IN THE SUPREME COURT OF FLORIDA

MONSANTO COMPANY, Appellant, v. MICHAEL McK. WILSON, et al., Appellee.	)	CASE NO. 7'3,689 PSC DOCKET NO. 890001-EI

On Appeal from the Florida Public Service Commission

ANSWER BRIEF OF APPELLEE
GULF POWER COMPANY

G. EDISON HOLLAND, JR.
Fla. Bar No. 261599
JEFFREY A. STONE
Fla. Bar No. 325953
Beggs & Lane
P.O. Box 12950
(700 Blount Building)
Pensacola, FL 32576-2950
(904) 432-2451
Attorneys for Gulf Power Co.

TABLE OF CONTENTS

Page No.

TABLE OF CITATIONS ii

PRELIMINARY STATEMENT iii

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 9

SUMMARY OF ARGUMENT 22

ARGUMENT

THE FLORIDA PUBLIC SERVICE COMMISSION DECISION THAT GULF'S IMPLEMENTATION OF SCHEDULE R DID NOT CAUSE GULF'S RETAIL CUSTOMERS TO BEAR INAPPROPRIATE FUEL COSTS IS SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE 25

A. The Standard of Review; Burden to Demonstrate Error 25

B. Gulf's Fuel Expenses Incurred to Supply Plant Daniel Were Reasonably and Prudently Incurred 26

C. The Evidence in the Record Overwhelmingly Supports the Commission's Decision that Fuel Costs Paid by Retail Ratepayers Were Appropriate 27

CONCLUSION 42

CERTIFICATE OF SERVICE 43

INDEX TO APPENDIX 44

TABLE OF CITATIONS

Cases	Page No.
Florida Power Corporation v. Cresse, 413 So.2d 1187 (Fla. 1982)	27
Gulf Power Co. v. Florida Public Service Commission, 453 So.2d 799 (Fla. 1984)	25
Florida Statutes	
Section 120.68(10) (1987)	25
Section 366.03 (1987)	9
Administrative Orders	
FPSC Docket No. 810136-EU, Order No. 10557	37, 38
FPSC Docket No. 820150-EU, Order No. 11498 at p. 76	38, 40
FPSC Docket No. 840086-EI, Order No. 14030	40
FPSC Docket No. 870001-EI, Order No. 17281	3, 26
FPSC Docket No. 880001-EI, Order No. 18867	4
FPSC Docket No. 880001-EI, Order No. 19042	4, 5, 6, 22, 25, 41
FPSC Docket No. 880001-EI, Order No. 20568	8, 22, 25

PRELIMINARY STATEMENT

Throughout this brief, the Appellant, The Monsanto Company, is referred to as Monsanto or Appellant. The Florida Public Service Commission, is referred to as The Public Service Commission, FPSC, or the Commission. Gulf Power Company is referred to as Gulf Power, Gulf, or the Company.

The record on appeal is denoted "R-Vol. ___, p. ___." Exhibits are denoted "R-Vol. ___, Exh. ___." References to the transcript are designated "Tr-Vol. ___, p. ___." References to the Appendix include numerical references to the appropriate tab under which the item may be found.

STATEMENT OF THE CASE

In January, 1987, as part of the Commission's regular fuel cost recovery proceedings, Gulf Power petitioned the Commission to approve certain costs for recovery from Gulf's retail customers through the fuel adjustment factor to be used during the period April 1, 1987 through September 30, 1987. The hearings to determine the factor for this period were scheduled for late February 1987. Hearings to determine the appropriate fuel adjustment factor are held every 6 months, typically in late February and late August, to set the fuel adjustment factor (the "factor") for use April 1 through September 30 and October 1 through March 31, respectively.

Gulf's January 1987 fuel adjustment petition sought recovery, through the fuel adjustment factor, of projected costs for the period April 1 through September 30, 1987 and an amount to true up the past period's projections to reflect the actual expenses incurred. As part of the January 1987 petition, Gulf brought to the attention of the Commission the fact that the Company had been successful in negotiating an early end to the previous long term contracts responsible for providing the coal supply for the Company's Daniel Generating Station ("Plant

Daniel", or "Daniel").[1] (Appendix 1)

The purpose and effect of the Company's efforts to negotiate an early end to the previous long term supply contracts was to enable Gulf to reduce the fuel costs associated with Plant Daniel for the benefit of Gulf's customers. Economies in the fuel supply market that had developed since the long term contracts were originally entered into enabled the Company to secure coal to supply Plant Daniel at much lower delivered prices than had been possible under the previous long term contracts. As part of the negotiated early termination, an up front payment of funds was made to the coal vendors as consideration for their loss of future rights under the contracts.

The fuel cost savings achieved with the early termination of the previous long term contracts were of sufficient magnitude to allow Gulf's customers to enjoy fuel cost savings even after the up front termination payments were added to the stockpile cost of fuel. As a result, the Company proposed to recover the contract termination costs by adding them to the cost of fuel charged to customers receiving energy generated at Plant Daniel. The purpose and effect of this proposal was to

---

[1]Gulf owns an undivided 50% interest in the total generating station and Gulf's sister Company, Mississippi Power Company owns the remaining 50%. In this brief, references to Plant Daniel mean Gulf's ownership share.

ensure that the costs associated with the early termination of the previous long term supply contracts were paid by those customers who received and enjoyed the benefit of reduced fuel costs because of the early termination.

In Order No. **17281** entered after the February **1387** hearings, the Commission recognized the fuel cost savings that the early termination of the previous long term fuel supply contracts enabled Gulf to achieve for its customers. As a result, the Commission approved Gulf's recovery of the early termination or buyout costs. (Appendix 2) The method of recovery approved by the Commission treated the early termination costs as an adder to the price of replacement fuel purchased to supply Plant Daniel. Thus, the customers who receive electric energy generated at Plant Daniel and therefore enjoy the benefits of the reduced fuel costs made possible by the early termination payment would pay the cost associated with such payment. Monsanto intervened and raised the question whether the proposed recovery method would result in a fair allocation of the buyout cost among retail and wholesale customers of the Company, specifically the Unit Power Sales customers who had "purchased" a portion of the Plant Daniel capacity. (Appendix 2, p. 6) The Commission retained jurisdiction to examine the allocation issue. (Appendix 2, p. 6)

Following protracted discovery, and after a prehearing conference, a prehearing order, Order No. **18867,** was issued by the Commission on February **16, 1988.** The issue was framed in the prehearing order as "Do Gulf Power's Schedule R sales to UPS customers cause retail ratepayers to bear inappropriate fuel **charges?"**[2] Order No. **18867** at page 12. (R-Vol. I, p. **33)** The hearing began as scheduled on February *22*, **1988.** Testimony and arguments related to the issue framed in the prehearing order was presented on February *23* and 24. (Tr-Vol. III **- V,** pp. *320* **- 693)**

