BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for approval of plan to bring generating units into compliance with the Clean Air Act by Gulf Power Company.	DOCKET NO. 921155-EI ORDER NO. PSC-93-1376-FOF-EI ISSUED: 09/20/93

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER APPROVING IN PART GULF POWER COMPANY'S PLAN TO BRING ITS GENERATING UNITS INTO COMPLIANCE WITH THE CLEAN AIR ACT AMENDMENTS OF 1990

BY THE COMMISSION:

On November 6, 1992, Gulf Power Company (Gulf) filed a petition for approval of a plan to bring its generating units into compliance with the Clean Air Act Amendments of 1990, pursuant to the provisions of Section 366.825, Florida Statutes (Supp. 1992). This statute directs the Commission to review the plans submitted by utilities pursuant to this section

> in order to determine whether such plans, the costs necessarily incurred in implementing such plans, and any effects on rates resulting from such implementation are in the public interest. . . Approval of a plan submitted by a public utility shall establish that the utility's plan to implement compliance is prudent. . .

The following parties intervened in this proceeding: Florida Industrial Power Users Group (FIPUG); Legal Environmental Assistance Foundation, Inc. (LEAF); United Mine Workers of America (UMWA); and the Office of Public Counsel (OPC).

The first prehearing conference was held on April 1, 1993. A formal administrative hearing was originally scheduled for April 27, and 28, 1993; however, because of the delay in providing the update to Gulf's compliance plan and to allow time for review by the parties, the formal hearing was rescheduled for and held on July 7 and 8, 1993. A second prehearing conference was held on June 30, 1993. Gulf agreed to the extension of time for final

Commission action on the company's petition. Pursuant to Section 366.825, Florida Statutes (Supp. 1992), the original eight-month clock would have expired July 6, 1993. Gulf agreed to extend the time period for issuance of the Commission's order until September 20, 1993.

Post-hearing filings were submitted by all parties. LEAF submitted proposed findings of fact. Our rulings on the findings of fact are set out in Attachment 1.

The substantive aspects of this proceeding are governed by Section 366.825, Florida Statutes (Supp. 1992), and Chapter 366, Florida Statutes. The procedural aspects of the case are governed by the provisions of Chapter 120, Florida Statutes, and Chapter 25-22, Florida Administrative Code.

SUMMARY OF DECISION

We find that Gulf Power Company's petition for approval of its plan to bring generating units into compliance with the Clean Air Act is hereby approved in part.

Gulf Power Company's compliance plan consists of four strategies: Fuel Switching, Phase I scrubber, Internal, and Company by Company. Gulf has proposed and is currently implementing a fuel switching strategy with annual review updates for purposes of Phase I compliance. Because of the uncertainty of future low sulfur-high sulfur differential fuel costs, allowance prices, and future environmental regulations, particularly for air toxics, a fuel switching strategy appears to be the most reasonable and cost-effective plan at this time.

We find that it is premature to approve Gulf's Phase II compliance plan because of the uncertainty of future conditions and because most of the Phase II compliance rules and regulations have not been enacted. Gulf's Phase I compliance strategy provides an appropriate response to future conditions and does not preclude implementation of any other reasonable and cost-effective Phase I and Phase II compliance options as they become available.

Gulf's periodic system planning reviews provide a method of addressing changing fuel prices, allowance prices, environmental rules, and environmental regulations. Gulf shall include a compliance update report in its Load Forecasts and 10 Year Site

Plan as they are reported to the Commission. The compliance update report shall include the fuel price forecasts, the allowance price forecast used, and a summary of the cost-effectiveness of Clean Air Act compliance options.

COMPLIANCE PLAN

Gulf's Compliance Plan to bring its generating units into compliance with the SO_2 emission provisions of the Clean Air Act Amendments of 1990 consists of four strategies: Fuel Switching, Phase I scrubber, Internal, and Company-by-Company. (EX 1,10) These strategies are more fully described below. Gulf, a member of the Southern Company, has voted on and adopted the Southern Company's system strategy of "fuel switching" for purposes of compliance with Phase I of the Clean Air Act Amendments of 1990 as indicated in Exhibit 10, section 6.3.

The "fuel switching strategy," also known as the "base strategy," the "market strategy," and "base case strategy," indicates strategic policies and actions which should be pursued assuming a viable allowance market. The "fuel switching strategy" is the most cost-effective and flexible of the strategies considered for both Phase I and Phase II of the Clean Air Act Amendments of 1990. This approach strategically positions all member companies with the ability to respond to local, state and federal regulatory developments, changes in the fuel market, and changes in the allowance market. Since the strategic position of the "fuel switching strategy" is of a "wait-and-see" nature, periodic reviews of fuel prices, allowance prices, load forecasts, conservation programs, and all other system planning are implicitly required.

A subset of the "fuel switching strategy" is the "Phase I scrubber strategy," which assumes that a non-economic scrubber is required to be installed at Georgia Power's Plant Wansley in 1996. The non-economic scrubber costs are assumed by Georgia Power and its customers. The analysis indicates that economic dispatch and cost-effectiveness of compliance options change for the Southern Company system; however, Gulf's compliance costs are not estimated to be significantly effected. Gulf may receive some savings since Intercompany Interchange Contract (IIC) energy transactions from Plant Wansley may be lower than self-generation or other sources. The "Phase I scrubber strategy" is not an option which should be selected by Gulf since the key assumption is that "non-economic"

scrubber costs are imposed on Georgia Power and its customers, which is beyond our jurisdiction.

