an opportunity to reweigh the evidence. Thus,
11 in the instant case staff believes, as we've described
12 in our recommendation, that they have failed to identify
13 a mistake of fact or law that would afford the
14 Commission the ability to redecide these issues.

15 **COMMISSIONER BROWN:** And Gulf is not
16 precluded, as was stated in the staff recommendation,
17 from coming back in at a later date and asking for
18 inclusion in rate base.

19 **MS. KLANCKE:** Absolutely. They can come in
20 either as, in a limited proceeding specifically with
21 respect to this issue or they can come in at their next
22 rate case when perhaps their need is a little closer in
23 proximity or substantive situations have changed.

24 **COMMISSIONER BROWN:** Mr. Stone, would you like
25 to respond to that?

1 **MR. STONE:** I would, Commissioner. A rate
2 case is a very expensive proposition, and that's why we
3 felt it was appropriate to bring this mistake back to
4 the Commission by a Motion for Reconsideration to avoid
5 the cost of another rate case to relitigate this issue.

6 We believe the mistake that was made is it was
7 an inappropriate threshold that was addressed, and I can
8 go through the transcript and show how that mistake may
9 have occurred.

10 But the threshold of the need determination,
11 which is unprecedented for property held for future use,
12 is what has kept you from considering the rest of the
13 evidence. And the characterization of our motion as
14 asking you to reweigh the evidence is not true at all.
15 Our motion simply asks you to remove the artificial
16 barrier of a need determination from your consideration
17 and then consider our case as a conventional request for
18 property held for future use. And in that light we
19 believe that the Commission would find that it is a
20 reasonable inclusion as it has in every other instance
21 where a generation site has been brought before the
22 Commission on a rate case.

23 **COMMISSIONER BROWN:** Thank you. And,
24 Commissioners, I took the opportunity to look at the
25 transcript again. I was surprised first when Gulf came

1 in and asked for a reconsideration on this motion
2 because I remember during the technical hearing there
3 was a lot of discussion, deliberate, considered
4 discussion on this issue, on Issue 24, and then during
5 the Special Agenda there was discussion as well. And my
6 thinking when I supported the vote was not based on the
7 need, the lack of a need determination. It was based on
8 the fact that Caryville has been in rate base for over
9 30 years, it was based on the Ten-Year Site Plan that
10 they don't have any generation needs until 2022 for
11 30 megawatts, and it was based on the reasonableness
12 too. So those, for those decisions I don't think that
13 there's been a change, a mistake of fact here or a
14 mistake of law that we addressed.

15 **CHAIRMAN BRISÉ:** Commissioner Edgar.

16 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

17 And part of what I was going to ask has just
18 been addressed because I was going to ask Mr. Stone to
19 speak specifically to the point that they are, or
20 argument that they are raising as to whether the test
21 for reconsideration has been met, and I believe, as he
22 addressed Commissioner Brown's question, he did that.

23 I am not as, am not recollecting as clearly as
24 some of my colleagues the exact transcript and the issue
25 wordings, and depending on where we end up here in a few

1 minutes, Mr. Chairman, I may ask if we could take a
2 slight break or move on and then come back so that I can
3 refresh my memory as to some of those points. We all
4 know it was voluminous and I fully admit to not having
5 it all memorized.

6 However, I do think, backing up a little bit,
7 we are bound by a couple of things, and one of which is
8 certainly, and we will all want to follow it, the
9 process, procedures, rules that we are bound by for due
10 process and transparency in our decisions, particularly
11 in evidentiary proceedings. But I also think that it is
12 worthwhile to factor in within that framework that the
13 goal, I believe, of a rate case is to try to have the
14 most appropriate and best for the operations and
15 therefore for the ratepayers as to what should and
16 should not be included in costs and rates.

17 And it sounds like there is an issue being
18 presented to us that in our consideration of the North
19 Escambia site, the discussion as to, and the testimony
20 as to the need for an actual need determination to have
21 been issued was given, perhaps was given significant
22 weight to the point that perhaps that overshadowed some
23 of that between a variety of potential future sites what
24 does make the most sense for the future planning for the
25 delivery of services.