On March 25, **1988,** the Commission issued Order No. **19042.** (R-Vol. **I,** p. **80)** On pages **8 -** 12 of that Order, (R-Vol. I, pp. **87-91)** the Commission extensively discussed the evidence presented at the hearing in regard to the issue framed in the prehearing order and announced its decision. In its review and discussion of the evidence, the Commission acknowledged that the Company had shown through its testimony that its generating plants were operated under the principle of economic dispatch; that is, generating units of the Southern electric system (of which Gulf is a part) are dispatched to serve electric load requirements of the system in the order of

----

'Schedule R is a pricing schedule for certain types of energy sales made available by the Southern electric system for purchase by its Unit Power Sales customers.

ascending incremental costs. This is done to ensure that load is served by the most economical generating units available. The Commission also noted that Monsanto's witness, Mr. Pollock, conceded a number of facts including the theory that under the economic dispatch system, the utilization of Plant Daniel to generate electric energy was the economic choice and thus to the extent that Plant Daniel's energy was made available to Gulf's territorial customers, it was the most economical energy available to them at that time. (R-Vol. I, p. 90)

Mr. Pollock perceived a shift in Plant Daniel energy costs to Gulf's retail customers and stated that it was unclear what happened to Plant Daniel energy when its generating units were called upon to generate energy at a level higher than the units would produce at their minimum stable operating limits. According to Mr. Pollack, the central question in determining whether the retail customers were bearing excessive costs was how the energy being produced by the unit was accounted for; in other words, to whom were the costs of the energy being allocated. (Tr-Vol. IV, p. 480) To get to this question, Mr. Pollock posed the idea that there was a problem in accounting for energy once a generating unit was dispatched to generate above minimum operating limits as one possible explanation for his perceived shift of Plant Daniel energy costs to retail customers. (Tr-Vol. IV, pp. 529 - 536) The Commission noted at page 11 of Order No. 19042 (R-Vol. I, p. 90) Mr. Pollock's concession that "... the problem of accounting for energy after a unit goes above minimum

was a part of economic dispatch generally and was not necessarily related solely to the effects of Schedule R." The Commission went on in Order No. 19042 to discuss some of the evidence presented by Gulf's witness, Mr. Howell, in rebuttal to the testimony of Mr. Pollock.

In announcing its decision, the Commission acknowledged having reviewed the testimony of all witnesses in respect to the Schedule R issue. The Commission at page **12** of Order **No. 19042** then stated:

> It is by no means evident that under conditions of economic dispatch, there is a shift of higher priced generation to the retail ratepayers, once the UPS unit comes off minimum. Nor is it evident that this process is fundamentally different from that which occurs with any unit in economic dispatch or that the process would necessarily cause retail ratepayers to bear expenses that would not have been incurred absent the sale of UPS energy under Schedule R. Moreover, we find that off-system sales through the UPS contracts would tend to benefit all of Gulf's ratepayers through lowered fuel costs. Since Gulf calculates its incremental fuel costs on an average between contract and spot purchases, the net result of increased spot purchases would be to reduce the overall fuel cost. In sum, we find that the evidence does not support INDUS's claim that Schedule R has "tilted" the allocation of Plant Daniel energy costs to the detriment of the retail ratepayers. We, therefore, find that Gulf's implementation of Schedule R has not caused retail ratepayers to bear inappropriate fuel costs. (R-Vol. I, **p. 91**) (Emphasis Added)

Monsanto filed its Motion for Reconsideration dated April 7, **1988.** (R-Vol I, p. **123**) Gulf received an extension of

time to serve its response which was indeed served April 25, 1988. (R-Vol. I, p. 131) Oral argument on the issue of reconsideration, originally set for July 13, 1988, was ultimately heard by the Commission August 1, 1988.

The Commission's Case Assignment and Scheduling Record (CASR) issued August 8, 1988, indicated that the Staff's recommendation as to disposition of Monsanto's Motion for Reconsideration was due on September 8, 1988, in anticipation of the Commission's scheduled vote on the disposition at its regular agenda conference of September 20, 1988. (Appendix 3) The day the recommendation was due, Monsanto filed its Request for Official Notice. (R-Vsl. I, p. 138) The request concerned an opinion issued by the Administrative Law Judge (ALJ) on May 12, 1987 in two dockets pending before the Federal Energy Regulatory Commission and the FERC decision issued April 1, 1988 affirming in part the ALJ decision. Gulf served its Response to the Request for Official Notice on September 19, 1988. (Appendix 4)

At least in part because of the Request for Official Notice, Commission consideration of Monsanto's Motion for Reconsideration was delayed until the Agenda Conference on December 20, 1988. The Commission voted to deny the Motion.

In Order No. 20568 issued January 9, 1989 at page 3, (R-Vol. I, p. 175) the Commission stated:

> After exhaustively looking at the record developed in the proceeding, we are still of the opinion that Southern's economic dispatch does result in Gulf's ratepayers getting the cheapest power being dispatched at any time.

On February 8, 1989, Monsanto filed its Notice of Appeal precipitating this review. (R-Vol. I, p. 178)

STATEMENT OF THE FACTS

As this Court is well aware, Gulf Power is an electric utility charged by the legislature and the Commission with responsibility for furnishing reasonably sufficient, adequate, and efficient electric service to each person requesting same. §366.03 Fla. Stat. (1987). Since its founding in 1925, Gulf has worked to fulfill this obligation of service to its customers and the citizens of Northwest Florida.

In order to meet its statutory obligation of service in a manner that keeps the costs to the Company's customers as low as possible, Gulf participates in the power pool (the "pool") operated by the Southern electric system, a group of five operating electric utilities from four states.[3] Each is an operating subsidiary of one corporate parent, the Southern Company.

There are numerous benefits which flow to Gulf's territorial customers[4] as a result of its participation in the pool.

---

[3]The five operating companies are Gulf Power company from Florida; Georgia Power Company and Savannah Electric and Power Company from Georgia; Mississippi Power Company and Alabama Power Company from Mississippi and Alabama, respectively.

[4]Gulf's service territory covers Northwest Florida between the Appalachee and Perdido Rivers and from the Gulf of Mexico to the Alabama state line. Over 95% of Gulf's territorial customers constitute Gulf's retail customers, with the remainder being served at retail either by another investor owned utility also subject to regulation by the FPSC or a Florida municipality both of which are served by Gulf at wholesale under the regulation of the Federal Energy Regulatory Commission (FERC).

Among these benefits are several which are pertinent to the matter addressed by the Commission which is now under review herein, including: (1) the ability to plan and build large economy of scale generating units in order to more economically meet the generating needs of Northwest Florida; and (2) the ability to share the generating resources of the entire Southern electric system through the principle of economic dispatch to deliver lower priced energy to the territorial customers of each operating company than would otherwise be possible if any such company were to meet its load exclusively on its own.