The "internal strategy" differs from the "fuel switching strategy" in that it assumes that a viable allowance market does not develop and member companies pool allowances. It is appropriate and reasonable to review strategic policies and actions which could be pursued in the absence of an allowance market or if there are restrictions on allowance market participation. Local clean air issues may reasonably have an impact on allowance market viability and the degree of each Southern Company member's participation in the allowance market. (TR 460)

A subset of the "internal strategy" is the "company-by-company strategy" which further assumes that member companies will not be permitted to pool their allowances. It is appropriate and reasonable to review strategic policies and actions which could be pursued if allowance pooling is not an option because of related activities in other states and possible requirements from governmental agencies due to local clean air issues. (TR 460)

An "equivalent allowance value" (EAV) methodology was developed for purposes of estimating the relative cost-effectiveness of various compliance options available under each of the strategies on a system net present value basis. An EAV represents the ratio of the cost of the compliance option over time and the removed sulfur dioxide emissions over time in terms of today's price for allowances. (EX 10, page 4-6, Table 4-1)

Gulf's plan to bring its generating units into compliance with the Clean Air Act Amendments of 1990 also includes strategies to meet the Act's requirements regarding continuous emission monitoring systems (CEMs) as well as standards regarding emissions of nitrogen oxides (NO_x). No evidence was brought forth by parties in opposition to Gulf's plan to install new CEMs on all of its steam generating units, or of its plan to install Low NO_x burners (LNB) or if necessary, Overfired Air on its affected units to achieve compliance. Accordingly, we find that Gulf's plan is reasonable and we approve its plan to install CEMs and its plan to install Low NO_x burners or if necessary, Overfired Air, to achieve compliance.

We find that Gulf Power Company's current Compliance Plan Strategy consisting of coal switching and U.S. market based

allowance trading is the most reasonable and cost-effective strategy to Gulf Power Company's customers for purposes of compliance with Phase I of the Clean Air Act Amendments of 1990. Because of the uncertainty of future low sulfur differential fuel costs, allowance prices, and future emission regulations, particularly for air toxics, the flexibility of the fuel switching strategy makes it the most reasonable and cost-effective Phase I compliance plan strategy at this time.

The evidence of record supports our finding that the strategy or analysis methodology used to evaluate and select the Phase I fuel switching strategy currently implemented by Gulf contains no error, bias, or systemic problems. The record does not indicate that Gulf failed to address existing rules, regulations and compliance dates in its planning process. Gulf provided compliance modeling assumptions, company policies, estimated revenue requirements and estimated billing impacts of implementing the various strategies included in its plan. (EX 1,EX 10, EX 13, EX 16, EX 26, TR 338, TR 349-352)

We do not agree with OPC's contention that Gulf's specific compliance plan strategy is unknown today. Gulf has already committed to NO_x and continuous emissions monitoring (CEM) compliance actions for purposes of Phase I compliance as well as actions related to the fuel switching strategy. (TR 85, 89, 90, 493) The Southern Company Fossil Generation Compliance Strategy, (Exhibit 10), was prepared for the purpose of determining Phase I compliance actions. (TR 304, EX 10 page 6-48) As indicated by OPC and The Southern Company Fossil Generation Compliance Strategy, the fuel switching strategy is a strategic road map to follow for compliance purposes. (EX 1,EX 10 page 6-49)

A strategic plan which responds to changing conditions logically implies updates of all key assumptions, including fuel forecasts and load forecasts. Gulf's compliance options must be re-evaluated with each new fuel price forecast and with each new system planning update. We concur with OPC and FIPUG that Gulf appropriately acknowledges that planning assumptions change from year to year and from planning cycle to planning cycle, and that system planning reviews and updates are both reasonable and necessary. (TR 24, 31, 87, 98, 121, 122, 391, 393, 492)

FIPUG's and UMWA's arguments imply that if Gulf pays a portion of the Plant Wansley scrubber and there is a fine tuning of fuel

and allowance prices, it is possible to show the Plant Wansley Scrubber Strategy is at least as cost-effective as Gulf's fuel switching strategy. At issue is the certainty of fuel cost recovery and the uncertainty of recovery of significant scrubber capital costs or other significant capital investments. The most cost-effective Phase I scrubber location on the Southern Company system is not at Gulf's Plant Crist but at Georgia Power Company's Plant Wansley. (TR 461) Planning assumptions and decisions are Gulf's responsibilities. We agree with OPC that it is Gulf's responsibility to propose and adopt a least-cost compliance strategy to minimize its customers' rates. Accordingly, we shall not approve a plan that Gulf adopt a Plant Wansley Scrubber Strategy at this time since that strategy does not appear to be a viable least-cost compliance option to all of the Southern Company members. Furthermore, such action would relieve Gulf's management from any responsibility or consequence of the decision. (EX 1, 10)

LEAF and FIPUG argue that Gulf has not provided sufficient details or adequate implementation estimates of the various strategies. The sensitivity analysis results in Exhibit 10, Section 6.2.3, and the financial summary tables of Exhibit 10, Appendix E, and Tables 6-1, 2 and 3 of Exhibit 1 for each strategy also provide sufficient details. In addition, cash flow revenue requirement estimates for each strategy are included in Table 6-4 and Table 6-5 of Exhibit 1, titled "Gulf Power Company Clean Air Act Compliance Plan."

The evidence of record does not support LEAF's position that Gulf unreasonably rejected potential DSM/conservation alternatives. While LEAF takes exception with Gulf's forecast of demand-side programs and their impact on load growth, LEAF failed to establish an error, bias, or systemic problem in Gulf's energy and load forecasts used in the analysis of the four strategies. Demand-side programs were considered as reduced utilization options and additional measures will be investigated as part of the ongoing system planning process. (Exhibit 10, Section 3.2.6) Since all new load growth during Phase I is projected to be met with natural gas fired generation which does not emit SO_2 or require allowances, demand-side programs are not reasonably expected to alter the relative cost-effectiveness of the four strategies. (EX 25) Also, demand-side programs are already incorporated into the system planning load forecasts.

LEAF further argues that Gulf should have used a "least-cost integrated resource planning process" and because Gulf did not, Gulf cannot reasonably show that the attendant fuel switching strategy is the most cost-effective. We disagree. Section 366.825, Florida Statutes, does not establish or identify a specific planning process such as "least-cost integrated resource planning," which must be used when reviewing public utility compliance plans. The evidence of record does not support a finding of error, bias, or systemic problem in Gulf's system planning process.

