

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 110138-EI

In the Matter of:

PETITION FOR INCREASE IN RATES  
BY GULF POWER COMPANY.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 5

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

DATE: Tuesday, August 23, 2011

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

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FLORIDA PUBLIC SERVICE COMMISSION

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

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**CHAIRMAN GRAHAM:** Item Number 5.

**MR. MOURING:** Commissioners, I'm Curt Mouring with Commission Staff.

Item 5 is Staff's interim recommendation regarding Gulf Power Company's petition for an increase in base rates. Staff would also like to note that Jon Moyle from FIPUG is here today and has asked to speak, and Staff would like to remind the Commission that at this time participation is at the discretion of the Commission. And Staff is prepared to answer any questions the Commission may have.

**CHAIRMAN GRAHAM:** Thank you, sir.

Mr. Moyle.

**MR. MOYLE:** Thank you, Mr. Chairman.

First of all, I appreciate the chance to, to address you today. You guys decide a lot of issues, a lot of things come before you, but not every day does something valued at nearly \$40 million, a rate increase come before you, and that's what you have before you today in this interim rate increase is \$38.5 million, which is just short of half of the amount that Gulf is requesting in their, in their rate case. And on behalf of the Florida Industrial Power Users Group, large users

1 of electricity, we respectfully would oppose the effort  
2 to increase rates by \$38 million today, and suggest that  
3 you can consider these issues later when you have  
4 evidence before you, when you have witnesses, when you  
5 have testimony.

6 And the two arguments that FIPUG would make  
7 today admittedly are legal arguments, but I think that  
8 there's some policy that needs to be considered with  
9 respect to the first one, which is do you have to, to do  
10 this? Is this something that you have to do? And I  
11 have not been around all that long, I'm starting to get  
12 a little long in the tooth, but in talking to some  
13 people about these interim rate increases, I've kind of  
14 heard, well, it's a, it's a cookbook, it's a recipe, and  
15 you really don't have a lot of discretion. But in my  
16 reading of the statute, while I will concede that it is  
17 a cookbook, if you decide to bake a cake, you don't have  
18 to make a decision to bake the cake, if you will. And  
19 the support for that is, is two-fold.

20 The statute that deals with interim rates,  
21 366.071, the very first sentence says, and I quote, the  
22 Commission may, during any proceeding for a change of  
23 rates, upon its own motion, or upon petition from any  
24 party, or by a tariff filing of a public utility,  
25 authorize the collection of interim rates until the

1 effective date of the final order.

2 The use of the word "may" there is  
3 significant. The Legislature uses "shall" in other  
4 portions of this statute. Again, if you decide to move  
5 forward and bake the cake. But the first sentence says  
6 "may," which we would argue provides discretion to the  
7 Commission as to is now the right time to do this.

8 This argument, we would argue, is bolstered by  
9 a reported case from the Florida Supreme Court that  
10 looks at this statute. And I would point out *Citizens*  
11 *of the State of Florida vs. Public Service Commission*,  
12 435 So.2d 784. And in this case, OPC brought a matter  
13 to the Florida Supreme Court, and they had occasion to  
14 look at the statute. And I found one sentence  
15 particularly interesting and enlightening, and it kind  
16 of goes along with the assumption that the Supreme Court  
17 is pretty judicious with their use of words and is not  
18 going to kind of put throwaway words in sentences.

19 But after reviewing the statute, the Supreme  
20 Court said in this case, quote, the statute requires a  
21 grant of interim relief, if one is to be made, within  
22 60 days of the filing for such relief. So the use of  
23 the words "if one is to be made," we would argue clearly  
24 recognizes that there's discretion with this Commission  
25 as to whether to act or not.

1           With that, with that legal argument, we would  
2           urge that now is not the, not the time to act. And this  
3           case is still relatively young; it was filed in July.  
4           Now it's August. You all have public hearings  
5           scheduled, I think, in September where you're going to  
6           go out to Pensacola, to Fort Walton, and you're going to  
7           hear from affected customers, and we would argue that  
8           that's part of what is needed for you all to make  
9           decisions about property rights, about people's money,  
10          and, you know, what's before you today is an effort to  
11          increase rates by, by 8 percent.