For a variety of reasons, different generating units have different capacity and energy charges associated with them. The simplified ideal which utilities such as Gulf strive for, is to match capacity (with appropriate margins of built in reserve) to the maximum total generating needs of the system over time, and to do this with the lowest cost capacity possible. In addition, utilities strive to maintain a sufficient mix of capacity to enable them to produce the lowest cost energy possible at any given moment.

As loads grow on a utility's system it must plan to build (or purchase) additional generating capacity to serve the new load. The utility must anticipate future needs in such a fashion that it allows sufficient lead time so that additional capacity can be constructed in advance of the need. Otherwise, the utility would be unable to meet its statutory obligation to serve each customer applying for service.

Through its membership in the power pool of the Southern electric system, Gulf Power is able to reduce the costs to its territorial customer in several ways. For example, by planning generation as one integrated system, the operating companies of the Southern electric system are able to add capacity in larger, more efficient increments than would be possible if each company were to operate on a stand alone basis. This is made possible by the sharing of reserve capacity through the Intercompany Interchange Contract (IIC) between the operating companies.

Over time, each operating company is responsible for obtaining and maintaining enough capacity to serve its own territorial requirements. In the short term, this would ordinarily cause an individual operating company to have temporary surpluses of capacity or to build new capacity in less efficient increments which do not take advantage of economies of scale associated with larger units. In either case, the utility's territorial customers would have the burden of higher costs. By sharing reserves with sister companies, each of the operating companies of the Southern electric system (including Gulf) benefit their territorial customer by reducing the reserve required in the short term to support the capacity built to serve the territorial customers in the long term.

In addition to the savings associated with the sharing of capacity reserves, the Southern electric system power pool also benefits territorial customers of the individual operating companies through more efficient generation of energy. The Southern

electric system dispatches the generating units of the system to serve system aggregate load in any given hour. Because the system as a whole has a larger number of units than any one company could afford to maintain, the system is able to dispatch units in the order of relative increasing costs without regard to the ownership of a particular generating unit or territorial location of particular load thus assuring that the least cost available energy resources are utilized to serve system needs. This sharing of generating resources through economic dispatch--the process of matching generation supply to customer demand in the least costly way possible--lowers the fuel costs incurred by the territorial customers of each operating company.

With this brief general background, it is now possible to review the facts that led to Gulf's purchase of Plant Daniel for its territorial customers, Gulf's decision to temporarily **"sell"** Daniel capacity to neighboring utilities through the Unit Power Sale (UPS) concept, and Gulf's decision to offer Schedule R as an additional energy resource to its UPS customers. This information was developed in the record below largely through the testimony and exhibits of Gulf Power's witnesses, M.L. Gilchrist and M.W. Howell. Mr. Howell's testimony was in rebuttal to Mr. Pollock's. At the time of the hearing these two witnesses had a combined personal history of over 48 years of service in the electric utility industry through their employment with Gulf Power. (Tr-Vol. III p. 326; Vol. IV p. 610)

Within the Southern electric system, from 1950 through 1972, the peak demand increased at a rate of 9% per year compounded. Load growth of this magnitude necessitated a responsive expansion of generating capacity. Plant Daniel was a part of this expansion program. Originally envisioned as a coal-fired plant, Mississippi Power Company planned Daniel as an oil fired plant during the early 1970's when new environmental laws precipitated a national push from coal to oil use.

In 1973 the U.S. was impacted by the Arab Oil Embargo, causing disruptive petroleum shortages and skyrocketing oil prices along with double digit inflation. The specter of continuing oil shortages and a rapidly escalating oil price forecast led Mississippi Power Company to begin planning for coal as the permanent fuel supply for Daniel. During the late 1973-early 1974 time frame, Mississippi Power Company initiated the steps necessary for this change.

These factors, along with environmental laws requiring use of low sulphur New Source Performance Standard compliance coal, led Mississippi Power Company, in 1976, to enter into two long term contracts for the purchase of low sulphur compliance coal from mines in Utah and Colorado. The western coal contracts were negotiated to prevent the coal cost from escalating faster than the general inflation rate. These contracts were successful in accomplishing this goal.

Plant Daniel was planned, constructed and the western coal contracts entered into in order to meet the forecasted demand and energy needs of territorial customers.

The oil embargo and subsequent economic recession dramatically changed the economic environment in which utilities operated. The electric utility industry went from a period of rapid expansion to meet rapid load growth into a period of deferral, and in some cases cancellation, of generating units. In 1973, the load forecast indicated that Gulf would need additional capacity in 1979. The generation expansion plan and the site certification process indicated that Gulf's next unit should be a 500 megawatt nameplate coal fired unit at Caryville, Florida.

As the load growth began to decline in the mid 1970's, the projected generation needs for all companies in the Southern electric system were reduced. Mississippi Power Company was faced with a decision to either cancel the second unit at Plant Daniel or sell the capacity to some other utility off its system. Since the Daniel plant equipment commitments were made long before the high inflationary period of the late 1970's, Gulf was able to purchase 500 megawatts of nameplate capacity at Plant Daniel at a savings of $275 million over the same amount of capacity to be built at Caryville. This commitment to purchase was made in 1976, and resulted in the deferral and eventual cancellation of Gulf's Caryville unit. Gulf's purchase of a 50% interest in Plant Daniel, along with the existing coal contracts, was for the sole purpose of

meeting projected demand and energy growth of the territorial customers on Gulf's system.

As late as Gulf's March 1979 expansion plan, the need for the Daniel capacity by 1981 was clear. In October 1979, Gulf's load forecast and generation plan indicated for the first time that the need for the Daniel capacity as early as 1981 would not be as critical as earlier forecasts had indicated. At that time, the startup of the unit was less than 16 months away. It would have been uneconomical to stop construction at that late date.

Neither Southern nor Gulf ever planned to build generating units to sell to other areas. But a rapidly changing market environment required the Southern system to investigate temporary off-system sales. The Southern system made a decision in this uncertain environment to develop a marketing strategy to sell capacity and energy off-system to neighboring utilities until needed on the Southern system. Selling capacity and energy of units under construction avoided the costs associated with delay or cancellation of these units. Because of increasing prices in the oil market, and the 1978 adoption of the National Energy Legislation "Fuel Use Act" prohibiting new power plants for using oil or natural gas as their primary source of fuel, the climate was right for selling the capacity already under construction on the Southern system. The primary fuel source for electric generation in Peninsular Florida being oil and gas, sales efforts were initially aimed at providing oil replacement energy in that area.

In late 1979, the Southern system made the first sale of "Long Term Power" (Schedule E Energy), to Florida Power Corporation. By this time, the price of oil had risen to a level which made coal-fired generating plants of the Southern system an attractive alternative. Schedule E energy is priced at the incremental cost of production. This pricing mechanism was possible because the capacity was recallable by Southern if needed to serve the system load.

