Eric Fryson

From: Mary Davis [MD@beggslane.com]
Sent: Wednesday, April 18, 2012 12:50 PM
To: Filings@psc.state.fl.us
Cc: Caroline Klancke; chris.thompson.2@tyndall.af.mil; sayler.erik@leg.state.fl.us; kelly.jr@leg.state.fl.us; jmoyle@kagmlaw.com; mcglothlin.joseph@leg.state.fl.us; Karen.white@tyndall.af.mil; Keino Young; Martha Barrera; schef@gbwlegal.com; sdriteno@southernco.com; merchant.tricia@leg.state.fl.us; vkaufman@kagmlaw.com
Subject: e-filing Docket 110138-EI
Attachments: Gulf Power Co Motion for Reconsideration.pdf; Gulf Power Co Request for Oral Argument.pdf

a. Person responsible for this electronic filing:

Steven R. Griffin
Beggs & Lane
P.O. Box 12950
501 Commendencia Street
Pensacola, FL 32576-2950
(850)432-2451
srg@beggslane.com

b. Docket 110138-EI - In re: Petition for increase in rates by Gulf Power Company

c. Documents being filed on behalf of Gulf Power Company

d. Gulf Power Company's Motion for Reconsideration consists of 30 pages and Request for Oral Argument consists of 3 pages

e. The documents attached for electronic filing are (1) Gulf Power Company's Motion for Reconsideration and (2) Request for Oral Argument

Mary E. Davis
Legal Assistant to Jeffrey A. Stone,
Russell A. Badders and Steven R. Griffin
Beggs & Lane
501 Commendencia Street
Pensacola, FL 32502
(850)432-2451
Fax (850)469-3331
md@beggslane.com

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for increase in rates by Gulf Power Company.	Docket No. 110138-EI Dated: April 18, 2012

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GULF POWER COMPANY'S MOTION FOR RECONSIDERATION

Gulf Power Company ("Gulf Power," "Gulf," or "the Company"), by and through its undersigned counsel, and pursuant to Rule 25-22.060, Florida Administrative Code, respectfully requests that the Commission reconsider certain aspects of its decision memorialized in Order No. PSC-12-0179-FOF-EI issued on April 3, 2012, and states as follows:

On July 8, 2011, pursuant to the provisions of Chapter 366, Florida Statutes, and Rules 25-6.0425 and 25-6.043, Florida Administrative Code, Gulf Power filed a petition for *inter alia*, an increase in rates based on a projected 2012 test year. The Commission held four days of technical hearings concerning Gulf Power's request, concluding on December 15, 2011.

On February 15, 2012, the Commission Staff issued its recommendation on Gulf's request. While agreeing with much of Gulf's request, Staff recommended certain adjustments that would reduce the amount of Gulf's 2012 rate increase. The Commission considered Staff's recommendation at a special agenda conference held on February 27, 2012, made adjustments to that recommendation, and ultimately granted Gulf a base rate increase of approximately $64.1 million effective with electric bills based on meter readings scheduled to occur on and after April 11, 2012.

By this motion, Gulf Power seeks reconsideration of the Commission's decision with regard to Issue 24, but only insofar as it excludes from rate base as Property Held for Future Use[1]

[1] In past decisions, it appears that the terms Plant Held for Future Use and Property Held for Future Use have been used interchangeably. For purposes of this motion, Gulf's use of the acronym PHFU should be interpreted to encompass both terms.

("PHFU") a *portion* of the total costs Gulf previously identified as being associated with the North Escambia site. As described in greater detail below, Gulf believes that mistakes of facts and law warrant reconsideration by the Commission of this limited point. In the rate case filing, Gulf sought to include the Company's total investment associated with the North Escambia site of $26,751,000 ($27,687,441 system) in rate base as PHFU. For purposes of this motion for reconsideration, Gulf is seeking reconsideration of only a portion of the costs associated with the North Escambia site totaling $22,674,000 ($23,467,543 system).[2] The portion of Gulf's investment in the North Escambia site which Gulf is seeking through this motion is limited to the types of costs associated with prospective power plant sites that have historically and consistently been allowed in rate base as PHFU --in this case land, land acquisition and site investigation costs.

To be clear, Gulf's limited request for reconsideration voluntarily excludes a portion of the costs it incurred as part of its analysis of a potential nuclear project on the North Escambia site. The vast majority of the costs Gulf has voluntarily excluded from this motion are carrying costs accrued through December 2011 on the incurred investment Gulf believes fits the definition of "site selection costs" as set forth in Rule 25-6.0423, Florida Administrative Code (the "Nuclear Cost Recovery Rule"). These accrued carrying costs were the subject of the legal issue raised and decided as Issue 1, which Gulf is not seeking to address through this motion. In resolving Issue 1, the Commission concluded that a determination of need is a condition precedent to the accrual of carrying costs under the Nuclear Cost Recovery Rule and its enabling statute, section 366.93, Florida Statutes. Although Gulf does not agree with the Commission's

[2] The limited amount requested through this motion represents the sum of the land costs, other site acquisition costs and site investigation costs associated with the North Escambia site which are identified in the first three lines set forth in Table 4 on page 26 of Order No. PSC-12-0179-FOF-EI. The remaining costs set forth in Table 4 are excluded from this request.

conclusion on Issue 1, Gulf is not asking the Commission to reconsider that aspect of its final order. However, the subject of this motion, Issue 24, does not involve the Nuclear Cost Recovery Rule or its enabling statute. Issue 24 instead addresses whether costs associated with the North Escambia site should be included in Gulf's rate base as PHFU under the Commission's traditional ratemaking authority. Other than the carrying costs that were challenged in Issue 1, there never was a dispute in this case regarding the Commission's legal authority to authorize rate base treatment for the land, site acquisition and site investigation costs related to the North Escambia site as a prospective power plant site.[3] As detailed below, under the Commission's traditional ratemaking authority, a determination of need has never been, and should not be, a condition precedent to the inclusion of a prospective power plant site in rate base as PHFU.

Gulf believes that the Commission mistakenly imposed a new requirement for cost recovery of plant investment. A determination of need is neither a requirement in the statutes, nor is it a prerequisite to recovery of investment in land through base rates as PHFU. Even further, if this decision is allowed to stand, it will be inconsistent with more than forty-five years of Commission precedent. Clearly, this constitutes a mistake of fact, law and policy. Gulf believes that the misguided focus in this case on the absence of a prior determination of need led to an incomplete and inadequate consideration of the substantial body of evidence presented by Gulf regarding the importance of the North Escambia site for future generation planning. This substantial body of evidence demonstrates that Gulf's investigation led to the acquisition of the North Escambia site as a suitable site for future generation capacity. The value of the North Escambia site to Gulf and its customers stems from its location in the western portion of Gulf's

[3] At the Prehearing Conference in this case, the parties agreed that Issue 1 was limited to the legal authority for the accrual of carrying costs, and that there was no dispute regarding the Commission's legal authority to authorize rate base treatment for other (non-carrying) costs related to the North Escambia site. [Prehearing Conference, Tr. 15-16; 20-22]

service area and its status as the sole site in Northwest Florida suitable for nuclear generation. Acquisition of the property in advance of the need for any capacity that may be built on the site constitutes prudent planning to meet Gulf's future resource needs and is in the best interests of Gulf's customers. Therefore, Gulf seeks reconsideration of the Commission's decision in Issue 24 and the Commission's disallowance of costs associated with the North Escambia site totaling $22,674,000 ($23,467,543 system).

