

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 000808-EI - Petition for approval
of Consumptive Water Use Monitoring Activity
and Smith wetlands Mitigation Plan as new
programs for cost recovery through the
Environmental Cost Recovery Clause by Gulf
Power Company.

BEFORE: CHAIRMAN J. TERRY DEASON
COMMISSIONER E. LEON JACOBS, JR.
COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 46**PAA

DATE: Tuesday, September 26, 2000

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL
Registered Professional Reporter

ACCURATE STENOGRAPHY REPORTERS
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(850)878-2221

BUREAU OF REPORTING

RECEIVED 10-5-00

DOCUMENT NUMBER-DATE

12647 OCT-58
FPSC-RECORDS/REPORTING

COPY

PARTICIPANTS:

BOB ELIAS, on behalf of the Commission Staff.
DANIEL LEE, Commission Staff.
PATRICIA LEE, Commission Staff.
BILL MCNULTY, Commission Staff.
MARLENE STERN, on behalf of the Commission Staff.
JEFFREY A. STONE, Beggs & Lane, on behalf of Gulf Power Company.
JIM VICK, Gulf Power Company.

STAFF RECOMMENDATION

Issue 1: Should the Commission approve Gulf's petition for the Consumptive Water Use Monitoring Activity as a new program appropriate for recovery through the ECRC?

Recommendation: Yes.

Issue 2: Should the Commission approve Gulf's petition for recovery through the ECRC of the wetland mitigation plan required in order to construct the new Smith Unit 3 plant?

Recommendation: No. The Commission should deny Gulf's petition for recovery of costs for wetland mitigation through the ECRC for both legal and policy reasons.

Issue 3: Should this docket be closed?

Recommendation: Yes. This docket should be closed upon issuance of a consummating order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action order.

1 CHAIRMAN DEASON: Item 46.

2 MR. LEE: Commissioners, Item 46 is staff's
3 recommendation of Gulf Power Company's petition
4 for two projects. On Issue 1, Staff recommends
5 approval of the consumptive water use monitoring
6 program for cost recovery through the ECRC. On
7 Issue 2, staff recommends denial of the Smith
8 wetland mitigation program for cost recovery
9 through the ECRC.

10 Staff has a correction to make on page 7 of
11 the staff analysis. The first paragraph needs
12 to be revised because the conservation cost was
13 created by statute and not by order as stated in
14 the analysis. This first two sentences should
15 be revised as follows: "Of the various cost
16 recovery clauses associated with the electric
17 industry, only the ECRC and conservation are
18 embodied in statute. The other similar clauses,
19 fuel and capacity, were created by Commission
20 order."

21 Gulf Power representatives are here to
22 argue their case and answer questions.

23 CHAIRMAN DEASON: Thank you. Mr. Stone?

24 MR. STONE: Thank you, Commissioner.

25 Jeffrey A. Stone of the law firm Beggs & Lane,

1 representing Gulf Power Company.

2 I'm here today to speak with regard to
3 Issue 2. The petition that Gulf has submitted
4 had two projects, and Issue 1 addresses the
5 first project, and we take no issue with staff's
6 recommendation on that first project. With
7 regard to the second project, the Smith wetlands
8 mitigation project, staff has recommended that
9 you should deny ECRC recovery, and they state
10 that it's for legal and policy reasons.

11 First, I would point out to you that there
12 is no legal impediment stated in the statute or
13 the Commission's past orders that would prohibit
14 the Commission from allowing ECRC recovery of
15 the Smith wetlands project. In fact, if you go
16 through the staff recommendation, you will see
17 that each of the requirements set forth in the
18 statute and in past Commission orders have been
19 met by Gulf's petition on the Smith wetlands
20 project. Rather, it's a question of whether or
21 not the staff -- the staff's recommendation asks
22 the Commission to set a new policy which would
23 limit ECRC recovery to changes that are made to
24 existing plant, and that is not what is set
25 forth in the statute.

1 In fact, if you look at the definition of
2 environmental compliance costs set forth in
3 Chapter 366.8255, it is defined to include all
4 costs or expenses incurred by an electric
5 utility in complying with environmental laws or
6 regulations, including but not limited to
7 inservice capital investments, including the
8 electric utility's last authorized rate of
9 return on equity thereon, operation and
10 maintenance expenses, fuel procurement costs,
11 purchased power costs, emission allowance costs,
12 and direct taxes on environmental equipment. As
13 you can see, nowhere in that definition is there
14 any limitation on it being to existing plant or
15 is there anything that even mentions existing
16 plant or new plant. In fact, you will not find
17 those phrases contained anywhere within the four
18 corners of the statute.