UMWA asserts that selective scrubbing will be the least-cost option for Gulf's ratepayers if high sulfur coal prices decline and low sulfur coal prices rise. (TR 436) The coal supply market is not static. New developments and changes can affect both the coal price and the ability to deliver coal. The results of the Peabody coal contract 1998 market reopener negotiations are not certain at this time. Gulf's customers may be exposed to a small low sulfur coal premium or a large one. (TR 334, EXH 23) Gulf estimated the low sulfur coal premium equivalent to scrubbing high sulfur coal in the year 1998 to be $8.47/Ton in the original filing and $22.11/Ton in its revised plan. (EX 17, 18) In the 1992 Fuel study, the Southern Company forecasted a 1998 price for 1% Central Appalachian coal delivered to plant Crist of $47.42/Ton. In 1993, the same coal was forecasted to cost $40.53/Ton in 1998. (EXH 5) Because of cost variations, periodic system planning updates of compliance options are necessary for determining continued cost-effective compliance with Phase I. (TR 31, 87, 492)

In response to the UMWA's view that the fuel switching strategy "represents an all-eggs-in-one-basket" option that would expose the ratepayers to a risk of miscalculation of future coal prices, Gulf contends that installing a scrubber for SO_2 compliance would require a significant fixed capital investment. (TR 434) The installation of a scrubber now, for Phase I purposes, would limit future flexibility to choose other compliance options to meet new conditions. (TR 86,434) Capital investment in a scrubber at Plant Crist or Plant Wansley is not supported at this time based on the Southern Company's sensitivity analyses for the Phase I and Phase II periods. (EX 10, page 6-44, 6-48) In addition, there is nothing precluding UMWA or any coal supplier from proposing scrubber costs and allowance costs in negotiated contracts with the Southern Company or its members.

Based on the foregoing, we find that Gulf has established reasonably sufficient and adequate planning guidelines and procedures and selected the most reasonable and cost-effective compliance strategy for Phase I of the Clean Air Act Amendments of 1990 at this time.

We find that it is premature to approve the Phase II portions of Gulf's Clean Air Act compliance plan at this time because of the uncertainties in the allowance market, the lack of completed Environmental Protection Agency regulations, possible air toxics regulations, and potential CO_2 legislation. (TR 53) Because of these uncertainties, Gulf needs to be flexible regarding Phase II options. Since Phase II compliance rules and regulations have not been established, it is not critical that a Phase II compliance plan determination be made at this time.

Gulf has presented a snapshot view of a continuous system planning process that allows both the utility and the Commission to be prepared for any event which may appear over the planning horizon. (TR 15) By not asking us to issue carte blanche approval for Gulf to proceed with the specific actions set forth in its currently filed compliance plan and by its proposal to inform us of system planning results, Gulf has shown that it believes there is a dynamic nature to the environment in which it operates that requires the maximum flexibility possible. (TR 15,16,87) However, we disagree that Gulf can reasonably and cost-effectively evaluate any proposed Phase II compliance plan strategy in the absence of any rules and regulations that govern both implementation and compliance. Final Phase II allowance allocations will not occur until 1998. Until additional requirements are established, it is premature for Gulf to file for Phase II permits. (TR 297-299) As the Phase II compliance date approaches, more truing up occurs. Each system planning review will incorporate new and improved data, and refined assumptions, so the results may be different. (TR 189) If flexibility is to be maintained, then cost-effective Phase II alternatives should be continuously evaluated. The selection of a Phase II compliance plan should only occur when there is a need to do so or when sufficient implementation requirements are known. Accordingly, we find that it is premature to approve or disapprove the Phase II portion of Gulf's compliance plan.

Specific issues were raised regarding whether scrubbing, allowance market trading, use of a variety of coals, or other compliance measures would provide a better balance of risk between

the ratepayers and the stockholders than Gulf Power Company's Compliance Plan for Phase I or Phase II. Since we find that Gulf's selected compliance strategy of fuel switching appears to be the most reasonable Phase I SO_2 compliance strategy for Gulf at this time, we do not find that the measures identified above would provide a better balance of risk between the ratepayers and the stockholders than Gulf Power Company's Compliance Plan for Phase I or Phase II, except to the extent that Phase I fuel switching provides flexibility to comply with yet to be promulgated Phase II and air toxics regulations.

In a "fuel switch strategy," the customer carries the cost of fuel until estimated scrubber costs are justifiable. The initial economic risk of scrubbing is placed on the stockholder, with cost recovery of actual expenditures ultimately coming from the customers, if scrubbing is found to be prudent. (TR 316)

Bag houses or additional flue gas conditioning equipment or scrubbers may be required by possible future air toxics regulations. However, plans for air toxics compliance cannot be reasonably formulated in the absence of air toxics limits, rules and regulations. (TR 95, 199) If Gulf decides to pursue use of scrubbers, Gulf will carry the scrubber costs and benefits until the scrubber option is determined to be prudent. At that time Gulf's actions, actual costs, and projected costs will be reviewed and appropriate cost recovery will be set. This can occur in a rate case proceeding or in a proceeding held pursuant to 366.8255, Florida Statutes.

Accordingly, we find that Gulf Power Company has established reasonably adequate and sufficient guidelines and procedures which ensures its customers of the most cost-effective compliance in Phase I of the Clean Air Act Amendments of 1990. For Phase I compliance, periodic review of fuel prices, allowance prices, changes in all environmental rules and regulations, estimate of options, use of the "Equivalent Allowance Value" as a normal system planning function, and pursuing a fuel switching strategy are reasonably sufficient and adequate guidelines and procedures for determining cost-effective compliance planning at this time. For Phase II compliance, we find that Gulf has not established reasonably adequate and sufficient guidelines that ensure its customers of cost-effective compliance since it is premature at this time, except to the extent that Phase I fuel switching

provides flexibility to comply with yet to be promulgated Phase II regulations and air toxics regulations.

INTERCOMPANY INTERCHANGE CONTRACT

The transactions between members of the Southern Company, which includes Gulf Power Company, are governed by the Intercompany Interchange Contract (IIC). Such transactions include demand, energy, reliability and financial responsibilities. The IIC is reviewed or updated about once each year. All changes to the IIC must pass with approval by all members.

At issue is whether Gulf Power Company's participation in the Southern Company's Phase I and Phase II compliance plan strategy of fuel switching is reasonably estimated to result in costs that are equal to or less than costs Gulf would have incurred had it proceeded on a stand-alone basis.