By 1980, Florida Power & Light (**"FP&L"**) and Jacksonville Electric Authority (**"JEA"**) were also in the market for additional energy, and contracts for Schedule E were also signed with them. Although long term Schedule E energy can be utilized to replace high cost oil and natural gas generation, it cannot be relied upon as an assured capacity resource to meet the purchaser's statutory obligation to serve because it is recallable by the selling utility.

In the early 1980's the Southern system first discussed the sale of energy from specific units with FP&L, JEA, and Gulf States Utilities (GSU). Out of these negotiations came the first Unit Power Sales (UPS) agreements. The UPS concept involves the dedication of the right to use of generating capacity from units physically located on the Southern electric system to the off system purchaser. The purchaser received the capacity and could schedule energy as long as its purchased unit was available for operation. Included in the UPS agreements were provisions for sale of alternate energy (energy delivered from generating resources

other than the UPS units), supplemental energy (energy supplied to replace outaged or derated UPS units) and discretionary energy (energy supplied from other resources in quantities of up to 10% of the capacity purchased). The UPS contracts, through the capacity payment, require the customers to pay a portion of the cash working capital allowance for the stockpile carrying cost, but do not obligate the customer to purchase any dedicated amount of fuel. The basic concept was to require the UPS customer to purchase the capacity, but allow limited participation in the economic dispatch of the Southern system power pool for energy. Energy was not allocated to the UPS customer and territorial customer in proportion to their respective capacity entitlements out of the Daniel units.

By 1985, the market situation which had fostered the UPS agreement had reversed. In direct contradiction of the pricing trend forecast as late as 1983, oil was dramatically decreasing in price. As oil prices continued their downward spiral, sales of UPS energy dropped, and pressure mounted to improve the pricing of the capacity and energy under the UPS contracts. Again, the market for energy had changed dramatically in a relatively short period of time. The UPS customers made it very clear to Gulf and Southern that they could not and would not continue to take energy and capacity under the contracts at a price far in excess of the price for which they could generate energy for themselves. This led to implementation of Service Schedule R.

Schedule R was an attempt to maintain the benefit of significant capacity revenues from the UPS contracts for Gulf's

territorial customers and to ensure energy utilization by allowing UPS customers to substitute Schedule R energy and apply such purchases against energy scheduling requirements under UPS agreements. Lowering energy prices to the UPS customer through Schedule R helped to increase UPS energy utilization which, in turn, even further lowered the costs of UPS capacity and energy in comparison to oil fired energy alternatives. This effect was necessary to counter the competitive advantage of oil fired energy created by the dramatic drop in oil prices. The decision was made to offer Schedule R as an additional energy pricing mechanism to the UPS customers under separate agreement.

The combination of the existing UPS contract with the new Schedule R energy pricing formula would and did provide the necessary incentives to the off system purchaser to increase its energy purchases and to continue making the capacity payments. Schedule R energy is priced at the incremental cost to produce, thus it recovers the full cost of production.

The majority of the customers who benefited from the lower average fuel costs reside in Florida. Thus, Schedule R not only benefited Gulf's territorial customers; it also benefited the Florida ratepayers of the UPS customers. Schedule R also assisted Florida in reducing its dependence on foreign oil by helping keep coal-fired energy flowing to the state. Schedule R thus assisted tremendously in meeting the legislature's and the Commission's goals of oil backout.

With the exception of GSU which defaulted on the contracts, the UPS contract capacity obligations have been maintained. Gulf's retail customers have been relieved of the cost of this capacity until it is needed in the late **1980's** and early **1990's.** When the capacity returns to Gulf's system, it will do so at a depreciated cost incurred in the **1970's.**

The statement that Schedule R helped preserve the UPS Contracts is well founded. GSU defaulted on its contractual obligations beginning in 1986.[5] GSU's actions prove that breach of the UPS contracts was an option to the customers. The actions of GSU alone have deprived Gulf of well over $20 million in capacity revenues and over $2.6 million in energy revenues. The UPS customers were faced with the option of producing energy on their system, with oil and gas, at approximately $20/mwh versus buying UPS base energy at approximately $30/mwh. Market pressure required a prudent decision by the Southern electric system to produce an economic alternative to base energy to save the UPS contracts. The loss of these contracts would have a catastrophic effect on revenues to Gulf (Exhibit **11;** Section 1, Charts G & H). Although the net energy revenues at risk if the UPS contracts were terminated are significant, they pale in comparison to the capacity revenues at risk. As a result, the offer of Schedule R on the energy side to save the significant revenues on the capacity side

---

[5]The contracts with GSU are the subject of ongoing litigation in the U.S. District Court Eastern District of Texas.

of the UPS contracts was dictated by prudent decision making. The UPS revenues offset the increased revenue that would otherwise be required from Gulf's retail customers to support the capacity that was purchased for their long term benefit. The loss of the UPS revenues would adversely impact retail rates for many years.

The prudency of Schedule R energy sales is also objectively measured by the amount of revenues placed in jeopardy had Gulf and Southern not taken action in 1985. These revenues, along with lower average fuel cost resulting from increased utilization of energy, firmly support the fact that Schedule R has been and will continue to be an asset providing major benefits to all of Gulf's customers.

Simultaneously with its efforts to maintain the viability of the UPS agreements, Gulf, Mississippi, and the Southern system were continuing their efforts to negotiate a buyout of the Western Coal contracts supplying fuel to Plant Daniel. Lowering the energy prices out of Plant Daniel was yet another means of helping maintain the UPS Agreements, as well as lowering the energy cost to all of Gulf's customers.

By mid-1979, external factors had caused the market price of coal to trend downward below the contract price. Some of these factors were: lower than anticipated growth in load demand for electrical power; changing environmental laws that first encouraged the use of low sulphur coal, then eliminated the advantage by mandating the installation of scrubbers in all future coal fired

plants; and unanticipated decline in demand for metallurgical coal. Reduced demand had lowered the price of coal, thus the contracted price of the western coal was no longer the economic choice. During the period from 1980 through 1986, Mississippi and Gulf negotiated with the coal supplier to reduce the cost and/or quantities of the western coal. In late 1986, a contract buyout was accepted and an agreement was signed. This opened the door for Mississippi and Gulf to obtain a new source of compliance coal at substantially better terms. The savings to Gulf's customers were projected to be over $15 million dollars for 1987 alone. Actual figures demonstrated even greater savings (over $22 million to Gulf's customers for 1987). At the time of hearings before the Commission, recent projections indicated savings in excess of $164 million over the otherwise remaining life of the contracts (which would have been through 1995).

The early termination of the western coal contracts did involve up-front payments which will be amortized over nine years on all energy taken out of Daniel. This cost was not allocated to any type of customer, whether retail or UPS. Quite simply, whoever has need of the energy buys it because it is the least cost option even with the buyout adder. The buyout has so significantly reduced Daniel's fuel cost that Daniel price of generation was near system incremental as of June 1987.