19 What staff has asked you to do is to infer
20 a legislative intent by going back to the one
21 quote taken out of the remarks that were spread
22 upon the House Journal. And that quote, I think
23 it's instructive to hear the question that was
24 being asked when that quote was uttered. The
25 question that was being asked by Representative

1 Davis is, "Is it the intent of this amendment
2 that the cost of a large capital item, such as
3 an entire power plant, could be recovered
4 through this procedure?"

5 And Representative Tobin's remark was, "The
6 answer to that is no." And then he goes on with
7 the quote that's contained in the staff's
8 recommendation, "The intent is not to authorize
9 recovery through this procedure of new power
10 plant construction costs. The intent is to
11 allow recovery of modifications to existing
12 plants in order to bring them into compliance
13 with the environmental standards."

14 It's instructive to hear the full context
15 of the quotation. The idea was moving an entire
16 plant into ECRC, not a component of the plant.
17 Later on Representative Tobin expanded on that,
18 on his position on that, and he stated, "The
19 Commission may elect to hold a rate case if it
20 determines that the proposed capital investment
21 is so large that it's material to the overall
22 costs and expenses of the company. It may also
23 make such action if it finds that the primary or
24 dominant purpose of the investment is not to
25 comply with environmental standards, but to

1 generate electricity."

2 In this particular instance, the Smith
3 wetlands mitigation project has absolutely
4 nothing to do with generating electricity,
5 except that it corrects for a fill situation
6 under the footprint of the new Smith Unit 3.
7 Once the Smith wetlands mitigation project has
8 been completed, it will be serving its purpose
9 to help mitigate environmental impacts in
10 perpetuity, as indicated in the introduction to
11 what is attached as Exhibit B to our petition.
12 After success, the 130-acre parcel of land will
13 be preserved in perpetuity either through a
14 conservation easement, or if preferred,
15 transferred in fee title to FDEP, another
16 resource agency, or a third party.

17 This clearly is an environmental
18 requirement set forth by a permit. It is
19 something that will essentially be in service
20 well before the completion of Smith Unit 3. It
21 is separate and distinct from Smith Unit 3. And
22 there is nothing in the four corners of the
23 statute which would limit your ability to
24 approve recovery of this project through the
25 environmental cost recovery clause.

1 I have a few more comments I would like to
2 make about the staff recommendation. Staff has
3 already corrected a reference that stated that
4 the ECRC was the only cost recovery clause
5 created by statute. As we all know, the
6 conservation clause was also created in that
7 regard.

8 It's instructive to note that conservation
9 expenses, just like ECRC expenses, and I believe
10 it would be accurate to refer back to the
11 creation of the capacity clause by order, that
12 none of those three clauses was -- the dominant
13 purpose was the volatility of expenses was the
14 driving force behind the implementation of these
15 cost recovery clauses, but rather, there were
16 other policy bases for those clauses to be
17 created.

18 In the case of conservation, it was to
19 incent utilities to provide conservation
20 activities and to fund those activities by
21 providing a mechanism for recovery of those
22 expenses without the regulatory lag associated
23 with traditional ratemaking treatment.

24 In the case of the capacity cost recovery
25 clause, again, it was to try and create a

1 mechanism that would encourage utilities to
2 purchase power, purchase capacity rather than
3 building capacity, and it put it on a different
4 recovery basis.

5 And with regard to the environmental cost
6 recovery clause, the second one created by
7 statute, it was not necessarily the volatility
8 of environmental expenses, because, quite
9 frankly, they don't go up and down. They simply
10 go up. But it was primarily to deal with the
11 timing issue and to deal with the fact that
12 environmental regulations can be imposed on a
13 utility separate and apart from construction
14 decisions, and they have to be complied with,
15 and the concern would be that the regulatory lag
16 associated with traditional ratemaking treatment
17 would not provide the utility with sufficient
18 recovery and would not provide the financial
19 markets with sufficient confidence that the
20 utilities would be recovering for large
21 environmental expenditures.

22 We submit to you that the Smith wetlands
23 mitigation project is appropriate for ECRC
24 recovery. There certainly is nothing in the
25 statute that prohibits ECRC recovery. There is

1 absolutely nothing in your prior orders that
2 prohibits ECRC recovery. And this notion that
3 you cannot determine when ECRC stops and base
4 rates begins, as implied in the staff's
5 recommendation, is not a basis for deciding
6 against allowing recovery for this project.