12                 There's a, there's another component in there  
13          that -- and there's a lot of case law on this, but I  
14          think things have changed dramatically. This cookbook  
15          recipe does tag certain things. But one of the points  
16          that I do feel compelled to bring out as to why we would  
17          argue you should exercise your discretion not to move  
18          forward today is that, you know, they're asking for a  
19          return on equity of 10.75 percent, which is a low end of  
20          a previously authorized range, but that is a very, very  
21          high return on equity in today's market. You know,  
22          interest rates are very low. This Commission --  
23          Commissioner Edgar and other Commissioners did not see  
24          fit to award Florida Power & Light or Progress Energy a  
25          return on equity that high. And we would urge you not

1 to move forward today with your discretion, in part  
2 because of that, but also because, you know, you do not  
3 have the first shred of evidence before you.

4 And that would lead me to my, to my next  
5 argument, which is one of fundamental due process.  
6 Article 1, Section 9, provides that before life,  
7 liberty, or property can be taken, you have to, you have  
8 to have due process. There's a Florida Supreme Court  
9 case, *Citizens of the State of Florida vs. Mayo* found at  
10 333 So.2d 1. It stands for the proposition -- it has a  
11 lot of things in it, but one that I'm going to call to  
12 your attention says, "Public policy of the state favors  
13 traditional due process rights with regard to permanent  
14 or interim rate hearings." So I think there's  
15 recognition that minimum due process rights be afforded.

16 In doing some research and in looking back,  
17 the order that was referred to in the case where I,  
18 where I just cited that said that there's some  
19 discretion involved -- let me strike that.

20 The due process requirement, in past orders  
21 that we've reviewed there appears that the Commission  
22 has done something more than just accept filings, that  
23 there's been some public hearing, there's been some  
24 testimony. You've had some opportunity for minimum due  
25 process, cross-examination, the ability to contest. In

1 looking at your docket sheet for this case, it doesn't  
2 appear that there's been any opportunity for  
3 Intervenor, my client, others to contest, to challenge,  
4 to cross-exam anybody. And the, you know, while there's  
5 been lots of filings made and Staff has looked at them,  
6 I mean, respectfully, it's your task and your job,  
7 particularly when consumers are being asked to part with  
8 their hard earned money, that you all consider the facts  
9 and weigh them and make a judgment.

10 The analysis that you're being asked to  
11 consider today, the Staff analysis, and Staff does a  
12 good job, but, you know, it's pretty summarily crafted.  
13 I mean, it's four sentences that sets forth the  
14 recommendation that you grant the interim rate increase  
15 of nearly, nearly \$40 million.

16 So, so we would oppose it on two principle  
17 grounds. One, we don't think that the due process  
18 rights have been afforded. And if that argument is  
19 accepted, I think there's probably an opportunity to at  
20 least have a hearing where the people who have put forth  
21 things raise their right hand and say, yes, this is true  
22 and accurate and you're able to ask them some questions.  
23 Because as we sit here today, there's nothing in the  
24 record that's been admitted into evidence either in the  
25 form of testimony or documents that support an award of

1       nearly \$40 million in interim rates.

2               And, secondly, we would ask that you exercise  
3       your discretion and take a pass on acting on this today.  
4       This case is set for hearing in the middle of December.  
5       You know, it's four months or so away. Gulf has been  
6       out, you know, for nearly, nearly ten years. So I'm not  
7       sure that four months is going to work a severe economic  
8       hardship on them. And for that reason, we would ask  
9       that you deny Staff's recommendation and not provide the  
10      relief requested today. Thank you. And I'd be happy to  
11      answer any questions.

12              **CHAIRMAN GRAHAM:** Mr. McGlothlin.

13              **MR. MCGLOTHLIN:** Thank you, Mr. Chairman.

14              I understand that typically when you consider  
15      a request for interim measures, you want to limit  
16      discussion. I promise to be very brief.

17              Our office is not here to oppose the Staff  
18      recommendation today, and I want to take a moment or two  
19      to explain what that says and what it doesn't say about  
20      our position in the case.

21              It says only that we acknowledge that the  
22      Legislature has made this mechanism available to the  
23      utility. It says only that we acknowledge that the  
24      utility has made an initial prima facie case. It says  
25      only that we acknowledge Staff appears to us to have

1       adhered to the formula that the Legislature prescribed  
2       in quantifying the amount of an interim increase to be  
3       granted subject to refund pending the disposition of the  
4       final case.

5               It's -- our position says nothing about the  
6       position we will ultimately take with respect to either  
7       the interim increase or the request for permanent rate  
8       relief once the evidence has been heard.

9               And I want to mention that to that end our  
10      office has engaged consultants to assist us in this  
11      case. We have served more than 150 interrogatories at  
12      this point and a like number of requests to produce  
13      documents, and we will participate fully in the  
14      evaluation of the utility's request.