SUMMARY OF ARGUMENT

There is a presumption of validity attached to orders of the Public Service Commission. The role of the Supreme Court in reviewing orders of the Commission is to determine whether they are supported by competent substantial evidence. It is not the role of the Court to reweigh the evidence to determine whether it would have reached the same conclusions as the Commission.

Monsanto, as the appellant, has the burden of overcoming the presumption of validity attached to Orders 19042 and 20568. Monsanto must demonstrate that these Orders are not supported by competent substantial evidence. The Commission heard the evidence presented by Monsanto's witness. It also heard the evidence presented by Mr. Gilchrist and Mr. Howell on behalf of the Company. The Commission, as fact finder, is allowed great latitude in determining the credibility of the testimony.

Monsanto, through the selective use in its brief of evidence presented through Gulf's witnesses has done nothing more than suggest that the evidence in the record could have supported a decision opposite to that actually reached by the Commission. This is nothing except a request that the Court reweigh the evidence, an impermissible exercise.

The evidence before the Commission demonstrates that Gulf purchased a portion of the Daniel Generating Station and entered into the coal supply contracts related thereto in order to serve Gulf's territorial customers at a lower cost than other available options. Because of changes in the economy and resulting changes

in the load growth on Gulf's system, the territorial need for Plant Daniel capacity was deferred. In order to limit the need of Gulf's territorial customers to support this capacity with additional revenue in the short term, Gulf was encouraged to "sell" this capacity to other utilities and receive the revenue support for the capacity from off system sales. This was accomplished through UPS.

The economy changed again, this time affecting the relative economics of the UPS energy versus that of the UPS customers' own generating resources. The evidence before the Commission is that a utility bases its energy scheduling decision on the cost of energy without regard to the capacity payments made to support the entitlement to energy out of a given energy resource. Faced with a changing economic situation, Gulf's and Southern's management prudently reacted by offering replacement energy to the UPS customers at a price set equal to Southern's incremental cost of generation. This reaction allowed the UPS customer to continue economically scheduling energy from the Southern electric system in lieu of from the customer's own generation. Thus an incentive to the UPS customer to continue supporting the revenue requirements of the Daniel capacity rather than forcing Gulf to seek rate relief in the form of increased revenues from Gulf's retail customers was provided through the implementation of Schedule R.

Gulf is part of the Southern electric system, and therefore its units are operated by Southern under the process of economic dispatch. That is, the available generating units are

dispatched to serve customer load in the order of increasing average costs in order to optimize the cost of energy. Although billing for the energy taken is an after-the-fact process, it is done in a fashion similar to economic dispatch but in reverse. That is, billing moves down the "stack" of units from highest cost to lowest until the energy taken by the territorial customers is reached. In this fashion, the lowest cost energy is "retained" to serve territorial and thus retail customer load. Very simply, as the Commission correctly determined, the dispatch and billing programs result in the territorial customers receiving the most economical energy possible within operational limitations.

The increases in energy sales associated with Schedule R enabled Gulf to lower the average price of fuel to all of its customers because of the ability to mix higher quantities of relatively lower priced spot fuel purchases with fixed quantities of contract cost purchased at relatively higher prices. To the extent Schedule R allowed Gulf to increase energy sales, it could only have produced lower average fuel prices to be born by retail customers.

Commission's decision herein is supported by competent and substantial evidence by the record. The Commission should be affirmed in all respects and this appeal dismissed.

ARGUMENT

THE FLORIDA PUBLIC SERVICE COMMISSION DECISION THAT GULF'S IMPLEMENTATION OF SCHEDULE R DID NOT CAUSE GULF'S RETAIL CUSTOMERS TO BEAR INAPPROPRIATE FUEL COSTS IS SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE.

A. The Standard of Review; Burden to Demonstrate Error

It is well established that the Commission's orders must be supported by competent substantial evidence. See §120.68(10) Fla. Stat. (1987). The question left unanswered by the appellant's brief is who must meet the burden of demonstrating that Order Nos. 19042 and 20568 are not supported by competent substantial evidence. The law in Florida is equally clear on this subject. The burden is on the appellant to overcome the presumption of validity attached to Commission orders in general and to demonstrate that these Orders in particular are not supported by competent substantial evidence. See Gulf Power Co. v. Florida Public Service Commission 453 So.2d 799, 806 (Fla. 1984). The Court will not reweigh evidence and will not overturn an order of the Commission even if the Court would have arrived at a different conclusion if it had made the initial decision. Id. at 803.

The Commission has decided in this case that Gulf's implementation of Schedule R has not caused Gulf's retail

ratepayers to bear inappropriate fuel costs. Order No. 19042 at page 12. (R-Vol. I, p. 91) Stated another way, the retail ratepayers have paid appropriate fuel costs notwithstanding Gulf's implementation of Schedule R. By removing the emotion laden and diversionary terms "refusal", "disallow" and "excessive" from Monsanto's restatement of the Commission's decision in this case, it is clear that the Commission's decision is supported by competent substantial evidence and should therefore be affirmed.

B. Gulf's Fuel Expenses Incurred to Supply Plant Daniel Were Reasonably and Prudently Incurred

The only evidence in this regard is that of the Company's witness, Mr. Gilchrist. He was not cross examined on this issue. In fact, when the question was initially raised by Monsanto and preserved for further review by the Commission, Monsanto along with the other Industrial Intervenors took no position with respect to the prudence of the original coal supply contracts or of the terms of the buyout transaction. Order No. 17281 at page 6. (Appendix 2)

It is also important to note that Monsanto's position before the Commission was that Schedule R impacted fuel charges from August 1985 - December 1987. (Tr-Vol. IV, pp. 480-482, 484-485, 487-488) The fuel adjustment factors for the period

April 1985 through March 1987 had already been established by Commission order by the time Monsanto intervened. As such, the fuel adjustment factor or "rate" had been established. "Burden of proof in a commission proceeding is always on the utility seeking a rate change and upon other parties to chanse established rates." (emphasis added) Florida Power Corporation v. Cresse 413 So2d 1187, 1191 (Fla. 1982) (citation omitted) As to the period at issue then, Monsanto had the burden of proof before the Commission below. This being the case, it is clear that Monsanto woefully failed to meet the burden of showing that the fuel charges paid by Gulf's customers were inappropriate due to the implementation of Schedule R.

C. The Evidence in the Record Overwhelmingly Supports the Commission's Decision that Fuel Costs Paid by Retail Ratepayers Were Appropriate.

