

One Energy Place
Pensacola, Florida 32520
850.444.6111

ORIGINAL



November 22, 2000

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0870

Dear Ms. Bayo:

RE: Docket No. 000808-EI

Enclosed are an original and fifteen copies of Gulf Power Company's Petition for a Formal Proceeding with Regard to Certain Portions of Order No. PSC-00-2092-PAA-EI.

Also enclosed is a 3.5 inch double sided, high density diskette containing the Petition in WordPerfect for Windows 8.0 format as prepared on a Windows NT based computer.

Sincerely,

Susan D. Ritenour (lw)

Susan D. Ritenour
Assistant Secretary and Assistant Treasurer

APP _____
CAF _____ lw
CMP _____
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RGO _____
SEC _____
SER _____
OTH _____

cc: Beggs and Lane
Jeffrey A. Stone

Free Done 11/30/00

DOCUMENT NUMBER-DATE

15148 NOV 27 8

FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition for approval of Consumptive)
 Water Use Monitoring Activity and Smith) Docket No.: 000808-EI
 Wetlands Mitigation Plan as New Programs) Filed: November 27, 2000
 for cost recovery through the Environmental)
 Cost Recovery Clause by Gulf Power)
 Company.)
 _____)

GULF POWER COMPANY'S PETITION FOR A FORMAL PROCEEDING WITH REGARD TO CERTAIN PORTIONS OF ORDER NO. PSC-00-2092-PAA-EI

GULF POWER COMPANY ("Gulf Power," "Gulf," or "the Company"), by and through its undersigned counsel, hereby petitions the Florida Public Service Commission ("Commission") for a formal proceeding to address certain portions of Order No. PSC-00-2092-PAA-EI, issued in this docket on November 3, 2000. This petition is filed pursuant to and in accordance with said order, Rule 25-22.029, Florida Administrative Code and Rule 28-106.201, Florida Administrative Code. As grounds for the relief requested by this petition, the Company would respectfully show:

1. Notices and communications with respect to this petition and docket should be addressed to:

Jeffrey A. Stone
 Russell A. Badders
 Beggs & Lane
 P. O. Box 12950
 Pensacola, FL 32576-2950
 850/432-2451

Susan D. Ritenour
 Assistant Secretary and Assistant Treasurer
 Gulf Power Company
 One Energy Place
 Pensacola, FL 32520-0780
 850/444-6231

2. The agency affected is the Florida Public Service Commission. The agency's address is 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850. The agency's file number is Docket No. 000808-EI.

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3. The petitioner is Gulf Power Company. The petitioner's mailing address is One Energy Place, Pensacola, FL 32520-0780. The petitioner's telephone number is 850/444-6231. The petitioner is an investor-owned electric utility operating under the jurisdiction of this Commission. The identity of petitioner's representatives and their respective addresses and telephone numbers have been stated in paragraph 1 above.

4. Petitioner seeks a formal proceeding with regard to those portions of Commission Order No. PSC-00-2092-PAA-EI ("the Order") addressing Gulf Power's request for ECRC recovery of costs associated with the Company's Smith Wetlands Mitigation Plan. Gulf does not request a formal hearing with regard to those portions of the Order addressing Gulf's request for ECRC recovery of the costs associated with the Company's Consumptive Water Use Monitoring Activity.

5. The petitioner's substantial interests will be affected by the proposed agency action set forth in the Order because petitioner's request for recovery of certain amounts through the Environmental Cost Recovery Clause ("ECRC") is being denied without first affording the petitioner an opportunity for an evidentiary hearing on disputed issues of material fact, Commission policy and applicable law.