15              But I want to step back and also make a  
16      different point, and it involves the bigger picture and  
17      a longer view. The same statute that makes available to  
18      a utility the mechanism for requesting an interim  
19      increase in rates also makes available to the Commission  
20      and parties the opportunity to request a, that the  
21      Commission subject revenues that may be in excess of the  
22      top of the authorized range subject to refund in a  
23      proceeding to reduce rates. This Commission has  
24      jurisdiction over numerous utilities. Economic  
25      circumstances change, utility earnings change, and it's

1 quite possible and perhaps even probable that at some  
2 point along the road either this utility or another  
3 utility that you regulate will be in a posture of  
4 earning more than the authorized range.

5 And in that context, we want to make this  
6 point: The utilities can't have it both ways. If they  
7 want to claim the ability to have a quick resolution on  
8 a prima facie showing when they need revenues, it  
9 follows that the statute has to apply equally to the  
10 situation in which a utility is experiencing  
11 overearnings and our office files a request to reduce  
12 rates and, in conjunction with that, asks you to subject  
13 overearnings subject to refund. What is sauce for the  
14 goose has to be sauce for the gander, and we ask you to  
15 keep that in mind as you consider this request today.

16 **CHAIRMAN GRAHAM:** Thank you, sir.

17 Mr. Stone.

18 **MR. STONE:** Thank you, Mr. Chairman.

19 First, I would like to respond to  
20 Mr. McGlothlin by stating that I wish we were in the  
21 position of overearnings. As evidenced by our  
22 surveillance report, Gulf is not in that situation and  
23 that is not an issue that's before the Commission at  
24 this time.

25 It's, it's important to us to recognize, as

1 Public Counsel has recognized, that due process is  
2 afforded all the customers of Gulf Power Company through  
3 the mechanism that the Legislature has enacted through  
4 Chapter 366, Section 366.071. And that is that while  
5 it's ordinary for the Commission to consider an interim  
6 request based on the evidence presented without hearing  
7 from the parties and without a hearing and enter an  
8 order on that as evidenced by your own rule, the  
9 ultimate ruling comes after a hearing at the conclusion  
10 of the case, and that is subject to appeal by the  
11 citizens or the customers.

12 The only party that can be aggrieved by an  
13 adverse decision today that has no effective remedy at  
14 law is Gulf Power Company. If the Commission were to  
15 decide not to follow the law, there's no recourse,  
16 effective recourse for us. Because by the time that we  
17 could overturn such a decision, first of all, that's  
18 more revenues that cannot be collected and held subject  
19 to refund. We can't go back. And the only way we can,  
20 can have any chance of making up for this shortfall in  
21 our earnings is to have an interim rate increase. The  
22 Legislature has recognized that.

23 There are essentially two mechanisms for  
24 interim, and I think most of Mr. Moyle's arguments  
25 direct at the other aspect of interim, which is under

1 the file and suspend law, which we have not invoked in  
2 this case. We have followed the statute to the "T."  
3 We've established our prima facie case with sworn  
4 evidence. Our testimony was submitted under oath by  
5 affidavit. And we're before the Commission today asking  
6 that you approve the Staff recommendation.

7 **CHAIRMAN GRAHAM:** Thank you, sir.

8 Commissioner, Commissioner Brisé.

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

10 And I pulled this item off so that we could  
11 have a little bit of conversation as to what the statute  
12 allows for and how Staff arrived at its recommendation,  
13 particularly on Issue 1 and Issue 6. So if we could  
14 talk about those, and in that conversation include  
15 conversation about due process, and I believe due  
16 process is a two-way street. And so if we can have  
17 comments from Staff on, on those issues.

18 **MS. KLANCKE:** Thank you, Commissioner.

19 Staff would like the opportunity to address  
20 each of FIPUG's concerns in turn briefly before we get  
21 to the conversation with respect to Issue 1.

22 With regard to the Commission's discretion,  
23 the Staff has not asserted by any means that this is a  
24 cookie-cutter analysis. However, as the Supreme Court  
25 recognized in the case quoted by FIPUG, in particular

1       *Citizens vs. the Florida Public Service Commission*, they  
2 put in context the amount of discretion that's allowed  
3 pursuant to the fairly regimented statute. In  
4 particular, on page 786 they specified interim awards  
5 attempt to make a utility whole during the pendency of a  
6 proceeding without the interjection of any opinion  
7 testimony. The statute further removes most of the  
8 Commission's discretion in such areas as cost of  
9 capital, cost of equity capital. Interim relief is  
10 prescribed by a formula that locks the authorized rate  
11 of return to the previously authorized -- the rate of  
12 return to the previously authorized rate of return, and  
13 mandates that such -- and any adjustment be made  
14 consistent with those authorized in the last rate case.