Gulf's estimated net present value revenue requirements (1992-2016) for compliance under the fuel switching strategy is $256 million while the company-by-company strategy net present value revenue requirements is estimated at $275 million over the same period. (TR 342) This indicates that, in general, Gulf would likely experience higher compliance costs on a stand-alone basis as compared to participation in the Southern Company's compliance plan of fuel switching. This holds true even on an energy basis. (EX 22) Based on the updated filing, a stand-alone basis is not estimated to be as cost-effective as participation in the Southern Company.

We find that issues regarding uncertainties associated with future cost allocations to member companies through future Intercompany Interchange Contract (IIC) amendments are not material to this docket and would be more appropriately addressed in cost recovery proceedings. Likewise, Gulf has not explained how all future Intercompany Interchange Contract provisions and amendments will insure appropriate cost allocations to its customers.

If a scrubbing option were found to be cost-effective on the Southern Company system, the IIC may have to be amended to address intercompany transactions and cost allocations. (TR 304, 399, EX 1, 10) Sections 7.2 and 7.3 of Exhibit 10 describe the modeling methodology used to address construction costs. Construction costs are not allocated in an explicit method which determines that "X"

dollars of Project "SCRUB" go to Company "A" and "Y" dollars go to Company "B". Instead, site-specific estimates for each plant were developed and a system economic dispatch model was used. Capital cost allocation is therefore not directly determined but is reflected in the net price of exchanged energy including allowances.

We find that the pricing of sulfur dioxide emission allowances for purposes of sales and purchases shall be U.S. market based, as opposed to company-specific, since market pricing will tend to result in least cost compliance actions. FIPUG and OPC agree. UMWA maintains that market prices should not be used for intra-system transfers where actual costs are known. As indicated by Gulf Power Company's witness, Mr. Parsons, "The transactions through the interchange contract are at cost and that would also include the allowance value." (TR 280 Lines 17-20) Both Gulf and UMWA agree. All energy transactions were estimated using forecasted allowance prices and in a uniform manner for both affiliated and nonaffiliated companies. (EX 10, TR 281) However, affiliated energy transactions are at cost and nonaffiliated energy transactions are off the Southern Company system and should therefore be market based. (TR 280) Modeling all energy transactions using a forecasted allowance price may tend to overstate compliance costs since IIC transactions using a market allowance price would tend to be higher than transactions which use EPA zero cost allocated allowances. (TR 245,246) We do not believe, however, that changing this modeling assumption will change the relative cost-effectiveness of the Phase I fuel switching strategy when compared to the other three strategies at this time.

Interchange allowance costs or savings were assumed to directly increase or reduce a company's revenue requirements. The allowance cost allocation scheme used for modelling purposes is the same scheme which has been voted on and approved by the Southern System companies. However, the modifications to the IIC which would implement the scheme have not yet been made. (TR 278, 281) The intervenors presented no factual error or unreasonable bias in the capital cost allocation methodology or in the allowance cost allocation methodology to support their positions.

Although the previously described cost allocation methodology does not seem unreasonable for modeling purposes, it does not fully address cost allocation concerns if implemented. There is no clear

tracking of company-specific compliance costs such as CEMs and NO_x capital expenses and Southern System SO_2 compliance capital expenses such as scrubbers. No evidence was presented to indicate that Gulf will not recover scrubber costs both from its own customers as well as from other Southern Company members, if the scrubber is determined to be cost-effective for the Southern Company system.

Because the nature of future IIC amendments is unknown, it is not possible to determine, at this time, whether the future allocation of costs is appropriate. Thus, we find that resolution of compliance cost allocations and all other cost recovery issues are not necessary for determining approval or denial in this review of Gulf's Phase I compliance plan strategy of fuel switching. (TR 36, 90, 91, 301, 314) Also, the resolution of such issues is not material to this docket, because we find that the cost allocation issues are more appropriately addressed in cost recovery proceedings.

We find that Gulf Power Company's participation in the Southern Company's Phase I compliance plan strategy of fuel switching is reasonably estimated to result in costs that are equal to or less than costs Gulf would have incurred had it proceeded on a stand-alone basis for Phase I. It is premature to determine this for Phase II at this time.

SUFFICIENCY OF THE PLAN AND GULF'S ANALYSES

We find that Gulf Power Company has reasonably, adequately and sufficiently estimated the effects of its Compliance Plan, including the estimated costs and the expected impact on rates resulting from implementing the plan and alternatives to the plan for Phase I. However, the Phase II cost effective compliance cost estimates are speculative and premature since the applicable regulations have not been promulgated.

The intervenors contend that Gulf's estimates of plan implementation costs and impact on rates for each of the four strategies are insufficient, inadequate, and unreasonable. We find that Gulf has estimated the least-cost strategy. The least-cost strategy has also been shown to be the strategy with the least impact on rates. (EX 10, 22, 26)

Because air toxics regulations have not been promulgated and the EPA study reports have not been published pursuant to Title III - Hazardous Air Pollutants, of the Clean Air Act Amendments of 1990, there is no reasonable basis to establish a compliance plan or strategy specific to air toxics. (TR 94, 461, 490) As previously discussed, periodic system planning reviews provide for the most reasonable method to address the evolving nature of environmental regulations. If flexibility is maintained, then cost-effective Title III alternatives can be evaluated and implemented when the need to do so occurs. Thus, cost-effective compliance cost estimates would be speculative and premature since no applicable Title III regulations have been promulgated.

Accordingly, we find that Gulf Power Company's Compliance Plan has been developed in sufficient detail to permit us to determine whether it is prudent and should be approved in the public interest pursuant to Section 366.825(3), Florida Statutes (Supp. 1992) for Phase I. We find a Phase II determination is premature because of the uncertainty of future conditions and the yet to be promulgated Phase II and air toxic regulations.

FUTURE GULF FILINGS

We find that Gulf shall continue using the analysis methodology used to develop the current plan strategy for future filings. This includes fuel price forecasting, allowance price forecasting, compliance cost estimates of any new applicable environmental legislation or limitations, assessment of the strategic risks between available compliance options, and estimates of equivalent allowance values of compliance options.

