

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Gulf Power Company.

DOCKET NO. 130140-EI

In re: 2013 depreciation and dismantlement study by Gulf Power Company.

DOCKET NO. 130151-EI

In re: Petition of Gulf Power Company to include the Plant Daniel Bromine and ACI Project, the Plant Crist Transmission Upgrades Project, and the Plant Smith Transmission Upgrades Project in the Company's program, and approve the costs associated with these compliance strategies for recovery through the ECRC.

DOCKET NO. 130092-EI  
ORDER NO. PSC-13-0454A-PCO-EI  
ISSUED: October 24, 2013

AMENDED ORDER GRANTING MOTIONS TO CONSOLIDATE AND  
TO ENLARGE NUMBER OF DISCOVERY REQUESTS

On August 16, 2013 the Office of Public Counsel (OPC) filed a Motion to Consolidate Docket Nos. 130140-EI, 130151-EI and 130092-EI for Purposes of Single Evidentiary Hearing and Motion to Enlarge Number of Discovery Requests Authorized by Order No. PSC-13-0342-PCO-EI (Motion). On August 20, 2013 Gulf Power Company filed its Response to Citizens' Motion to Consolidate Docket Nos. 130140-EI, 130151-EI and 130092-EI for Purposes of Single Evidentiary Hearing and Motion to Enlarge Number of Discovery Requests Authorized by Order No. PSC-13-0342-PCO-EI (Gulf's Response).

Background:

On April 1, 2013, Gulf Power Company (Gulf) filed a petition for approval of environmental cost recovery final 2012 true-up, for approval to establish a regulatory asset and associated amortization schedule and to modify the scope of an existing environmental program which was assigned Docket No. 130092-EI (ECRC Docket). In its petition, Gulf requested that certain Plant Smith and Plant Crist transmission line upgrade costs be recovered through the Environmental Cost Recovery Clause (ECRC) since these upgrades constituted the most cost-effective solution to comply with the requirements of federal Mercury and Air Toxics Standards (MATS). Gulf has also requested that the Plant Daniel Bromine and ACI Project costs be recovered through the ECRC as well. Docket No. 130092-EI is being processed as a Proposed Agency Action (PAA). A staff recommendation in Docket No. 130092-EI was filed on July 18, 2013 for consideration at the Commission's July 30, 2013 agenda. The item was subsequently deferred and scheduled for the Commission's October 24, 2013 agenda. OPC is a party to this docket.

On May 9, 2013, Gulf filed a test year letter, as required by Rule 25-6.140, Florida Administrative Code (F.A.C.), notifying the Florida Public Service Commission (Commission) of its intent to file a petition in July of 2013 for an increase in rates effective on or about April 10, 2014. Pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, F.A.C., Gulf filed its petition for an increase in rates on July 12, 2013. OPC is a party to this docket.

On May 22, 2013, Gulf filed its Depreciation and Dismantlement Study (Depreciation Study) as required by Rules 25-6.0436 and 25-6.04364, Florida Administrative Code (F.A.C.), in Docket No. 130151-EI (Depreciation Docket). This docket is also being processed as a PAA and is currently scheduled for consideration at the Commission's October 24, 2013 agenda. OPC is a party to this docket.

The depreciation rates and other associated data used in the development of Gulf's Minimum Filing Requirements (MFR) are based on current depreciation rates approved in various Commission dockets.<sup>1</sup> However, the prefiled direct testimony of Gulf's witness Huck includes the Study filed in Docket No. 130151-EI and Gulf has made a net operating income adjustment of \$2,199,000 to the 2014 test year to reflect an increase in depreciation expense based on the Study.<sup>2</sup> Additionally, in its rate case petition, Gulf has requested that the Plant Smith and Crist transmission line upgrades be included in base rates if the Commission determines that they are not appropriately recovered through the ECRC. If included in base rates, Gulf is requesting a step increase of \$16,392,000 effective July 1, 2015, which represents the annual revenue requirement for the twelve months ending June 30, 2016, the first twelve months that the completed transmission upgrades would be included in base rates.

Analysis and Ruling:

Motions to consolidate are governed by Rule 28-106.108, F.A.C., which states: "If there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party." The decision to consolidate is discretionary with the Commission.

In its Motion, OPC notes that Gulf's rate case docket includes data in both the MFRs and Gulf's direct testimony that incorporate the depreciation expenses developed in the Depreciation Study and include Plant Crist and Plant Smith transmission line upgrades in rate base upon their completion. Inclusion of these items necessarily increases the revenue requirements sought by Gulf in its rate case. In essence, OPC's first argument for consolidation is that by including this data Gulf has placed both the reasonableness of the Depreciation Study and the inclusion of the Plant Crist and Plant Smith transmission line upgrades in rate base at issue in the rate case.

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<sup>1</sup> Order No. PSC-10-0458-PAA-EI, issued on July 19, 2010 in Docket No. 090319-EI; Order No. PSC-10-0674-PAA-EI, issued on November 9, 2010 in Docket No. 100368-EI; Order No. PSC-12-0179-FOF-EI, issued on April 3, 2012, in Docket No. 110138-EI.

<sup>2</sup> Direct testimony of Constance J. Erickson at page 20; Exhibit CJE-I, Schedule 4.

