

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 110138-EI

In the Matter of:

PETITION FOR INCREASE IN RATES
BY GULF POWER COMPANY.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE
ITEM NO. 4

COMMISSIONERS
PARTICIPATING:

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

DATE: Tuesday, July 17, 2012

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

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P R O C E E D I N G S

1
2 **CHAIRMAN BRISÉ:** Now moving on to Item Number 4,
3 Docket Number 110138-EI, which is a Gulf Power motion for
4 reconsideration. Ms. Klancke will introduce the item.
5 This item was deferred from June 19th. We heard oral
6 arguments at that time, and I think we will go into
7 questions, but we'll ask Ms. Klancke to introduce the
8 item, and then if the parties will make themselves
9 available to answer questions as posed by the
10 Commissioners.

11 Ms. Klancke.

12 **MS. KLANCKE:** Good morning, Commissioners.
13 Caroline Klancke from Commission legal staff.

14 Item 4 addresses Gulf Power Company's motion
15 for reconsideration. This item was deferred from the
16 June 19th, 2012, Commission Conference. At that
17 Commission Conference, Issue 1 was denied and the parties
18 were given an opportunity to present oral argument. The
19 remaining issues to be addressed are contained in Issue
20 Numbers 2 and 3. Participation is at the Commission's
21 discretion. The parties and staff are available to
22 answer any questions that you may have.

23 **CHAIRMAN BRISÉ:** All right. Thank you very
24 much.

25 Commissioners?

1 Commissioner Edgar.

2 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman. I
3 would -- with your approval, of course -- would like to
4 ask the parties that participated in the discussion the
5 last time to go ahead and come forward. I may have some
6 questions, and I'm thinking there may be other questions,
7 as well. And I do see this as a continuation, in my mind,
8 of the discussion that we had previously. And so I would
9 like, if I may, to go ahead and ask those parties to come
10 forward.

11 **CHAIRMAN BRISÉ:** Sure. I think that would be
12 perfectly appropriate.

13 **COMMISSIONER EDGAR:** Thank you.

14 **CHAIRMAN BRISÉ:** It seems like the parties have
15 settled in. So, Commissioners, you are welcome to pose
16 questions.

17 Commissioner Edgar.

18 **COMMISSIONER EDGAR:** I think I will kick it off.

19 **CHAIRMAN BRISÉ:** Sure.

20 **COMMISSIONER EDGAR:** I had asked at the last
21 time we were together on this to have some additional
22 time. I felt like there were some points raised that I
23 know did raise some questions in my mind, and I wanted the
24 opportunity to go back and review the record and the
25 transcripts and the motions. And I have done so

1 exhaustively, exhaustively in more than one way, I would
2 say, but to help us frame what I hope will be a good
3 discussion here at the bench.

4 I recognize that we are in a very narrow
5 procedural posture, and through all the issues and votes
6 that I have participated in the years, probably somewhat
7 of a unique one. I do believe, and I did at the time,
8 and my original belief is confirmed after having the
9 opportunity to go back over portions of the record again,
10 that in some of the testimony at hearing and in some of
11 the discussion during the consideration of the staff
12 recommendation that was before us that a very few of the
13 issues got a little muddied and a little unclear, and so
14 I would like to use this time to add clarity, as
15 appropriate.

16 And I guess what I would like, Mr. Chairman, is
17 to begin by asking, to help us get started asking the
18 petitioner, in this instance, to very briefly reiterate
19 concisely and specifically, if I may, what indeed is the
20 basis for their request for consideration, recognizing
21 the standard that is before us. And then I would like to
22 ask very briefly, if I may, for each of the parties that
23 would like to to briefly respond.

24 **CHAIRMAN BRISÉ:** Sure.

25 Mr. Stone.

1 **MR. STONE:** Commissioners, as the petitioner,
2 our focus on our motion for reconsideration is primarily
3 on the discussion that occurred at the agenda on
4 February 27th. We believe that the discussion actually
5 didn't make its way fully to the order, and so our focus
6 on reconsideration is the decision itself, not the order.

7 And on our review of the transcript of that
8 decision back on February 27th, we perceive that there
9 may have been a mistake in understanding with regard to
10 the interplay between Issue 1, a legal issue dealing with
11 a very narrow amount of costs, and Issue 24, which was
12 the broader more traditional rate base treatment of plant
13 held or property held for future use.

14 And we believe that that potential for a
15 mistaken understanding occurred at the outset. And with
16 your indulgence, I can go through the transcript, and I
17 think I can track through what causes us to believe that
18 there may have been a misunderstanding.

19 But before I go to the transcript of
20 February 27th, I think it's helpful from background for
21 me to go all the way back to the prehearing conference
22 when we were discussing the formation of the issues,
23 Issue 1 and Issue 24, among all the issues in this case.
24 And there was at that time an interplay between the
25 parties as we were trying to refine the issues to get it

1 down to squarely what it was that was trying to be
2 presented.

3 And on that day, at Page 21 of the transcript,
4 Mr. Melson made the following comments in response to
5 what we were trying to work out as the final wording of
6 Issue 1.

7 MR. MELSON: Commissioner, I think we would be
8 all right with Version 3 -- referring to the third
9 iteration of trying to draft the wording for Issue 1 --
10 assuming that none of the intervenors is taking the
11 position that the Commission lacks the legal authority to
12 include the plant, in plant held for future use.

13 We read some of the initial positions as
14 indicating maybe they were questioning that broader legal
15 authority. If that issue is off the table, and the only
16 issue is the narrow one -- only issue in Issue 1 is the
17 narrow one of the scope of 366.93, then I think we can
18 live with Mr. McGlothlin's Version 3.

19 COMMISSIONER EDGAR: Thank you. Mr.
20 McGlothlin.

21 Mr. McGlothlin stated, we believe the
22 Commission has the legal authority to allow property as
23 plant held for future use if that property qualifies and
24 meets the criteria for such inclusion. We dispute that
25 position with respect to the North Escambia site, so I

1 think that's why we say we can address that in Issue 24.

2 MR. MELSON: If I'm understanding Mr.
3 McGlothlin, he's saying we do not have a dispute about
4 the Commission's legal authority, only about the factual
5 question of whether it qualifies for inclusion. And if
6 so, then I think the legal issue that he has stated here
7 -- again, meaning the legal issue in Issue 1 -- would
8 focus on that particular legal dispute we have.

9 COMMISSIONER EDGAR: Okay. Then, Mr. Melson,
10 your restatement of Mr. McGlothlin's response to your
11 question is what I understood Mr. McGlothlin's response to
12 be, so let me put it to Mr. McGlothlin.

13 MR. MCGLOTHLIN: I think we're there.

14 COMMISSIONER EDGAR: I think we're there, too.
15 Okay.

16 So clearly the parties understood back in
17 November, before we had the evidentiary hearing, that
18 Issue 1 was a narrow legal issue, and that Issue 24 was
19 the traditional base rate treatment of property held for
20 future use for a future generating site.

21 Now we fast forward to the Agenda Conference on
22 February 27th. And the very first issues that comes up
23 for discussion is Issue 1, as you would expect, and,
24 Commissioner Graham, you said, Thank you, Mr. Chair. If
25 we could, if it is the will of the chair, let's do Issue

1 1 and Issue 24 together, because they are pretty much the
2 same issue. And, Staff, can I get you to walk us through
3 the recommendation for Issue Number 7 -- Number 1.

4 At that point, it had been posed as a
5 possibility that the two were related. And that's on
6 Page 3 of the transcript, at Lines 11 through 15. Later
7 on, on Page 3, beginning at Line 25 and going through
8 Page 4, Line 5, Ms. Klancke accepts the premise that
9 Issues 1 and 24 are fundamentally related and focuses
10 exclusively on the requirement for a need determination
11 order to invoke the nuclear cost-recovery statute, the
12 mechanism set forth in that statute and rule. And what
13 she said was the plain language of both the statute and
14 the rule, which is subject to interpretation, explicitly
15 require a final order granting a need determination or
16 determination of need prior to a company being able to
17 avail itself of the alternative cost-recovery mechanism
18 contained within the nuclear cost-recovery statute.

19 Now I have no quarrel with that statement, but
20 we're not availing ourselves of the alternative
21 cost-recovery mechanism provided by the nuclear
22 cost-recovery statute. As I stated during oral argument
23 four weeks ago, the nuclear cost-recovery statute has
24 nothing to do with the traditional base rate recovery of
25 property held for future use as a future generating site.

1 Later on, on Page 4, at Lines 9 through 12, Ms.
2 Klancke again makes the point the need determination
3 threshold was not satisfied in this case saying no final
4 order granting a need determination exists in this case.
5 As such, staff believes that until that threshold
6 criteria has been satisfied, it is not appropriate at
7 this time.

8 Here's where we run the risk that by
9 inadvertently combining Issue 24 and Issue 1, we have now
10 foreclosed a full and fair consideration of all the
11 evidence in the record about why it was prudent for Gulf
12 to move ahead with the purchase of North Escambia.