15               However, it should be noted that your  
16 discretion is not nonexistent should, for example, you  
17 believe that the utility has not established a prima  
18 facie case that is earning outside of its range of  
19 return. That is not the case here before you. Staff  
20 has no indicia in this case that the utility is, has  
21 failed to meet its prima facie burden.

22               With respect to the due process concerns, we  
23 are sensitive to that, as you could imagine. However,  
24 as the Supreme Court recognized in that case, and as  
25 Staff included in their recommendation, we have certain

1       protections with respect to due process.

2               First of all, the intent of the statute is to  
3       make whole during the pendency of this process.

4       However, we have scheduled a full administrative hearing  
5       to be held on December 12th through 16th of this year.

6       At that time, all of the figures and information  
7       provided that we are now approving will be analyzed and  
8       any inaccuracies will be dealt with at that time. FIPUG  
9       will also be able to cross-examine witnesses with  
10      respect to these revenue figures. In addition, all  
11      revenues derived from the interim award are collected  
12      subject to refund. In the instant case, it is a  
13      corporate undertaking that secures it. And, thus, in  
14      the event that in the hearing inaccuracies are found,  
15      which Staff has heretofore not found any, we would make  
16      that refund -- we would make those monies subject to  
17      refund with interest as specified in the statute.

18              With respect to Issue 1 --

19              **CHAIRMAN GRAHAM:** I think she's getting to  
20      your question now.

21              **MS. KLANCKE:** With respect to Issue 1, and  
22      I'll let Mr. Mouring, who is a representative of Staff  
23      and listed on this item, elucidate further.

24              Just to give you a legal perspective on how we  
25      derived this opinion, we believe that, as I stated

1 previously, the movant, here the utility, has the burden  
2 of proving a prima facie case that they're earning  
3 outside of the range of reasonableness, their reasonable  
4 rate of return based on their most recent rate case,  
5 which was in 1992. Thus, in the instant case we believe  
6 that burden has been met and that's reflected in Issue  
7 1. But I'll let Curt elucidate further.

8 **MR. MOURING:** I'm sorry. Your question is why  
9 for Issue 1, why is it being suspended?

10 **COMMISSIONER BRISÉ:** Right.

11 **MR. MOURING:** There's just a tremendous amount  
12 of consideration and analysis that needs to go into  
13 this. And 60 days, for 60 days to process this case is  
14 just, just not enough time. But the interim rates  
15 allow, allow the utility to collect rates sufficient to  
16 earn at the minimum of the range of return on the equity  
17 authorized in the last case, if that clarifies.

18 **MS. KLANCKE:** Just to clarify, it was 2002.  
19 Regardless, it was a long time ago.

20 **COMMISSIONER BRISÉ:** With respect to Issue 6,  
21 if we would turn to Issue 6. And in essence, there  
22 seems to be some sort of justification for the actual  
23 dollar amount and the percentage. So if you would talk  
24 about how we arrived there.

25 **MR. MOURING:** Yes. This is -- I'm sorry.

1 Yes. This is based off of the prima facie showing for  
2 the rate base and the net operating income, as well as  
3 the net operating income multiplier which is discussed  
4 in Issue 5. This is just a cut and dried calculation  
5 for the most part that gets Staff to the number  
6 reflected in this issue, the \$38 million interim rate  
7 increase.

8 COMMISSIONER BRISÉ: All right. Thank you.

9 MR. MOYLE: May I be afforded a brief  
10 rebuttal?

11 CHAIRMAN GRAHAM: Hold on a second.  
12 Commissioner Edgar.

13 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

14 I had wanted -- and I thank Commissioner Brisé  
15 for helping to tee this item up for us. You had asked  
16 specifically about Issues 1 and 6, and I was going to  
17 ask also that our Staff speak to Issue 3, which  
18 Mr. Mouring may have done, but I would draw attention to  
19 that as well. That for Issue 3, the ROE that is  
20 requested and in the Staff recommendation of 10.75, that  
21 is based upon -- I guess my question, to make sure I  
22 understand -- that is based upon the minimum ROE from  
23 the most recent rate case?

24 MR. MOURING: That is correct.

25 COMMISSIONER EDGAR: And using the minimum ROE

1 from the most recent base -- most recent rate case, is  
2 that based upon statute or based upon precedent?

