

SECURITIES AND EXCHANGE COMMISSION

Release No. 35-28042; 70-10117

Gulf Power Company

Order Authorizing Issuance of Preference Stock

September 30, 2005

Gulf Power Company (“Gulf Power”), Pensacola, Florida, a wholly-owned utility subsidiary of The Southern Company (“Southern”), a registered holding company, has filed an amendment to its original declaration/application (“Amended Declaration”) under sections 6(a), 7, and 12(c) of the Act and rules 42, 53 and 54 under the Public Utility Holding Company Act of 1935 (“Act”). The Commission issued a notice of the filing of the Application on August 10, 2005 (Holding Company Act Release No. 28015). No request for a hearing was received.

By order dated June 27, 2003 (Holding Company Act Release No. 27690) (“Original Order”) Gulf Power was authorized to issue up to \$450 million principal amount of senior debentures, senior promissory notes or other senior debt instruments, first mortgage bonds and preferred stock (“Senior Security Limitation”) through March 31, 2006 (“Authorization Period”).¹ In the Amended Declaration, Gulf Power is seeking

¹ Pursuant to Original Order, Gulf Power has issued \$270 million in securities under the Senior Securities Limit, leaving it with authority to issue an additional \$180 million under that limit. Gulf Power was also authorized to issue an aggregate of \$180 million in pollution control revenue bonds under the Original Order but to date has not issued any bonds.

authority to also issue preference stock through the Authorization Period.² Any issuance of preference stock would be included within the Senior Security Limitation.

A. Description of the Preference Stock

Gulf Power proposes that each issuance of preference stock, with par or stated value of up to \$100 per share (“Preference Stock”), will be sold for the best price obtainable (after giving effect to the purchasers’ compensation) but for a price to Gulf Power (before giving effect to the purchasers’ compensation) of not less than 98% of the par or stated value per share.

The terms of each series of Preference Stock will be established by amendment to Gulf Power’s Articles of Incorporation. Each series may have a cumulative sinking fund which would retire a certain number of shares of the series annually, commencing at a specified date after the sale. In connection with the sinking fund, Gulf Power may have the non-cumulative option of redeeming up to an additional like number of shares of the series annually.

Gulf Power may determine that, in light of the current market conditions at the time any series of the Preference Stock is offered, it is in the best interest of Gulf Power and its investors and consumers that the terms of the Preference Stock provide for an adjustable dividend rate to be determined on a periodic basis, rather than a fixed rate dividend. In that event, Gulf Power proposes that the rate of dividends on the Preference Stock for an initial period would be a fixed amount or rate per annum. Periodically thereafter, the rate would be adjusted by periodic auction or remarketing procedures, or in

² Notwithstanding the request for authority through March 31, 2006, the authorization period in this matter extends only to February 8, 2006. The Energy Policy Act of 2005 repealed the Public Utility Holding Company Act of 1935, effective February 8, 2006.

accordance with a formula or formulae based upon certain reference rates, or by other predetermined methods.

B. Financing Parameters

Gulf Power states that except as modified below, the transaction described in the Amended Declaration will be subject to the parameters applicable to the transactions listed in the Original Order.

At all times during the Authorization Period, Gulf Power represents that it will maintain a common equity ratio of at least thirty percent of its consolidated capitalization (common equity, preferred stock, preference stock and long-term and short-term debt) as reflected in its most recent Form 10-K or Form 10-Q filed with the Commission adjusted to reflect changes in capitalization since the balance sheet date, unless otherwise authorized. With respect to the securities issuance authority proposed in the Amended Declaration: (1) within four business days after the occurrence of a Ratings Event, Gulf Power will notify the Commission of its occurrence (by means of a letter, via fax, email or overnight mail to the Office of Public Utility Regulation) and (2) within 30 days after the occurrence of a Ratings Event, Gulf Power will submit a post-effective amendment to the Amended Declaration explaining the material facts and circumstances relating to that Ratings Event (including the basis on which taking into account the interests of investors, consumers and the public as well as other applicable criteria under the Act, it remains appropriate for Gulf Power to issue the securities for which authorization is sought in the Amended Declaration, so long as Gulf Power continues to comply with the other applicable terms and conditions specified in the Commission's order authorizing the transactions requested in the Amended Declaration). Furthermore, no securities

authorized as a result of the Amended Declaration will be issued following the 60th day after a Ratings Event if any downgraded rating has not been upgraded to investment grade. Gulf Power also requests that the Commission reserve jurisdiction through the remainder of the Authorization Period over the issuance of any authorized securities pursuant to the Amended Declaration that are prohibited from being issued after the 60th day following a Ratings Event, if no revised rating reflecting an investment grade rating has been issued.