13 Going on on that page, starting at Line 15 on
14 Page 4 going through Page 5, Line 11, Commissioner Graham
15 then discusses the reasons why actions such as those by
16 Gulf in this case are reasonable and appropriate.

17 Commissioners, I have to tell you, this was -- this was a
18 big issue for me. In a prior life I used to be an
19 engineer, and I spent a lot of time in paper mills. One
20 specific, up in Brunswick, where you have a much -- I
21 apologize, the size of my print is too small for my --
22 where you have so much residential intrusion that moves
23 in around the paper mill that it got to the point where
24 so many of the neighbors complained that you can't move.
25 They weren't allowed to move their trains after 10:00

1 o'clock at night and before 8:00 o'clock in the morning.
2 So, in essence, you shut down the warehouse for ten hours
3 a day, which is huge for these guys because of all the
4 paper they produce. Trying to get that stuff out of
5 there was very important to them. And so, you know, I
6 understand where Gulf is coming from trying to acquire
7 this land, because you don't want for the houses that are
8 built around in the area, you don't want to, after the
9 need determination, trying to shoehorn a nuclear plant
10 into somebody's neighborhood. Because I can tell you
11 right now, nobody wants not only a power plant in their
12 neighborhood, but they don't want a nuclear plant in
13 their neighbor. And so it's a very difficult thing.

14 And then he goes on -- Commissioner Graham, you
15 went on to say, and I was prepared to push my issue on
16 this subject, but Caroline Klancke did a great job of
17 illustrating the fact that if you don't want to be part
18 of this, it all comes down to the statute. And the
19 statute says you have to go through the need
20 determination.

21 And that was the premise on which the motion
22 was made. That is the mistake that I believe occurred on
23 February 27th where there was an inappropriate and an
24 inadvertent linkage between traditional base rate
25 recovery for North Escambia and the nuclear cost-recovery

1 statute.

2 At Page 6, Lines 19 through 23, again,
3 Commissioner Graham encourages Gulf to do what it is
4 doing, but in order for there to be recovery it either
5 must go through a need determination proceeding or it
6 must seek a change in the statute. At Page 7
7 Commissioner Brisé asks what happens if it's not
8 allowed -- if we're not allowed current recovery and the
9 company later begins using the property to serve retail
10 customers. Ms. Gardner answered on that page that the
11 property would then go into rate base at today's costs,
12 and did not consider whether the property might not
13 belong to the company at that point when that occurred
14 based on the decision made today. Commissioner Brisé you
15 acknowledged that that would create a question of
16 fairness.

17 At Page 10, Mr. Willis suggests that a failure
18 to go through the need determination process is a fatal
19 flaw with regard to cost-recovery. He stated, I'm not
20 sure the company actually has proven that this site is
21 eligible for a nuclear power plant, either. They haven't
22 gone through the process to have that done.

23 And, again, we aren't siting a nuclear power
24 plant. We are simply buying property for a future
25 generation site, a future generation site that keeps the

1 nuclear option open. But even if we never build
2 another nuclear -- a nuclear plant, let alone another
3 one, but a nuclear plant, we would still use that
4 property for a future generation site to serve our
5 customers.

6 At Page 11, Lines 22 through 25, Commissioner
7 Brisé asked if the decision to disallow is consistent
8 with Commission precedent, and Mr. Willis answered that
9 it does. But Mr. Willis' statement does not mention the
10 TECO '71 order, which is essentially the beginning of
11 this Commission's treatment of plant held for future use
12 with regard to future generation sites, and it dealt with
13 the Beacon Key site, nor did he mention the TECO '93
14 order regarding the Port Manatee site, a future nuclear
15 site.

16 There are other cases that were omitted from
17 the discussion. Our own '72 order regarding Caryville,
18 it cited the TECO order. There was an FPL '81 order
19 regarding DeSoto and South Dade, which I believe were
20 also future nuclear sites that were allowed. They were
21 actually canceled nuclear projects, and they were allowed
22 to continue to remain in property held for future use.
23 There was an FPL '66 order that recognizes that deferral
24 of acquisition of generation sites is costly to
25 customers. None of that was cited when Mr. Willis said a

1 decision to disallow was consistent with the precedence
2 of this Commission.

3 In fact, we have done an exhaustive search. We
4 have been unable to locate any case in a rate case where
5 this Commission has considered the question of a future
6 generation site and disallowed it from property held for
7 future use. We found none. At Page 18, Lines 17 through
8 23, Mr. Willis states that proving a need is a
9 prerequisite to accruing a return or placing into rate
10 base, and that's simply not the case.

11 And then the final point from February 27th,
12 again, at this point we have already voted a combination
13 of Issue 1 and Issue 24 denying us North Escambia. We
14 now move on to Issue 23, which is the Caryville site.
15 And, Commissioner Brown, you stated that -- after the
16 vote on Issue 23 you explained your vote by saying that a
17 key distinction between Caryville and North Escambia is
18 the fact that Caryville is a certified site under the
19 Power Plant Siting Act. But what that statement didn't
20 recognize is that Caryville was placed in rate base
21 before that certification. We were recovering it through
22 rates before that certification. And but for the
23 opportunity to participate in Plant Daniel outside
24 Pascagoula, there would be a coal plant operating today
25 on the Caryville site, because we were already to the

1 point of preparing to build, ordering equipment when we
2 had the opportunity to buy into Daniel. And all of this
3 is evidenced by orders of this Commission in past rate
4 cases. And the Commission agreed with us that it was
5 more cost-effective for us to go into Daniel and incur
6 the cancellation charges associated with ceasing the
7 project --

8 **MR. SAYLER:** Objection, I don't believe that's
9 is in the record of the hearing transcript anywhere in
10 there. It's certainly not in the agenda transcript that
11 Gulf is asking you to reweigh at this time.

12 **MR. STONE:** I would ask that the Commission take
13 official notice of its own orders, and that is that
14 information that I just described to you is in our past
15 rate case orders, and I can get you the specific cites if
16 you desire.

17 **CHAIRMAN BRISÉ:** Thank you. I'll overrule the
18 objection.

19 **MR. WRIGHT:** We object; we also join the
20 objection. This isn't an issue about Caryville; this is
21 an issue about whether the Commission made a mistake of
22 fact or law with respect to its decision on the North
23 Escambia site.

24 **CHAIRMAN BRISÉ:** Thank you.

25 **MR. STONE:** Issue 1 inadvertently served as a

1 gateway or barrier to full consideration of all the
2 evidence about why it was a prudent decision to move ahead
3 with the purchase of North Escambia. Based on our
4 perception of that decision process that I have just
5 described to you with particular references to the
6 transcript, it's an inadvertent error that is precisely
7 the type of error that this Commission has the power to
8 correct at any time before its order is rendered final.

9 Now, your order is not final in this case by
10 virtue of the fact that we filed a motion for
11 reconsideration. And whether you reconsider your
12 decision on February 27th based on our motion or on your
13 own motion is within your inherent power to do that. The
14 relief we've requested is within your sound discretion.
15 It is on a sound legal basis. And if we are granted the
16 relief we have asked for, whether it is on our motion or
17 your own motion, you will restore the precedent of this
18 Commission back to where it has been for more than 40
19 years. Allowing your prior decision to exclude North
20 Escambia to stand does harm to that precedent. And based
21 on the evidence presented in this case, a decision to
22 deny cost-recovery is essentially a statement to the
23 utilities that you should wait to buy generation sites --
24 you shouldn't buy them now in anticipation of future
25 need, but you should wait until there is a present need.

1 And as recognized by your own orders or this Commission's
2 own orders over a course of more than 40 years, that is a
3 delay that will disadvantage ratepayers in the long-term.

4 I thank you for the opportunity to comment. I
5 realize this is a little unusual, but I think it's
6 important that you get the full picture of what's
7 happening here. Thank you.

8 **CHAIRMAN BRISÉ:** Thank you, Mr. Stone.
9 Commissioner Edgar.

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

11 I would agree, from my own perspective that it
12 is a little unusual, and also that it is important. I
13 thought I had gone back and looked at every relevant
14 piece of information on this over and over again, but I
15 will admit that I did not go back and reread the
16 transcript of the prehearing conference. However, what I
17 can say is I was the prehearing officer, so I was in
18 attendance, and absolutely agree, of course, with the
19 excerpts that have been read and described to us here.

20 At the prehearing conference we -- all the
21 parties, our staff participated; I made, I believe, some
22 statements, was very clear in my desire for as many
23 issues that could be stipulated prior to hearing to be
24 stipulated, as many issues that could be eliminated prior
25 to hearing to be eliminated. I think we did have some

1 language that there was some overlap, and was somewhat
2 duplicative. And we did, with the agreement at the time
3 of all parties and with my understanding at the time that
4 they were separate issues, make a very -- in my opinion,
5 as my signing at the time, and then, of course, signing
6 the prehearing order, that Issues 1 and 24 were two
7 different issues -- were two different issues. There
8 was -- my words now -- a relationship, but separate legal
9 issues, and therefore should remain as separate issues.