Compliance planning is an integral part of utility system planning. There is no reason to segregate Clean Air Act compliance planning from all other system planning, especially since the two planning processes cannot occur in isolation. Compliance planning is dependent on other system planning forecasts such as fuel price forecasts and load/energy forecasts. Therefore, Gulf shall incorporate compliance planning review into its existing system planning process, if it has not already done so.

No evidence was presented to support or require ongoing formal filings and reviews of Phase I compliance plans, as suggested by OPC, UMWA and LEAF.

Annual reviews and updates are best handled in concert with existing system planning cycles. Clean Air Act compliance planning is not sufficiently different from other utility system planning functions to merit a separate review. We find that it is sufficient for Gulf to incorporate compliance reviews and updates into its normal system planning. Approval of the fuel switching strategy provides the flexibility Gulf seeks. Given that flexibility, Gulf has the responsibility that if it determines an alternate strategy is appropriate, Gulf shall notify us of its findings. If any substantive changes are planned for the Phase I fuel-switching strategy, Gulf shall inform us of those changes and include the reasons for the proposed changes. Gulf shall include but not be limited to a compliance update report in its Load Forecasts and 10 Year Site Plan as they are reported to the Commission. The compliance update report shall include the fuel price forecasts, the allowance price forecast used, and a summary of the cost-effectiveness of Clean Air Act compliance options. Gulf shall also address the unresolved implementation issues of under-utilization, allowance banking, interchange transaction pricing with cost allocations, and fuel procurement policies in future compliance reviews and updates.

The following factors shall be addressed in Gulf's future system planning:

- Gulf Power Company needs to more fully explore potential natural gas usage in future planning efforts such as firm and seasonal options in addition to the take or pay natural gas options.

- Gulf Power Company shall investigate using clean generating units to displace dirtier units as provided by the under-utilization provisions of the Clean Air Act Amendments of 1990 and include all resulting costs in future updates.

- Gulf Power Company shall explain how allowances and Clean Air Act compliance costs are priced for purposes of energy transactions between affiliated companies and how those costs are addressed in the Intercompany Interchange Contract in future updates.

- Gulf Power Company shall include the use of long term coal contracts over the entire planning horizon.

We shall not require Gulf to file benchmarks, market indicators, guidelines and procedures, or other quantitative cost controls for purposes of assuring cost-effective compliance with the Clean Air Act Amendments of 1990 in this docket. It is more appropriate for parties to address these concerns in Docket 930613-EI, which is Gulf's petition for environmental cost recovery pursuant to Section 366.8255, Florida Statutes.

PLAN'S IMPACT ON PROPOSED FACILITIES

We find that the effects of Gulf's proposed facilities were included in the development of its compliance plan. During the hearing, Gulf Power's witness, Mr. Parsons, was asked to review Exhibit 25, which contained excerpts from Gulf's Ten Year Site Plans for 1992 and 1993 showing unit additions. (TR 348-349) In answer to the question, "What effect will these additions have on your compliance plan?" Mr. Parsons replied, "Well, they have been modeled--this is a part of the integrated resource plan and would have been a part of the assumptions that were used in the modeling for our strategy. It would have no effect other than what they already have had in the plan." Since Gulf has indicated that the primary fuel is natural gas for all the proposed unit additions, the proposed unit additions are not subject to sulfur dioxide emission regulations in the Clean Air Act Amendments of 1990.

DEFINITION OF "PUBLIC INTEREST"

The phrase "in the public interest" as used in Section 366.825, Florida Statutes, encompasses those matters within the jurisdiction of the Florida Public Service Commission. In this case, we find that the phrase "in the public interest," means the cost and effect on rates and services provided by Gulf Power Company to its ratepayers. This is not to say, however, that we are precluded from considering other factors where appropriate, including environmental and health concerns, in the interpretation of "in the public interest." Traditionally, however, the Commission has not done so, and there is no statutory mandate to consider such factors. While we may consider such factors in the interpretation of "public interest," it is not the primary responsibility of this agency to determine if utilities are in compliance with health and environmental regulations; rather, other agencies, such as the Department of Environmental Protection, are given express statutory mandates in such areas. In its review of

a utility's plan, the Commission, however, may not interfere with the authority of the Department of Environmental Protection (formerly the Department of Environmental Regulation) relating to Sections 403.087 and 403.0872, Florida Statutes, or the State Air Implementation Plan for the Clean Air Act.

FIPUG maintains that the phrase "in the public interest" includes "insuring that the costs incurred by the utility in implementing the plan are the least cost way to implement the plan and by insuring that the effect on rates, if any, is appropriately distributed among customer classes." We generally agree with FIPUG except that allocation is more appropriately addressed in a cost recovery proceeding.

LEAF asserts that "public interest," as used in this statute, is much broader than rates and compliance costs. LEAF refers to Article II, Section 7, Natural Resources and Scenic Beauty, of the Florida Constitution, the Florida Energy Efficiency and Conservation Act (FEECA), and the State Comprehensive Plan and asserts that those standards are encompassed by "public interest."

The policy expressed in Article II, Section 7 of the Florida Constitution (1968) is to conserve and protect the state's natural resources and scenic beauty, including the abatement of air and water pollution. Our decision in this docket is whether to approve Gulf's compliance plan, which is to reduce sulfur dioxide and nitrogen oxide emissions. Reduction of such emissions is consistent with the policy expressed in Article II, Section 7 of the Florida Constitution (1968).

The energy efficiency programs, conservation programs, and DSM programs, which were approved by this Commission, were appropriately included in the energy forecasts used in this proceeding. Further, we are currently considering the issue of energy efficiency in other dockets before this Commission. It is not a wise use of our resources to take a piecemeal approach to this complex subject matter. Instead, we find that the most appropriate forum for considering all issues relating to Gulf's energy efficiency, conservation and DSM programs is in Docket No. 930550 -EG - Adoption of Numeric Conservation Goals and Consideration of Natural Energy Policy Act Standards (Section 111).