3 **MR. MOURING:** That's the statute,  
4 Commissioner.

5 **COMMISSIONER EDGAR:** Thank you.

6 **CHAIRMAN GRAHAM:** Commissioner Brisé.

7 **COMMISSIONER BRISÉ:** Yes, Mr. Chairman.  
8 Sorry. I just wanted to know if we are in a posture to  
9 entertain a motion or are there other things that you  
10 want to do prior to that?

11 **CHAIRMAN GRAHAM:** I was going to entertain  
12 Mr. Moyle's rebuttal.

13 **COMMISSIONER BRISÉ:** Sure. That's fine.

14 **MR. MOYLE:** Thank you. And not to get overly  
15 lawyerly, but being handicapped with a law degree, I  
16 feel compelled to make the point that, you know, the  
17 case law is pretty clear both in 120 and in opinions  
18 that your decisions have to be supported by competent,  
19 substantial evidence. And I think we have a little bit  
20 of a disagreement as to whether there is any competent  
21 substantial evidence before you today. There have been  
22 filings -- even sworn filings, you know, are not  
23 evidence. They don't come in sort of magically. They  
24 have to -- you have to have the declarant in, in court.  
25 Otherwise, it's hearsay.

1           So respectfully I would suggest that you don't  
2 have any competent substantial evidence that hasn't been  
3 provided. And it appears to me that the previous  
4 practice with respect to these interims has been some  
5 sort of a limited hearing or proceeding where you have  
6 the ability to at least have some of these, quote,  
7 unquote, facts tested a little bit.

8           And, and I did -- there's a *United Telephone*  
9 *Company vs. Mann* case that's found, it's a Supreme Court  
10 case that was found at 403 So.2d 962. And it's an old  
11 case, and I went -- your Staff was very helpful  
12 yesterday and helped pull an order that was issued on  
13 May 1st, 1979, in an interim situation there. And I  
14 was -- it kind of was interesting that the panel at that  
15 time that considered an interim request for a phone  
16 increase, Mr. Mayo, Mr. Gunter, Mr. Cresse, Mr. Marks,  
17 and Mr. Mann, who I think some of the buildings are  
18 named after some of these folks today, but in the actual  
19 order that the Commission entered, it referenced that  
20 they had a public hearing. It looked like a public  
21 hearing was held on April 11th, 1979, in Tallahassee,  
22 you know, for the purposes of determining, and it went  
23 on. But it looked clearly to me that there is some  
24 opportunity, again, probably to meet minimum due process  
25 standards, you know, to, to question some of the, the

1 facts that are, that are put forth.

2 So we would urge that you consider a limited  
3 type proceeding where this might be tested further, or  
4 exercise your discretion and say, well, you know, we've  
5 got these hearings coming up around the Panhandle, let's  
6 hear what, what we have to say -- what they have to say.  
7 The hearing is coming up in December, it's not a whole  
8 lot longer, and take a pass on ruling on this issue  
9 today. Thank you.

10 **CHAIRMAN GRAHAM:** Thank you, sir. .

11 Commissioner Brisé.

12 Commissioner Balbis.

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

14 I just have a question for Staff in response  
15 to Mr. Moyle's comments. The information that you  
16 reviewed in order to determine the interim rates were  
17 appropriate, is that the same type of information that's  
18 reviewed for similar requests?

19 **MR. MOURING:** Yes. I'm not sure exactly what  
20 your question is.

21 **COMMISSIONER BALBIS:** Well, my question is  
22 really, deals with precedence. And, you know, Mr. Moyle  
23 brought up cases in the past where the Commission has  
24 maybe or maybe not exercised its authority in different  
25 ways. But my question is more in the, I don't want to

1 say recent history, but in previous times when a utility  
2 comes in for a rate increase or an interim rate  
3 increase, do we review the same types of information and  
4 all the findings, and, based on your review, we're  
5 consistent with those of similar cases?

6 **MR. MOURING:** Yes, Commissioner.

7 **MR. SLEMKEWICZ:** And John Slemkewicz with  
8 staff. You know, we have, you know, designated, you  
9 know, a specific set of MFRs for the utility to file  
10 that does address the interim increase, and it's the  
11 same data that we receive since probably about 1980.  
12 And, and that's what we review.