10 I can also say that from my perspective, when
11 we were at the agenda conference, I guess, back in
12 February and these issues, the discussion was initially
13 combined, it was a little unexpected to me at the time,
14 and at the time I was then listening and thinking at the
15 same time and trying to sort through them.

16 When I have gone back and looked, again, now
17 over the past few weeks at all of this, I do think that
18 in that discussion some of the issues and the standard
19 under Chapter 366.93, I think it is, and the standard
20 under our general ratemaking authority has been that the
21 discussion was kind of combined, a little muddled,
22 chummed up, for lack of a better term.

23 Now whether that was and is determinative and
24 whether that meets the standard that is before us is what
25 I have been trying to think through, and one of the

1 reasons why I wanted the benefit of hearing from my
2 fellow colleagues and also from all of the parties. So
3 with that, if I may continue --

4 **CHAIRMAN BRISÉ:** Sure.

5 **COMMISSIONER EDGAR:** -- I would like to ask, as
6 I said earlier, each of the parties to very briefly
7 respond on those points that have been raised, recognizing
8 the position that we are in.

9 **CHAIRMAN BRISÉ:** Sure. Who would you like to go
10 first?

11 **COMMISSIONER EDGAR:** It doesn't matter to me.

12 If I get the choice, then I would ask OPC
13 first -- sorry -- and then the Retail Federation and then
14 Ms. Kaufman.

15 **MR. SAYLER:** Thank you, Commissioners, Mr.
16 Chairman. I'm Erik Sayler on behalf of the Office of
17 Public Counsel.

18 I was going to keep my remarks fairly brief,
19 but I do have quite a bit to respond to, things that Mr.
20 Stone has raised, but I do have some prepared remarks
21 which I think will set the context to reset the context
22 to where we were at, or this Commission was at back in
23 February of 2007, and also explain some of the issues
24 that we have first with their motion for reconsideration.

25 Before I really get started, I do want to

FLORIDA PUBLIC SERVICE COMMISSION

1 remind all of us that the procedural posture of this case
2 is we are on a motion for reconsideration. The arguments
3 that were raised, they are the arguments that were raised
4 in the joint intervenors response, and also staff's
5 recommendation on reconsideration. And we fully support
6 staff's recommendation, which recommends denial of their
7 motion for reconsideration.

8 One of the key issues that we had with Gulf's
9 motion for reconsideration is that they set up a strawman
10 argument, shot it down, and then trotted out a lot of
11 Commission past cases and precedent, and then asked this
12 Commission to reweigh the evidence in light of those
13 cases. It is axiomatic that this Commission does not
14 need to cite every fact or evidence that it considers, or
15 even counter every argument that a losing litigant faces
16 when it comes to rendering its order or decision, and
17 that is State ex rel. Jaytex Realty.

18 But as you are all familiar from reading
19 staff's excellent motion for reconsideration, the
20 standard for reconsideration is that the moving party
21 must demonstrate a matter -- in most cases just called a
22 mistake -- a matter of fact or law that the Commission
23 overlooked or failed to consider when rendering its
24 decision. Gulf knew that standard and, therefore,
25 presented its motion.

1 In order to fashion or manufacture a mistake,
2 we believe that Gulf reinterpreted the Commission's order
3 and also misinterpreted the discussion that was had here
4 on February 27th before this Commission. To do so,
5 Gulf's mistake depends on isolating certain key phrases
6 in the order, such as determination of need, as well as
7 the discussion that was here on the 27th, and taking
8 those phrases out of context to assert that the
9 Commission misapprehended its own plant held for future
10 use standard. And with this manufactured mistake in
11 place, argued that the Commission then departed from its
12 past precedent to start requiring a determination of need
13 as a condition of precedent to place the North Escambia
14 site in plant held for future use.

15 As staff demonstrated through its thorough
16 recommendation, no such manufactured mistake occurred.
17 If you look at the transcript from that period, Mr. Stone
18 is quite correct that when Ms. Klancke was asked to
19 discuss or to go through Issue 1, she recounted that we
20 are on the NCRC statute, they are asking for carrying
21 costs to be recovered, that in order -- the condition
22 precedent for getting carrying costs through the NCRC is
23 you must have a nuclear determination of need first from
24 this Commission. That was clear.

25 Now, I do agree with you and others that

FLORIDA PUBLIC SERVICE COMMISSION

1 perhaps teeing up Issues 1 and 24 together may have
2 muddied the water a little bit, but later on after a
3 question from Chairman Brisé on Page 7, and then leading
4 into 8 -- let's see, Mr. Brisé is asking -- or Chairman
5 Brisé is asking did the utilities have an opportunity to
6 reap the benefit of the future for the decision made in
7 the past? And Mr. Willis said, Commissioner, if I could
8 take a shot at that. The company will have an
9 opportunity in the future to come forward and argue any
10 possible argument to increase the value over time. The
11 Commission has not done that. It has not been the
12 practice to do that. Once they purchase at the original
13 cost, it is the original cost that goes into rate base.
14 I added that.

15 The problem that -- and I skip on down to the
16 problem that we have here today is the record to deal
17 with. It is staff's option -- opinion that the company
18 did not meet the burden to prove the need for this
19 property at this point in time, especially with the
20 property held that they are already have in plant held
21 for future use.

22 It is this page and other pages where Mr.
23 Willis goes through and essentially sets up Issue 22 for
24 the Commissioners' consideration side-by-side with Issue
25 1. And then later on the Commission did a joint motion

1 to have both of those issues done together, and,
2 Commissioner Edgar, you seconded that motion. If I
3 recall correctly, I don't believe, Commissioners Brown or
4 Balbis had anything to say. So I would just presume that
5 you agreed with staff's recommendation on those
6 individual records.

7 And as a former staff attorney here, I know
8 that all the Commissioners have the opportunity to meet
9 with staff individually outside of the -- it's not
10 outside of the public, it's just part of that free flow
11 understanding of the briefings that go on before agenda.
12 And each Commissioner had an opportunity to ask their
13 questions about the individual issues. And I would
14 presume from, you know, the lack of robust discussion
15 that that idea was fairly settled in the minds and the
16 hearts and the thoughts of all the Commissioners.

17 Now getting back to some of my points, as
18 staff's recommendation on reconsideration recounts, the
19 Commission based its denial of North Escambia on several
20 factors that are in the Commission's order and not
21 Gulf's, as we would call it, fictitious need
22 determination precondition for plant held for future use
23 mistake argument. Staff carefully teased out the
24 numerous individual references in the Commission order to
25 the determination of need carrying costs of North

1 Escambia plant held for future use, helped separate those
2 along with any other considerations that went into the
3 staff's original recommendation to deny it.

4 And if you review the transcript, which is
5 really essentially what Gulf and our side is arguing
6 about, we are trying to -- if you just review that, we
7 believe that after some discussion this Commission
8 adopted that. Therefore, we believe staff's
9 recommendation is comprehensive and demonstrates that no
10 such mistake occurred and that Gulf's mistake argument is
11 groundless.

12 Now, one of the things that Gulf raised again
13 today is the fact that the Commission staff in their
14 initial recommendation or at the discussion at the agenda
15 conference there weren't discussions of prior orders and
16 things of that nature, but that is not necessary. Under
17 State ex rel. Jaytex Realty Co v. Green, there is no
18 requirement that a Commission or court mention each and
19 every piece of evidence it considered or to refute the
20 arguments advanced by the unsuccessful litigant in its
21 order or opinion deciding a matter. And that's
22 essentially what Gulf Power is asking you to do.

23 We believe that Gulf manufactured the mistake
24 argument as a strawman argument to shoot down, and it was
25 nothing more than a pretext to be able to have a lengthy

1 effort for this Commission to reweigh the evidence in
2 light of the various cases that they cited. And for that
3 matter, we believe that Gulf is just impermissibly asking
4 you to reweigh the evidence, which as the Commission is
5 well aware of controlling case law cited in staff's
6 recommendation, courts have held that it is improper for
7 a party to seek reweighing of the evidence on
8 reconsideration, and it is reversible error for this
9 Commission to do so. And for those reasons we support
10 staff's recommendation and recommend that you deny it.

11 And my co-intervenors may have a few other
12 things to say, but those are some of the things -- by the
13 way, it's my understanding that the prehearing conference
14 transcript, which Mr. Stone quoted to liberally, is not
15 in the hearing record. But I would have to defer to
16 Commission staff whether that's part of the hearing
17 record for consideration. It certainly sets up the fact
18 that Issue 1 was a legal argument completely separated
19 from the plant held for future use. So I agree that it's
20 important to understand that going into the hearing these
21 were two separate arguments, and just along the way they
22 are coming -- so thank you for your time.

23 **CHAIRMAN BRISÉ:** Thank you, Mr. Sayler.

24 Mr. Wright.

25 **MR. WRIGHT:** Thank you, Mr. Chairman. Good

1 morning --

2 **CHAIRMAN BRISÉ:** Good morning.

3 **MR. WRIGHT:** -- Commissioners, Mr. Chairman.

4 Schef Wright on behalf of the Florida Retail
5 Federation. I will be very brief. First off, I agree
6 with everything Mr. Sayler said. Thank you for this
7 opportunity.