I. STANDARD FOR RECONSIDERATION

The Commission has recited the following standard for reconsideration:

> The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See, Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So.2d 96 (Fla. 3d DCA 1959), citing State ex.rel. Jaytex Realty Co. v. Green, 105 So.2d 817 (Fla. 1st DCA 1958).

In Re: Petition for Rate Increase by Tampa Electric Company, 2009 WL 2589104 at *6; (Docket No. 080317, Order No. PSC-09-0571-FOF-EI, August 21, 2009).

In addition, the Commission has granted reconsideration in numerous instances to correct mistakes or errors made in an order or to follow precedent.[4] Gulf seeks reconsideration to correct several mistaken conclusions underlying the Commission's ultimate decision regarding the exclusion of the North Escambia site from PHFU in rate base in Issue 24.

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[4] In Re: Conservation Cost Recovery Clause, Docket No. 950002-EG, Order No. PSC-95-0579-FOF-EG, May 9, 1995 ("This Commission has the power to correct final orders where a mistake has occurred, particularly where that mistake involves rates...."); In re: Application of Utilities, Inc. of Florida for amendment of Certificate No. 383-W in Lake County, Docket No. 890335-WU, Order No. 22303, December 12, 1989 (Order corrected to cure a mistake); In re: Investigation into the effect of 1986 Federal Tax Reform for 1988, In re: Investigation into the imposition of a penalty for failure to comply with the provisions of Rule 25-14.003(4), F.A.C. INDIANTOWN GAS COMPANY, Docket Nos. 871206-PU; 890430-PU; Order No. 21963, September 28, 1989 (Order corrected to ensure consistency with prior precedent)

For the reasons set forth in detail below, Gulf Power respectfully submits that the Commission overlooked or failed to consider important issues of law and fact in determining that costs associated with the North Escambia site were inappropriate for inclusion in PHFU. In particular, the Commission failed to consider that its decision to effectively require a determination of need as a condition of allowing cost recovery for a future generating plant site is an unprecedented departure from past Commission practice. Need determinations have historically and more appropriately been tied to the actual imminent construction of a particular type and size of generation capacity on a specific site within a specific time frame. It is unprecedented for the Commission to require a determination of need as a prerequisite for including future generating plant sites in PHFU. The future generating sites addressed in PHFU are unlike those in need determinations in that the type, size and timing of the future generating plant is not known, but the utility has shown that the need to secure one or more potential generating sites is reasonable and prudent for the site itself. Thus, the inappropriate focus on the absence of a prior determination of need led the Commission to overlook or fail to fully consider uncontested evidence showing that the current acquisition of the North Escambia site is in the best long term interests of Gulf's customers. In addition, in reaching its decision not to allow the North Escambia site investment in rate base as PHFU, the Commission made several mistakes in its underlying conclusions that should be reconsidered.

II. THE NORTH ESCAMBIA SITE MEETS THE REQUIREMENTS FOR INCLUSION IN PHFU AND, IN EXCLUDING THE NORTH ESCAMBIA SITE FROM PHFU, THE COMMISSION MADE MISTAKES OF LAW AND FACT IN FAILING TO CONSIDER ITS WELL ESTABLISHED PRECEDENT REGARDING PHFU.

Decisions of administrative agencies such as the Commission are subject to the doctrine of stare decisis.[5] Simply stated, administrative agencies are bound to follow their precedent. Indeed, the Administrative Procedure Act makes deviation from prior agency policy or practice without explanation a basis for judicial review and remand.[6]

Staff's recommendation concerning Issue 24, and the Commission's decision approving that recommendation at the special agenda conference on February 27, 2012, were premised primarily on the fact that Gulf Power Company had not sought or received a determination of need for a nuclear generation facility on the North Escambia site. However, as demonstrated below, the Commission overlooked or failed to consider that a need determination has never been a prerequisite to inclusion of property in rate base as PHFU. If not corrected in response to this motion, the Commission's decision creates a new regulatory requirement without the benefit

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[5] Gessler v. Dept. of Business and Pro. Reg, 627 So.2d 501, 504 (Fla. 4th DCA 1993) ("The concept of stare decisis, by treating like cases alike and following decisions rendered previously involving similar circumstances, is a core principle of our system of justice....[W]hile it is apparent that agencies, with their significant policy-making roles, may not be bound to follow prior decisions to the extent the courts are bound by precedent, it is nevertheless apparent that the legislature intends there be a principle of administrative stare decisis in Florida.); Accord: Plante v. Dept of Business & Pro Reg., 716 So.2d 790 (Fla. 4th DCA 1998); Couch v. State, 377 So.2d 32, 33 (Fla. 1st DCA 1979) ("This court has previously applied to administrative proceedings certain well established judicial principles, for example, stare decisis...."); Amos v. Dept of Health and Rehabilitative Services, 444 So.2d 43 (Fla. 1st DCA 1983) ("Persons have the right to locate precedent and have it apply and the right to know the factual basis and policy reasons for agency action.")

[6] Section 120.68(7)(e)(3), Florida Statutes, provides: "The court shall remand a case to the agency for further proceedings consistent with the court's decision or set aside agency action, as appropriate, when it finds that....[T]he agency's exercise of discretion was....inconsistent with officially stated agency policy or a prior agency practice, if deviation therefrom is not explained by the agency."; North Miami General Hospital, Inc. v. D, H.R.S., 355 So.2d 1272, 1278 (Fla. 1st DCA 1978) (Inconsistent results based upon similar facts, without a reasonable explanation violate express provisions of the Administrative Procedure Act); Accord: Amos v. D.H.R.S. 444 So.2d 43 (Fla. 1st DCA 1983). The Commission offered no explanation for its deviation from prior precedent in this case.

of statutory changes or rulemaking and without ever considering the practical or policy ramifications of such a change. For the reasons discussed below, Gulf asserts that it is not good regulatory policy to require a prior need determination proceeding as a prerequisite to allowing new property to be included in rate base as PHFU.[7] Staff also ascribed weight to the fact that Gulf Power had no immediate plans for construction of any generation -- nuclear or otherwise -- at the North Escambia site. This too fails to consider the appropriate standard and the long standing policy of the Commission.