7 Once again, Representative Tobin: "The
8 Commission may elect to hold a rate case if it
9 determines that the proposed capital investment
10 is so large that it's material to the overall
11 costs and expenses of the company." The \$1.2
12 million we've projected for the Smith wetlands
13 mitigation project is no so large in comparison
14 to the overall costs of the utility that it
15 would justify the Commission implementing a rate
16 case at this time to seek recovery of that
17 project.

18 Going on, "It may also make such action if
19 it finds that the primary or dominant purpose of
20 the investment is not to comply with
21 environmental standards, but to generate
22 electricity." Clearly, in the Smith wetlands
23 mitigation project, it is to comply with an
24 environmental standard, and that is to replace
25 wetlands that had to be filled in order to

1 provide a footprint for the new unit that's
2 being constructed. It is not the primary
3 purpose of this wetlands mitigation project to
4 generate electricity.

5 COMMISSIONER JABER: How did -- DEP issued
6 an order to Gulf requiring you all to make the
7 update during the new construction? How did you
8 get required by DEP to do this?

9 MR. STONE: It's a combination of FDEP and
10 the Corps of Engineers, is my understanding.
11 And Mr. Vick is here. He's our Manager of
12 Environmental Affairs, and he can shed some more
13 light on that permitting requirement if that's
14 not sufficient.

15 MR. VICK: Hi. I'm Jim Vick with Gulf
16 Power Company. The requirement to do the Smith
17 wetlands mitigation project came from the
18 certification order that was issued by DEP in
19 the site certification process for Smith 3. As
20 part of that, the dredge and fill permits from
21 both the Florida Department of Environmental
22 Protection and the Corps of Engineers both
23 required this mitigation plan.

24 CHAIRMAN DEASON: It was part of you
25 receiving approval for the site of the new

1 plant; correct?

2 MR. VICK: That's correct, Commissioner.

3 COMMISSIONER JABER: Staff makes the
4 point, Mr. Stone, in their recommendation that
5 to open this door for this kind of environmental
6 cost associated with a new plant could create a
7 policy of flowing through large investments
8 through the ECRC, which, of course, is not what
9 the clause was designed to do. Are there any
10 other environmental costs associated with the
11 new plant that you're trying recover through the
12 clause?

13 MR. STONE: There are none contained within
14 this petition. We have recently filed our
15 petition for projected costs in 2000. There is
16 a project where we're retrofitting some
17 equipment onto Smith Unit 1 that is an explicit
18 requirement of the Smith Unit 3 permit, but it
19 is a -- and I know the acronym, but I can't
20 remember what the words stand for, but GNOCIS,
21 G-N-O-C-I-S. It has something to do with NOX
22 emissions, and it's -- there's more detail on
23 that in the petition that we filed at the end of
24 last week. But that is a retrofit to Smith Unit
25 1. It is not involving Smith Unit 3, and it

1 will be in service before Smith Unit 3 goes into
2 service.

3 But the only other environmental projects
4 that we have sought -- those are the only two
5 projects that we have sought recovery through
6 the ECRC that are in any way related to Smith
7 Unit 3 that I'm aware of.

8 The only other environmental expenditure
9 that I can think of that might be appropriate
10 for the ECRC or we might seek future recovery
11 through the ECRC rather than through base rates
12 may be the continuous emission monitors for
13 Smith 3. And the reason for that would be that
14 it would tie those to the other CEMs that are
15 with all the units and put them on a common
16 basis. I'm not -- I don't want to preclude
17 that, but that's just based on what I know at
18 this point.

19 CHAIRMAN DEASON: Mr. Stone, if the
20 Commission approves staff's recommendation,
21 you're certainly free to capitalize those
22 expenditures as part of the overall cost of
23 Smith 3 and include it in your rate base and
24 receive recovery in that manner; correct?

25 MR. STONE: I'm not an expert in

1 accounting, and I certainly would defer to your
2 expertise in that regard, but I think that would
3 be the case.

4 One distinction I would draw is that the
5 Smith project is probably going to be its own --
6 I don't know if you can retire land, but it's
7 not going to be tied to the plant in terms of
8 retirement codes or anything of that sort. It's
9 going to end up being its own project in the
10 property records. It will have a unique life in
11 that regard.

12 And as you noted in the -- or as I noted in
13 the quotation from the introduction to Exhibit B
14 of our petition, there is the potential that the
15 wetlands may be conveyed to an environmental
16 agency in order to help preserve them in
17 perpetuity.

18 So we look at the wetlands project as being
19 separate and distinct from the mechanics of the
20 project, which will have a finite life and be
21 depreciated. The capitalization of these
22 expenditures and recovery through base rates, I
23 mean, certainly if we don't recover them through
24 the ECRC, then we will be looking to our base
25 rates to recover them.