8 We agree with the staff that this is an
9 impermissible attempt by Gulf to get you to reweigh the
10 evidence. Basically, to try to escape the normal
11 consequences of a fully considered, fully developed
12 decision that this Commission made to disallow a certain
13 relatively small amount of money. They got \$67 million
14 by the terms of your current order as it stands. They
15 want another \$2 million of customers' money. We don't
16 think they are entitled to it for the obvious legal
17 reason and factual reason that they haven't carried the
18 ball.

19 As a legal matter, with regard to any
20 confusion, or what the order says or doesn't say, orders
21 speaks for themselves. The order doesn't have to explain
22 everything you considered. You made the decision. The
23 staff pointed out quite correctly in their recommendation
24 that Gulf itself acknowledges that the issue of whether a
25 proposed item, an item proposed for inclusion in rate

1 base as plant held for future use is appropriate is a
2 factual issue.

3 Mr. Stone makes much of his assertion that the
4 Commission has never disallowed a power plant site from
5 consideration. Well, this is a fact-specific analysis
6 that, frankly, in our view of the world, Gulf went off
7 prematurely and bought this site without -- honestly
8 without making a really good case that they needed it.
9 They bought a site that they now acknowledge in their own
10 ten-year site plan, which is in evidence in the record
11 in this case, that they wouldn't use until sometime maybe
12 in the 2020s, after Caryville, after Smith, and after
13 another site -- I think Scholz is what I think their
14 Ten-Year Site Plan says.

15 This is a fact-specific analysis, as staff said
16 and as Gulf acknowledges. And I'm going to quote to you
17 from the staff recommendation because I think the staff
18 has said it very well: The inclusion of property in
19 plant held for future use should be predicated upon a
20 fact-intensive reasonableness analysis. Following the
21 extensive analysis of the evidence presented in the
22 instant case, the Commission simply found that Gulf had
23 failed to meet this factual standard. Given the presence
24 of this analysis in this proceeding, staff believes that
25 the final order comports with past Commission practice.

1 Moreover, because staff does not believe that the
2 Commission in rendering its decision created a novel
3 condition precedent to the inclusion of property in plant
4 held for future use, Gulf has not identified a mistake of
5 fact or law. Gulf's efforts here are merely an attempt
6 to get you to reweigh evidence which is inappropriate in
7 this context of a motion for reconsideration. You should
8 deny their motion.

9 One more point. With regard to Mr. Stone's
10 argument that this would be harmful to companies who
11 might be considering buying future plants. We don't
12 agree what a decision to uphold a decision that you have
13 already made, i.e., to deny the motion for
14 reconsideration, would do is it would tell utilities that
15 if they want an item, an asset to be included in rate
16 base as plant held for future use that they have to make
17 the right strong factual case that it is appropriate to
18 be thus included.

19 We support the staff recommendation. Thank you
20 for your time.

21 **CHAIRMAN BRISÉ:** Thank you, Mr. Wright.

22 Ms. Kaufman.

23 **MS. KAUFMAN:** Thank you, Chairman,
24 Commissioners. Vicki Gordon Kaufman. I'm here on behalf
25 of the Florida Industrial Power Users Group, and I support

1 the comments of my colleagues, Mr. Wright and Mr. Sayler.

2 I'm not going to repeat what they said. I
3 think that you all have discussed that there may have
4 been some confusion between Issue 1 and Issue 24. I
5 think that you have addressed that clearly in your order,
6 that you've considered those two items separately, and I
7 just want to quote from your order. This follows up on
8 what Mr. Wright said that this is a fact-specific
9 determination whether or not this property qualifies for
10 plant in future use or not.

11 You squarely addressed that on Page 26 of your
12 order, and you said, let me quote, in light of our
13 approval of Gulf's retention of the Caryville site and
14 the other available sites already included in rate base,
15 we believe that Gulf has sufficient options for its
16 future generation needs. Moreover, we find that Gulf has
17 failed to support the inclusion of the North Escambia
18 County Nuclear Plant site and associated costs in PHFU,
19 plant held for future use. So you considered and
20 separately addressed both arguments. And we think that,
21 as others have said, this is just an attempt to reweigh
22 the evidence. We support the staff's recommendation, and
23 we also think that in the posture that we are in on
24 reconsideration you have a very narrow focus, and I would
25 suggest that it's important that you keep the standard in

1 mind during your deliberations.

2 Thank you.

3 **CHAIRMAN BRISÉ:** Thank you very much, Ms.
4 Kaufman.

5 Commissioner Edgar.

6 **COMMISSIONER EDGAR:** Mr. Chairman, I yield.

7 **CHAIRMAN BRISÉ:** All right.

8 Commissioner Graham.

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

10 I can't speak for the other Commissioners, but
11 you can go back and read the transcript, as I did, as
12 well, and I'm glad Mr. Stone pulled that information up
13 when he read it. I clearly combined Issue 1 and Issue
14 24, and I clearly let the need determination rule both of
15 those. If that was not the case back then, I would
16 probably have made the same -- no probably, I would have
17 made the same argument that I did on June the 19th when
18 we talked about doing one piece of property or the other.
19 Doing the Caryville piece of property or the North
20 Escambia piece of property.

21 Now I don't know if the burden was on Gulf to
22 bring that option up during the hearing, but because I
23 thought the North Escambia piece was a worthwhile piece
24 that probably needed to be held onto, I would have
25 brought it up and I would have talked about it back on

1 February 27th. But because I thought the need
2 determination was going to disallow that piece of
3 property, and as I said in the transcript, as Mr. Stone
4 mentioned earlier on Page 5 on February 27th, on Line 12,
5 that was an issue, that was a big issue for me, and I
6 would have planted my feet and we would have had
7 conversations with it back then.

8 So as I went back and I read this transcript, I
9 don't know or I don't think my fellow Commissioners made
10 that same mistake that I made. But I can clearly say
11 that that was a mistake that I made at that time, and I
12 don't know legally where we go from here. And, once
13 again, I don't know if the burden is on Gulf, or if the
14 burden was on this board, or if the burden was on myself
15 to talk about the one piece of property or the other.
16 Clearly Caryville is a good piece of property, and it
17 really doesn't cost the ratepayers a whole lot of money
18 to hold onto that. I just can't justify the ratepayers
19 paying for both North Escambia and Caryville, and that's
20 an issue that probably should have come up during the
21 trial and should have been talked about during the trial.
22 And I guess I yield to the board or to the staff on how
23 do we handle that moving forward.

24 **CHAIRMAN BRISÉ:** I think that raises a good
25 question. I don't know if staff would like to take a stab

1 at it before we have some discussion on that issue up
2 here.

3 **MS. KLANCKE:** I would like to specify that the
4 presence of the Caryville site did come up and was
5 discussed in testimony at the hearing by witnesses, in
6 particular Witness Schultz, and it is referenced -- the
7 presence of the Caryville site as a factor for our
8 fact-intensive analysis is reflected on Page 26 of the
9 final order. It's one of the enumerated -- the Caryville
10 site is available for the generation needs currently
11 facing the utility was a determinative factor, something
12 that was very much considered. It was part of your
13 recommendation which you deliberated on February 27th,
14 which was before you, which was clearly denoting the
15 separation between Issues 1 and 24.

16 Also, I would like to, with respect to the
17 transcripts, although I appreciate Mr. Stone's reading of
18 them, I would like to just correct some of the dialogue
19 that transpired as it was selectively read. In
20 particular, in response to your statement that you wanted
21 to bring these two issues up together, I specified that
22 Issues 1 and 24 are functionally, not fundamentally
23 related, and that they both pertain to the North Escambia
24 site.

25 And then I began -- because just for the sake

1 of ease of reference to specifically address the
2 arguments with regard to Issue 1. In particular, I said
3 in this proceeding with respect to Issue 1, comma, and
4 then put forth the fact that the carrying charges --
5 we're looking at carrying charges associated with this
6 site, and then provided an explanation of why we did not
7 believe that 366.93, the nuclear cost-recovery statute,
8 afforded them a reasonable argument with regard to
9 Issue 1.

10 Then on Page 5 we went on -- I went on to say,
11 well, with respect to the carrying charges, essentially
12 trying to move on to the second part. I said those would
13 be prudent then at that time, in the event that a need
14 determination occurred. But with respect to Issue 24,
15 it's two parts.

16 **CHAIRMAN BRISÉ:** (Inaudible.)

17 **MS. KLANCKE:** The threshold criteria with
18 respect to Issue 1 was not met, however --

19 **CHAIRMAN BRISÉ:** Ms. Klancke.

20 **COMMISSIONER EDGAR:** Thank you.

21 Mr. Chairman, and I hope I'm not out of
22 order -- thank you for calling me. What I thought I
23 heard was that Commissioner Graham posed a question to
24 you as to if he or we had an option looking more closely
25 at the Caryville site, and the fact that there are two

1 and maybe more other sites in front of us. And I feel
2 like you're advocating for a position rather than
3 answering the question.

4 **MS. KLANCKE:** Absolutely.