Since at least 1966, the Commission has consistently employed a "reasonableness" standard in determining whether property is eligible for inclusion in PHFU. While considerations have differed from case to case, they have included some, or all, of the following: (1) the need for generation, whether it be imminent or in the reasonably foreseeable future; (2) any unique characteristics of the land at issue, including its location and suitability for one or more distinct types of generation; (3) barriers to acquisition of the land in the future, including increasing acquisition costs and potential for encroachment by residential and commercial development; and (4) the overall circumstances which were prevailing at the time the acquisition decision was made.

In an order dated December 15, 1966, addressing a request for a base rate increase by Florida Power & Light Company ("FP&L"), the Commission found as follows with respect to inclusion of property in PHFU:

> With reference to this item, we believe the better practice is to view each situation on its own merits. Whether the property should be included is a matter of fact depending upon the utility's plans for its use. *In Florida, at least, public utilities cannot, in the exercise of good business judgment, indefinitely postpone the acquisition of property necessary for future expansion. In many instances, a deferral of acquisition of*

[7] Even if a need determination is considered a prerequisite to the accrual of carrying costs as the Commission decided in Issue 1, a need determination is not a prerequisite to the recovery of the cost of the property itself.

> *necessary property would be very costly and imprudent and the management would be subject to criticism for delay. Properties in this category should be subjected to a reasonable test to determine whether it should be included or excluded in a utility's rate base.* If the property was acquired as a result of definite plan for its use, and its use is imminent, then certainly it should be included. In considering the imminence of the property's use it is proper to look at the growth potential of the utility, its expansion plans and the acquisition problems that might become involved at a later date. It is no longer realistic to apply a hard and fast rule to the inclusion or exclusion of property held for future use.

In Re: Florida Power and Light Company, 67 P.U.R.3d 113 at *17 (Docket No. 7759-EU, Order No. 4078, Dec. 15, 1966) (emphasis supplied).

The Commission expounded upon the standard articulated in the FP&L order in a November 30, 1971, order addressing a base rate increase by Tampa Electric Company. In that case, the intervenors argued that the Commission should exclude Tampa Electric's Beacon Key site, a potential coal or nuclear plant site, from inclusion in PHFU. The Commission applied its reasonableness test again, noting that a utility could be found to be imprudent if it failed to provide for long range planning:

> This Commission has long recognized that in Florida, public utilities cannot, in the exercise of good business judgment, indefinitely postpone the acquisitions of property necessary to future expansion. In many instances, a deferral of acquisition of necessary property would be very costly and imprudent and the management would be subject to criticism for delay. *Properties in this category should be subjected to a reasonable test to determine whether it should be included or excluded in the utility's rate base. Until recently, this Commission allowed the inclusion of property held for future use if it were acquired as a result of a definite plan for its use, and its use was imminent.* Since we last considered this matter there has been a growing controversy over the locating of power plants, both nuclear and fossil fuel, which *makes it imperative that we review our policies, practices and procedures in this area.* The Federal Power Commission (FPC), in its Docket No. R-379, Order No. 420 issued January 7, 1971, amended its rule to encourage electrical utilities to acquire land for long-term utility needs. While we have not adopted a similar policy, *we recognize that there is merit in the*

new Federal Power Commission regulation. The Federal agency explained its ruling saying:

> "…. in recent years utilities have experienced numerous problems in acquiring adequate plant sites and related facilities due in a large degree to scarcity of land available for utility needs….
> "[The adopted] accounting changes and comparable rate treatment for the land and land right costs [are] designed to encourage and assist utilities in meeting future long range needs at reasonable costs while at the same time serving the overall public interest in regard to the location and operation of utility functions commensurate with the growing scarcity of land available for utility operations."

The record in this case reveals that Tampa Electric cannot postpone the acquisition of property necessary for future expansion….[T]ampa Electric's witnesses also testified that acquisition of approximately 1500 acres (Beacon Key site) is necessary to provide sufficient area for a coal-fired conventional plant or nuclear plant. The Company also considers the availability of appropriate sites in the future in determining its land acquisition policy. In the Tampa Electric service area in 1967, the date of the Company's acquisition of the property in question, *the record indicates that there was only one site left on tide-water which was suitable for a large conventional or nuclear plant.* This was the Beacon Key Site which was acquired by the Company…. [T]he record shows that immediately upon receiving title to the Beacon Key property, the Company formulated definite plans for its use. In 1967, Stone and Webster prepared three plans for location of (1) a nuclear power plant, (2) the cooling water intake and discharge, and (3) the location of substation sites. Company witnesses moreover testified that invitations for bids for construction were issued in 1967 and quotations were received from several corporations for various components of Beacon Key Unit No. 1. Moreover, Stone and Webster Engineering Corporation made a detailed evaluation of these proposals for Tampa Electric. Stone and Webster also prepared in 1970 five additional plans for construction at Beacon Key. It thus appears that the Company does have definite plans for use of the Beacon Key property.

In addition to the necessity of purchasing property well in advance from an operational standpoint, the Company maintains it is also more economical in the long run to purchase large tracts of land well ahead of the date construction is scheduled to commence. *A delay until the last minute undoubtedly would cause an inflation of market price, because it is known the utility has to have it. This would be adverse to the public interest….*

> [I]t is the conclusion of this Commission that so long as the acquisition of the property in question is considered a responsible and prudent investment and it appears that it will be used for utility purpose in the reasonably near future, in light of the prevailing conditions, such lands should be included in the Company's rate base. In this regard, *failure to provide for the long range planning necessary for adequate and reliable power supply could well be considered an imprudent act and inconsistent with the public interest.* It is our finding, therefore, that the Beacon Key power plant site should be included in the rate base.

In Re: Petition of Tampa Electric Company for an Increase in Rates and Charges and for Approval of a Fair and Reasonable Rate of Return, 71 F.P.S.C. 472; 1971 WL 223862 at *5-7 (Docket No. 70532-EU, Order No. 5278, Nov. 30, 1971) (emphasis supplied).

The following year, the Commission issued an order in a Gulf Power Company base rate proceeding addressing the inclusion of the Caryville generating site in Gulf Power's PHFU. In that order, the Commission held as follows:

> [I]ntervener Department of Defense has urged the elimination of the Caryville property primarily because the Company was '*vague and inconclusive as to the intended use of this property*'....[T]he record in this case reflects that Gulf cannot indefinitely postpone the acquisition of property necessary for future expansion. The Caryville site, acquired in 1964, *is one of few locations in Gulf's service area suitable for steam plant purposes.* It is the conclusion of the Commission that so long as the acquisition of the property in question is considered a prudent and reasonable investment and it appears that it will be used for utility purposes in the reasonably near future, in light of the prevailing conditions, such lands should be included in the Company's rate base. It is our finding therefore that the Caryville Steam Plant site be included in the rate base.

