

1   BEFORE THE  
2   FLORIDA PUBLIC SERVICE COMMISSION

3           In the Matter of:

4   DOCKET NO. 160134-EI

5           PETITION FOR ACCOUNTING  
6           RECOGNITION OF GULF POWER  
7           COMPANY'S OWNERSHIP IN PLANT  
8           SCHERER AS BEING IN SERVICE TO  
9           RETAIL CUSTOMERS.

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10           PROCEEDINGS:   COMMISSION CONFERENCE AGENDA  
11   ITEM NO. 6

12           COMMISSIONERS  
13           PARTICIPATING:   CHAIRMAN JULIE I. BROWN  
14   COMMISSIONER LISA POLAK EDGAR  
15   COMMISSIONER ART GRAHAM  
16   COMMISSIONER RONALD A. BRISÉ  
17   COMMISSIONER JIMMY PATRONIS

18           DATE:   Tuesday, September 13, 2016

19           PLACE:   Betty Easley Conference Center  
20   Room 148  
21   4075 Esplanade Way  
22   Tallahassee, Florida

23           REPORTED BY:   LINDA BOLES, CRR, RPR  
24   Official FPSC Reporter  
25   (850) 413-6734

## P R O C E E D I N G S

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2           **CHAIRMAN BROWN:** Moving on to Issue 6. We've  
3 had folks waiting here since 9:30 on this.

4           All right. While folks are getting situated,  
5 I want to thank staff for waiting along as well.

6           **MR. MOURING:** Good afternoon, Commissioners.  
7 Curt Mouring with Commission staff.

8           Item 6 is staff's recommendation on Gulf Power  
9 Company's request for accounting recognition of the  
10 company's ownership interest in Plant Scherer Unit 3.  
11 In its request, Gulf is seeking to notify the Commission  
12 that a portion of its capacity interest in Scherer Unit  
13 3 is now dedicated to serving its native load and has  
14 requested approval to stop making Commission-ordered  
15 adjustments to remove Scherer Unit 3 investment and  
16 operating expenses from its monthly earning surveillance  
17 reports.

18           The Office of Public Counsel has intervened in  
19 this docket and is here to address the Commission. The  
20 Sierra Club and Florida Industrial Power Users Group are  
21 also present and have asked to address the Commission on  
22 this matter. And, finally, representatives from the  
23 company are here to address the Commission. Staff is  
24 prepared to answer any questions the Commission may  
25 have.

1           **CHAIRMAN BROWN:** Thank you. And since it is  
2 Gulf's petition, I'd ask Mr. Stone if he'd like to  
3 address the Commission now or after the parties -- I  
4 mean, the interested persons have --

5           **MR. STONE:** Madam Chairman, in the interest of  
6 time, we support the staff recommendation. We believe  
7 we're the only party that's adversely affected by the  
8 staff recommendation, and we support the staff  
9 recommendation. I would like the opportunity to respond  
10 to any other comments.

11           **CHAIRMAN BROWN:** Certainly. And we've got  
12 Office of Public Counsel who wishes to address, and  
13 we'll do it in this order, five minutes each: OPC,  
14 FIPUG, Sierra Club. And I want to say, Mr. Moyle, it's  
15 been too long. I miss you.

16           **MR. MOYLE:** The sun's still up.

17           **CHAIRMAN BROWN:** The sun's still up.

18           So Public Counsel is here, and I don't believe  
19 I've had a chance to meet the counsel here.

20           **MS. MORRIS:** Once before actually. Stephanie  
21 Morris. I'm fairly new, but, yes.

22           **CHAIRMAN BROWN:** Nice to see you.

23           **MS. MORRIS:** Okay. Well, at your pleasure.

24           **CHAIRMAN BROWN:** You may begin.

25           **MS. MORRIS:** Thank you. Good afternoon, Madam

1 Chair and Commissioners. I'm Stephanie Morris appearing  
2 on behalf of the customers of Gulf Power.

3 As a preliminary matter, to the extent that  
4 today's action is not noticed as a proposed agency  
5 action that provides a point of entry to be heard to the  
6 substantially affected retail customers, we respectfully  
7 object. But to the extent that today's decision has no  
8 substantive precedential value on the determination of  
9 retail cost responsibility, then we would have less  
10 concern as long as any order is clear on this point.

11 As we read the recommendation, the outcome of  
12 today's decision is purely procedural in nature, and  
13 that is all it can be to our understanding. The issue  
14 of whether, based on all the facts and not just the ones  
15 Gulf has presented, that any Scherer costs should be the  
16 responsibility of the retail customers and not what Gulf  
17 refers to as, quote, native load, which includes  
18 wholesale customers over which the Commission has  
19 rate-setting authority, should be fully vetted and  
20 litigated, a premature -- or fully vetted and litigated  
21 in a formal hearing within the rate case proceeding, a  
22 premature ruling or a statement in this proceeding puts  
23 the cart before the horse, so to speak, and may  
24 compromise the rate case process and interfere with  
25 ratepayers' best interests. Specifically, it would be

1 premature for an order in this docket to opine about the  
2 Commission's historic discussions about Gulf's stated  
3 plans regarding Scherer.