OPC's second argument for consolidation is that failure to consolidate these issues in the rate case creates a timing problem due to the fact that the ECRC and Depreciation Study dockets are being processed as PAAs. Under Rule 25-22.029(1), F.A.C., any person who is substantially affected by a PAA order may file a request for an evidentiary hearing compliant with Rule 28-106.201, F.A.C., requirements within 21 days of the order's issuance date. A timely, valid request for evidentiary hearing prevents a PAA order from becoming final agency action. OPC has stated in its motion that it "intends to raise factual issues related to Gulf Power's proposed depreciation/dismantlement rates that will require an evidentiary hearing to resolve." [Motion at ¶ 6] Based on this representation, it is reasonable to conclude that OPC plans to file a timely protest of any PAA decision rendered by the Commission in the Depreciation Docket. Due to the Commission's calendar, a separate hearing on a PAA order issued in either the Depreciation Study or ECRC dockets will necessarily take place after the Gulf rate case final hearing currently scheduled for December 9-13, 2013. As such, OPC argues that consolidation will allow the Commission to avoid covering the same ground in different dockets, make its decision timely, and be administratively efficient.

In its response to OPC's Motion, Gulf argues that both the ECRC and Depreciation Study PAA dockets should not be consolidated with the rate case docket. Gulf notes that OPC does not appear to contest the inclusion of Plant Daniel Bromine and ACI Project costs in the ECRC. Nor has Gulf included these costs in its MFRs or rate case testimony. For that reason, Gulf would like the PAA ECRC docket to go forward addressing at least the uncontested Plant Daniel Bromine and ACI Project issue. With regard to the Depreciation Study docket, Gulf notes that it is required to file depreciation and dismantlement studies every four years which are quite complex and that analysis of those studies should not be compressed into the eight month statutory time frame that applies to rate cases. Further, Gulf states that the effect of its proposed depreciation rates on its proposed test year revenue requirement is minimal.

Upon close review of both OPC's Motion and Gulf's Response, it is clear that both OPC and Gulf are parties to all three dockets and that the issues for which consolidation is being requested are identical.<sup>3</sup> It is also clear that OPC as well as Gulf will have the same procedural rights with regard to the transmission line upgrades and Depreciation Study whether the dockets continue on separate PAA paths or are consolidated into the rate case, i.e., the right to have an evidentiary hearing on the recovery mechanism, prudence and appropriate cost of the proposed Plant Smith and Plant Crist transmission upgrades and reasonableness of the depreciation and dismantlement rates. Under these circumstances, the requirements for consolidation of the dockets under Rule 28-106.108, F.A.C., have been met. There are common questions of law or fact and the rights of all parties in the separate dockets can be adjudicated in the same docket without prejudice to any party.

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<sup>3</sup> Tampa Electric Company, Duke Energy Florida, Inc., Florida Power & Light Company and PSC Phosphate-White Springs, parties to the environmental cost recovery clause docket, Docket No 130002-EI, are listed as parties to Docket No. 130092-EI as well. However, none of these parties filed any responses to OPC's Motion and all have indicated to OPC that they have no position/no objection to its motion.

I agree with OPC that consolidation of these dockets and issues is administratively efficient. As Gulf has admitted in its Response, if the depreciation rate issue is not determined in the rate case and incorporated into the revenue requirements and final rates scheduled to be voted on by the Commission in February and March of 2014, there will have to be a "true-up" at some later date to reflect the Commission's ultimate decision on those issues. While this "true-up" may or may not ultimately affect Gulf's final revenue requirements or rates, it is an unnecessary exercise in these circumstances.

OPC has also requested that the 500 limit on interrogatories, requests for admissions and requests to produce documents established by Procedural Order PSC-13-0342-PCO-EI, issued on July 31, 2013, be increased by 300 for each discovery category. Due to the fact that OPC has already filed 65 interrogatories and 33 production of document requests in the Depreciation Docket, I will increase the total number of additional discovery requests by 100 to be allocated among the three categories of discovery as OPC and the other parties to the docket deem appropriate. To the extent that parties have provided responses to discovery or staff data requests in Docket Nos. 130092-EI and 130151-EI those requests and responses shall be incorporated into this docket as if originally filed herein. All prefiled testimony and pleadings filed in Docket Nos. 130092-EI and 130151-EI shall also be incorporated into this docket as if originally filed herein. Docket 130151-EI shall be closed and consolidated with the rate case docket, Docket No. 130140-EI. Docket No. 130092-EI shall remain open for disposition by proposed agency action of the regulatory treatment of the Plant Daniel Bromide and ACI Project. The regulatory treatment of Plant Crist and Plant Smith's transmission line upgrades shall be litigated as an issue in the rate case docket, Docket No. 130140-EI, and will not be considered in Docket No. 130092-EI.

Based on the foregoing, it is

ORDERED that the Office of Public Counsel's Motion to Consolidate Docket Nos. 130140-EI, 130151-EI and 130092-EI for Purposes of Single Evidentiary Hearing and Motion to Enlarge Number of Discovery Requests Authorized by Order No. PSC-13-0342-PCO-EI is granted as directed herein. It is further

ORDERED that Docket No. 130151-EI shall be closed and consolidated for all purposes with the rate case docket, Docket No. 130140-EI. All issues raised in Docket No. 130151-EI shall be heard and decided in the rate case docket, Docket No. 130140-EI. Parties shall not file any pleadings, orders, notices or correspondence in Docket No. 130151-EI effective immediately. It is further

ORDERED that Docket No. 130092-EI shall remain open for disposition by proposed agency action of the issue of the regulatory treatment of the Plant Daniel Bromide and ACI Project only. The regulatory treatment of Plant Crist and Plant Smith's transmission line upgrades shall be heard and decided in the rate case, Docket No. 130140-EI. All pleadings, orders, testimony, notices or correspondence related to the Plant Crist and Plant Smith transmission line upgrades shall be filed only in the rate case docket, Docket No. 130140-EI.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 24th day of  
October, 2013.

  
LISA POLAK EDGAR

Commissioner and Prehearing Officer

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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing 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.

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

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) 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 wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.