STATE COMPREHENSIVE PLAN

We must first address the question of whether we are required to consider Gulf's proposed Clean Air Act Compliance Plan pursuant to Section 186.008(6), Florida Statutes. The intent of the Florida Legislature (Legislature) in enacting the Florida State Comprehensive Plan is that the plan act to guide state and regional agency policies, especially "those policies dealing with land use, water resources, and transportation system development." Section 186.002, Florida Statutes. Also, it is to aid in coordinating state agency functional plans to facilitate growth consistent with the public interest and to enhance the quality of life of Florida's citizens.

Section 186.008(4), Florida Statutes, provides that the State Comprehensive Plan (Chapter 187, Florida Statutes) shall be implemented and enforced by all state agencies consistent with their lawful responsibilities and that the Governor shall oversee the implementation planning process. Section 186.003(6), Florida Statutes, defines a state agency as being in the executive branch of the government. While the Commission is an arm of the legislative branch of state government, Section 186.008(6), Florida Statutes, provides that

> The Florida Public Service Commission, in approving the plans of utilities subject to its regulation, shall take into consideration the compatibility of the plan of each utility and all related utility plans taken together with the adopted state comprehensive plan.

The State Comprehensive Plan covers a broad range of areas such as tourism, transportation, agriculture and education. We do not have the expertise to determine compatibility with those areas outside our jurisdiction. It is within the expertise of the Florida Public Service Commission to consider the compatibility of utility plans, pursuant to Chapter 366, Florida Statutes, with the energy goals and policies of the State Comprehensive Plan. Section 186.008(6), enacted in 1985, does not supersede the provisions of Section 366.825, enacted in 1992, that set forth standards for us to use in our review of Clean Air Act compliance plans. The Legislature has set forth specific guidelines for us to use in our evaluation of Clean Air Act compliance plans. The compatibility of the compliance plan to the State Comprehensive Plan is important, but nonetheless secondary to our Section 366.825 evaluation.

The second issue regarding the State Comprehensive Plan is whether Gulf's proposed plan, pursuant to Section 186.008(6), Florida Statutes, complies with the adopted State Comprehensive Plan, Chapter 187, Florida Statutes.

It is our responsibility to consider the compatibility of Gulf's compliance plan with the State Comprehensive Plan pursuant to Chapter 187, Florida Statutes. The statute does not mandate strict adherence to all goals and policies. It is within our authority, pursuant to Chapter 366, Florida Statutes, to consider the compatibility of utility plans with the energy goals and policies of the State Comprehensive Plan.

We find that Gulf's plan is compatible with the State Comprehensive Plan. Gulf's witness, Mr. Parsons, testified that Gulf's plan, which incorporates the company's emphasis on cost-effective conservation, is consistent with those provisions of the State Comprehensive Plan which encourage energy efficiency and conservation. (TR. 351-352). Gulf's proposed compliance plan is compatible with the State Comprehensive Plan.

APPROVAL/DENIAL OF THE PLAN

The ultimate issue in this proceeding is whether Gulf Power Company's Compliance Plan should be found to be in the public interest and therefore be approved.

Gulf Power has submitted for approval its compliance plan consisting of four strategies to meet the SO_2 emissions requirements. Gulf Power has repeatedly demonstrated its need to have the flexibility to switch strategies as conditions warrant. It is for this reason the compliance plan must consist of alternate strategies, and Gulf Power maintain the option of choosing strategies as necessary. We commend this approach and understand the necessity of being flexible because of the uncertainty regarding future low sulfur differential fuel costs, allowance prices, and future emission regulations, particularly for air toxics. Thus, we find that the flexibility of the fuel-switching strategy makes it the most reasonable and cost-effective Phase I compliance plan strategy at this time.

Gulf's plan to bring its generating units into compliance with the Clean Air Act Amendments of 1990 also includes strategies to

meet the Act's requirements regarding continuous emission monitoring systems (CEMs) as well as standards regarding emissions of nitrogen oxides (NO_x). We find those plans to be reasonable, and thus we approve those plans.

Total plan approval is inappropriate at this time, not because the plan consists of competing strategies, but because approval of the total plan could constitute prudence of competing strategies which have significantly different costs through the Phase II period. (TR 355) Total plan approval is also inappropriate at this time since the Phase II compliance rules and regulations have not been established and because Gulf's plan includes a long term assumption that is contrary with Order No. 12645, issued November 3, 1983, in Docket No. 830001-EU. The fuel procurement policy, set forth in Order No. 12645, is to establish firm contracted supplies for most generation requirements. Gulf Power had both contract and spot forecasts and should have used them. Gulf Power should not have assumed a 100 percent reliance on the spot market for all coal needs after year 2007 at the termination of the Peabody Contract. Contract and spot prices are not the same, and this price difference may have an impact on long range plans.

FUTURE COMMISSION ACTIVITIES

At issue is whether the Southern Company's allowance banking, purchasing, and trading activities should be subject to our review of the multistate activities of the Southern Company. FIPUG, LEAF, UMWA, and OPC appear to be concerned that this proceeding will in some way prevent us from reviewing actual expenditures and determining the prudence of future actions. Until we make a finding of prudence on actual costs, actual costs will remain subject to continued Commission review for cost recovery purposes. It is immaterial whether those cost were incurred by Gulf through the IIC. Accordingly, we find that the impact of all Southern Company activities related to Gulf and Gulf's customers should continue to be evaluated in the fuel adjustment proceeding and other ongoing activities.

IMPACT ON COMPLIANCE COST RECOVERY

Section 366.825, Florida Statutes, (Supp. 1992), provides in part that

> [a]pproval of a plan submitted by a public utility shall establish that the utility's plan to implement compliance is prudent and the commission shall retain jurisdiction to determine in a subsequent proceeding that the actual costs of implementing the compliance plan are reasonable...

Cost recovery for compliance of the Clean Air Act Amendments of 1990 will be conducted in a subsequent proceeding. Section 366.8255, Florida Statutes, has been enacted to allow the utilities to petition for cost recovery for environmental compliance costs including those costs associated with the Clean Air Act Amendments. In addition, other proceedings, such as rate cases, are available for the utilities to recover compliance costs.

Approval of Gulf's compliance plan shall establish that the plan to implement compliance is prudent, and the Commission would determine in a subsequent proceeding if the costs incurred in implementing the compliance plan were reasonable. Approval does not constitute approval of actions or inactions by Gulf with regard to future developments; essentially, it shall establish prudence for Gulf's compliance plan at this time. Accordingly, a finding of approval or denial of the compliance plan does not constitute approval or denial of recovery costs.

