BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by Gulf Power Company for approval of "Tax Savings" refund for 1988.	)	DOCKET NO. 890324-EI
	)	ORDER NO. 24270
	)	ISSUED: 3-21-91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
BETTY EASLEY
MICHAEL McK. WILSON

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

On September 7, 1990, the Commission issued Order No. 23536 in which Gulf Power Company ("Gulf") was ordered to refund to its ratepayers 1988 tax savings in the amount of $ 3,618,332, plus interest. Thereafter, Gulf moved for reconsideration of certain portions of that order. In support of its motion, Gulf argued that the burden of proof was improperly placed upon and applied to Gulf and that various expenses were improperly disallowed. Public Counsel responded to Gulf's motion, and argued that the motion should be denied because it did not identify a mistake of fact or law which would justify reconsideration. We agree with Public Counsel.

In its motion, Gulf reiterates an argument made throughout the course of its 1988 tax savings procedure: the burden of proof does not rest upon a utility under Rule 25-14.003, Florida Administrative Code (the tax savings rule). This argument was made both prior to the hearing and in the utility's posthearing briefs, and was decided adversely to Gulf. The utility has not established that the Commission overlooked a point or failed to consider Gulf's burden of proof argument and therefore we will not reconsider this point.

Gulf next argues that the Commission developed a different burden of proof standard in Docket No. 890319-EI, Florida Power & Light Company's ("FPL's") tax savings docket, which was decided after the decision in this docket, and that application of that standard would mandate a different result herein. We find this argument unpersuasive. The standard set forth in Order No. 23727, issued in Docket No. 890319-EI, does not differ from that applied to Gulf. Order No. 23536, at page 2, stated that "Gulf has the

burden of proof herein." Order No. 23727, at page 3, stated that FPL "has the burden of proof herein, and must establish a prima facie case that its expenses are reasonable, utility-related, and prudently incurred." These are not different standards. Although the latter statement may be somewhat more explanatory, it does not impose a different burden of proof.

Gulf next argues that the Commission should reconsider ten specific disallowances in light of the "three-pronged test" contained in Order No. 23727. However, Gulf incorrectly states that under Order No. 23727, "the requisite minimum evidence [required of Gulf] should be that contained in the required filing under the rule. The presumption should be that the data filed by the utilities is reasonable, prudent and utility related.... Once this initial showing has been made, the burden would then shift to the party advocating disallowance to prove that a particular expenditure is unreasonable, imprudent or not utility related." This constitutes yet another reargument of Gulf's position on the burden of proof issue, which was rejected after the hearing, was not the Commission's intent in either Order No. 23536 or Order No. 23727 and cannot be used as a basis for reconsideration.

While we will not grant reconsideration based on Gulf's arguments, each of the ten disallowances raised in Gulf's motion can be shown to be proper upon the more explanatory standard used in FPL's tax savings docket:

Steam Production - Plant Daniel The Commission disallowed $253,000 of Gulf's benchmark excess of $506,000 for this function. A review of the record and page 13 of Order No. 23536 shows that Gulf did not meet its burden of proof. Gulf justified the expense based on increased generation requirements for Plant Daniel. However, Gulf's witness, Mr. Lee, testified that an increase in generation would reduce cycling, which in turn would serve to reduce O&M expenses. Gulf did not account for the resulting expense reduction, and therefore did not meet its burden of proof as to the reasonableness of the claimed expense. Although we made no specific finding that the claimed expense was unreasonable in amount, such a finding is justified from the record.

Steam Production - Acid Rain Monitoring Gulf argues that the Commission disallowed $13,000 without a finding that the amount was unreasonable or imprudent. Gulf argues, without citing to specific evidence in the record, that "monitoring" expenses were not budgeted in 1984 and therefore were not included in the base year.

However, Mr. Lee testified that the Acid Rain Monitoring program was merely an extension of the previously allowed Acid Rain Deposition Study. [Tr 616, Ex. 39] Since the expense was included in the benchmark under another title, it cannot be used to justify the benchmark excess. Therefore, Gulf did not meet its burden of proof that the $13,000 benchmark excess was the result of a reasonable, prudent, utility related expense.