In Re: Petition of Gulf Power Company for Authority to Increase Its Rates and Charges So as to Give Said Utility an Opportunity to Earn a Fair Return on the Value of Its Property Used and Useful in Serving the Public, 72 F.P.S.C. 425; 1972 WL 236569 at *11 (Docket No. 71342-EU, Order No. 5471, June 30, 1972) (emphasis supplied).[8]

[8] Although the Caryville property was acquired by Gulf in 1964, the first time Gulf ever sought an increase in rates after the Caryville purchase was the 1972 rate case in which this order was issued.

In an order issued on September 23, 1981, the Commission considered whether property acquired by Florida Power & Light for nuclear units, the construction of which had subsequently been *cancelled*, should be included in PHFU. In determining that such property qualified for inclusion in PHFU, the Commission observed as follows:

> The balance in the account for property held for future use presently includes amounts related to the rights-of-way acquired for the DeSoto and South Dade generating facilities, the construction of which has been cancelled.
>
> The Company contends that it will require additional generating units in the *1990 to 2000 time frame* [9 to 20 years into the future] based on its forecast of system load growth, principally in the southwest portions of Dade County and along Florida's west coast. Both the South Dade and DeSoto plant sites and associated transmission corridors will be needed and are included in the bulk power supply expansion plans of the Company. *While current plans do not contemplate the construction of nuclear units at these sites, it is evident that, due to the scarcity of environmentally suitable power plant sites, both of these plant sites should be retained for future construction of base load generation.*

In Re: Petition of Florida Power and Light Company for authority to increase its rates and charges, 81 F.P.S.C. 9:240 at 250; 1981 WL 634490 AT *8-9 (Docket No. 810002-EU, Order No. 10306, Sept. 23, 1981) (emphasis supplied).

Finally, in an order dated February 2, 1993, the Commission addressed the issue of whether Tampa Electric Company's Port Manatee plant site was appropriate for inclusion in PHFU. In that order the Commission held as follows:

> Power plant sites in Florida are becoming increasingly more difficult to find, purchase, and permit. Tampa Electric has a *potential* power plant site at Port Manatee. *Utilities purchase power plant sites in advance because the value of the land will generally appreciate at a rate greater than the utility's overall rate of return. If the Commission found that the Port Manatee Site was an imprudent investment and did not allow Tampa Electric to earn a rate of return on the property,* ***Tampa Electric would be encouraged to sell the site now.*** *Tampa Electric would then have to search for, and purchase, another site for a future power plant at much greater cost.* Public Counsel argues that *Tampa Electric has no*

> *current plans for the Port Manatee Plant site.* Staff agrees that, at the current time, the Company has not identified a particular generating unit to be built at the site. *However as discussed before, it will be more difficult to find an alternate plant site in the future. By allowing the Port Manatee Site to remain in rate base, Tampa Electric will already have a viable generating site for future power plants.*

In Re: Application for a rate increase by Tampa Electric Company, 93 F.P.S.C. 2:45 at 77 (Docket No. 920324-EI, Order No. PSC-93-0165-FOF-EI, Feb. 2, 1993) (emphasis supplied).

Each of the foregoing orders vividly illustrates the appropriate considerations in determining whether the property at issue should be included in PHFU. At its core, the question is one of prudence and reasonableness. "Prudence has been defined as 'what a reasonable utility manager would have done in light of conditions and circumstances which were known or reasonably should have been known *at the time the decision was made.*'" In Re: Progress Energy Florida, Inc., 260 P.U.R.4th 306; 2007 WL 2980912 at *2 (Docket No. 060658-EI, Order No. PSC-0700816-FOF-EI, October 10, 2007) (emphasis supplied). Notably, the existence of a need determination -- or a lack thereof -- is mentioned nowhere in this precedent. Any suggestion that such a determination is relevant -- let alone determinative -- to the question of whether the North Escambia site should be included Gulf Power's rate base as PHFU is erroneous and represents an unprecedented departure from this Commission's past practice.

Similarly, as evidenced by the orders cited above, the Commission has repeatedly recognized that it is not necessary for a utility to have an immediate need or "current plan" for the property in order for the property to qualify for inclusion in PHFU. The fact that a site will provide value as a future generation site is sufficient.

The creation of a requirement that there be a determination of need for a power plant before sites for future generating plants can be included in rate base as PHFU inappropriately

and unnecessarily mixes two separate and distinct statutory schemes, therefore resulting in a mistake of law. Section 403.519, Florida Statutes, sets forth the Commission's limited but important role in connection with the "Florida Electrical Power Plant Siting Act" found in sections 403.501-518, Florida Statutes (the "Siting Act"). The Siting Act is primarily a land use permitting statute, not a ratemaking statute. Section 403.519 requires the Commission to make a determination of need for some (not all) power plants that are proposed to be built in Florida before such plants may be approved for permitting by Florida's Governor and Cabinet Officers sitting as the Power Plant Siting Board. A need determination proceeding takes place *after* a utility has acquired property and determined that a specific unit or units must be constructed on that property in order to meet a specific capacity need. The utility must not only demonstrate its need for that generation addition, but also the cost-effectiveness of the proposed addition. See, In Re: Petition of Seminole Electric Cooperative, Inc. to Determine Need for Electrical Power Plant, 88 F.P.S.C. 6:185 at 189-192; 1988 WL 1527486 (Docket No. 880309-EC. Order No. 19468, June 6, 1988) (declining to grant a need determination because, among other things, the utility had not identified a specific site for the proposed generation additions) To make that showing, the utility must have acquired the site and know its cost.

The Commission's function under Chapter 403, Florida Statutes, must be contrasted with its function under Chapter 366, Florida Statutes. The Commission establishes a utility's rates under Chapter 366. It is under Chapter 366 that the Commission determines whether property is appropriate for inclusion in utility rate base as PHFU. In determining whether property may be included in PHFU, the Commission considers whether the property may be needed in the future. The utility is not required to demonstrate --as it is in a need determination proceeding-- imminent need and cost-effectiveness of specific types and capacities of generation at specific sites. The

concept of PHFU recognizes that utilities must engage in long term planning which frequently involves the acquisition of property long in advance of construction of a power plant. For this reason, nothing in Chapter 366 or the Siting Act makes a determination of need a condition precedent to including a potential power plant site in rate base as PHFU. The Commission's decision to add such a requirement in this case is, simply stated, a mistake of law.