PROPOSED FINDINGS OF FACT

We have made specific rulings on all proposed findings of fact. Specific rulings on LEAF's proposed findings of fact are attached hereto as Attachment 1.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the petition for approval of its plan to bring its generating units into compliance with the Clean Air Act Amendments of 1990 by Gulf Power Company is hereby approved in part. As discussed within the body of this Order, the portion of the plan regarding the Phase I fuel switching strategy, continuous emissions monitoring, and NO_x emissions is hereby approved. It is premature to approve the Phase II portions of Gulf Power Company's Compliance Plan at this time. It is further

ORDERED that Gulf Power Company shall submit requisite filings and updates in the appropriate dockets as discussed within the body of this Order. It is further

ORDERED that all findings of fact contained herein are hereby approved or rejected, as stated in Attachment 1. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 20th day of September, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
DLC:bmi

by: Kay Flynn
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and

the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

ATTACHMENT 1

LEAF'S PROPOSED FINDINGS OF FACT

PROSPECTIVE ENVIRONMENTAL REGULATION (Issues 2,3 and 4)

1. Air toxics regulation may occur in 1995. [TR 95 Lines 12-16]

We reject this finding as a prediction of a future event that may or may not occur; it is speculative. A finding of fact must be more definite.

2. Bag houses or flue gas scrubbers might be needed to control air toxics at Gulf's affected generating units. [TR 95 Lines 17-21]

We reject this finding as a prediction of a future event that may or may not occur; it is speculative. A finding of fact must be more definite.

3. Flue gas scrubbing at Gulf's affected generating units could also remove sulfur dioxide and other pollutants. [TR 96 Line 2-5]

We reject this finding because it is not based on fair inferences from the record. This sentence is not specific about the technology of flue gas scrubbing at Gulf's affected generating units and not specific about which "other pollutants." For example, some scrubber technologies may increase CO_2 emissions. [TR 196, Lines 9-10]

4. Installation of flue gas scrubbers at Gulf's affected generating units to control sulfur dioxide could also help Gulf comply with prospective air toxics regulations. [TR 96 Lines 2-14]

We accept this finding in part and reject it in part. The witness said, "(a)nd if the substances that are regulated by the regulations can be controlled by scrubbers, that would be true." [TR 96 Lines 12-14] It is speculative that air toxics will be

regulated and the design of installed scrubber will meet the prospective regulatory requirements.

5. The cost of a scrubber to remove air toxics at the Crist plant would cost about the same as a scrubber that would also remove sulfur dioxide (dual use). [TR 463 Lines 5-11]

We accept and incorporate this finding.

6. Gulf has not investigated the purchase of "purchase options" for the installation of pollution control technology at affected generating units to cope with possible air toxics regulations. [TR 96 Line 15 to TR 97 Line 15]

We reject this finding as immaterial and speculative, since Federal regulations for air toxics are not finalized. [TR 496 Lines 9-12]

SUFFICIENCY OF ANALYSIS & METHODOLOGY (Issues 2-5, 8-12, 14, 16)

7. Gulf did not specifically evaluate the cost-effectiveness of energy efficiency and conservation for purposes of Clean Air Act planning. [TR 97 Line 16 to TR 99 Line 2]

We reject this finding. The witness said "We don't do a study specifically from the area of Clean Air Compliance. In our normal plan that we do every year, we do an annual plan to determine what our generating capacity needs are, our integrated resource plan, at Gulf Power Company, and that is integrated into the Southern Electric system plan. At Gulf Power Company, in the development of our loads and demands that we're going to have in the future, these will be done as an integral part of our overall plan. The conservation programs that we have will become a demand-side part of that to determine how much load we actually have to serve." [TR 98 Lines 11-22]

8. Gulf's customers' implementation of demand-side measures, in and of itself, does not produce sulfur dioxide or nitrogen oxides. [TR 100 Lines 13-23]

We accept and incorporate this finding.

9. Gulf did not factor Clean Air Act avoided allowance costs in calculating the cost-effectiveness of existing and potential conservation or demand-side programs. [TR 103, Lines 18-25; TR 105 Lines 4-12]

We reject this finding because it is not based on fair inferences from the record. Utility system planning implicitly includes existing and potential conservation and demand-side programs. [TR 92, 98, 121, 122]

10. Gulf's filing in this docket is based on its 1992 "integrated resource plan," although its 1993 "integrated resource plan" is complete. [TR 105 Line 13 to TR 104 Line 2]

We reject this finding as irrelevant and immaterial to our approval or denial of Gulf's Clean Air Act compliance plan. Even if this were relevant, this sentence is rejected because it is not based on fair inferences from the record; taken as a whole, it is a misrepresentation of Gulf's ability to incorporate the 1993 integrated resource plan results and assumptions into the plan filed in this docket. Although Gulf's filing in this docket is based on its 1992 "integrated resource plan" and that the witness testified that the 1993 integrated resource plan is now complete, the witness also stated that it "was not complete at the time this update was filed." [TR 106, Line 1-2]

11. Gulf can retire affected units as a means to comply with the Clean Air Act. [TR-108 Line 8 to TR-109 Line 6]

We reject this finding because it is not based on fair inferences from the record. The witness stated "(i)t has to be a cost-justification for doing that." [TR 109 Lines 5-6]

12. Gulf can use the reduced utilization of affected generating units as a means to comply with the Clean Air Act. [TR 108 Line 8 to TR-109 Line 25]

We reject this finding because it is not based on fair inferences from the record. The witness stated "(i)t has to be a cost-justification for doing that." [TR 109 Lines 5-6]

13. Gulf's analysis of the reduced utilization provisions of the Clean Air Act is not complete. [TR 114 Line 25 to TR-115 Line 6]

We accept and incorporate this finding.

14. Gulf did not evaluate demand-side program options other than those included in Gulf's "integrated resource plan" as part of the Clean Air Act compliance planning. [TR 121 Line 24 to TR-122 Line 12]

We accept and incorporate this finding.