Transmission Line Rentals Gulf argues that the Commission disallowed $109,749 in this function "based solely on a perceived failure of the Company to justify an excess over the benchmark." The expense was not disallowed because it was above the benchmark. It was a previously disallowed expense from Gulf's last rate case, and the utility did not prove that the expense was now reasonable, prudently incurred, and utility related.

Distribution System Work Order Clearance $139,000 was disallowed because Gulf did not justify this amount over its benchmark. Again, Gulf failed to prove that the amount was reasonable, prudently incurred, and utility related.

Electric Power Research Institute (EPRI) Expenses In support of its motion, Gulf argues that "these are not EPRI expenses over and above the EPRI dues, rather these expenses are nothing more than the amount of EPRI dues paid by the Company that has been allocated to the distribution function." This assertion is not supported by the record, and constitutes an after-the-fact attempt to bolster evidence which did not prove the expenses to be reasonable in amount. Even if one accepts Gulf's assertion that the expense is a dues allocation, Gulf still failed to prove the reasonableness of the amount in that EPRI dues were included in the benchmark base year, and would therefore not account for a benchmark excess.

Good Cents Program In Order No. 19742, a stipulation was approved in which Gulf agreed not to seek recovery of its Good Cents New Program through direct conservation cost recovery. According to Gulf's witness, Mr. Bowers, recognition of these expenses in the 1988 tax savings calculation produces the same direct recovery result as if the utility had recovered the expense through conservation cost recovery. [Tr 784] Further, the record indicates that the program is only marginally cost effective, mimics the state building code, and that there has been no post-

installation verification of demand and energy savings. Therefore, given the terms of Order No. 19742, Gulf failed to prove that the disallowed expense of $447,057 was prudently incurred or reasonable in amount.

Industrial Customer Activities and Cogeneration The Commission did not accept Gulf's explanation that the program benefits the general body of ratepayers by preserving revenues. Order No. 23536, at page 17, notes that the explanation is "contradictory" to certain facts established in the record, and that the Commission "fail[s] to see a clear benefit from the program." Thus, Gulf failed to prove the prudence of the expenditures.

Heat Pump Program The Commission found this program to be partially duplicative of the disallowed Good Cents Program. It is thus clear from the terms of Order No. 23536 that Gulf failed to prove that the program expense was prudently incurred or reasonable in amount.

Ally Information and Education Gulf repeats its argument that the program is an education program, and argues that it supports, rather than duplicates the Good Cents program. The Commission disapproved this expense because it partially duplicates the Good Cents Programs, but also because some of the information provided in this program is readily available to contractors, and because consumers have less need of the function than previously. Thus, Gulf did not prove that the expense was prudently incurred or reasonable in amount.

Shine Against Crime The Commission disallowed only one-half of the benchmark excess of $104,000 for this program because it included both an acceptable and unacceptable purpose. The promotion of new outdoor fixtures increases energy requirements, but did not result in a reduction in peak demand. Thus, Gulf failed to prove the prudence of this program expense in that it did not prove that off-peak load building is cost effective. Nevertheless, the Commission allowed the rest of the program expense in an attempt to allow the utility to recover the cost of replacement of inefficient outdoor lights.

Gulf was originally ordered to make either a one-month refund based on a winter month or six-month refund over the period beginning October, 1990. At this time, we find that Gulf should make a one-month refund based on March, 1991.

It is therefore

ORDERED by the Florida Public Service Commission that Gulf Power Company's motion for reconsideration of Order No. 23536 is hereby denied. It is further

ORDERED that Gulf Power Company shall make a one-month refund of its 1988 tax savings, based on March, 1991 kWh usage.

By ORDER of the Florida Public Service Commission, this 21st day of MARCH, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

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Commissioner Wilson dissents in part from the decision:
Having reviewed the record on the issue of EPRI expenses, I find that the company has established a prima facie case that the expenses are reasonable, prudent and utility related and that the prima facie showing has not been overcome. I would treat the EPRI expense as an allowable one.

Aside from the evidentiary issue, the level of research and development investment in this country has been woefully inadequate. For this Commission to directly discourage investment in research and development in the energy area is myopic, at best. Actions in the energy area -- increased conservation, efficient and more environmentally benign generation technology, and end user efficiency -- will greatly influence the ability of our economy and our people to compete and thrive in the future.

NOTICE OF JUDICIAL REVIEW

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

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.