As noted earlier in this brief, the Commission's decision below was that the fuel charges paid by Gulf's retail ratepayers have been appropriate, notwithstanding the implementation of Schedule R. It is important to remember that all of Gulf's efforts regarding Plant Daniel, including its investment in the plant and its participation in the fuel contracts related thereto, were done solely for the purpose of serving territorial customer load. (Tr-Vol. 111, pp. 340,345; Vol. IV, pp. 611-613)

When Gulf's anticipated load growth did not materialize as rapidly as forecasted, the temporary surplus of capacity represented by Plant Daniel was "sold" off system by a novel approach pioneered by Gulf and the Southern system; the Unit Power Sales concept. (Tr-Vol. III pp. 345-346; Vol. IV, pp. 614-615) When changing economics in the fuel and energy markets threatened the viability of the UPS contracts, Gulf and the Southern system prudently reacted by providing the incentive for the off system purchaser to continue to live up to its capacity payment obligations and therefore continuing to relieve the territorial customers of the need to support the revenue requirements associated with this capacity. (Tr-Vol. III, pp. 340-341, 346-348, Vol. IV, pp. 620-622)

The mechanism of the incentive was Schedule R: replacement energy sold at a price set to recover the incremental cost of its generation. The territorial customers continued to enjoy the benefit of not having to pay rates designed to recover for the level of investment measured by the cost of Daniel capacity and the full cost of the replacement energy continued to be paid by those who used it. (Tr-Vol. IV, p. 620-622)

Gulf's territorial customers participate in the Southern system power pool and as a consequence, enjoy the fuel savings benefits associated with economic dispatch. As noted by Mr.

Howell, "The effect of the pool is that the least cost generating resources are kept on the owning company's system to serve its territorial load. If Gulf's territorial customers are receiving energy from Daniel, it is because Daniel is the most economic choice available within operational locations." (Tr-Vol. IV, p. 625).

At page 34 of its brief, Monsanto attempts, as it did before the Commission below, to convince the Court that the intent of the UPS Agreements was to assure that the energy taken by the **UPS** customers out of the **UPS** units correlated with the capacity entitlement. Significantly, Monsanto can point to nothing which supports this argument. In no instance, either before or after implementation of Schedule R, did the percentage of capacity ownership match the percentage of energy taken. A match was never intended. The Commission correctly recognized this and rejected Monsanto's argument.

Monsanto's witness Mr. Pollock unsuccessfully argued that a perceived dramatic increase in the amount of Daniel energy retained by Gulf's customers after implementation of Schedule R, categorically proved that Gulf's customers had been harmed. First, while during relatively short periods carefully selected by Mr. Pollock, there were swings in the amount of retained energy, over the 2 1/2 year period before and after Schedule R,

the average percentage of Daniel energy retained was fairly constant as shown in the following table:[6]

	Total Daniel Generation (Mwh)	Daniel Retained (Mwh) for Territorial Customers	% Retained
BEFORE SCHEDULE R			
1983	1,916,160	1,097,540	57.28
1984	1,971,504	668,627	33.91
1985 (Jan-Jul)	1,159,964	332,712	28.68
	5,047,628	2,098,879	41.58
AFTER SCHEDULE R			
1985 (Aug-Dec)	682,385	431,660	63.26
1986	1,880,993	1,057,290	56.21
1987	2,552,630	827,650	32.42
	5,116,008	2,316,600	45.28

Secondly, as the Commission also recognized, the energy retained by Gulf's customers was, under economic dispatch, the most economical energy available to them at the time. As a result, the amount retained by them as a percentage of capacity retained is totally irrelevant.

----

[6]The information in this table was extracted and calculated from information supplied by Gulf in its response to Monsanto's Interrogatory 46 and Interrogatory 63. Interrogatory 46 is part of the response to Industrial Intervenors 3rd set of Interrogatories which was introduced into evidence at the hearing as Exhibit 15. Interrogatory 63 was merely a request to update Interrogatory 46. Both responses are attached to this brief in the Appendix under Tab No. 8.

While it is true that the territorial customer receives a higher portion of Daniel energy when off system energy sales from the unit decline, this is simply because Plant Daniel is a Gulf owned resource which was originally obtained to satisfy territorial customer requirements. It is also the economic source of supply for Gulf's territorial customers. The decline in off-system energy sales from Plant Daniel after August 1985 was not the result of the implementation of Schedule R. The decline in energy sales was caused by the reversal of the oil-coal price differential. (Tr-Vol. IV, pp. 626-627)

The customer's decision to schedule deliveries of energy from particular resources is a function of the comparison between the variable costs of one energy resource versus the variable costs of another energy resource at a particular time. The Commission was given vivid evidence of the relative economics of Daniel base energy and Schedule R when compared with the off-system purchasers' own generating resources by a series of overlays represented by Exhibits 20, 20-A, 20-B and 20-C. (Tr-Vol. 111, pp. 457-467) Exhibit 20 graphically depicts Florida Power and Light's actual oil price on a dollar per megawatt hour basis from January 1985 through October 1985. Exhibit 20-C depicts Gulf States Utilities actual gas price during the same period also on a dollar/MWH basis. Exhibit 20-A depicts the base energy rate on a dollar/MWH basis for energy delivered out of Plant Daniel over the same time period. By

overlaying Exhibits 26 and 20-A together, the Commission was able to see the dramatic difference between the price of energy the off-system purchaser would pay using its own system resources and the price for energy it would pay if it continued to schedule energy from Plant Daniel. (Tr-Vol. III, pp. 457-458) Finally, Exhibit 20-B which depicts the Schedule R price on a dollar/MWH basis over the same time frame, can be overlayed with the other exhibits to directly show the comparison of energy priced under Schedule R with the other energy sources. (Tr-Vol. 111, pp 461-463) This direct comparison showed that Schedule R, while still recovering the actual cost of generation, enabled Gulf and the Southern system to remain a competitive source for energy sales during this time frame thus giving the off-system customer the incentive to voluntarily continue making the capacity payments necessary to keep the Southern system supply option open to the UPS customer.

Monsanto mischaracterizes the effect the after the fact billing or redispatch process has on the cost paid by territorial customers for the energy retained to serve them. The Southern electric system's economic dispatch process **"stacks"** units in order from lowest to highest cost. The actual dispatch order moves up the cost **"stack"** when committing generating units to serve projected load (Tr-Vol. III, p. 368). The territorial customers are considered first in the dispatch order and thus the lowest cost resources (within operational limitations) are

committed to serve the needs these customers present. The billing or redispatch program does nothing more than operate in reverse, moving down the cost "stack" from highest cost to lowest. Off-system sales are billed at the top of the "stack", then the intercompany transactions are calculated, and, finally, Gulf's lowest cost resources are "retained" for Gulf's territorial customers. As recognized by Commissioner Herndon during the cross examination of witness Pollock, the fact that the billing method backs down the stack to determine the energy retained for territorial load does not alter the fact that Gulf's most economic units are preserved for its own territorial customers. (Tr-Vol. IV, p. 528-629; 624-25) In its brief, Monsanto ignores the factual results of the billing method, just as its counsel did during his cross examination of Mr. Gilchrist at the hearing. The territorial customers retain Daniel energy not sold off-system in order to economically meet the energy requirements of territorial load. (Tr-Vol. III, p. 340; 375-377). The subtraction process of billing does not alter this fact.