1 But I think it's instructive again -- and I
2 hate to belabor the point, but Representative
3 Tobin's comments were talking about you would
4 hold a rate case if you determined the magnitude
5 of these dollars were so great that it would be
6 appropriate or that the dominant purpose was to
7 generate electricity rather than complying with
8 environmental requirements.

9 When I read that and I read that in
10 conjunction with the statute, which has no
11 limitation on existing plant versus new plant,
12 it seems to me to convey an intent that the
13 utilities were to be made whole and not be
14 subject to the regulatory lag associated with
15 traditional ratemaking treatment. In Gulf's
16 case, there cannot be a base rate adjustment
17 until the date that Smith Unit 3 goes into
18 service, and yet the Smith wetlands project will
19 be in service well before that date.

20 CHAIRMAN DEASON: Okay. Further questions,
21 Commissioners?

22 COMMISSIONER JABER: I have a question for
23 staff.

24 COMMISSIONER JACOBS: I have a brief
25 question. If we follow your logic, we would

1 have multiple rate impacts from the Smith plant
2 over time. That seems to counter exactly what
3 -- first of all, what ratemaking is supposed to
4 do, but second of all, what the clauses were
5 attempting to avoid, and that is a volatile,
6 fluctuating rate impact from events. And as
7 staff argues, those events were intended to be
8 unplanned events, not an event such as a plant.
9 But how do you deal with that from a policy
10 perspective?

11 MR. STONE: First of all, I would point out
12 that the magnitude of this project compared to
13 the overall expenditures for the plant -- I may
14 have misquoted when I said \$1.2 million on this
15 particular project. But -- it's close to \$1.3
16 million. But compared to -- I believe the
17 latest estimate on the plants are \$225 million.
18 So you can see this capital cost compared to the
19 overall cost of the plant is very small.
20 Obviously, it's very small compared to our
21 overall capital investment as a company.

22 But the fact of the matter is, this is an
23 environmental compliance activity. There can be
24 no real question about that. I don't think
25 staff contends that it's not an environmental

1 compliance activity.

2 Their argument about opening the door, I
3 don't think you need to draw the line to
4 prohibit this project out of concern about
5 opening that door. You have the opportunity to
6 examine each project on a case-by-case basis, as
7 the staff has indicated.

8 what I submit to you is that this
9 particular project, given its magnitude, given
10 when it goes into service, given that it's
11 separate and distinct from the plant itself, I
12 think it is appropriate for recovery, and we
13 think it meets with the test of the statute.

14 with regard to multiple rate impacts, I
15 don't think it was ever the intent to bundle
16 impacts into discrete portions. In fact, to the
17 contrary, I think the point of the environmental
18 cost recovery clause was to smooth transitions
19 and rates, and this will give you that
20 opportunity. As small as it is, it will still
21 be something that's moving in and more gently
22 moving towards the rate impact of this unit, as
23 it should be, since the wetlands mitigation
24 project itself will be in service before the
25 plant is providing electricity.

1 COMMISSIONER JABER: Staff, it was my
2 understanding that the purpose of the clause,
3 that clause in particular, was to encourage
4 companies to comply with all environmental
5 regulations, and that's the stated purpose of
6 that clause. Would you agree with that?

7 MS. STERN: I think there's very little
8 legislative history on this clause. What the --
9 I think you've probably heard it all now between
10 the recommendation and what Gulf Power said. I
11 don't think there's a clear statement of the
12 intent in the text of the statute itself. And I
13 think we're --

14 COMMISSIONER JABER: But that's a
15 commonsense purpose, I think, of the clause.
16 The purpose of the clause, though, is not to
17 encourage compliance with environmental
18 regulations just for plant that already exists.
19 I mean, the statute is silent with respect to
20 new construction; right?

21 MS. STERN: Yes, it is.

22 COMMISSIONER JABER: All right. Have we
23 ever allowed this kind of recovery through the
24 clause?

25 MS. STERN: Not to my knowledge.

1 Could I also clarify one thing about the
2 intent? I think the intent deals mostly with
3 economic effects of environmental compliance on
4 plants. That's my feeling after numerous
5 conversations with the people who have been
6 involved in working on these dockets and reading
7 the legislative history, not so much as actual
8 environmental compliance, but the costs of
9 environmental compliance and the effects, the
10 economic effects that has on a utility. So
11 maybe a secondary thing is environmental
12 compliance, but I think it's really an economic
13 -- it's like an economic kind of intent to help
14 utilities cope with the proliferation and
15 constantly changing environmental requirements.