1 So that is something I think, Mr. Chairman, I
2 may need to have a couple of minutes to consult with
3 staff and think on depending on how you would like us to
4 proceed. And just to restate what I have just stated,
5 I'm trying to figure out in my mind how the framework of
6 what we are bound to from the record and the posture
7 that we are in today fits with our overarching charge of
8 establishing rates that are the most accurate from the
9 information that is available and is in the record on a,
10 before us in a go-forward, prospective basis looking at
11 the test year information that we had.

12 **CHAIRMAN BRISÉ:** Thank you, Commissioner
13 Edgar.

14 Commissioner Graham.

15 **COMMISSIONER GRAHAM:** I guess the question I
16 have to you, Mr. Chairman, is if we're going to table
17 this and come back to it after Commissioner Edgar has
18 had a chance to go back over this stuff or are we going
19 to move forward now?

20 **CHAIRMAN BRISÉ:** Considering the concern that
21 is raised by Commissioner Edgar, if -- there may not be
22 clarity with respect to the weight that was applied to
23 the need determination and there may be a need to maybe
24 go back and make sure that it was either given the
25 appropriate weight or not or so forth. I think in

1 making this decision that plays a crucial role in that.
2 So if -- time may be necessary for, for some of us to
3 maybe take a look at that again to make sure that our
4 recollection is, is accurate. I think that may not be a
5 bad thing to do at this time. So how much time might be
6 needed?

7 **COMMISSIONER EDGAR:** Mr. Chairman, I will toss
8 this out and maybe a question to staff and, if you would
9 like, to others who have been participating in the
10 discussion.

11 I note from the front page that there are no
12 critical dates on this. I don't know if there is a
13 critical date that was not, you know, that for whatever
14 reason was not included there.

15 I guess I would perhaps suggest that we could
16 table this for the moment, and realizing that there are
17 people here on other items, we could go ahead and
18 address the other items that are on our agenda today.
19 And then I would ask if it is possible to just table
20 this until the next agenda, which would give me the
21 opportunity to review the transcript and the other items
22 in more detail. Because, candidly, although I did
23 review the item before us and the motion, points have
24 been raised that I had not considered or had not, that
25 had not been brought to my attention until the open

1 discussion that we're having today.

2 So I don't know if a delay for two to three
3 weeks, whatever is our next date, would provide a
4 hardship. If it is, I would certainly want to know
5 that. But I would ask that we consider the possibility
6 of giving me and perhaps each of us the opportunity to
7 review the documents and meet with staff over the next
8 short time period.

9 **CHAIRMAN BRISÉ:** Okay. So, staff, if we could
10 walk through maybe some of the timeline associated with
11 this, if there are any time constraints or anything.

12 **MS. KLANCKE:** There are no time constraints
13 associated with your determination with respect to the
14 Motion for Reconsideration, and thus staff sees no
15 impediment to the timeline that was suggested by the
16 Commissioner.

17 **CHAIRMAN BRISÉ:** Okay. I'd like to hear from
18 the parties as well.

19 **MR. STONE:** Commissioner, as far as Gulf is
20 concerned, you're under no time impediment. We would
21 welcome a review of the transcript. In fact, if it
22 would be helpful to the Commission, we have excerpts
23 from the Agenda Conference transcript that we've
24 highlighted the passages where you talked about the need
25 determination as a threshold. And if that would be

1 helpful to the Commission, I would be happy to
2 distribute it to the parties and to the Commission.

3 **CHAIRMAN BRISÉ:** Thank you. Mr. McGlothlin or
4 any of the other Intervenors?

5 **MR. MCGLOTHLIN:** The, I think the delay is
6 unnecessary for the reasons I've talked about. The
7 timing of your decision is not concerning, whether it's
8 today or next time. I don't think the Commission needs
9 any help in finding the transcript of its Agenda
10 Conference with, with Gulf's preferred passages marked
11 for your attention. I think that's something between
12 you and your staff.