6. Petitioner received written notice of the agency decision that is protested by this petition via Order No. PSC-00-2092-PAA-EI issued by the agency's Division of Records and

Reporting on November 3, 2000. Petitioner received a copy of said order at its offices in Pensacola by fax on November 3, 2000 and by U.S. Mail on or about November 6, 2000.¹

7. The disputed issues of material fact, law and policy to be resolved in a formal proceeding held pursuant to this petition concern whether the Smith Wetlands Mitigation Plan meets the requirements for cost recovery in the Environmental Cost Recovery Clause. Specifically, Petitioner submits the following statements as an appropriate indication of at least some of the matters in dispute that must be resolved through an appropriate formal proceeding prior to implementation of the proposed agency set forth in Order No. PSC-00-2092-PAA-EI:

- a. Petitioner alleges that the Smith Wetlands Mitigation Plan meets all statutory requirements and Commission orders implementing those statutory requirements for approval for recovery through the Environmental Cost Recovery Clause. Commission Order No. PSC-94-0044-FOF-EI, issued January 12, 1994 in Docket No. 930613-EI, established three criteria for costs to be recovered through the ECRC. According to that order, costs may be recovered through the ECRC if:
 - (1) such costs were prudently incurred after April 13, 1993;
 - (2) the activity is legally required to comply with a governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the company's last test year upon which rates are based; and,
 - (3) such costs are not recovered through some other cost recovery mechanism or through base rates.

The Commission in Order No. PSC-94-1207-FOF-EI, issued October 3, 1994, in Docket No. 940042-EI, established a fourth criteria for recovery by its statement requiring that “. . . a utility's petition for cost recovery must describe proposed

¹The Order was faxed to the Pensacola offices of petitioner on November 3, 2000. At the time of this fax transmission, petitioner's representatives were either en route to, in attendance at or returning to Pensacola from, the prehearing conference held that day in Tallahassee in connection with Dockets 000001-EI, 000002-EG and 000007-EI. Petitioner's representatives were not aware of the issuance of the Order until Monday, November 6, 2000.

activities and projected costs, not costs that have already been incurred.” (emphasis in original, p. 5.) As a result, utilities are expected to petition the Commission for approval of new projects in advance of the project costs being incurred.

Gulf’s petition for ECRC recovery of costs associated with the Company’s Smith Wetlands Mitigation Plan meets each of the four criteria set forth in Order No. PSC-94-0044-FOF-EI and Order No. PSC-94-1207-FOF-EI. Specifically, Gulf’s original petition seeking ECRC recovery of the costs associated with the Smith Wetlands Mitigation Plan was submitted in advance of incurring the project costs; all of the project costs are to be incurred by the Company after April 13, 1993; unless and until the Commission decides to include the costs of the Smith Plan in base rates in a subsequent proceeding, these costs are not recovered through some other cost recovery mechanism or through base rates; and, as recognized by the Commission in Order No. PSC-00-2092-PAA-EI, the Smith Wetlands Mitigation Plan is required by the final order issued in DOAH Case No. 99-2641EPP and thus the investment associated with the plan is legally required to comply with a governmentally-imposed environmental regulation.

- b. The central disputed issues of material fact, policy or law concern whether environmental costs associated with new power plants are recoverable through the Environmental Cost Recovery Clause. Section 366.8255(1)(d), Florida Statutes unambiguously defines “environmental compliance costs” to include “all costs or expenses incurred by an electric utility in complying with environmental laws or regulations.” Gulf maintains that this definition captures the costs associated with the Smith Wetlands Mitigation Plan and does not exclude from cost recovery the environmental compliance costs associated with new power plants.
- c. Although there is some question whether the entire cost of a new power plant can be recoverable through the ECRC, that question is not germane to the issue before the Commission with regard to the Smith Wetlands Mitigation Plan. The costs associated with the Smith Wetlands Mitigation Plan are not equivalent to (nor do they approach) the entire cost of a new power plant. The Company’s investment in the Smith Wetlands Mitigation Plan will not, in and of itself, result in the generation of any electricity. The Smith Wetlands Mitigation Plan is a discrete project separate and apart from the construction activity directly associated with the new generating unit designated as Smith Unit 3, with a life expectancy that is not tied in anyway to the new generating unit. The in-service date of the capital investment associated with the Smith Wetlands Mitigation Plan will significantly precede the projected in-service date of Smith Unit 3. The life of the new wetlands created by the plan will extend beyond the life of Smith Unit 3.