16 COMMISSIONER JABER: And that's the same
17 evaluation that we would do if we denied their
18 request today and allowed them to come back and
19 try to include this in base rates. We're still
20 going to be looking at the economic effect;
21 right? What is it we would do in a case where
22 they come in and try to seek the same cost
23 through base rates that we're not doing now?

24 MS. STERN: I'm not sure.

25 MR. LEE: Okay. I think this issue here is

1 the appropriate mechanism, cost recovery
2 mechanism, and we just -- in this case, we
3 believe ECRC is not the appropriate mechanism
4 for that.

5 COMMISSIONER JABER: Mr. Elias, can you --

6 MR. ELIAS: Ms. Lee is probably more
7 appropriate to --

8 MS. LEE: Commissioners, we would be
9 looking at this project, the prudence of it. We
10 would be looking at the expenses in the overall
11 rate of return context, where they're earning
12 and how these expenses roll into that, what the
13 effect is on their earnings. In the rate base
14 context, that's where we would be.

15 COMMISSIONER JABER: All right.

16 MS. STERN: Could I just clarify one
17 thing?

18 COMMISSIONER JABER: Sure.

19 MS. STERN: About the intent and -- through
20 the clause, you can recover your costs faster.
21 You know, it's there so the utilities don't have
22 the lag in recovery that you have with the base
23 rate case.

24 COMMISSIONER JABER: And with respect to
25 earnings, though, then is there a true-up for

1 costs recovered through the clause?

2 MS. LEE: There is a true-up. My
3 understanding is that every six months they file
4 a projection, and then they file a true-up for
5 the clause as well.

6 MR. ELIAS: I want to address one issue,
7 and that's this question of regulatory lag.
8 This plant is not scheduled to come on line
9 until sometime in the future. If Gulf felt that
10 after this plant was coming on line it would be
11 earning outside of its authorized range, subject
12 to the agreements that they made in place with
13 other parties that cap and freeze their base
14 rates, they could file a rate case based on a
15 projected test year and have a mechanism to see
16 that those costs were fully recovered.

17 COMMISSIONER JABER: All right. From a
18 legal standpoint, Bob, there is no legal
19 prohibition against our allowing their request
20 to be handled through the clause.

21 MR. ELIAS: No, not unless you go beyond
22 the plain language and look at what we believe
23 to be the legislative intent.

24 COMMISSIONER JABER: All right. But
25 Mr. Stone gave us the full picture of the

1 question and answer to Representative Tobin.
2 And you would agree -- would you agree that that
3 was the circumstances upon which Representative
4 Tobin answered that question?

5 MR. ELIAS: Yeah. I don't draw the same
6 conclusion from the colloquy that was related,
7 that it was -- that the intent was that
8 environmental programs associated with new plant
9 construction were appropriately recovered
10 through the clause. I don't draw the same
11 conclusion.

12 COMMISSIONER JABER: I don't think that's
13 what he said. If I understood the question
14 correctly, the question from one representative
15 to another was, "Are you trying to allow the
16 complete cost of construction of a entire plant
17 through the clause?" That was the question.
18 See, staff has only given us the response. We
19 didn't have the question.

20 MS. STERN: well, because we don't
21 interpret the question the same way as Gulf
22 Power does. Okay. "Is it the intent of this
23 amendment that the cost of a large capital item,
24 such as an entire power plant, could be
25 recovered through this procedure?" well, we

1 think they're not -- they're in the process of
2 building a new power plant, and if they're --
3 well, they're coming in now for this one thing,
4 but -- you know, the fact that maybe an entire
5 new power plant is not intended means that a
6 part of a new power plant is not intended.
7 That's how we're looking at it, because once you
8 start a part of a new power plant, you
9 inevitably have to build the other parts. So
10 that's how we're interpreting it.

11 COMMISSIONER JABER: Ms. Stern, I don't
12 understand your point. The Company is only
13 seeking to recover the cost associated with DEP
14 telling them that they need to comply with an
15 environmental aspect of constructing the new
16 plant. Their point is, the statute does not
17 prohibit them from seeking that cost through the
18 clause. And what you all are telling me is
19 there's no legal prohibition against what
20 they've tried to do. Now, there might be some
21 policy considerations; is that correct?

22 MS. STERN: Yes, that's what we're telling
23 you. And if you look to the other part of
24 Chapter 366 where it says that the entire
25 chapter is to be liberally construed --

1 COMMISSIONER JABER: That works to their
2 favor, doesn't it? That works to Gulf's favor.

3 MS. STERN: No, I think it works -- I
4 thought it worked -- I think it works in our
5 favor, because that's what allows us to look at
6 the legislative intent. And our interpretation
7 of the legislative intent is that projects such
8 as this are not intended to be covered, passed
9 through the clause.