A “Ratings Event” will be deemed to have occurred if, during the Authorization Period (1) any outstanding security of Gulf Power that is rated is downgraded below investment grade; (2) any security to be issued by Gulf Power pursuant to the authorization sought in the Amended Declaration upon original issuance is rated below investment grade; or (3) any outstanding security of Southern that is rated is downgraded below investment grade. For purposes of this provision, a security will be deemed to be rated “investment grade” if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3-1 under the Securities Exchange Act of 1934, as amended. Gulf Power requests that it be permitted to issue a security that does not satisfy the foregoing condition if the requirements of rule 52(a)(i) and rule 52(a)(iii) of the Act are met and the issue and sale of a security have been expressly authorized by the Florida Public Service Commission.

The effective cost of money on the Preference Stock will not exceed competitive market rates available at the time of issuance for securities having the same

or reasonably similar terms and conditions issued by similar companies of reasonably comparative credit quality.

The proceeds from the sales of any series of Preference Stock may be used to redeem or otherwise retire Gulf Power's outstanding debt or preferred and preference stock if considered advisable. In addition proceeds may be used to pay a portion of its cash requirements to carry on its electric utility business.

C. Miscellaneous

The proposed transaction is subject to rule 54, which provides that in determining whether to approve the issue or sale of a security for purposes of financing the acquisition of an exempt wholesale generator ("EWG") or foreign utility company ("FUCO"), as those terms are defined in sections 32 and 33, respectively, of the Act, the Commission shall not make certain adverse findings if the conditions set forth in rule 53(a)(1) through (a)(4) are met, and are not otherwise made inapplicable by reason of the existence of any of the circumstances described in rule 53(b).

Gulf Power states that Southern currently meets all of the conditions of rule 53(a). At June 30, 2005, Southern's "aggregate investment" (as defined in rule 53(a)(1)) in EWG's and FUCO's was approximately \$286 million, or approximately 4.85% of Southern's "consolidated retained earnings" (as defined in rule 53(a)(1)), which were \$5.907 billion as of June 30, 2005.³

³ Although Southern owns all of the equity in four indirect subsidiaries (EPZ Lease, Inc., Dutch Gas Lease, Inc., GMAOG Lease, Inc. and NUON Lease, Inc.), Southern has no direct or indirect investment or any aggregate investment within the meaning of rule 53 in these FUCOs, including any direct or indirect guarantees or credit positions related to any capital or financing leases (see Southern's application on Form U-1, File No. 70-9727 for further information). Southern has executed limited keep-well commitments whereby Southern would be required to make capital contributions to SE Finance Capital Corp. II,

In addition, Southern has complied and will continue to comply with the record-keeping requirements of rule 53(a)(2), the limitation under rule 53(a)(3) on the use of operating company personnel to render services to EWGs and FUCOs, and the requirements of rule 53(a)(4) concerning the submission of copies of certain filings under the Act to retail rate regulatory commissions. Further, Gulf Power states that none of the circumstances described in rule 53(b) has occurred. Rule 53(c), by its terms, is inapplicable since the requirements of paragraphs 53(a) and 53(b) are satisfied.

Gulf Power states that its obligations with respect to the preference stock have been expressly authorized by the Florida Public Service Commission, which has jurisdiction over the issuance of stocks, bonds and certain evidence of indebtedness by public utility companies operating in Florida. Otherwise, the proposed transactions are not subject to the jurisdiction of any other state commission or of any federal commission other than the Commission.

Gulf Power states that the fees and expenses to be incurred in connection with the proposed transactions (other than those described in section B above and other than underwriting discounts and commissions) are estimated not to exceed \$2,000,000.

Due notice of the filing of the Amended Declaration has been given in the manner prescribed by rule 23 under the Act, and no hearing has been requested of, or ordered by, the Commission. Based on the facts in the record, the Commission finds that

SE Finance Capital Corp., or SE Finance Company, Inc. if there is a shortfall in the scheduled debt service resulting from certain changes in the payments due from Southern under the Southern Company Income Tax Allocation Agreement. The maximum potential capital contributions required under these commitments is the unamortized balance of the related loans, which total approximately \$403 million as of March 31, 2005.

the applicable standards of the Act are satisfied and that no adverse findings are necessary.

IT IS ORDERED, that jurisdiction is reserved in regard to Gulf Power's request to issue preference stock that is otherwise prohibited from being issued after the 60th day following a Ratings Event, if no revised rating reflecting an investment grade rating has been issued.

IT IS FURTHER ORDERED, under the applicable provisions of the Act and the rules under the Act, that the Amended Declaration filed by Gulf Power (File No. 70-10117), other than as to those matters where jurisdiction is reserved, be permitted to become effective immediately, subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz
Secretary

Action as set forth or recommended herein APPROVED
pursuant to authority delegated by the Commission under
Public Law 87-592.
For The Division of Investment Management

By: _____ Branch Chief
September 30, 2005