The thrust of Monsanto's position in its brief, as it was at the hearing, is that absent Schedule R, the UPS customers would have continued to purchase large quantities of Daniel "base" energy in the face of lower prices for their energy alternatives. Schedule R was Gulf's and the Southern system's response to declining energy sales, not the cause. (Tr-Vol. III, pp. 451-468). To give credence to Monsanto's position, one must

assume that the UPS customers would act contrary to widely accepted basic economic theories regarding commodity pricing and demand curves. (Tr-Vol. IV, p. 639). The facts developed at the hearing show that the UPS customers do not ignore but rather act consistently with these basic economic principles. (See Exhibit 22; Tr-Vol. V, p. 768). The facts presented at the hearing show that UPS customers do not feel constrained by the UPS contracts to purchase Daniel "base" energy beyond their pro rata share of the energy generated by the units at minimum operating levels unless it was their best economic alternative. (R-Vol. VIII, Exhibit 22; Tr-Vol. V, p. 768).

Schedule R was implemented in response to changing market conditions. Monsanto did not produce one shred of testimony or evidence to support their theory that off-system Daniel "base" energy sales would have remained at the pre-R levels after August 1985 absent the implementation of Schedule R. The uncontroverted evidence and testimony sponsored by Gulf proves that the off-system Daniel "base" energy sales declined because of the price of off-system energy alternatives. (See Exhibits 20, 20-A, 20-C and 22). The assumptions made by Monsanto in this regard have been challenged and refuted by Gulf from the start.

At pages 8 and 32 of Monsanto's brief, it is maintained that the UPS customers, pursuant to section 3.5 of the UPS Agreements committed to purchase a minimum quantity of UPS unit

energy annually. It is upon this premise which Monsanto bases it argument that Schedule R constitutes a "concession" which resulted in some unsubstantiated loss, the risk of which should be borne by the shareholders. In order for Appellant's argument to have any basis whatsoever, the commitment must be absolute and unequivocal. As clearly reflected in the record and as acknowledged by Appellant's own witness, it is not. (Tr-Vol. IV, pp. 552, 575) By attempting to take those portions of the Agreement favorable to its position out of context, while ignoring those provisions indicating the **UPS** purchasers' latitude in scheduling and taking energy under the Agreements, Appellant hoped to convince the Commissioners that the **UPS** customers would have continued to take base energy out of the **UPS** units regardless of economics. The Commission properly rejected Monsanto's position.

Without the above premise, Monsanto's argument fails absolutely. If, under the economic circumstances prevailing at the time Schedule R was offered, the UPS customers could have, as Monsanto's witness acknowledged, "used prudent utility practices" and declined to purchase any energy above the minimum operating level under the Agreements, there would have been tremendous economic harm to the territorial customers. The record unequivocally reflects that the **UPS** customer interprets the Agreements in a like manner. (Tr-Vol. IV, pp. 558-559) Instead, Gulf, using prudent utility practices, offered to the **UPS**

customers a more economically priced energy schedule which not only dramatically increased the level of energy purchased by the UPS customers, but maintained the viability of the UPS Agreements. Both results benefitted Gulf's customers.

The simple fact is that sales under Schedule R are at incremental cost and, therefore, there are no costs relative to these sales that are not recovered from the purchaser. Further, the Schedule R sales increased Gulf's ability to purchase lower priced spot coal, thereby lowering the overall average fuel price to all of Gulf's customers. Finally, Schedule R helped provide an incentive to the UPS customers to continue making energy purchases from Southern/Gulf pursuant to the UPS contracts thus preserving the capacity revenues to the ultimate benefit of Gulf's territorial customers.

Monsanto would have the Court believe that Plant Daniel was constructed on behalf and for the benefit of Gulf's shareholders. It is upon this false premise that Monsanto argues that all risk associated with the loss of capacity or energy sales falls on these shareholders. The Commission has recognized the fallacy in this argument. The Court should do likewise.

Gulf Power Company purchased an interest in Plant Daniel on the basis that it was the lowest cost supply of energy available to meet its territorial customers needs over the long-term. (Tr-Vol. III, pp. 340-341; Vol. IV, pp. 611-613) The Commission has agreed and deemed Gulf's interest in Plant Daniel to be in the "long-term best interest" of Gulf's customers.

Order No. 10557 page 41 (Appendix 7) When in the early 1980's it was determined that all of the Daniel capacity was not needed for the territorial customers, the Commission encouraged Gulf to market the **"excess"** in the form of "off-system sales" of capacity. (Tr-Vol. 111, pp. 345-346; Vol. IV, pp. 613-615) When, in the view of the Commission, Gulf did not do so as expeditiously as the Commission deemed prudent, certain of the capacity costs associated with this plant were disallowed. Order No 10557 at p. 23 (Appendix 7). At no time did the Commission deem Gulf's investment in Plant Daniel on behalf of its territorial customers imprudent.

The Commission has examined Gulf's decision regarding Plant Daniel in several rate cases. In Order Number 10557 issued in Gulf's 1981 rate case, FPSC Docket Number 810136-EU, (Appendix 7) the Commission discussed the evolution of Gulf's planning with regard to its ultimate participation in the ownership of Plant Daniel. The Commission rejected the assertion by Public Counsel that Gulf's investment in Plant Daniel and Plant Scherer (another UPS unit owned by Gulf) was intended to meet sales off of Gulf's own system. The Commission specifically found at page 39 of Order 10557 that Gulf's decision to invest in Plant Daniel was "prudent and appropriate". At page 41 of that order, the Commission specifically found that Gulf's decisions to participate in Plant Daniel were based on the long term best interest of Gulf's customers.

Following the changes in the economy that affected Gulf's load growth, the Commission endorsed Gulf's efforts at off-system sales. The 1981 rate case decision in Order 10557 encouraged such sales. At page 20 of Order Number 11498 issued in Gulf's 1982 rate case, FPSC Docket Number 820150-EU, (Appendix 6) the Commission rejected Public Counsel's contention that all of Plant Daniel should be in retail rate base and UPS revenues included in the determination of the Company's retail revenue requirements. The Commission specifically stated that it had examined the UPS contract from all angles and determined that the retail ratepayers benefit handsomely from the UPS sales.

In Gulf's 1984 rate case, Docket No. 840086-EI, the Commission once again reviewed Gulf's involvement in the Daniel Generating Station. The Commission once again deemed Gulf's investment in Plant Daniel to be prudent and in the best interest of Gulf's territorial customers. The Commission allowed in rate base, all of the Daniel capacity dedicated to retail service during the test year, or 53% of the total investment.