5 **COMMISSIONER EDGAR:** So if I may, I would kind
6 of like to bring us back to -- because there are so many
7 issues, and I, as I think you do, find them fascinating,
8 because I like the esoteric nature of it, as I know you
9 do. But I would like to kind of, if I may, kind of bring
10 us back to the question at hand and then hear kind of the
11 questions and discussion and then go from there.

12 **MS. KLANCKE:** Certainly. And to answer your
13 question --

14 **CHAIRMAN BRISÉ:** Wait one second. Were you
15 comfortable with the answer or was that beyond what you
16 were looking for?

17 **COMMISSIONER GRAHAM:** If I may, Mr. Chair, it
18 was beyond what I was looking for, and I didn't want to
19 interrupt her as she was going through that. I'm not here
20 to point blame at anybody. I clearly said that I
21 misunderstood at the time. I'm not saying that Ms.
22 Klancke didn't correct me during the time, but I was still
23 misunderstood at the time, and I still -- and I still
24 claim that the option of switching one over the other was
25 never discussed. And if you go back and you read the

1 order and you go back and you talk to staff, it was this
2 piece separately, and this piece separately. And looking
3 at those two separately, I could not get there. But if
4 you talk about this one and not that one, that was never
5 discussed, that was never analyzed, that was never talked
6 about during any of this. And that was the only point
7 that I was trying to make. And the question I had was
8 what do we do moving forward?

9 **CHAIRMAN BRISÉ:** Okay. Can someone answer
10 Commissioner Graham's question?

11 **MS. KLANCKE:** Absolutely.

12 That is correct. The option of having one in
13 lieu of the other, electing to have one placed in rate
14 base or continue to be in rate base and not the other was
15 never discussed. No witnesses at the hearing were
16 cross-examined with respect to it, nor was any testimony
17 provided about that. That's because their application
18 contained both, their desire and their assertion that
19 their need was for both.

20 In staff's recommendation and then in the order
21 that is one of the reasons why the presence of both,
22 given their need at this time or their generation needs
23 in the future for the next ten years, for example, was
24 such an issue, and why that was part of the factors that
25 led to our decision that's reflected in the order.

1 **MR. STONE:** Commissioner Graham.

2 Mr. Chairman, if I may very briefly.

3 There may not have been any discussion about
4 one property versus the other, but that is, in essence,
5 what your decision was. Your decision was to give us
6 Caryville and not give us North Escambia, so you made
7 that decision on your own without --

8 **MR. SAYLER:** Objection to the
9 mischaracterization of the order.

10 **MR. STONE:** You have given one and not the
11 other. What we're suggesting and what I think you are
12 suggesting is that the threshold that prevented you from
13 considering the other option, North Escambia versus
14 Caryville, was an inappropriate reliance on the nuclear
15 cost-recovery statute, and I believe you have stated that
16 the mistake prevented you from considering that other
17 option.

18 **CHAIRMAN BRISÉ:** Commissioner Graham.

19 **COMMISSIONER GRAHAM:** Thank you, Mr. Chair.

20 And, fellow Commissioners, I apologize for
21 monopolizing.

22 **CHAIRMAN BRISÉ:** That's fine.

23 **COMMISSIONER GRAHAM:** And as I said earlier, I
24 don't know who the burden was on to bring up the -- the
25 one or the other. Clearly, Caryville is a site that

1 justifies itself. And I think in the order it said that
2 Caryville justified itself. With Caryville being there,
3 the order states -- and staff made a point that North
4 Escambia cannot be justified because you have Caryville.
5 And as staff says, they can handle everything else other
6 than nuclear. And so because Caryville is on the table --
7 and this is just me paraphrasing -- because Caryville was
8 on the table, North Escambia never raised to the level
9 that it could go through or it cut muster. And my
10 question was we never discussed taking Caryville off the
11 table. Even though Caryville by itself justifies itself,
12 if you take Caryville off the table, would North Escambia
13 pass the muster. And that is the discussion that I said
14 that we never had, and that is the discussion that I take
15 fault for not having back on February 27th.

16 Now the question -- and this goes back to
17 staff -- is where do we put ourself in the posture where
18 we can have that conversation? And that was the question
19 that I put on the table, and that's the question that
20 Commissioner Edgar was trying to get us back to, and that
21 is the question I still haven't heard an answer to. And
22 just give me one option that you think is the best way of
23 getting me to that point.

24 **MS. KLANCKE:** Certainly.

25 **CHAIRMAN BRISÉ:** Staff, do we have an answer for

1 Commissioner Graham's question?

2 **MS. KLANCKE:** Absolutely. I would submit that
3 staff and the Commission, to a certain extent, must by
4 necessity address the issues that are presented in the
5 proceeding. Many of them are based on the application.
6 Obviously, the utility puts forward its case, and that was
7 what came before you.

8 With respect to the proceedings in this case, I
9 believe that the record is strong, and I would agree with
10 Mr. Stone that we did follow, with regard to each
11 property held for future use, the tenets, the two-pronged
12 standards set forth in the '71 order, which he mentioned
13 in TECO, and which was applied in '72 to the Caryville
14 site when it initially went into rate base, that it would
15 be used for utility purposes and in the reasonably near
16 future.

17 With regard to that, I believe that our order
18 is sound, and, therefore, there is not mistake of fact or
19 law represented in this order. Thus, I believe we should
20 deny the company's motion. However, that would not
21 preclude them -- and I would suggest this is a possible
22 alternative -- that would not preclude them in any way
23 from coming back in the form of a limited proceeding
24 under 366.076. They could come back to this Commission
25 in a de novo proceeding with just this piece of property

1 and the possibility of it being placed in rate base for
2 plant held for future use, narrowly analyzed in which we
3 possibly could have an avenue to have the discussion that
4 Commissioner Graham specified that he wanted to have at
5 the hearing.

6 In that instance, it would afford them with
7 another opportunity of presenting new witnesses, new
8 testimony, and completely novel arguments if they deem it
9 necessary. And we will look at it with fresh eyes at
10 that time in a very limited, in scope, proceeding.

11 **CHAIRMAN BRISÉ:** Thank you, Ms. Klancke.

12 Does that answer your question?

13 All right. Commissioner Balbis.

14 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

15 And thank you, Ms. Klancke. I think that
16 option might be something that we need to consider. But
17 first I want to focus on what's before us today, and that
18 is, you know, did Gulf's motion identify any mistake of
19 fact or law that we made that would warrant a
20 reconsideration. And this Commission, as you know,
21 almost every large case since I have been on here, we
22 have combined issues for just ease of handling them, and
23 a lot of times without a discussion. And that certainly
24 doesn't mean we didn't consider anything when we made
25 those decisions, it's just that we agreed with staff

1 recommendations which are very detailed, very thought
2 out, and have the appropriate citations, et cetera.

3 These two issues were clearly separate, as the
4 Prehearing Officer approved their separation as separate
5 issues. Staff's recommendation, which we approved
6 unanimously, was very clear that they were separate
7 issues and addressed several aspects as to why staff was
8 recommending that this property not be included.

9 So I think it was clearly separate in the
10 recommendation, and in the following order that came out
11 followed the same clear discussion. So I think, you
12 know, legally they were separate. I have not found
13 anything, any mistake of fact or law that Gulf presented.
14 And, you know, I do caution any further reconsideration
15 of the evidence as that may put us towards a dangerous
16 posture from an appeal standpoint.

17 I do appreciate Mr. Stone's additional
18 arguments and additional factors that, you know, I wish
19 would have been presented during the evidentiary process.
20 If a witness would have provided that information, I
21 mean, that would have been something that I would have
22 liked to have considered, but unfortunately we are
23 limited to the record which didn't include any of those
24 additional aspects.

25 And I believe we had this discussion last time

1 that nothing prevents Gulf Power from moving forward
2 immediately after this decision or when they are ready
3 with additional witnesses and information so we can look
4 at the different options. But, you know, let's not
5 forget what we are dealing with. Gulf's customers have
6 been paying for 32 years for a piece of property that has
7 not been used. And in Gulf's petition they wanted to
8 include an additional property for -- although it was
9 listed as \$2 million, upwards of \$27 million that they
10 could not prove that it was going to be used in the
11 foreseeable future.

12 So, you know, that's what we are dealing with.
13 That's what we considered during the process. We heard
14 from countless customers during the customer hearings how
15 they are struggling to pay their bills and they cannot
16 afford any additional increase. So, unfortunately, we
17 have made our decision. We have no mistake of fact or
18 law that has been presented to us. However, if Gulf
19 wants to move forward with another petition, I'm sure
20 we'll fully consider it.

21 **CHAIRMAN BRISÉ:** Thank you, Commissioner Balbis.
22 Commissioner Brown.

23 **COMMISSIONER BROWN:** Thank you.

24 And I just want to say I appreciate the
25 additional time that we had to review the record, which I

1 did. I gave it ample consideration. I spent a lot of
2 time looking at the transcripts from the hearing
3 actually, and I want to just walk through my analysis and
4 why I supported the decision that we made at the special
5 agenda conference.