Requiring that a determination of need be obtained before a site for a future power plant may be included in rate base as PHFU is as impractical as it is unprecedented. It also results in economic inefficiency as described in greater detail below. This newly created requirement would effectively preclude any site for a future power plant from being included in rate base as PHFU until just prior to planned construction of the plant because a utility cannot secure a "generic" determination of need (a determination without designation of a specific site) and the need determination process is tied to the imminent construction of the associated generating plant. See, In Re: Petition of Seminole Electric, Cooperative, Inc. to Determine Need for Electrical Power Plant, 88 F.P.S.C. 6:185 at 189-92; 1988 WL 1527486 (Docket No. 880309-EC. Order No. 19468, June 6, 1988) Under the new requirement imposed for the first time by the Commission's decision in this case, the utility is discouraged from purchasing such a site in advance of the determination of need because it will not be able to place that investment in rate base as PHFU. The uncertainty of recovery created by the conflict between the new requirement and the existing precedent renders the new requirement untenable. This is completely inconsistent with the long-term planning initiatives of regulated companies and the Commission's Ten Year Site Plan which is designed to encourage long term generation planning and economic efficiency. The Commission's new requirement is also unworkable because some generating plants are not subject to the Siting Act and therefore do not require a determination of

need. One could never meet the new determination of need requirement for sites associated with such "exempt" generation additions. This point demonstrates inconsistent regulation. Lastly, the newly created requirement ignores the reality that acquisition of property for a power plant site can be a lengthy process. Depending on the location and ownership status of the property to be acquired, the acquisition process for the parcels of land needed for a plant site could take years. Assuming that a determination of need could be made in the absence of a utility acquiring a suitable site, the Commission's decision would only further impair an already challenging process.

Simply stated, the decision in this case to require a determination of need before the North Escambia site is eligible to be placed in rate base as PHFU has put the cart before the horse. To meet long-term generation needs, utilities must investigate and purchase future generation sites well in advance of the actual need for any generation addition that may be placed on the site. This fact was recognized by the Federal Power Commission in 1971 when it issued Order No. 420. This Commission also recognized the prudence of securing valuable sites in advance of the need to develop generation on the site as early as 1966. And, Commissioner Graham recognized the importance and prudence of such strategic planning in his comments at the February 27, 2012, agenda conference in this docket.[9] However, effectively precluding a utility from being able to earn on such prudent and necessary investments by insisting on a

[9] COMMISSIONER GRAHAM: Commissioners, I have to tell you, this was a, this was a big issue for me. I -- in a prior life I used to be an engineer, and I spent a lot of time in paper mills, one specific up in Brunswick, where you have so much residential intrusion that moves in around that paper mill that it got to the point where so many of the neighbors complained that you can't move -- they weren't allowed to move their trains after 10:00 at night and before 8:00 in the morning. So in essence you shut down the warehouse for ten hours a day, which was huge for these guys because of all the paper they produce, trying to get that stuff out of there was very important to them. And so, you know, I understand where Gulf is coming from, trying to acquire this land because you don't want for the houses that are built around in the area, you don't want to, after the need determination, trying to shoehorn a nuclear plant into somebody's neighborhood. Because I can tell you right now, nobody wants, not only a power plant in their neighborhood, but they don't want a nuclear plant in their neighborhood. And so it's a very difficult thing. [2/27/12 Agenda, Tr. 4-5]

determination of need as a condition to including prudently acquired land in rate base as PHFU serves to discourage such prudent utility conduct. The new requirement of a prior determination of need, if intended by the Commission, is at odds with decades of prior Commission precedent and practice that has established a sound and reasonable policy in the long-term best interests of the utilities and their customers.

III. IN EXCLUDING THE NORTH ESCAMBIA SITE FROM PHFU, THE COMMISSION OVERLOOKED OR FAILED TO CONSIDER IMPORTANT AND UNCONTESTED FACTS DEMONSTRATING THE VALUE OF PRESERVING THE NUCLEAR OPTION FOR GULF'S CUSTOMERS IN THE FUTURE.

Perhaps because it was operating under the flawed assumption that a determination of need was a necessary prerequisite to inclusion of the North Escambia property in rate base as PHFU, the Commission failed to consider or address the prudence and reasonableness of Gulf's decision to purchase the North Escambia site. The prudence and reasonableness of Gulf's decision is well established in the record. As detailed in the testimony of Gulf Power witnesses Burroughs, McMillan and Alexander, the acquisition of the site was reasonable and prudent in light of the circumstances which existed at the time the purchase decision was made (i.e., pending federal and state government legislation targeting reductions of greenhouse gas emissions, state policy promoting the development of nuclear power, Gulf Power's capacity needs, and higher natural gas prices) and remains a prudent and reasonable purchase today. The following evidence of that reasonableness and prudency is in the record: (1) Gulf's consideration of the nuclear option coincided with a need that could be met by a nuclear unit [Alexander, Tr. 2215, 2223-2225, Ex. 163, Sch. 4, 5]; (2) Currently, Gulf has a forecasted need that could be met by a nuclear unit [Alexander, Tr. 2233-2234]; (3) Gulf's current forecasted need does not include needs that could arise because of the potential of significant coal retirements on Gulf's system

due to pending environmental issues, retirements which would significantly increase Gulf's projected capacity needs [Alexander, Tr. 2212-2215, 2234];[10] (4) The Company's decision to acquire the North Escambia site was the product of extensive study and technical analysis that showed the need for nuclear capacity, the cost-effectiveness of nuclear capacity and the feasibility of nuclear capacity [Burroughs, Tr. 755-759; Alexander, Tr. 2230-2233; Ex. 163, Sch. 3-12]; (5) The North Escambia site is the only site suitable for nuclear generation in Gulf Power's service area [Burroughs, Tr. 758; McMillan, Tr. 1079; Alexander, Tr. 2218]; (6) The purchase of the site was necessary to enable Gulf Power to preserve a nuclear option which could result in hundreds of millions of dollars of savings for Gulf's customers [McMillan, Tr. 1079; Alexander, Tr. 2221, 2225]; and (7) The Caryville site is located in the eastern portion of Gulf's service area, while the North Escambia site is located in the western end of Gulf's service area. The North Escambia site provides additional value to Gulf because of its proximity to a majority of Gulf's load. [Ex. 147, Burroughs Depo. at 35, 37-38]

Although some of this evidence was addressed in Staff's recommendation and mentioned in the Commission's order, there is another body of evidence that the Staff recommendation and the Commission's order completely overlooked or failed to consider. Specifically, Gulf presented an abundance of evidence that nuclear generation was, and continues to be, an important option for meeting future generation requirements of its customers. Gulf witness Alexander addressed the significant analyses performed by Gulf which served to assess Gulf's potential need for new capacity and to evaluate many scenarios in which the cost-effectiveness of nuclear is superior over other options [Alexander, Tr. 2210-16, 2228, 2230-32; Ex. 163, Sch. 3-12] The Commission's order addresses Gulf's potential need for capacity, but it completely fails

[10] The fact that coal-fired generation is subject to an increasing number of environmental regulations that could lead to early retirements has been the topic of several Commissioner requested presentations by the Florida utilities, including Gulf, at Internal Affairs over the past year.

to address the value of maintaining nuclear generation as a viable option for Gulf to serve its customers.

