

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of
Consumptive Water Use Monitoring
Activity and Smith Wetlands
Mitigation Plan as new programs
for cost recovery through the
Environmental Cost Recovery
Clause by Gulf Power Company.

DOCKET NO. 000808-EI
ORDER NO. PSC-00-2092-PAA-EI
ISSUED: November 3, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER
BRAULIO L. BAEZ

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR COST
RECOVERY UNDER THE ENVIRONMENTAL COST RECOVERY CLAUSE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. CASE BACKGROUND

On June 30, 2000, Gulf Power Company (Gulf) petitioned this Commission for approval of the Company's Consumptive Water Use Monitoring Activity and Smith Unit 3 Wetlands Mitigation Plan as new programs for cost recovery through the Environmental Cost Recovery Clause (ECRC).

Section 366.8255, Florida Statutes, the ECRC, gives us the authority to review and decide whether a utility's environmental compliance costs are recoverable through the ECRC. Guidelines for environmental cost recovery through the ECRC have been established by order. Order No. PSC-94-1207-FOF-EI, issued October 3, 1994, in

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Docket No. 940042-EI, states in part, "...a utility's petition for cost recovery must describe proposed activities and projected costs, not costs that have already been incurred." (emphasis in original, p. 5.) Thus, utilities are expected to petition the Commission for approval of new projects in advance of the project costs being incurred.

Furthermore, 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 the 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. (p. 6-7)

II. MONITORING OF CONSUMPTIVE WATER USE

Gulf is required to install and maintain in-line totaling water flow meters on all existing and future water supply wells at Gulf's Crist and Smith electric generating plants. This requirement is a part of the Consumptive Use and Individual Water Use permits issued by the Northwest Florida Water Management District (NFWWMD).

Rule 40A-2.381, Florida Administrative Code, provides the specific basis for the NFWWMD's authority to impose a condition on any permit issued by the NFWWMD. Therefore, the Consumptive Water Use Monitoring Activity is legally required to comply with a governmentally imposed environmental regulation. Furthermore, Gulf has attested that there are no in-line totaling water flow meters currently installed on any of Gulf's existing water supply wells.

The relevant permits and the associated requirements for Plant Crist and Plant Smith were issued on November 30, 1999, and August 26, 1999, respectively. Gulf's Smith Plant meters must be

installed by August 31, 2000, and Gulf's Crist Plant meters must be installed by December 31, 2000. The new requirement is also expected to be a condition of the permit renewal for Plant Scholz in 2005.

Gulf's most recent cost estimate for the Consumptive Use Monitoring Activity is \$205,000 for calendar year 2000. Gulf does not expect to incur any maintenance expenses in the first five years after installation of the flow meters. After that period, additional O&M expenses, currently estimated at a 5-year cycle cost of \$9,000, may be required for the flow meters to be re-calibrated. Costs related to the Plant Scholz flow meters, to be determined when the permit is renewed in 2005, are also expected to be incurred in this program. Gulf uses a combination of bidding and past experience to develop the cost estimates. The costs presented in the petition were projected costs rather than costs that had already been incurred.

Based on Gulf's representation of its actions taken to date, we find that Gulf has been prudent with respect to the proposed program. The NFWMD set forth the specific compliance requirement for Gulf, and thus no alternative compliance approaches are relevant. We shall continue to monitor and evaluate the prudence matter through the ECRC true-up process, in Docket No. 000007-EI, as Gulf's actual costs and other relevant information become available. To insure that the most cost effective compliance action is taken, Gulf shall continue to monitor costs, trends, technology, and other relevant factors.

We find that Gulf's Consumptive Water Use Monitoring Activity Program qualifies for recovery through the ECRC based on the guidelines established in Order No. PSC-94-1207-FOF-EI and Order No. PSC-94-0044-FOF-EI. The actual expenditures/expenses will be addressed in an up-coming true-up cycle and will be subject to audit. Issues that will determine the specific amount recoverable through the ECRC, such as whether specific costs were prudently incurred and whether they have already been recovered in other mechanisms, will be further examined and resolved in Docket No. 000007-EI. Gulf has not requested a change in the ECRC factors that have been approved for 2000. Based on the information provided, we find that there is no potential for a significant rate impact. Therefore, the review of Gulf's expenses should be addressed at the November 2000 ECRC hearing.

III. WETLAND MITIGATION PLAN

The Smith Unit 3 Wetlands Mitigation Plan (Smith Plan) is the second activity for which Gulf seeks recovery through the ECRC. This environmental requirement is associated with the planned construction of the new Smith Unit 3 in Bay County. We have not previously determined whether environmental costs associated with construction of new power plants should be recoverable through the ECRC.

The new Unit 3 will result in the unavoidable loss of wetlands that are regulated by the Florida Department of Environmental Protection (FDEP) and the United States Army Corps of Engineers (USACE). To offset the loss of wetlands, the FDEP and the USACE required that existing wetlands near the site be enhanced. Gulf is required to enhance 130 acres of wet pine plantation within a 232-acre parcel of land. The 130 acres will be preserved in perpetuity through a conservation easement or transferred to a resource agency. Various tree species will be planted and monitored for five years. Reporting requirements are also a part of the Smith Plan. This new program will be initiated after Gulf's last test year upon which its current base rates were established.

The Smith Plan is required by the final order issued in DOAH Case No. 99-2641EPP. This final order meets the definition of "environmental laws or regulations" in Section 366.8255(1)(c), Florida Statutes. We therefore find that the Smith Plan is legally required to comply with a governmentally-imposed environmental regulation.