6 To me, I believe that the record evidence was
7 clear that any development on Escambia was merely
8 speculative. Gulf Witness Burroughs testified that Gulf
9 did not have any specific plans to use the site at the
10 time, and that it was an option, as needed, in the
11 future. Gulf's Witness Alexander stated that the
12 immediate purpose was the preservation of a potentially
13 valuable nuclear resource for customers.

14 In addition, Burroughs testified that Gulf had
15 no discussions with any other companies with regard to
16 sharing the site for nuclear purposes, which I believe is
17 necessary for Gulf to utilize its nuclear option.

18 Witness Burroughs also acknowledged that Gulf holds at
19 least two properties for future generation, although the
20 company also acknowledges that it has no plans to build
21 now or in the future. So to me the record was clear, in
22 addition to the ten-year site plan, that Gulf did have
23 not any specific generating need for the property.

24 With regard to the argument that the property
25 was acquired and considered as a nuclear option, I think

1 there was some contradictory testimony throughout the
2 hearing on Gulf's witnesses regarding the purchase of the
3 land to preserve a nuclear option. Gulf's own witnesses
4 kept going back and forth. McMillan said Gulf was
5 relying on recovery under 366.93 for inclusion in rate
6 base. Gulf's Witness Alexander testified Escambia's
7 intended purpose was the preservation of a nuclear
8 resource. And then when Witness Burroughs -- when I
9 asked Witness Burroughs a direct question, he stated the
10 opposite. He said the property -- they bought it to be
11 used for -- it could be used for nuclear, but also for
12 other generation means.

13 In addition, another Commissioner asked if
14 Escambia was planned for non-nuclear or non-IGCC
15 generation would the costs be allowed under the rules,
16 which the witness acknowledged that it would. So I
17 thought that the record evidence that the Commission
18 could have considered plant held for future use for the
19 site, but we ultimately decided we were not convinced.
20 So I thought that was pretty clear.

21 With regard to the argument that Gulf has
22 presented to us regarding combining Issues 1 and 24,
23 looking at the order from the February Special Agenda
24 Conference, I think you are a fine attorney for
25 presenting that argument to us, and I appreciate what

1 Commissioner Graham has said about combining the issues,
2 and we do tend to combine issues in big cases like this.
3 But to me it was clear that if the Commission disallowed
4 the carrying charges on Issue 1, but then wanted to
5 consider the Escambia site for plant held for future use,
6 the Commission would need to remove those carrying costs
7 from the total costs.

8 Also, looking at the order and remembering
9 staff's responses to the questions, it was clear that the
10 prerequisite for a need determination really only applied
11 to Issue 1 and not to 24, so I thought that was just a
12 very clear point. My support of the vote was based on
13 the fact that Caryville had been in rate base for over
14 30 years with no foreseeable plans to build a power plant
15 now or in the future. It was based on the ten-year site
16 plan, and it was based on the reasonableness and prudence
17 of the investment.

18 I just can't see including Escambia in rate
19 base when Gulf has not justified in the record that it
20 would be used for utility purposes in the foreseeable
21 future. It would be bad public policy, and it would go
22 against the record evidence that we have before us. So I
23 support Staff's recommendation.

24 **CHAIRMAN BRISÉ:** Thank you. Let me give you my
25 thoughts on what occurred in our discussion on the 27th,

1 and I'm looking at some of the transcripts here of some of
2 the things I said. And for me it was pretty clear that we
3 had two separate issues, even though we decided to deal
4 with them through one vote. One dealt with the carrying
5 costs, and then the other dealt with a plant for future
6 use. And I think in my discussion I asked questions about
7 Caryville and what is possible on Caryville, and then I
8 asked questions about North Escambia and what is possible
9 there. And I also go into a discussion about sort of a
10 shared ownership with the Southern Company and so forth.
11 And part of my discussion was leading to the whole idea of
12 can our consumers handle financially having all of these
13 pieces of property that may not be put into use
14 immediately. And that's why part of my questioning at the
15 offset was what happens to the property if it's not
16 considered now and then it's purchased later on. And do
17 the customers then have to eat the cost of, you know, our
18 decision today and so forth. So I believe that from that
19 perspective I don't think that there was an error on our
20 part.

21 Now, I do believe that -- and I agree with
22 Commissioner Graham, we probably could have had and
23 should have had a whole lot broader discussion on what
24 maybe some options might have been with respect to
25 Caryville and so forth. And I think it probably would be

1 appropriate, depending upon what the decision is today,
2 how we look at the North Escambia site if Gulf would be
3 interested in coming back before the Commission and
4 seeing if the Commission would be willing to look at that
5 site in a separate hearing.

6 But at this point I think that we didn't make
7 any mistake of law or fact. I do believe that -- and I
8 agree with you in this case, Commissioner Graham, it
9 would have been nice if we could have just had this
10 conversation, as you say, sort of in a place where all of
11 these options could be put on the table and, look, this
12 doesn't make sense. If you're going to go down the road
13 with this, then you need to figure out what you're going
14 to do with this so that we can maybe look at this other
15 option which would probably be better for all the
16 consumers and all of those who are interested parties in
17 this.

18 So that's my take on what I recall and what I
19 see that the transcript reflects for my decision, and how
20 I arrived at my decision.

21 I saw your light, Commissioner Graham.

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

23 This question is to staff. Staff, I don't
24 think that this board made an error. I think I made an
25 error. As we move forward, I guess, voting on Issue 2

1 and then voting on Issue 3, I guess I'm looking for some
2 guidance on where I should be on that issue.

3 **MS. HELTON:** Ms. Klancke has punted that one.
4 As I read Issue 2 it is should the Commission grant Gulf
5 Power Company's motion for reconsideration of the order,
6 and staff's recommendation is, no, that the Commission has
7 not made any mistake of fact or law.

8 I think in your statement that the Commission
9 has not made a mistake of fact or law that you can vote
10 to that effect. If you wanted to add some kind of a
11 concurring opinion that you agree with the result, but
12 yourself made a mistake, that's something -- I think
13 something that would be appropriate to do. But I think
14 that you can vote with the other Commissioners who have
15 said that there has been no mistake of fact made by the
16 Commission in the final order.

17 And then Issue 3 is simply just should the
18 docket be closed.

19 **COMMISSIONER GRAHAM:** Thank you.

20 **CHAIRMAN BRISÉ:** Commissioner Edgar.

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

22 A couple of comments. For my own purposes and
23 my own analysis, I always like to try to come back to the
24 very essence. And in my mind, the essence every day that
25 we do this job, but also the issue or issues that are

1 before us right now today are what are the statutory
2 requirements, and what is in the public interest, and how
3 can we further the -- with the issues that come before
4 us, how do we further the public interest within our
5 authority and the tools that we have?

6 The stage that has been set for us to make
7 those decisions is a rate case, a rate case that was
8 brought to us. The purpose of a rate case is to
9 establish the balance between the costs to provide safe,
10 reliable utility service and the rates that are paid to
11 balance out the need -- the ability to provide that
12 service. So what we are trying to do is match the rates
13 to the costs, recognizing that the statute and the
14 markets also include into that a reasonable rate of
15 return for a variety of reasons. And that ratemaking
16 process is by its nature prospective. We are looking
17 forward, we are not looking back.

18 Commissioner Brown, you've mentioned that the
19 North Escambia site from your analysis is speculative,
20 but I would point out that apparently Caryville was
21 speculative, too, noting that it has been included in
22 rate base by a decision that even predates me, and that
23 that decision was made prior to the need determination
24 being issued. And that obviously no generation is
25 currently existing or is proposed currently for that

1 site. Thereby, for my own perspective, I agree that the
2 analysis for the North Escambia site is somewhat
3 speculative, as is the analysis that we do in ratemaking
4 looking forward, not retrospectively, for this issue.
5 But that Caryville, I would say, would fall into
6 speculative classification for the reasons that I have
7 just described.

8 I also want to point out for record purposes
9 for the discussion today that counsel for Gulf has said
10 that in our decision we gave them Caryville, but did not
11 gave them Escambia. And I realize that we are all
12 speaking extemporaneously, as am I now, but that
13 description of giving a utility a site, I don't think
14 is -- and you know where I'm going, and I understood what
15 you meant. But words do matter. And what we are talking
16 about is whether under the statutes and authority it is
17 in the public interest for the North Escambia site and as
18 we consider the Caryville site to -- Caryville remain in
19 rate base and North Escambia to be added to base.

20 Now, from my review of the evidence in the
21 record, those two points were not as clear as apparently
22 they were to some of you. I think there are gaps in the
23 record on these points. I think that questions exist as
24 to what is the most appropriate and most accurate, from
25 the tools that are before us, accounting treatment for

1 both of these properties, and perhaps others. There are
2 other properties in the portfolio. Are there other
3 accounting treatments or mechanisms that may be more
4 appropriate? We have used a regulatory asset in some
5 instances in other cases. There is not, in my mind,
6 evidence in the record as to that point. Maybe that
7 would be something that might be with a tool to serve the
8 public interest, maybe not. I don't know. But that
9 would be a question that I would have.