Ms. Alexander presented no less than three cost-effectiveness analyses that examined whether a nuclear option would be the best value for Gulf's customers. [Ex. 163, Sch. 9-11] Specifically, Ms. Alexander testified as follows:

> A series of cost-effectiveness analyses were performed in addition to need assessments. Exhibit RJA-1 [Ex. 163], Schedule 9 was a cost-effectiveness assessment performed in February 2008 that assesses the cost-effectiveness of the nuclear option. A preliminary cost-effectiveness analysis prepared for the early part of the determination of need effort is attached as Exhibit RJA-1 [Ex. 163], Schedule 10. It was a multiple scenario analysis using multiple levels of gas costs and multiple levels of carbon costs. This was based upon assumptions out of the 2008 resource planning process. The most refined study performed by Gulf is attached as Exhibit RJA-1, [Ex. 163] Schedule 11. It was the same analysis as shown in Schedule 10 with updated cost information. It showed that nuclear was the most cost-effective option in 8 out of 9 scenarios.

[Alexander, Tr. 2231]

Ms. Alexander summarized what Gulf learned from these analyses: "Gulf learned that the nuclear option was cost effective relative to natural gas. The nuclear option also improved fuel diversity." [Alexander, Tr. 2216]

In response to cross examination at the hearing, Ms. Alexander provided updated information regarding the relative value to Gulf's customers of nuclear versus natural gas. Ms. Alexander stated, "[a]nd currently, actually, in our 2012 planning process, nuclear *still* is being chosen in seven out of nine scenarios as the most cost-effective option for Gulf's customers." [Alexander, Tr. 2244] (emphasis supplied)

The evidence demonstrates that under both the planning assumptions present when Gulf made the decision to buy the North Escambia site and under more current 2012 planning assumptions, a nuclear option was and is the most cost-effective option to meet Gulf's

customers' future need for power under many reasonable planning scenarios. This evidence was uncontested. The Commission overlooked or failed to consider this evidence in rendering its decision.

It is also uncontested that the North Escambia site is the only site in Northwest Florida that is suitable for a nuclear plant. [Burroughs, Tr. 758; McMillan, Tr. 1079; Alexander, Tr. 2218] As Gulf witness Alexander testified, "Gulf learned from these extensive efforts [site investigations] that North Escambia was the only potential nuclear unit site in Gulf's service area and Gulf needed to purchase the site if it was going to preserve a nuclear option for its customers." [Alexander, Tr. 2218] Simply stated, it does no good to analyze and find the best option for customers if there is no site available to build that type of plant. [Burroughs, Tr. 755] In short, the uncontroverted evidence demonstrates that: (1) Gulf acted reasonably and prudently in acquiring the North Escambia site; (2) the site presently provides substantial value to Gulf's customers in the form of an option; and (3) the site will provide value to Gulf's customers in the reasonably foreseeable future whether it be used for nuclear generation or otherwise. Not only did the Commission not apply the "reasonableness" standard, the Commission overlooked the facts outlined above. Pursuant to Diamond Cab Co., v. King, 146 So.2d 889 (Fla. 1962), reconsideration must be granted in this regard.

IV. THE COMMISSION'S RATIONALE FOR EXCLUDING THE NORTH ESCAMBIA SITE FROM RATE BASE AS PHFU WAS BASED ON DEMONSTRABLY ERRONEOUS UNDERLYING CONCLUSIONS -- MISTAKES WHICH SHOULD BE CORRECTED.

There are essentially three underlying conclusions embodied within the final paragraph summarizing the Commission's decision to exclude the North Escambia site from rate base. [Final Order at p. 26] As the following discussion shows, none of these three underlying conclusions have a sound basis either in the evidence or the prior precedent and practice of this

Commission. The faultiness of the underlying conclusions led the Commission to make a mistake when it ultimately concluded that Gulf "[f]ailed to support the inclusion of the North Escambia County Nuclear plant site and associated cost in PHFU." [Final Order at p. 26]

A. The Commission made a mistake of fact in concluding that the Caryville site could be used for any future generation needs.

The Commission found that the Caryville site is available and sufficient for "any" future generating plant that may be needed by Gulf to serve its customers. [Final Order at p. 26] This conclusion is demonstrably incorrect for at least two reasons. First, the evidence is undisputed that the Caryville site will not accommodate a nuclear generating plant. [Burroughs, Tr. 759] Second, the Caryville site is located in the eastern portion of Gulf's service area, while the North Escambia site is located in the western end of Gulf's service area. The North Escambia site provides additional value to Gulf because of its proximity to a majority of Gulf's load. [Ex. 147, Burroughs Depo. at 35, 37-38]

B. The Commission made a mistake of law in concluding that potential future co-ownership of the North Escambia site would render it ineligible for inclusion in PHFU.

The Commission found that Gulf may share ownership of the North Escambia site with its sister companies. [Final Order at p. 26] While it is intuitive and theoretically correct that there may be economic benefits to sharing the ownership of a generating plant to be built in the future, such co-ownership is not a disqualifying factor under the Commission's established policy and precedent regarding PHFU. First, the Commission has a long history of encouraging such arrangements on the basis that they provide customers cost effective access to generation that otherwise may not be feasible or reasonably available. Second, there is no precedent to suggest that the mere possibility of shared ownership of a generation site would make such a site ineligible for inclusion in rate base as PHFU. If possible future co-ownership of a generation

addition disqualifies a site from being included in rate base as PHFU, then sites already held as PHFU would no longer be eligible for such co-ownership, even if such arrangements were demonstrably cost-effective. Although the order seems to suggest that the possibility of co-ownership disqualifies a site from consideration in PHFU, there is no explanation offered as to what would be wrong if a property included in PHFU is ultimately shared with an affiliate or another entity in the future. The order appears to presume such co-ownership would not be in the best interests of Gulf's customers. Not only is that a presumption that ignores Commission precedent approving co-ownership of generation, but it is also a matter that cannot and should not be decided in this proceeding. The more reasonable assumption is that if the site is ultimately shared, it would be because there are mutual benefits to such an arrangement. It is also reasonable to assume that if such a mutually beneficial arrangement were to present itself in the future, before entering into such arrangement Gulf would comply with Commission rules and policy by properly allocating costs and benefits between the co-owners such that Gulf's customers do not end up subsidizing the other entity, whether or not such entity is an affiliate. The demonstration that this is a more reasonable assumption is evidenced by numerous decisions of this Commission rejecting the intervenors' challenges to the allocation of costs among and between Gulf and its affiliates in this case, and in the Commission's approval of Gulf's cost allocation methodology.[11] If sharing of ownership were to occur, the only reasonable assumption based on the record is that costs would properly be allocated.