13 **CHAIRMAN BRISÉ:** All right. So I'm gathering
14 that there are no time constraints with respect to this.
15 And I'm looking, you know, at my colleagues and I don't
16 particularly see strong objection to, to maybe a delay
17 in this.

18 When would be the next date, Mr. Baez?

19 **MR. BAEZ:** My glasses don't seem to be
20 working. July 17, it looks like, sir.

21 **CHAIRMAN BRISÉ:** July 17th. Okay. So with --
22 Commissioner Graham.

23 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.

24 I make a motion that we table this item,
25 Number 5, until our next Commission meeting July 17th.

1 **COMMISSIONER EDGAR:** Second.

2 **CHAIRMAN BRISÉ:** All right. It's been moved
3 and seconded. All in favor, say aye.

4 (Vote taken.)

5 Okay. The item has been deferred to
6 July 17th.

7 **COMMISSIONER EDGAR:** And, Mr. Chairman, I
8 would just say thank you for that consideration.

9 (Agenda item concluded.)

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1 STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
 2 COUNTY OF LEON)

3
 4 I, LINDA BOLES, RPR, CRR, Official Commission
 Reporter, do hereby certify that the foregoing
 5 proceeding was heard at the time and place herein
 stated.

6
 7 IT IS FURTHER CERTIFIED that I stenographically
 reported the said proceedings; that the same has been
 transcribed under my direct supervision; and that this
 8 transcript constitutes a true transcription of my notes
 of said proceedings.

9
 10 I FURTHER CERTIFY that I am not a relative,
 employee, attorney or counsel of any of the parties, nor
 am I a relative or employee of any of the parties'
 11 attorneys or counsel connected with the action, nor am I
 financially interested in the action.

12 DATED THIS 22nd day of June,
 13 2012.

14
 15 Linda Boles
 16 LINDA BOLES, RPR, CRR
 FPSC Official Commission Reporter
 17 (850) 413-6734

("PHFU") a *portion* of the total costs Gulf previously identified as being associated with the North Escambia site. As described in greater detail below, Gulf believes that mistakes of facts and law warrant reconsideration by the Commission of this limited point. In the rate case filing, Gulf sought to include the Company's total investment associated with the North Escambia site of \$26,751,000 (\$27,687,441 system) in rate base as PHFU. For purposes of this motion for reconsideration, Gulf is seeking reconsideration of only a portion of the costs associated with the North Escambia site totaling \$22,674,000 (\$23,467,543 system).² The portion of Gulf's investment in the North Escambia site which Gulf is seeking through this motion is limited to the types of costs associated with prospective power plant sites that have historically and consistently been allowed in rate base as PHFU --in this case land, land acquisition and site investigation costs.

[portion of page omitted]

² The limited amount requested through this motion represents the sum of the land costs, other site acquisition costs and site investigation costs associated with the North Escambia site which are identified in the first three lines set forth in Table 4 on page 26 of Order No. PSC-12-0179-FOF-EI. The remaining costs set forth in Table 4 are excluded from this request.

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Table 4

North Escambia County Plant Site Costs

	System	Jurisdictional
Land Costs	\$18,140,286	\$17,527,000
Other Site Acquisition Costs	778,485	752,000
Site Investigation Costs	4,548,772	4,395,000
Need Determination Filing	187,238	181,000
Project Support Costs	650,742	629,000
Project Frank	370,460	358,000
UWF Study	33,620	32,000
Subtotal Land Costs	24,709,603	23,874,000
Carrying Costs thru 12/31/11	2,977,838	2,877,000
Total Site Costs	\$27,687,441	\$26,751,000

Total of first three lines:

System

Jurisdictional

\$23,467,543

\$22,674,000

Parties/Staff Handout
Internal Affairs/Agenda
on 6/19/12
Item No. 5
110138-EI