10 COMMISSIONER JABER: Did the legislative
11 intent get incorporated into the statute?

12 MS. STERN: No, it did not.

13 CHAIRMAN DEASON: Commissioners, I think
14 it's clear that this is a matter of discretion
15 for the Commission. I don't think there's a
16 legal prohibition that says we can't, or I don't
17 think there's a legal obligation that says we
18 must. So I think it boils down to a question of
19 what makes the best policy.

20 I think it's clear to understand that we're
21 not denying recovery. It's just a question of
22 how we're to allow recovery if it is ultimately
23 determined that this is a prudent act.

24 I think it's important that we be able to
25 identify the cost of new plants, particularly in

1 the environment which we foresee in the future.
2 I see this as a cost of the plant. Just like
3 the concrete foundation, or the nuts and bolts,
4 or whatever else, this is required to build this
5 new plant, and it should be part of the cost of
6 the new plant.

7 And it is a cost of providing electricity,
8 because if they did not comply with this
9 requirement, the plant would not be built and
10 they would not be able to provide electricity.
11 I think it is contrasted to the situation where
12 you have an existing plant and environmental
13 requirements change and it's a matter of
14 retrofitting. This is new plant and new
15 capacity. Requiring this wetlands mitigation is
16 just as much a cost of generating power from
17 that plant as the cost of the boiler or the
18 turbine or anything else. It's required. If it
19 were not, it would not be part of the plant.

20 And there are so many things that could go
21 into the construction of new plant that could be
22 labeled environmental. I don't think this plant
23 is going to have smokestacks, but in other
24 plants you have smokestacks. Perhaps they think
25 a smokestack 150 feet tall is enough. Maybe the

1 environmental review says, "No, it's got to be
2 higher than that." well, do you say, "well, the
3 incremental cost of the new smokestack, we're
4 going to have to estimate how much that is, and
5 we're going to flow that through the clause as
6 opposed to just building the plant with the
7 smokestack height that the environmental
8 regulators say"?

9 Now, that's just an example. It may not be
10 a good example. But there are probably hundreds
11 of things that go into the construction of new
12 power plants that must meet environmental
13 regulations. It would be a nightmare to try to
14 segregate everything out from the construction
15 of a new plant and say this is environmental and
16 this is not.

17 I think it's important that we have the
18 cost of this new plant, particularly when we
19 review it for prudence purposes. The cost of
20 the wetlands mitigation should be a part of the
21 cost of this new plant, and we need to review
22 that. It may be that this was not a good site.
23 And I'm not saying that, but maybe there was
24 another site where there would not have had to
25 have been wetlands mitigation, and we need to be

1 able to see what those costs are.

2 so I think from a policy standpoint that we
3 need to adopt staff's recommendation.

4 COMMISSIONER JABER: Right. Chairman
5 Deason, I am completely comfortable with that,
6 but that's why I stressed the difference between
7 the legal concerns and the policy concerns. I
8 can move staff, with the understanding that --
9 the cites to the legislative intent and what the
10 statute says or doesn't say, if that's deleted
11 and it's clear that we're making our decision
12 based on policy, I'm completely comfortable with
13 that.

14 It has been my experience when we leave
15 language like this and it doesn't give a
16 complete picture that parties will come back and
17 cite to orders as if we're setting some sort of
18 precedent.

19 So I think that with those clarifications
20 and with what Ms. Lee said incorporated into the
21 order, I can move staff.

22 CHAIRMAN DEASON: We have a motion. Is
23 there a second?

24 COMMISSIONER JACOBS: I will second that.
25 If I may add briefly, I think this is an

1 interesting call, because there are some public
2 policy issues here that are somewhat
3 attractive. Here's an idea where we throughout
4 this state are in a very critical status in
5 terms of water, and here's an effort by the
6 local agency that deals with water issues to
7 bring about some greater management of water
8 resources.

9 So I don't -- I agree with staff's
10 recommendation, but I know that we've looked at
11 issues where there have been overall public
12 policy benefits from environmental improvements
13 to plants. In recent history we've seen a
14 scrubber put onto a plant, and we've seen other
15 issues come up.

16 I'm of the opinion that this is a very
17 important matter. How utility plants deal with
18 water issues I think is probably an issue that
19 we could look at and make some decisions as to
20 how we may want to approach this policy. I know
21 that many of the merchant plants have made
22 express decisions to try and pursue reuse, and
23 they've pursued their location decisions based
24 on reuse. Maybe we can look at a way of
25 incenting these companies to go after better

1 water management policies through this venue. I
2 could explore that issue and look at ways that
3 we could do that.