In its petition, Gulf projected \$1,270,000 in costs related to the Smith Plan for calendar year 2000. Gulf's most recent cost estimates for the Smith Plan are \$360,000 for calendar year 2000 and a total of \$870,000 through calendar year 2005. These expenditures include land purchase and site preparation (\$360,000), tree planting (\$340,000), and monitoring and reports to FDEP (\$170,000). The reduced cost estimates are due to a combination of factors, including the timing of tree planting and the availability of trees that can achieve the same mitigation objective at a lower cost. These types of costs are normally recorded as part of the in-service costs of new power plants.

The difference between the Smith Plan and prior ECRC petitions is that the Smith Plan is associated with construction of a new power plant, not modifications of an existing power plant. Gulf acknowledges this fact. Gulf believes all environmental compliance costs associated with new power plant construction are appropriate for cost recovery through the ECRC.

Gulf argues that approval of the Smith Plan for recovery through the ECRC is consistent with the ECRC and subsequent Commission orders implementing the statute. Gulf points out that costs associated with new facilities meet the definition of "environmental compliance costs" in Section 366.8255(1)(d), Florida Statutes. That term is defined as "all costs or expenses incurred by an electric utility in complying with environmental laws or regulations." Furthermore, Gulf contends that its petition is consistent with the Commission's criteria for recovery in Order Nos. PSC-94-1207-FOF-EI and PSC-94-0044-FOF-EI implementing the ECRC (Those criteria were restated in Part II of this Order). Therefore, Gulf maintains that the Smith Plan should be approved regardless of whether it is associated with new power plant construction.

The ECRC is silent on whether environmental costs associated with new plants should be recoverable through the ECRC. The statute allows the Commission some discretion in deciding which prudently incurred environmental costs can be approved. Section 366.8255(2) states:

An electric utility may submit to the commission a petition describing the utility's proposed environmental compliance activities and projected environmental compliance costs in addition to any Clean Air Act compliance activities and costs shown in a utility's filing under Section 366.825. If approved, the commission shall allow recovery of the utility's prudently incurred environmental compliance costs. (Emphasis added.)

The ECRC falls short of expressly requiring that all prudently incurred environmental costs be approved for recovery. Furthermore, Section 366.01, Florida Statutes, states that the provisions of Chapter 366 are to be liberally construed to protect the public welfare. Therefore, we find that whether the cost of

the Smith Plan may be recovered through the ECRC is a matter of agency discretion and policy.

Of the various cost recovery clauses associated with the electric industry, only the ECRC and conservation clauses are embodied in statute. The other similar clauses - fuel and capacity - were created by Commission Order. We believe that it is informative to consider the rationale for creating the other clauses.

It appears the intent of the clauses is to address costs that may fluctuate or increase significantly and unpredictably from year to year. In such cases, the costs included in a test year would not adequately capture future costs. The fuel clause, which was the first to be created, is a good example. The docket that created the current version of clause, Docket No. 74680-CI, was opened in response to the dramatic rise in fuel costs in the mid-1970s. See Order No. 6357, issued November 26, 1974. At that time, the cost of fuel was a significant and volatile part of the utilities' expenses. The clause provided a method for ensuring that utilities could recover fluctuating costs quickly. See *id.*; Order No. 13452, issued in Docket No. 820001-EU-A, on June 22, 1984.

Construction of a new plant can not be characterized as an unpredictable event. It is a predictable event, as evidenced by inclusion of new plants in the utilities' ten-year site plans, submitted annually, and the requirement to solicit bids for construction of new plants in Rule 25-22.082, Florida Administrative Code. Because the event of construction is predictable, the utility is able to anticipate when it will incur costs. Furthermore, much of the planning process is under the control of the utility, unlike costs of fuel or changing environmental regulations for existing plants which increase the costs upon which base rates are set. Thus, the rationale behind the clauses does not apply in the case of planned construction of a new power plant.

Approval of Gulf's petition would set a precedent for recovery, through the ECRC, of a class of expenses that is quite large. Because many of the components of a new plant must meet environmental requirements, a substantial percentage of the cost of a new plant could be recovered through the ECRC. For example, it

could be argued that the cost of selective catalytic reduction could be recovered through the ECRC. Tampa Electric Company estimates the cost of the Gannon repowering will be over \$600 million. Furthermore, some environmental requirements are inextricably bound with construction requirements, which makes it very difficult, if not impossible, to distinguish between environmental compliance costs and construction costs.

Finally, even if Gulf is not authorized to recover the cost of the Smith Plan through the ECRC, it can include the costs in its monthly earnings surveillance reports and, if prudent, recover the costs through base rates. This is the method that has always been used to recover costs associated with construction of new power plants.

For the reasons discussed above, we find that the cost of the Smith Plan is not recoverable through the ECRC.

Based on the foregoing, it is hereby

ORDERED by the Florida Public Service Commission that the Petition of Gulf Power Company for Approval of Cost Recovery for New Environmental Programs is granted for the costs associated with monitoring consumptive water use, as discussed in Part II of this Order. It is further

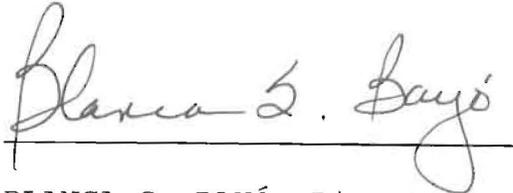
ORDERED that the Petition of Gulf Power Company for Approval of Cost Recovery for New Environmental Programs is denied for costs associated with the Smith Unit 3 wetland mitigation plan, as discussed in Part III of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 3rd
day of November, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MKS

DISSENT

Commissioner Baez dissented from the portion of this Order that ruled Gulf Power Company could not recover, through the ECRC, the costs of the wetland mitigation plan associated with the new Smith Unit 3 plant.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests

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for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 24, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.