15. Gulf is evaluating the Clean Air Act compliance potential associated with additional demand side measures and new technologies such as advanced energy management with variable pricing, thermal storage, heat pipes and high-efficiency lighting. [EX 1 page 14]

We accept and incorporate this finding.

16. Gulf's existing conservation and demand-side programs provide avoided Clean Air Act sulfur dioxide allowance benefits. [Request for Admission 30; TR 128]

We accept in part and reject in part this finding. Gulf Power's answer to Request for Admission 30 is "Admitted that Gulf's existing conservation programs are expected to provide some avoided SO2 allowance benefits." [EX ?] Admission 30 does not include the words "and demand-side". We accept and incorporate this finding if the finding is Gulf's response to Request for Admission 30 and reject the finding if the words "and demand-side" are included.

17. On October 27, 1992, Gulf filed for Commission approval of a proposed residential advanced water heating program, a proposed residential high-efficiency HVAC equipment upgrade program, and a proposed residential ceiling insulation program. On or about January 11, 1993, Gulf withdrew the program filings. [Request for Admissions 25, 26; TR 128]

We accept and incorporate this finding.

18. Gulf has evaluated potential conservation or demand-side programs that could provide avoided Clean Air Act sulfur dioxide allowance benefits. [Request for Admission 31; TR 128]

We accept in part and reject in part this finding. Admission 31 did not include the phrase "or demand-side". We accept and incorporate this finding if the phrase demand-side" is excluded and reject this finding if the phrase "or demand-side" is included.

19. Gulf's Clean Air Act compliance planning evaluated energy conservation and demand-side measures from an energy standpoint and not from a demand (capacity) standpoint. [TR 496 Line 13 to TR 497 Line 3]

We reject this finding because it is not based on fair inferences from the record. Gulf's system planning process is based upon load forecasts which address energy conservation and demand-side measures. Therefore, energy conservation and demand-side measures are incorporated into Gulf's Clean Air Act compliance plan which is based on Gulf's system planning process. (TR 92, 98)

20. A combination approach which includes burning natural gas, purchasing allowances, cost-effective demand-side measures, purchasing clean power, and scrubbing is a way to avoid the risks associated with any one compliance strategy. [TR 459 Lines 4-9]

We reject this finding. The witness' opinion is over-simplistic. If the option he suggests are not cost-effective, the ratepayers face the risk of higher rates.

21. The reduced utilization provisions of the Clean Air Act have implications for Phase I compliance. [EX 1 page 51]

We accept and incorporate this finding.

22. In 1995, Gulf and Southern's economic dispatch will include the cost of consuming emission allowances as the companies determine the least-cost method of dispatching units to serve load. [EX 1 page 48]

We reject this finding as speculative and as a prediction of a

future event that may or may not occur.

PROSPECTIVE ENVIRONMENTAL REGULATION (Issues 4,6,10,11,13,14)

23. Gulf does not have a mercury content specification in its existing coal contract. [TR 129 Lines 12-17]

We reject this finding. Although the statement by itself is factually correct, it is immaterial and irrelevant to our approval or denial of Gulf's Clean Air Act compliance plan. Air toxics regulations have not been promulgated by Florida or the EPA.

24. The higher the mercury content of the coal, the greater the emissions of mercury from the power plant. [TR 129 Lines 22-25]

We reject this finding as immaterial and irrelevant to our approval or denial of Gulf's Clean Air Act compliance plan. Mercury regulations have not been promulgated by the EPA or Florida.

25. Gulf did not evaluate specification of the mercury content of fuel as a potential means of compliance with prospective air toxics regulations, including mercury. [TR 130 Lines 11-16]

We reject this finding as speculative, immaterial, and irrelevant to our approval or denial of Gulf's Clean Air Act compliance plan. Mercury and air toxics regulations have not been promulgated by the EPA or Florida.

26. Gulf did not provide an air toxics sensitivity analysis in its filing in this docket. [TR 494, Lines 8-22]

We reject this finding as speculative, immaterial, and irrelevant to our approval or denial of Gulf's Clean Air Act compliance plan. Air toxics regulations have not been promulgated by Florida or the EPA.

27. Even if the Environmental Protection Agency does not regulate air toxics, the State of Florida can regulate them. [TR 494 Line

23 to TR-495 Line 3]

We reject this finding as speculative, immaterial, and irrelevant to our approval or denial of Gulf's Clean Air Act compliance plan. Air toxics regulations have not been promulgated by Florida or the EPA.

28. If Florida regulates air toxics, the rules would apply to Gulf by 1996. [TR 495 Lines 11-24]

We reject this finding as speculative, immaterial and irrelevant. Air toxics regulations have not been promulgated by Florida or the EPA.

29. Florida is evaluating mercury air pollution emission limits and air toxics regulations. [TR 495 Line 21 to TR-496 Line 8; EX 1 page 7]

We accept and incorporate this finding.

30. Federal regulations for air toxics are not finalized. [TR 496 Lines 9-12]

We accept and incorporate this finding.

31. Gulf refers to "low sulfur coal" as coal with a sulfur percentage of .73 to 1.49%. [TR 130 Line 23 to TR-131 Line 2]

We accept and incorporate this finding.

DEFINITION OF "PUBLIC INTEREST" (Issues 14 and 15)

32. The "public interest" includes consideration of whether the coal is domestic or imported. [TR 131 Line 13 to TR 132 Line 16]

We reject this finding because defining public interest is a legal conclusion rather than a finding of fact.

33. Clean air is in the "public interest." [TR 133 Lines 9-11]

We reject this finding because defining public interest is a legal conclusion rather than a finding of fact.

34. If Gulf can attain Clean Air Act compliance at the same price or less than supply-side alternatives, energy efficiency as a Clean Air Act compliance option is in the "public interest." [TR 133 Lines 3-8]

We reject this finding as speculative and irrelevant. This is a subject for the Conservation Goals docket. Also, defining public interest is a legal conclusion rather than a finding of fact.

35. The "public interest" of Floridians is broader than simply cheap electricity for Gulf's customers. [TR 460 Line 14 to TR-461 Line 1]

We reject this finding because defining public interest is a legal conclusion rather than a finding of fact.