- d. The Commission’s discretion to approve or exclude prudently incurred environmental compliance costs from recovery through the ECRC is tied by the stated legislative intent to a Commission determination that the proposed capital investment is so large as to be material to the overall costs of the utility and therefore sufficiently large to warrant a full rate case.² The stated legislative intent also indicates that the Commission may elect to hold a rate case rather than allow ECRC recovery of a proposed investment if the Commission finds that the primary or dominant purpose of the investment is not to comply with environmental standards, but is instead to generate electricity.³ In order to make either such determination, the Commission must consider evidence produced in a formal proceeding such as that which would be initiated pursuant to this petition.
- e. There is nothing about ECRC recovery of the Smith Wetlands Mitigation Plan that will interfere with the Commission’s review of the costs of Smith Unit 3 for prudence purposes as part of a subsequent rate proceeding. In fact, the Commission could decide in such a subsequent rate proceeding to include the costs associated with the plan in base rates if it decides that such inclusion is “. . . necessary and appropriate . . .”. §366.8255(5), Fla. Stat. (1999) In the event of such a decision by the Commission in a subsequent rate proceeding, the costs associated with the Smith Wetlands Mitigation Plan would then be appropriately excluded from those costs recoverable through the ECRC. §366.8255(5), Fla. Stat. (1999) The possibility of such a future determination does not (and should not) affect the present recoverability of these costs through the ECRC. The purpose of the ECRC is to allow timely recovery of environmental compliance costs, and to provide assurance to the financial markets that such costs will be recovered by affected utilities in a timely manner.
- f. When read in its entirety, it is clear that Section 366.8255 of the Florida Statutes intends that all prudently incurred environmental compliance costs should be recovered by a utility through the ECRC unless and until such costs are appropriately included in base rates established through new rate case proceedings. Such intent is also supported by the comments of the sponsor of the legislation that ultimately became Section 366.8255 of the Florida Statutes.⁴ The

²The “stated legislative intent” referred to here is expressed in comments of Representative Tobin, the sponsor of the legislation in the Florida House of Representatives that ultimately became §366.8255 of the Florida Statutes. Representative Tobin’s comments are reported in the *Journal of the Florida House of Representatives*, 95th Reg. Sess., Mar. 24, 1993, at p. 672.

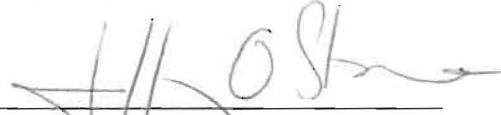
³See, *Journal of the Florida House of Representatives*, 95th Reg. Sess., Mar. 24, 1993, p. 672.

⁴Id.

Commission's proposed agency action does not comport with this clear intent of the statute and therefore a formal proceeding should be held by the Commission to consider this question.

WHEREFORE, Gulf Power Company respectfully requests the Commission to grant its petition for a formal proceeding for the purpose of determining whether Gulf should be allowed to recover through the Environmental Cost Recovery Clause the environmental compliance costs associated with the Smith Wetlands Mitigation Plan or such other appropriate and reasonable relief as may be determined by the Commission.

Respectfully submitted the 22nd day of November 2000.



JEFFREY A. STONE

Florida Bar No. 325953

RUSSELL A. BADDERS

Florida Bar No. 7455

Beggs & Lane

P. O. Box 12950

Pensacola, Florida 32576-2950

(850) 432-2451

Attorneys for Gulf Power Company

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Docket No. 000808-EI

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was furnished by hand delivery or the U. S. Mail this 22nd day of November 2000 on the following:

Marlene Stern, Esquire
FL Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0863

John Roger Howe, Esquire
Office of Public Counsel
111 W. Madison St., Suite 812
Tallahassee FL 32399-1400



JEFFREY A. STONE
Florida Bar No. 325953
RUSSELL A. BADDERS
Florida Bar No. 0007455
BEGGS & LANE
P. O. Box 12950
Pensacola FL 32576
(850) 432-2451
Attorneys for Gulf Power Company