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[11] "Based upon the record evidence in this proceeding, we find that Gulf is adequately compensated by the non-regulated companies for the intangible benefits they receive from their association with Gulf and the non-regulated companies do not benefit from high credit ratings as alluded to by OPC witness Dismukes." [Final Order at p. 57]

"Furthermore, we find that the record in this proceeding does not support OPC's allegation that specific costs were not allocated properly....[B]ased upon the record evidence, we find the methodology used by the Company for allocating costs is reasonably effective and Gulf has appropriately accounted for revenue, expenses and investments associated with non-regulated operations. " [Final Order at p. 61]

Indeed, Ms. Alexander explicitly addressed the potential sharing issue in her rebuttal testimony, noting that costs would be appropriately shared if such a scenario were to come to pass in the future and that what Gulf's customers would be paying for now if the North Escambia site were included in rates is the preservation of that future option:

> Q. Please address Mr. Schultz's next argument that states it is inappropriate to charge customers for costs that might be shared in the future.
>
> A. What customers are being asked to pay for is to preserve an option for them. If Gulf decides to proceed in a co-ownership arrangement, then parties coming to the table will be required to share costs, reducing costs to be covered by Gulf's customers. What Gulf's customers are paying for now is to preserve an option for them, and it is a relatively small price to pay for potentially millions of dollars of savings if a nuclear unit is needed.

[Alexander, Tr. 2225]

Similarly, Mr. Burroughs confirmed in his deposition that even if ownership in a future nuclear unit is shared, it would only be because such co-ownership was in the best interest of Gulf's customers and that Gulf's customers would not subsidize Gulf's partners:

> Q. Sure. If Gulf actually acquires partners in a future nuclear power project would those partners benefit from Gulf's actions in procuring the North Escambia?
>
> A. The partners?
>
> Q. The partners, yeah.

"We find OPC's argument that SCS costs allocated to Gulf are overstated as a result of costs not being allocated to SRE is not supported by the record. We further find that an adjustment to the expenses to allocate costs to SRE are [sic] inappropriate absent evidence that shows costs are misallocated." [Final Order at p. 64]

"We find that adjustments are not necessary to the allocation factors used to allocate SCS costs to Gulf. The factors are provided annually to the FERC for review, they have been used for over 25 years, they were approved by us in Gulf's last two rate cases, and neither the FERC nor our auditors have recommended changes to the factors. Therefore, we find that Gulf's arguments are sufficiently supported by the record and the methodology and allocation factors SCS uses to allocate costs to Gulf and its other affiliates shall not be adjusted as proposed by OPC." [Final Order at p. 70]

A. I think I understand what you're asking. We make decisions based on what's going to benefit the customers in our service area. And if the decision is made to move forward with a nuclear facility in the future, based on what happens, again, when our power purchase agreements in 2023 expire, what happens with Federal regulations regarding emissions standards and so forth, the decision we make will be based on what's good for our customers.
If it so be that we will want to partner with affiliated companies, part of the Southern Company, or with someone that's not affiliated with us, the customers in our service area in the State of Florida would not subsidize any other partner, that they would be responsible for whatever their cost is.
Again, all the decisions we make is going to be made to benefit the the customers in our service area, never to benefit anybody else.

[Ex. 147, Burroughs Depo. at 36-37].

In short, should shared ownership (with an affiliate or otherwise) become a possibility, it will only be pursued if it is beneficial to Gulf's customers and any cost allocations will be subject to review and approval by the Commission at that time. Any judgment concerning whether shared ownership is appropriate is premature at this time.

C. The Commission made a mistake of law in excluding the North Escambia site from PHFU for lack of an order granting determination of need.

In support of the Commission's ultimate decision to exclude the North Escambia site from PHFU, the Commission also found that there was not an order granting a determination that would allow the Company to petition for and the Commission the opportunity to review the "nuclear option" and all the various corresponding costs. This finding is flawed for all of the reasons detailed in section II above.

Given that all three underlying conclusions to the Commission's determination that Gulf's North Escambia site should not be included in rate base as PHFU are faulty, the Commission's ultimate conclusion that Gulf failed to support the inclusion of the North Escambia site and associated cost in rate base as PHFU is faulty as well

Based on the record evidence in this case, it is clear that any application of a "reasonableness" test warrants inclusion of the North Escambia site in rate base as PHFU.[12] Among other things, it is clear from the evidence that was presented and that was not controverted by any intervenor that: (1) the North Escambia site is the *only* site in the Company's entire service area which is suitable for nuclear generation; (2) the Company's decision to procure the property was extensively researched, thoughtful and reasonable under the circumstances which prevailed at the time that the decision was made; (3) the costs incurred for the acquisition of the property were not excessive or unreasonable; (4) delaying the decision to purchase the property until a time when nuclear generation is clearly necessary would likely lead to Gulf Power and its customers incurring higher property acquisition costs and additional encroachment[13] by residential and commercial development; and (5) in light of pending and proposed environmental regulations, there remains a very real possibility that nuclear generation will become a viable, if not necessary, generation option for Gulf Power and its customers in the reasonably foreseeable future .

V. THE COMMISSION MADE A MISTAKE OF FACT IN ASSUMING THAT THE NORTH ESCAMBIA SITE WILL REMAIN AVAILABLE TO SERVE GULF'S CUSTOMERS IN THE FUTURE IF IT IS EXCLUDED FROM RATE BASE AS PHFU .

Finally, it is critical that the Commission fully understand the import of the decision made in this case. The Commission's decision to exclude the North Escambia site from rate base as PHFU leaves open the very real possibility that the Company, in the exercise of good business judgment, will divest itself of some or all the property constituting the North Escambia site. The

[12] The evidence in this case is more extensive than that recited in the prior FPL or TECO orders cited in Section II.

[13] Gulf witness Burroughs testified that one benefit of procuring the 4,000 acre North Escambia site now was the relatively small number of individuals and home owners that would be impacted. According to Mr. Burroughs, "this site had only 35 property owners, some of whom owned multiple properties. By far the largest portion of the land was held by timber companies." [Burroughs, Tr. 758]

notion that the Company will, or must, retain the property at its shareholders' expense for the future benefit of its customers ignores economic reality, the regulatory compact, Commission precedent and the fundamental nature of the utility business. Indeed, as was true in the Tampa Electric order addressing the Port Manatee site cited above, the Commission's decision, in effect, encourages the Company "to sell the site now." Discussion between the Commission and Staff during the February 27, 2012 special agenda conference clearly suggested that a decision not to allow the North Escambia site in PHFU now would result in the land coming into rate base at original cost when needed in the future. [2/27/12 Agenda, Tr. 7-8, 12-14] Under the regulatory compact, placing future plant sites in rate base as PHFU is the only means of preserving that site for customers at its original cost. Unless the property is included in rate base as PHFU, the investment is not under the jurisdiction of the Commission and Gulf may find it appropriate to divest the property rather than continue to carry it as an investment without an opportunity for earnings to support the associated investment. In that event, the Company would be faced with two unappealing prospects if nuclear generation in Northwest Florida appeared to be a cost-effective supply choice. The Company could forego such nuclear generation entirely, or reacquire the very same property at higher cost -- assuming that the property is even available at all. Of course, the uncertainty as to whether this site, the only suitable site in Gulf's service area for a possible nuclear generating unit, would be available in the future is what led Gulf to prudently purchase the site as an option for serving the future needs of its customers.