10 Would it be most appropriate to remove from
11 rate base property that was deemed prudent at the time of
12 purchase, but that a generation use has not materialized?
13 I do believe that there are gaps in the record as to
14 proving up the benefits of other property that may allow
15 more diverse uses. In the record there is evidence that
16 I believe is unrefuted that the North Escambia site,
17 although being the only site that as of now would
18 potentially be deemed suitable for nuclear, it also, from
19 the record, has other attributes that the Caryville site
20 does not; my recollection is closer to load growth,
21 closer to transmission, closer to projected load growth,
22 et cetera.

23 I also think a point -- if, indeed, there is
24 any desire to look at some of these issues further, that
25 the contribution that ratepayers have made to securing

1 property should be recognized -- and, Chairman Brisé, you
2 have brought up this point a couple of times -- should be
3 recognized and compensation made if appropriate. And I
4 don't think that from my read there is evidence in the
5 record to make a determination one way or the other on
6 that, nor was there an issue before us in the prehearing
7 order and as the hearing progressed.

8 So from my reread of the record that is before
9 us, I have not been able to get comfortable with a
10 request or a statement that the order does not reflect
11 the decision that the Commission made. I do believe
12 there are gaps in the record, and that there are good
13 issues and good questions that have been raised that I
14 would like the opportunity to look at and gain additional
15 information in whatever is the most appropriate forum to
16 do so.

17 And I do think, again, should we have that
18 opportunity, the purpose of ratemaking -- and I don't
19 mean to lecture on this, because everybody in this room
20 knows this -- but the purpose of ratemaking and how that
21 mechanism and the accounting tools and others that are
22 before us can help us further the public interest is what
23 would guide us and certainly what I would use to continue
24 to look at all information. I do believe that we need to
25 look prospectively, and be somewhat creative, and I do

1 believe that there are accounting mechanisms that can
2 help us do that that are in the best interests of both
3 the utility in being able to provide the service that
4 they need now and into the future and to protect the
5 interests of ratepayers.

6 So those are some of the questions that through
7 the discussion have come to my mind. I would pose again
8 to staff -- and I would ask if any of the intervenors or
9 the petitioner would like to comment on this, you are
10 certainly not required to, but if you would like to -- an
11 evidentiary hearing has very prescriptive bounds, and
12 that is due process and transparency and are all good
13 things. But there are times that that process can be
14 very restrictive, as well. So I would pose back to our
15 staff, the possibility of a limited proceeding has been
16 broached. In the past I have not that always been in
17 favor of that route because I have had some concerns as
18 to how limited is limited.

19 So I guess I would ask to follow up a little
20 bit on that on what the process would be, and is that
21 something that we can do on our own motion, is that
22 something that would be required for a petitioner to
23 bring before us so that we could look at what I think are
24 narrow issues, but in my words perhaps gaps in the
25 record. Are there other options that are available to

1 us, and if you could just kind of walk me through. And I
2 would welcome comments from the parties, if they have
3 additional thoughts to that.

4 **CHAIRMAN BRISÉ:** Ms. Klancke.

5 **MS. KLANCKE:** With respect to the limited
6 proceeding, the Commission does have specific -- has been
7 afforded specific authority under 366.076 upon a petition
8 by the utility or on its own motion to initiate a limited
9 proceeding of which we would decide the issues. We could
10 then grant or deny any requests from the parties to extend
11 the scope of that proceeding.

12 That, in staff's opinion, would be the cleanest
13 mechanism for addressing the concerns or the analyses
14 that you expressed, recognizing that rate cases are --
15 that the utility does have the burden of proof in going
16 forward, and it is a very fact-intensive analysis that
17 sometimes does not encompass everything that a
18 Commissioner may wish to have access to information-wise.
19 This procedure would be narrowly tailored to address
20 uniquely this issue of North Escambia, and in that
21 proceeding those questions would definitely have answers.

22 **COMMISSIONER EDGAR:** Thank you.

23 To our petitioner, do you have any comments on
24 that, or elaboration?

25 **MR. STONE:** Commissioner, we certainly would

1 abide by whatever decision this Commission makes. Whether
2 we would petition ourselves is something we would have to
3 evaluate.

4 **COMMISSIONER EDGAR:** Of course.

5 **MR. STONE:** You mentioned alternatives to
6 recovering rates and the regulatory asset. I do recall
7 that there was a period of time, I believe it may have
8 been the Caryville case, although I may be mistaken on
9 that, and I do want to be careful with my choice of words,
10 that this Commission has allowed deferred accounting
11 treatment and a deferred return.

12 I know of one instance in Gulf's case it didn't
13 involve property held for future use in the generation
14 arena, but it did involve a piece of our corporate
15 headquarters that was in that posture for a period of
16 time, where it was not placed in rate base, but we were
17 allowed to earn a deferred return equivalent to the AFUDC
18 rate. And that was an alternative mechanism that the
19 Commission fashioned on its own motion. It was not we
20 asked for, but it is something that the Commission did on
21 its own motion. And I believe it was the 1990 rate
22 order.

23 **COMMISSIONER EDGAR:** And, Mr. Chairman, OPC?

24 **CHAIRMAN BRISÉ:** Sure.

25 Mr. Sayler.

1 **MR. SAYLER:** I apologize, I did not necessarily
2 hear everything that Ms. Klancke said with regards to
3 opening the record, but OPC would object to reopening the
4 record in this instance.

5 **CHAIRMAN BRISÉ:** There was no mention of
6 reopening the record.

7 **MR. SAYLER:** Well, with that being the case,
8 then, I will just --

9 **COMMISSIONER EDGAR:** Although that might have
10 been an option, but --

11 (Laughter.)

12 **MR. SAYLER:** Well, then strike all that, and I
13 do apologize for that. I was all fired up ready to go,
14 but nevermind.

15 (Laughter.)

16 **CHAIRMAN BRISÉ:** Any further comments by
17 intervenors?

18 **COMMISSIONER EDGAR:** I'm done for now.

19 **CHAIRMAN BRISÉ:** Okay.

20 Commissioner Balbis.

21 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

22 And just kind of a follow-up here. And I'm not
23 sure -- I wanted to warn you all, because I'm not sure if
24 this means I will never remain silent on an issue ever
25 again --

1 (Laughter.)

2 -- or it means that I will always remain silent
3 on an issue. So I'm not sure how that's going to play
4 out. I don't know if it's appropriate at this time, but
5 it sounds like we're going in a certain direction, at
6 least as to what is before us, and then we can have
7 additional discussion as to what the next steps will be.
8 But, you know, when I first took office -- and, once
9 again, it seems to be that every person I meet I have to
10 explain exactly what we do, because no one understands
11 it -- but I was asked one question, you know, do we tell
12 the utilities how to spend their money. And I was able
13 to answer that, no, we do not. But when they come to us
14 to have the customers pay for how they spend their money,
15 that the burden of proof is on them. They have to prove
16 to us that it's a good investment, and that's what our
17 role is.

18 And, you know, during the previous proceeding
19 and the hearing, you know, Gulf failed to prove that it
20 was a good investment, and we made that decision. And,
21 you know, I feel there was no mistake of fact or law that
22 was made, so, therefore, you know, I'm prepared to moved
23 staff's recommendation on all the issues on this item.

24 And I do like the discussion on what the next
25 steps will be. I want to make sure that whatever

1 proceeding that we have, if we have one, where we are
2 presented with sworn evidence in the record, that way we
3 can have an efficient and effective process so that we
4 can, again, make sure that Gulf provides the proof that
5 this site is an appropriate investment.

6 So with that, I would move staff's approval at
7 this time, or I'll wait.

8 **CHAIRMAN BRISÉ:** I don't know if you were
9 lighting your light to second, or did you want to make a
10 comment before we actually got into the posture -- because
11 I would like to sort of get a clear direction as to where
12 we are going, have the full discussion, and once we're
13 done with the full discussion then we will get into the
14 motion, and then move into the discussion of the motion.
15 And if it fails or if it succeeds, then we deal with that
16 so we can have real clarity on what is going on today.

17 Commissioner Graham.

18 **COMMISSIONER GRAHAM:** Thank you, Mr. Chair.

19 I was debating if I was going to even go down
20 this path or not, but it goes right into what
21 Commissioner Balbis was just talking about, the role, our
22 role up here as Commissioners, and that's the big
23 question. Is our role to listen to the evidence that is
24 put in front of us and then balance it, listen to both
25 sides of the evidence put in front us and figure out

1 where the balance is and make the determination, or is
2 our role to get in there and sift through a lot of that
3 stuff? The reason why I ask the question is the option
4 of one or the other was never put on the table. And so,
5 therefore, there was no evidence of one versus the other
6 was put on the table.

7 Now is it our role -- was it the utility's role
8 to put that option on the table? Was it the intervenor's
9 role to put that option on the table? Was it staff's
10 role to put that you on the table? Was it our role to
11 put that on the table? And I guess that's kind of the
12 philosophical question I throw out there.