Monsanto, at pages 9 and 10 of its brief implies that Gulf has, subsequent to the 1984 test year, been recovering for certain of this capacity in both retail base rates and from the UPS customers. The Commission properly discounted this argument as being without merit. The Commission was informed by Gulf in the 1984 rate case that between 89 and 179 MW of the Daniel capacity dedicated to retail service in 1984 would be removed in 1985 and sold under the UPS Agreements. The Commission

recognized that the requested Daniel capacity was properly includable for the purpose of setting rates. (Appendix 5) As even Monsanto is keenly aware, the Commission sets rates based on investment, expenses and revenues actually or expected to be incurred during the test-year. It is an undeniable fact that all of these components will change in subsequent years. While it is factual to state that rates which were set in 1984 included earnings on the Daniel investment, which was removed from rate base in 1985, it is just as factual to state that investment was added and expenses were incurred in 1985, for which rates set in 1984 were insufficient to cover. This is the purpose of the Commission surveillance procedures whereby the Company's earnings are monitored. Rule 25-6.024 F.A.C. If, as Monsanto would have this Court believe, Gulf were recovering for the Daniel capacity in base rates and from the UPS customers and all other investment and expenses remained static, Gulf's earnings in 1985 and subsequent years would have far exceeded that amount deemed reasonable by the Commission and the Commission would have instituted proceedings to decrease Gulf's rates. The fact is, such proceedings were not instituted. The absurdity of Monsanto's argument is obvious.

The assertion concerning Gulf's desire to maintain the UPS agreements and the "lucrative" 16% rate of return on equity solely for the benefit of the shareholders is likewise absurd. The Commission has consistently recognized the benefit of these

Agreements to the territorial customers as has been demonstrated previously. Monsanto's implication that the return on the UPS agreements of 16% was more "lucrative" than that allowed by the Commission during the relevant period is patently false. In Order No. 11498, in the Company's 1982 rate case, the Commission deemed a reasonable return on equity for Gulf to be within a range of 14.85% to 16.85% with a midpoint of 15.85%. This was the period during which the UPS contracts were negotiated and the 16% rate set. In the 1984 case, in Order No. 14030, the Commission deemed a reasonable return on equity for Gulf to be within a range of 14.6% to 16.6% with a midpoint of 15.6%. In each instance, the maximum return deemed reasonable for Gulf was greater than the 16% allowed under the UPS Agreement. Furthermore, effective January 1 of 1987, the return set in the UPS agreements was by mutual agreement reduced to 13.75%, the exact amount deemed appropriate for retail purposes by the Commission in 1988. Monsanto's willingness to exaggerate the impact and misstate Gulf's intentions relative to these Agreements is disturbing, The Commission has recognized the arguments as being without merit and has properly rejected them.

The Commission was in the best position to recognize that Mr. Pollock's and Monsanto's entire argument is premised on the fallacious notion that the UPS contracts were entered into solely for the benefit of Gulf's shareholders. The Commission has recognized that the UPS contracts represent a valuable asset

to the retail customers. Absent the UPS contracts, Gulf would have no alternative but to seek inclusion of the Daniel capacity in its retail rate base. The impact of this capacity in rate base, which under all recently adopted Commission standards would have been properly includable, would far exceed even Mr. Pollock's incorrect and ill-defined calculation of the impact of Schedule R.

The Commission, because of its ability to observe the demeanor of witnesses (including their ability to respond to a direct question) is allowed great latitude in determining which witnesses it chooses to believe; See, for example, Tr-Vol. IV, p. 536.

The Commission correctly considered the whole picture in making its decision on the issue of the effects of Schedule R on fuel cost recovery as set forth in Order 19042, issued March 25, 1988. The decision announced in Order 19042 should be affirmed.

CONCLUSION

The Florida Public Service Commission has been diligent in the exercise of its duty ensure that Gulf Power Company's retail customers pay appropriate costs for the service they receive. In this case, the evidence shows that Gulf's retail customers have done no more than pay the fuel costs associated with the energy they received from the generating capacity purchased or built **for** the retail customers long term benefit. The Commission rightly determined that under the principles of economic dispatch, Gulf's territorial customers have received the most economical energy available to them. The Commission decided that the fuel costs paid by the retail customers has been appropriate notwithstanding Gulf's implementation of service Schedule R. This decision is supported by competent substantial evidence. The Commission's decision announced in Order No. 19042 and Order No. 20568 should be affirmed.

Respectfully submitted,

JEFFREY A. STONE
Beggs & Lane
P.O. Box 12950
(700 Blount Building)
Pensacola, FL 32576-2950
(904) 432-2451
Attorneys for Gulf Power Co.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Answer Brief of Appellee, Gulf Power Company, has been furnished by U.S. Mail to the following parties of records, this 13th day of June, 1989.

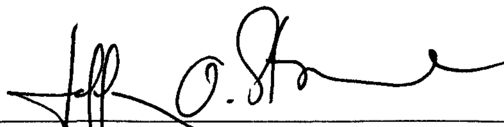
Suzanne Brownless
Florida Public Service Commission
101 E. Gaines Street
Tallahassee, FL 32399-0850

David E. Smith
Florida Public Service Commission
101 E. Gaines Street
Tallahassee, FL 32399

Joseph A. McGlothlin
Vicki Gordon Kaufman
Lawson, McWhirter, Grandoff & Reeves
522 E. Park Ave., Suite 200
Tallahassee, FL 32301

Sack Shreve, Public Counsel
Stephen C. Reilly
Office of the Public Counsel
c/o Florida House of Representatives
The Capitol
Tallahassee, FL 32399

Major Gary A. Enders, USAF
Hurburt Field
Pensacola Naval Air Station and Naval Coastal Systems Ctr.
HQ USA/ULT, STOP 21
Tyndall AFB, FL 32403-6001



G. EDISON HOLLAND, JR.
JEFFREY A. STONE

INDEX TO APPENDIX

Tab Description

1. Petition of Gulf Power Company regarding Fuel Adjustment Factor for April 1987 through September 1987 Dated January 9, 1987. Docket No. 870001-EI

2. Excerpt from FPSC Order No. 17281 Issued 3-12-87 Docket No. 870001-EI (pp 1-7)

3. Case Assignment Scheduling Record (CASR) Issued 8-8-88 Docket No. 880001-EI

4. Gulf Power Company's Response to Request for Official Notice Docket No. 880001-EI Dated September 19, 1988

5. Excerpts from Order No. 14030 Issued 1-25-85 Docket No. 840086-EI (pp 1-3; 14-17)

6. Excerpts from Order No. 11498 Issued 1-11-83 Docket No. 820150-EU (pp 1-3; 18-23; 31-37)

7. Excerpts from Order No. 10557 Issued 2-1-82 Docket No. 810136-EU (CR) (pp 1-4; 12-14; 20-23)

8. Excerpts from Exhibit 15 from hearing of 2-23-88 (Response to Interrogatory 46; updated by Response to Interrogatory 63)

9. Exhibit 20 from hearing of 2-23-88
   Exhibit 20A from hearing of 2-23-88
   Exhibit 20B from hearing of 2-23-88
   Exhibit 20C from hearing of 2-23-88