4 But I agree absolutely that in the context
5 of constructing a brand new plant, I think we
6 want to keep as holistic a view of this project
7 as possible to give it its proper oversight and
8 scrutiny, and so I would second the motion.

9 COMMISSIONER BAEZ: Mr. Chairman, I just
10 want to say one thing.

11 CHAIRMAN DEASON: Sure.

12 COMMISSIONER BAEZ: I came at it a little
13 differently than you did. I think that the
14 Company's argument that this particular project
15 is independent sort of draws a distinction that
16 I would be more willing to draw. And by reading
17 staff's recommendation, you try to equate this
18 wetlands mitigation with a component of a new
19 plant.

20 Now, we can read the word "component" as
21 broadly as we like or as narrowly as we like. I
22 just thought that, you know, wetlands mitigation
23 is a type of discrete project that's probably
24 the purest example of environmental compliance,
25 and that it could exist independently of what I

1 normally think of as a component, be they
2 smokestacks or be they these catalytic -- I'm
3 sorry, catalytic reduction equipment, whatever,
4 that you try to equate it with. I didn't see
5 that they're the same. I don't believe that
6 they're the same. I think there's a distinction
7 to be drawn at some point. I just think that
8 that distinction is a little bit farther down
9 the road than what you all tried to --

10 MR. McNULTY: Commissioner, I would agree
11 with you to the extent that it is hard to know
12 exactly where to draw the line. Anything that
13 is put in by environmental -- is required by
14 environmental law is going to be for the
15 ultimate generation of electricity. The
16 question is where to parse and where to draw
17 that line. And clearly, because so much is
18 required by environmental law, we don't know
19 exactly where that line could be drawn.

20 COMMISSIONER BAEZ: Exactly. And I sensed
21 from you all's analysis that there is a example
22 floating out there or a scenario floating out
23 there where you would be asking yourself the
24 question, well, did we have to use this
25 equipment rather than this other equipment which

1 impacts some type of efficiencies that the plant
2 may have because we have to meet environmental
3 requirements. And I saw -- I felt you all
4 having some type of trouble with that, because
5 it's a new plant, because of the environmental
6 regulations being as they are when you plan the
7 new plant, to have to use this equipment,
8 whereas you would have used other. I can see a
9 problem with that.

10 I just didn't see the problem with making a
11 distinction for wetlands mitigation. And my
12 view is buttressed by the fact that it's a
13 discrete project. It's not something that,
14 although it is an environment requirement in a
15 general sense, it has an impact on the plant's
16 efficiency or -- I mean, it's not something that
17 you can touch as a component of a new plant.
18 Maybe I'm reading it a little bit too narrowly,
19 but that's -- I just wanted to get that in.

20 CHAIRMAN DEASON: I agree with you that
21 there's probably a range of requirements or
22 projects that would be easy to separate out and
23 others that would be kind of commingled with the
24 overall engineering of the plant, and they're
25 just engineering that way because they know

1 there are certain environmental requirements
2 that have to be met. And so this is on one end
3 of that spectrum.

4 COMMISSIONER BAEZ: I believe it is.

5 CHAIRMAN DEASON: So I certainly understand
6 your viewpoint.

7 MR. STONE: Chairman Deason, I'm sorry. I
8 had a question. It may not be appropriate for
9 me to ask the question, but Commission Jaber's
10 motion raised an issue that I wasn't sure that I
11 understood what Ms. Lee's comments related to.
12 I believe that you had asked a question about a
13 true-up mechanism. And there is no true-up
14 mechanism with regard to base rates.

15 Ms. Lee referred to a true-up mechanism.
16 That's exclusively with the environmental cost
17 recovery clause. And that true-up mechanism --
18 if you deny recovery of this project through the
19 ECRC, it will not be subject to a true-up. And
20 subject to whether or not we can capitalize it
21 and deal with the carrying costs on the unit, on
22 this project at the time that Smith Unit 3 is
23 moved into rate base, that's going to be subject
24 to accounting rules that, quite frankly, I'm not
25 conversant enough with to know whether or not we

1 can or cannot capitalize that carrying cost in
2 the form of AFUDC or not. But the issue with
3 regard to a true-up mechanism, that would be
4 exclusively with the ECRC.

5 COMMISSIONER JABER: Right. I'm glad you
6 asked that, Mr. Stone. That was not the
7 response I was referring to. It was my previous
8 question to Ms. Lee, which is what we would do
9 in an application that would have us looking at
10 base rates, which is to look at the recovery of
11 costs in relation to the earnings. And it's
12 similar to what Chairman Deason brought up, that
13 we would make a more thorough evaluation in
14 that kind of application, and that's what I
15 would focus on in the order.