4 A prior alleged acknowledgment about the  
5 economics of the utility's plans does not equate to a  
6 determination of need, which Gulf acknowledged in its  
7 May 5th letter request was never issued by the  
8 Commission.

9 So in summary, it's OPC's position that the  
10 best course of action is to make it clear that any  
11 change in the surveillance reporting does not prejudice  
12 or effectively prejudge the issue of whether retail  
13 ratepayers absorb the cost recovery burden in this  
14 matter.

15 We think it's appropriate that the Commission  
16 handle these issues in the rate case, which is the most  
17 appropriate forum where the issues can be fully vetted  
18 and litigated to the best interests of ratepayers and  
19 other parties. Thank you.

20 **CHAIRMAN BROWN:** Thank you. And before we  
21 proceed, can you please just state that last statement  
22 again regarding any change in the surveillance  
23 reporting?

24 **MS. MORRIS:** Regarding any --

25 **CHAIRMAN BROWN:** Any change in surveillance

1 reporting.

2 **MS. MORRIS:** Oh, it does not prejudice or  
3 effectively prejudge the issue on whether the retail  
4 ratepayers absorb the cost recovery burden.

5 **CHAIRMAN BROWN:** Thank you.

6 All right. Mr. Moyle.

7 **MR. MOYLE:** Thank you, Madam Chairman, and  
8 thank you for the remarks. Before getting into the  
9 particulars, I would just like to take a moment, and the  
10 last time we were together the storm was threatening and  
11 we were working hard to finish the rate case, and we did  
12 and immediately had to go get ready for hurricane  
13 preparation. But I'd like to thank Gulf for their  
14 efforts to help the City of Tallahassee. I'm a resident  
15 and been here 20 something years, but everybody pulled  
16 together. And I wanted to thank Gulf for their efforts,  
17 as well as the City, to help recover. So thank you.  
18 Thank you for that.

19 The reason we're here today is because of  
20 Plant Scherer. And Plant Scherer is a coal-fired power  
21 plant that you all have considered before in many  
22 contexts. I find in the staff recommendation there's a  
23 footnote. Footnote 1 talks about a decision that you  
24 all made related to Plant Scherer in 1990. And the  
25 issue -- Public Counsel's point, as I understand it, is

1 this decision today before you, you know, shouldn't  
2 impact your ultimate decision about what to do with  
3 Plant Scherer. And FIPUG and, I think, others believe  
4 that that issue is one that needs to be considered in a  
5 case holistically, you know, to dig in and look at that  
6 and make a determination about what the right thing to  
7 do is with this coal-fired power plant.

8           You know, you all have had before you in other  
9 contexts, you know, retirements of coal-fired power  
10 plants. The Cedar Bay case that we spent time on last  
11 year, there was a purchased power agreement associated  
12 with that, but there was also testimony that the net  
13 value of that power plant was zero because of market  
14 conditions. So Plant Scherer is a coal-fired power  
15 plant. I think that Gulf Power is going to be coming  
16 before you asking that it be placed into rate base. And  
17 I think on behalf of the consumers, this warrants a  
18 close, careful look as to the impacts and whether this  
19 is the, you know, the right thing, the best thing,  
20 particularly given market conditions and given coal.  
21 There was mention earlier of the Clean Power Plan. So  
22 there's a lot of uncertainties.

23           I guess what our point is is that at the  
24 appropriate time, we think it should be looked at very  
25 carefully in a case. I know today is kind of an

1 accounting issue, not the right time to have the full  
2 debate and discussion. We think probably the rate case  
3 is the best time. Gulf has filed a test year letter,  
4 and that would give all the parties ample opportunity.  
5 I think there is some discussion about a clause  
6 proceeding.

7 My practice and history has been with clause  
8 proceedings, they go pretty fast often times, and  
9 sometimes it's hard, you know, when you have substantive  
10 issues, to handle those in the clauses because most  
11 times in the clause proceedings things get worked out.  
12 So when we do have the larger Scherer discussion, I  
13 expect it will delve into some of these issues. And we  
14 don't have any problem with the staff recommendation,  
15 would support it, I mean, with the caveat that this is  
16 not -- the decision today will not be held up as, well,  
17 this is something you already have decided and are  
18 moving forward. This is kind of an accounting issue,  
19 and we don't have any objection with it, you know, with  
20 that clear understanding. And at the right point in  
21 time, we'd like to have a full and frank discussion  
22 about Plant Scherer. So thank you for the chance to  
23 share those comments with you.

24 **CHAIRMAN BROWN:** Thank you, Mr. Moyle.

25 And we've got Sierra Club here. And I do want



1 to note that we are in receipt of the Sierra Club's  
2 letter, so that is in the docket file. Okay.

3 **MS. KUNKEL:** Great. Thank you. Diana sends  
4 her regards that she couldn't make it, but looks forward  
5 to seeing you all tomorrow. Stephanie Kunkel on behalf  
6 of the Sierra Club and its more than 30,000 members.