The property at North Escambia will be critical to Gulf's opportunity to develop the nuclear generation option for its customers if such option is cost-effective under conditions existing when such decision is ultimately made. Gulf Power understands that it is accountable to its customers. A future decision by Gulf to build nuclear generation will only come after rigorous

internal analysis that evaluates the value of the nuclear capacity and energy option over the anticipated sixty-year life span of the nuclear units. The Company has long been, and will continue to be, subject to rigorous oversight by this Commission. This oversight will include an advance need determination prior to any construction of a nuclear plant by Gulf Power in Northwest Florida. If Gulf is authorized through future proceedings to develop nuclear generation, the Commission will be closely monitoring the progress of the plant throughout the construction period.

But that is not the issue in this case. The issue in this case is whether it was prudent for Gulf to purchase the North Escambia site to preserve the nuclear option as a future source of generation for the benefit of its customers. As noted at the hearing, an option has its greatest value during times of uncertainty. [Burroughs, Tr. 765] Based on the Company's revised request for $22,674,000 ($23,467,543 system), the cost of preserving this option is $0.20 on a standard monthly residential bill for 1,000 kWh. This small price is extraordinarily reasonable when compared to: (1) the potential benefits of the nuclear option if it is pursued, or (2) the lost opportunity if the nuclear option is foreclosed by the action taken by this Commission in this case.

In its eighty-six year history, Gulf Power has learned many valuable lessons regarding the importance of providing exceptional service to its customers. Prudence in generation planning, a financially responsible business approach and high reliability are qualities that have made Gulf an industry leader, and are what the Company's customers have come to expect. Maintaining the option for possible addition of new generation at the North Escambia site will build on that solid foundation and ensure Gulf can continue to meet the electricity needs of its customers in a cost-effective manner for years to come.

CONCLUSION

The Commission erred in requiring a need determination as a prerequisite for inclusion of the North Escambia site in rate base as PHFU. Both Commission precedent and practical considerations make such a requirement ill-advised, unworkable and unnecessary. Additionally, such a decision will have implications far beyond the instant case that work to the detriment of customers.

The Commission's time-tested standard for inclusion of property in PHFU is one of "reasonableness." Gulf acted reasonably in acquiring the North Escambia site. Gulf had a need for generation when it began acquiring the property and nuclear capacity was demonstrated to be the most cost-effective means of meeting that need. The decision to acquire the property was made in the face of environmental regulations that had the potential to cause coal plant closures and a positive state climate for nuclear generation. The analyses in the record of this case demonstrate that nuclear generation could well be a viable option in the reasonably foreseeable future. The North Escambia site is the only property in Gulf's service area suitable for nuclear generation. Gulf's Caryville site does not preserve the nuclear option. The North Escambia property currently has very few landowners and the costs associated with acquiring it are likely to increase in the future. The Commission's decision overlooked all of the foregoing and denied Gulf cost-recovery based on three faulty conclusions.

Gulf has relied on the legal standard set forth in the Diamond Cab decision to raise mistakes of fact and law in the Commission's decision. Gulf respectfully submits that the Commission's decision to preclude inclusion of the North Escambia site in rate base as PHFU is bad policy, is inconsistent with prior Commission precedent, applies the wrong legal standard, is inequitable and ultimately serves as a powerful disincentive for Gulf Power and other similarly

situated utilities in the state to make and implement prudent strategic decisions for the ultimate long term benefit of their customers.

WHEREFORE, Gulf Power Company respectfully requests that the Commission reconsider its ruling on Issue 24, allow $22,674,000 ($23,467,543 system) of North Escambia costs to be included in rate base as PHFU and increase Gulf's revenue award by $2,060,000 to a total of $66,161,000 for 2012.

CONFERENCE WITH COUNSEL

In accordance with Rule 28-106.204(3), Florida Administrative Code, Gulf attempted to contact the Office of Public Counsel and counsel for each of the intervenors in this docket to determine whether they object to this motion. Gulf is authorized to represent that the Office of Public Counsel, the Florida Industrial Power Users Group and the Florida Retail Federation object to the relief sought herein. Gulf was unable to make contact with the Federal Executive Agencies despite repeated attempts to do so.

Respectfully submitted this 18th day of April, 2012.

JEFFREY A. STONE
Florida Bar No. 325953
RUSSELL A. BADDERS
Florida Bar No. 007455
STEVEN R. GRIFFIN
Florida Bar No. 627569
Beggs & Lane
P. O. Box 12950
501 Commendencia Street
Pensacola, FL 32576-2950
(850) 432-2451

CHARLES A. GUYTON
Florida Bar No. 398039
Gunster, Yoakley & Stewart, P.A.
215 South Monroe Street, Suite 601
Tallahassee, FL 32312
(850) 521-1980

RICHARD D. MELSON
Florida Bar No. 201243
705 Piedmont Drive
Tallahassee, FL 32312
(850) 894-1351

Attorneys for Gulf Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and via U.S. Mail this 18th day of April, 2012 to all counsel of record as indicated below:

Caroline Klancke
Keino Young
Martha Barrera
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0850
mbarrera@psc.state.fl.us
cklancke@psc.state.fl.us
kyoung@psc.state.fl.us

Office of Public Counsel
J. R. Kelly/Joseph A. McGlothlin/Erik Sayler
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32393-1400
Kelly.jr@leg.state.fl.us
mcglothlin.joseph@leg.state.fl.us
Sayler.erik@leg.state.fl.us
Merchant.tricia@leg.state.fl.us

Florida Industrial Power
Users Group
Vicki G. Kaufman/Jon C. Moyle, Jr.
c/o Keefe Law Firm
118 North Gadsden Street
Tallahassee, FL 32301
vkaufman@kagmlaw.com
jmoyle@kagmlaw.com

Federal Executive Agencies
c/o Major Christopher C. Thompson
Ms. Karen White
AFLOA/JACL-ULFSC
139 Barnes Drive, Suite 1
Tyndall Air Force Base,
Florida 32403
chris.thompson.2@tyndall.af.mil
karen.white@tyndall.af.mil

Robert Scheffel Wright/John T. La Via
1300 Thomaswood Drive
Tallahassee, FL 32308
schef@gbwlegal.com

BY: _____