16 CHAIRMAN DEASON: All right. We have a
17 motion and a second. All in favor say "aye."

18 COMMISSIONER JACOBS: Aye.

19 CHAIRMAN DEASON: Aye.

20 COMMISSIONER JABER: Aye.

21 CHAIRMAN DEASON: All opposed?

22 COMMISSIONER BAEZ: Nay.

23 CHAIRMAN DEASON: Okay. Show that the
24 motion carries on a three-to-one vote.

25 MR. ELIAS: Commissioners, just real

1 quickly, now that you've made your decision.
2 we're going to bring this order around before it
3 goes out so that you're all comfortable with
4 it. You may see similar policy questions in the
5 future with respect to repowerings and other
6 environmental -- I use that word in quotes --
7 projects.

8 COMMISSIONER JACOBS: why don't we just --
9 Mr. Chairman, can we take this to workshop, this
10 issue?

11 MR. ELIAS: There's no reason why we --
12 well, we need to take action on -- you know, we
13 need to finalize the action on this petition.

14 COMMISSIONER JACOBS: No, no. I mean the
15 generic issue of how the clauses apply in these
16 circumstances.

17 MR. ELIAS: Sure. And then, you know, if
18 deemed appropriate, either, you know, establish
19 specific rule requirements, or given that we've
20 got the flexibility with the 366 cost recovery
21 clause, make --

22 CHAIRMAN DEASON: Are you saying go to
23 workshop with the idea of adopting a rule?

24 COMMISSIONER JACOBS: No, no. I just --

25 MR. ELIAS: Well, we could consider --

1 remember, Mr. Chairman, that 366 recovery
2 clauses are exempt from the rulemaking
3 requirement if we choose to go down that route.
4 So we could conceivably go to workshop and then
5 formalize the policy.

6 COMMISSIONER JABER: Here's the specific
7 question I would be interested in, and let's see
8 if it's similar to what you're thinking. The
9 question I have in my mind is, when DEP or any
10 state agency, because it could be the water
11 management districts --

12 COMMISSIONER JACOBS: Or federal.

13 COMMISSIONER JABER: Or federal, requires a
14 utility during their permit or citing
15 application to comply with an environmental
16 regulation, is that cost appropriate for
17 recovery through the environmental clause.
18 That's my specific question, whether it be --
19 and, of course, you need to make sure that we're
20 talking about new construction.

21 MR. ELIAS: And new construction to include
22 repowering.

23 COMMISSIONER JABER: Yes, yes.

24 MR. ELIAS: Because we've got -- I think
25 those are the contexts where this is likely to

1 come up.

2 COMMISSIONER JACOBS: well, rather than
3 belabor it today, can we just let staff bring us
4 a recommendation to internal affairs and we can
5 deal with it from there?

6 MR. ELIAS: Or we could conduct a staff
7 workshop, you know, hear from all interest
8 groups, and take -- you know, bring a
9 recommendation to you on the basis of a
10 workshop, staff workshop.

11 COMMISSIONER BAEZ: Commissioner Jaber, I
12 think your question is a good one to answer, but
13 I also believe that it leaves it open to say,
14 well, any -- you know, under a permit, if I
15 issue you a permit, I'm going to issue you a
16 permit requiring you to comply with all
17 environmental regulations. And I don't want
18 that to be -- certainly I wouldn't like that to
19 be a catch-all for this. And the reason I
20 dissented on this decision in particular is
21 because there is no regulation that says you
22 have to use -- you know, you have to employ
23 wetlands mitigation. That really is on a
24 case-by-case basis based on the site that's
25 proposed. so that really can come up as a

1 special condition, if you will.

2 COMMISSIONER JABER: Yes. We need to be
3 specific that it would be a requirement via
4 order or consent final judgment from one of
5 those agencies. I mean, the wetland mitigation
6 program was something Gulf was required to do
7 through a decision by DEP. So to me, there is
8 no difference between this case. But I'm
9 saying, generally speaking, if one of the
10 federal or state agencies requires a company to
11 construct something to comply with an
12 environmental regulation, then I want to know if
13 it's appropriate to seek that recovery through
14 the clause. And I think a staff workshop is
15 ideal. I would want a vehicle that gives us
16 input from the parties.

17 CHAIRMAN DEASON: Okay. I think you have
18 your direction.

19 Okay. That concludes Item 46.

20 (Conclusion of consideration of Item 46.)
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25


CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 1 through 37 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 29th day of September, 2000.


MARY ALLEN NEEL, RPR
100 Salem Court
Tallahassee, Florida 32301
(850) 878-2221