7 Consistent with staff's recommendations and  
8 Public Counsel's remarks, we urge you to defer any  
9 decision on the merits here pending further record  
10 development. As we explained in our July comments, the  
11 Commission has every reason to deny the proposal to add  
12 Georgia coal-burning generation to Gulf's rate base.

13 Again, just very briefly those three points.  
14 There's no evidence of local customers needing coal  
15 generation. The costs and risks to local customers are  
16 not properly identified in the record before you, and we  
17 believe that that is a serious omission. Sierra Club  
18 maintains that all of the costs and risks of burning  
19 fossil fuels for power should be documented and  
20 scrutinized. Doing so helps the Commission look out for  
21 customers, especially as the environmental harm  
22 associated with fossil fuels can quickly translate into  
23 economic exposure. And the third reason to deny the  
24 proposal is timing. Why rush when Gulf has not cited  
25 any deadline for seeking Commission approval now?

1 Electric markets are changing so fast, the space of even  
2 a few months could help identify and pursue better  
3 alternatives.

4 For these reasons explained in the July  
5 comments, Sierra Club has respectfully urged you to deny  
6 Gulf's proposal. To be clear, we do support denial  
7 without prejudice or deferral without any decision on  
8 merits. Either way, Gulf can come back, if it wants to,  
9 for the Commission review in a full proceeding where the  
10 Commission would be able to complete its fact-finding  
11 process through discovery, hearing, and robust  
12 stakeholder participation, and we believe that this  
13 outcome is consistent with the outcome recommended by  
14 staff. Thank you.

15 **CHAIRMAN BROWN:** Thank you. And going back,  
16 circling back to Mr. Stone.

17 **MR. STONE:** Thank you, Madam Chairman. I was  
18 remiss. I should have identified myself for the record.  
19 I'm Jeffrey A. Stone of the law firm Beggs & Lane, and I  
20 serve as Gulf Power's general counsel.

21 And to be clear, I am here in support of the  
22 staff's recommendation dated August 31, 2016. And in  
23 that recommendation, the Commission staff has urged, has  
24 recommended that the Commission order Gulf to file two  
25 forms of earnings surveillance reports: One similar to

1 what we've been filing in the past, since 1990, and the  
2 other reflecting the Scherer investment as though it is  
3 serving retail customers.

4 As I mentioned in my brief introductory  
5 comments, we are the only ones burdened by the staff  
6 recommendation because we're the ones that would have to  
7 file the surveillance report in two fashions. No one is  
8 precluded from being able to litigate the merits of  
9 Scherer being included in rate base in subsequent  
10 proceedings, and, in fact, Gulf is initiating those  
11 subsequent proceedings. We have already petitioned for  
12 ECRC recovery with regard to the environmental controls  
13 and equipment that are in service at Scherer, and that  
14 is before -- will be before the Commission at its  
15 regularly scheduled hearing in November. We've also  
16 filed a test year letter seeking -- notifying the  
17 Commission of our intention to file a base rate  
18 proceeding for the remainder of our investment. And so  
19 with that, we urge the Commission to approve the staff  
20 recommendation as written.

21 One further comment. Mr. Moyle cited to  
22 Footnote 1 of the staff recommendation that cited the  
23 1990 order. I would just simply draw your attention to  
24 Footnote No. 3, which cites to the 1980 order of the  
25 Commission. And we believe all orders of the Commission

1 should be considered in this matter.

2 **CHAIRMAN BROWN:** Thank you, Mr. Stone.

3 Staff, any comments or response?

4 **MR. MOURING:** I don't believe so. I think we  
5 don't have anything to add at this point.

6 **CHAIRMAN BROWN:** I have a question for you.  
7 Public Counsel, they said that they don't really have a  
8 problem with it as long as the outcome is purely  
9 procedural in nature. And that is my understanding that  
10 what this is is basically, it's just an accounting  
11 treatment, so to speak; correct?

12 **MR. MOURING:** Yes, ma'am.

13 **CHAIRMAN BROWN:** So it is -- would you say it  
14 would be purely procedural in nature?

15 **MS. JANJIC:** We would say that it's a  
16 reporting requirement, not accounting. So it would be  
17 procedural, yes.

18 **CHAIRMAN BROWN:** So the reporting doesn't  
19 necessarily prejudge the issue of placing Plant Scherer  
20 in rate base. By approving this, this is not  
21 prejudging, as Office of Public Counsel noted in its  
22 comments; correct?

23 **MS. JANJIC:** Correct. That is my  
24 understanding, yes.

25 **CHAIRMAN BROWN:** Okay. Commissioners, any

1 questions?

2 Can I get a motion?

3 **COMMISSIONER EDGAR:** Move staff.

4 **COMMISSIONER PATRONIS:** Second.

5 **CHAIRMAN BROWN:** All those in favor, say aye.

6 (Vote taken.)

7 All right. The motion passes. Thank you.

8 (Agenda item concluded.)

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

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

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

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

18 DATED THIS 21st day of September, 2016.

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