13 You know, if we see a solution, I guess we can
14 throw the option out there. You know, I see this as
15 being a solution, and then we talk about it. But if that
16 was never something that was put before us, you know, is
17 our role just to say yes or no and find that balance, or
18 is our role to make this thing work? And that's kind of
19 where I thought that -- where we went with this. That,
20 you know, there are things that we could have done to
21 make this work, or there's things we could have done --
22 I'm not saying that the outcome would even have changed.
23 I can just tell you how it would have justified it for
24 me. But I can't tell you how that would have done for
25 the other four of you, but Caryville was just that big

1 huge thing that was sitting there for so long, and I
2 could not see putting another piece of property on the
3 ratepayers' back with Caryville being out there, and so
4 that would have made all the difference to me. And I
5 don't know who wants to even address this,
6 philosophically whose role was that to bring all this
7 forward. And it looks like both OPC and the executive
8 director want to speak to this, so I will bring it out
9 there.

10 **CHAIRMAN BRISÉ:** Ladies first. Mary Anne.

11 **MS. HELTON:** I'm happy to defer to the executive
12 director, but I'll take a shot at it, if you would like.
13 And I think that Mr. Baez will agree with what I'm saying;
14 I'm hoping my boss will agree with what I say.

15 (Laughter.)

16 **MR. KISER:** Careful.

17 **MS. HELTON:** The utility has the burden of
18 proof, period, in a rate case. That doesn't mean that
19 other folks here sitting at the table or you sitting up
20 there on the bench can't flesh out options or raise other
21 options during the course of a proceeding. So I think
22 that an option could have been raised during the hearing
23 about switching out the different property, but to do that
24 after the hearing after the record has closed, that's when
25 my lawyer legal red lights start flashing.

1 So I think that the utility has the burden of
2 proof, but anyone here sitting at this table or you
3 sitting up on there on the bench can flesh out different
4 options during the course of the evidentiary part of the
5 proceeding.

6 **CHAIRMAN BRISÉ:** Commissioner Graham.

7 **COMMISSIONER GRAHAM:** I don't want to put words
8 in your mouth. So what you're saying was it would have
9 been inappropriate for me on February 27th to bring up the
10 issue of flopping it, because that was after the
11 evidentiary part of the hearing was closed.

12 **MS. HELTON:** That was implicit in what I said,
13 yes, sir.

14 **COMMISSIONER GRAHAM:** Thank you.

15 **CHAIRMAN BRISÉ:** All right. Any further
16 comments? Okay. So I'm thinking this is what I'm hearing
17 so far, that we are probably going to move into a posture
18 for a motion to either accept staff's recommendation on
19 the reconsideration, and I guess the motion can go clean
20 like that, or there could be a motion that includes
21 something with a reconsideration, or there could be a
22 separate motion that will look at a limited proceeding, if
23 that would be of interest, or we can opt to allow the
24 company to come back with a request for a limited
25 proceeding. Is that the posture where we are right now?

1 I'm just trying to make sure that we are in the right
2 place.

3 Mr. Kiser.

4 **MR. KISER:** Mr. Chairman, I would suggest that
5 you try to keep it as clean as possible, a separate motion
6 for each individual action. Because you may have
7 Commissioners that want to vote differently on it, and
8 that makes the record the easiest to defend.

9 **CHAIRMAN BRISÉ:** Sure. I threw that out there
10 to make sure that we got that clarity.

11 Commissioner Balbis.

12 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

13 And now if it's appropriate, I would move
14 staff's recommendation on all issues in this matter,
15 Issues 2 and 3.

16 **COMMISSIONER GRAHAM:** Second.

17 **CHAIRMAN BRISÉ:** Okay. It has been moved and
18 seconded. All in favor say aye.

19 (Vote taken.)

20 **CHAIRMAN BRISÉ:** All right. We had good
21 discussion on these items, and it has been moved and it
22 has been voted as presented by staff's recommendation.

23 Any further comments?

24 Commissioner Edgar.

25 **COMMISSIONER EDGAR:** Thank you. You know, as I

1 started to say a little earlier, there are times in this
2 job where you feel, or at least I have felt, and I think
3 other Commissioners at times have expressed similarly,
4 that the tools we have are somewhat limited and
5 restrictive. It's kind of like going in with one hand
6 tied behind your back.

7 I do believe that there are some gaps in the
8 information, and there may be a better word than gap, but
9 I can't think of it right now. Some of the issues that
10 we have discussed, I certainly would appreciate and would
11 encourage whatever mechanisms need to occur for us to
12 have the opportunity to look at them more closely.

13 One point that we haven't really touched on,
14 but if we were going to revisit this issue in some forum,
15 I know there is evidence in the record that although the
16 Caryville site has been in base for a number of years and
17 has not been used for generation, it is, however, revenue
18 producing which has offset -- I don't have the exact
19 numbers in front of me, but has served to offset a good
20 portion, at least, of the costs associated with that
21 property.

22 And I know there was a question at hearing
23 about the potential for the North Escambia site to be
24 revenue producing, and I think that the answer was
25 basically unknown, which would maybe be another point if

1 we are looking at the two sites, as Commissioner Graham
2 has raised. I would just add that potential for revenue
3 producing as one question and recognize that the revenue
4 production from the Caryville site has accrued to the
5 benefit of the ratepayers, as it should.

6 I also would recognize that in my mind I
7 described some factors that seemed to me to be of value
8 to the North Escambia site, proximity to transmission,
9 future load growth, et cetera. And I would also as -- we
10 have touched on it, but just go ahead and say the words,
11 fuel diversity. We have had many discussions in
12 different forum at the Commission about future
13 additional, perhaps, costs from EPA regulations and
14 others, and that additional need statewide and for all of
15 our utilities, but to continue to look at ways to
16 diversify, I believe, does have a value to ratepayers and
17 to the public interests as a whole.

18 So I don't know, Mr. Chairman, if there is a
19 way -- clearly the company has to go back, as I have
20 said, and evaluate and make their own determination from
21 where they sit. I would just say from my own
22 perspective, with the discussion that we have had, I do
23 think there are some good issues here that I would
24 certainly look forward to the opportunity to gather
25 additional information, should that opportunity present

1 itself.

2 **CHAIRMAN BRISÉ:** Thank you.

3 Commissioner Graham.

4 **COMMISSIONER GRAHAM:** Thank you, Mr. Chair.

5 Ms. Helton, I want to thank you. It makes me
6 feel a lot better to know that I couldn't have changed
7 the path of the ship back then or not.

8 I just want to be clear. I don't know what the
9 utility's thought-process is or where you guys plan on
10 going from here. Putting together a limited proceeding
11 will allow for witnesses to come up to speak to the issue
12 of some sort of a swap or holding things on. We may find
13 out if we go down that path that we are back to the exact
14 same spot we are right now, because some of the things,
15 as Commissioner Edgar alluded to earlier, spoke to
16 earlier, there's a lot of great things about Caryville
17 right now. And, you know, it by itself justifies itself,
18 and so that is one of the things that need to be weighed,
19 if you're going to get rid of Caryville and try to hold
20 on to North Escambia. You know, is that the prudent
21 thing to do? Is that the wise thing to do?

22 And I guess that's the whole reason why you put
23 on the limited proceeding case. And I have to thank
24 staff. I'm sure I have been very frustrating to them,
25 but I think by putting on another case and specifically

1 looking at these two pieces of property and what you can
2 and cannot do with these two pieces of property, and as
3 Commissioner Edgar said, some of the creative financial
4 things that we can look at, I think that opens a whole
5 lot of issues. And I want to thank everybody for the
6 amount of time we got to massage all this and kind of
7 flesh it all out, because I think at the end of the day
8 we're in a better position now than had we been if we had
9 done some other different things on February 27th.

10 **CHAIRMAN BRISÉ:** Thank you, Commissioner Graham.
11 Commissioner Brown.

12 **COMMISSIONER BROWN:** Thank you.

13 And just to wrap it all up, I think that the
14 utility can go back and discuss whether it's prudent to
15 pursue a limited proceeding. I don't think we should
16 take the initiative on our own motion to initiate a
17 limited proceeding, and then we'll have that discussion
18 at a later date. But I think there has been a lot of
19 good discussion among the Commissioners about what we're
20 looking for and what we would like to see. And with
21 that, I think we're done.

22 **CHAIRMAN BRISÉ:** Thank you very much.

23 (Laughter.)

24 Okay. I want to thank everyone for working
25 diligently on this matter. I think there are a lot of

1 issues that were brought up today. And hopefully -- you
2 know, a lot of times when you watch a process and you
3 begin to think how people are thinking, it helps everyone
4 wrap their arms around what and how we should bring
5 things up, and what we should include in our
6 conversations as we bring things up.

7 So I think that this discussion was very
8 helpful not only because of the issue that is before us,
9 but for all of those who are paying attention to this
10 Commission, as to how we will deal with things and how we
11 are dealing with things.

12 So with that, we stand adjourned.

13 (The Commission Conference concluded at
14 11:05 a.m.)

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

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

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

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' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 20th day of July, 2012.



JANE FAUROT, RPR
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