13 **COMMISSIONER BALBIS:** Okay. Thank you. And,  
14 you know, my concern is that, you know, when a utility  
15 comes in for a rate increase and if they do not have the  
16 opportunity to get an interim amount, that we have some  
17 sort of regulatory lag where the utility is, is harmed  
18 if, by the time, you know, ten, 11 months, a year goes  
19 by before they can receive any appropriate amount. And,  
20 Mr. Moyle, as far as your request for a limited  
21 proceeding, one thing I've found on the eight months  
22 that I've been here is, you know, with an upcoming  
23 process starting in December, that's probably the  
24 soonest we could start anything anyways. So I'm not  
25 that concerned with, with having an ability to do

1 something quicker than December.

2 But so I really focused on Issue 8, which is  
3 what is the appropriate security? And to make sure that  
4 those funds are protected so that when we go through the  
5 evidentiary process, that if there's anything that's  
6 found that is, that was not appropriate, that it can be  
7 refunded to the customers quickly. So with that, I'll  
8 turn it over to Commissioner Brisé, who I think was  
9 moving towards a motion.

10 **CHAIRMAN GRAHAM:** Commissioner Brown.

11 **COMMISSIONER BROWN:** Thank you. Sorry for  
12 delaying the motion.

13 Ms. Klancke, I would like to hear some of your  
14 comments about, or your response to FIPUG's assertion  
15 about a limited proceeding and the previous cases that  
16 he referenced, and I just wanted to hear your thoughts.

17 **MS. KLANCKE:** Indeed. With respect to the  
18 case cited by FIPUG, as stated previously, your  
19 discretion with respect to the statute, though limited,  
20 is not nonexistent, and, in instances where the facts  
21 warranted a proceeding, very limited in scope. That was  
22 very limited in scope. For example, even in the  
23 proceeding cited by FIPUG, interim relief after the  
24 proceeding was granted, however. And the statute does  
25 contemplate an expedited narrow proceeding that has to

1 commence within 60 days, that's by September 6th in this  
2 case, in the event that the facts warrant such a  
3 proceeding; for example, in instances where a prima  
4 facie showing of moving forward, that burden hasn't been  
5 met by the movant. And I just want to remind us that  
6 that is not this case.

7 It does not, it does not sound that FIPUG is  
8 asserting that there are facts in this case that would  
9 warrant such a proceeding, but merely that such a  
10 proceeding could be contemplated. And I would stress  
11 that it is not necessary in the instant case.

12 COMMISSIONER BROWN: Thank you.

13 MS. HELTON: May I throw out one thing, too?  
14 The order that Mr. Moyle cited was a 1979 order. The  
15 statute was first adopted by the Legislature in 1980,  
16 1980. So that order was entered prior to the statute  
17 coming on the books.

18 COMMISSIONER BROWN: Good point.

19 CHAIRMAN GRAHAM: Mr. Stone.

20 MR. STONE: That was the point I was about to  
21 make.

22 CHAIRMAN GRAHAM: Commissioner Brisé.

23 COMMISSIONER BRISÉ: Thank you, Mr. Chairman.

24 I find that the, Gulf Power Company has met  
25 its prima facie requirement in making the request for

1 interim rates. And with the fact that we will have a  
2 full hearing coming up in December, I think there will  
3 be adequate time within that time period for all the  
4 Intervenors and all the interested parties to review  
5 information as, in preparation for the hearings. So,  
6 therefore, I move the Staff recommendation,  
7 understanding that whatever the increase is is subject  
8 to refund so that if we find at some point that, that  
9 it, the increase was not merited, there will be -- I  
10 mean, how do you call that -- consumers will be fully  
11 restituted for the amount that, that they're required to  
12 pay at this point. So I think that at this point I'm  
13 comfortable with Staff's recommendation and I move Staff  
14 recommendation on all issues.

15 **CHAIRMAN GRAHAM:** It's been moved and  
16 seconded, Staff recommendation on Item Number 5. Any  
17 further discussion? Seeing none, all in favor, say aye.

18 (Ayes unanimous.)

19 Any opposed?

20 (No response.)

21 By your action, you've approved Staff  
22 recommendation on Item Number 5.

23 **MR. MOYLE:** Again, we appreciate the chance to  
24 bring this before you. Thank you.

25 (Agenda item concluded.)

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FLORIDA PUBLIC SERVICE COMMISSION


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

4 I, LINDA BOLES, RPR, CRR, 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 attorneys or counsel connected with the action, nor am I  
17 financially interested in the action.

18 DATED THIS 26<sup>th</sup> day of August  
19 2011.

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LINDA BOLES, RPR, CRR  
FPSC Official Commission Reporter  
(850) 413-6734