

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Environmental Cost ) DOCKET NO. 940042-EI  
Recovery Clause ) ORDER NO. PSC-94-0964-PHO-EI  
\_\_\_\_\_ ) ISSUED: August 10, 1994

Pursuant to Notice, a Prehearing Conference was held on August 4, 1994, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

MATTHEW M. CHILDS, Esquire, Steel Hector & Davis, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301-1804  
On behalf of Florida Power & Light Company.

G. EDISON HOLLAND, JR., Esquire, JEFFREY A. STONE, Esquire, and TERESA E. LILES, Esquire, Beggs & Lane, 700 Blount Building, 3 West Garden Street, Post Office Box 12950, Pensacola, Florida 32576-2950  
On behalf of Gulf Power Company.

JOSEPH A. MCGLOTHLIN, Esquire, McWhirter, Grandoff and Reeves, 315 South Calhoun Street, Suite 716, Tallahassee, Florida 32301  
On behalf of the Florida Industrial Power Users Group.

JOHN ROGER HOWE, Esquire, Deputy Public Counsel, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400  
On behalf of the Citizens of the State of Florida.

MARTHA CARTER BROWN, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863  
On behalf of the Commission Staff.

DOCUMENT NUMBER-DATE

08124 AUG 10 1994

FPSC-RECORDS/REPORTING

PREHEARING ORDER

I. CASE BACKGROUND

Pursuant to the provisions of Section 366.8255, Florida Statutes, the Commission has established an environmental cost recovery clause. A formal administrative hearing for this docket is set for August 11 and 12, 1994. The hearing will address the issues set out in the body of this order.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the

hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

### III. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for

identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

Witnesses whose names are preceded by an asterisk (\*) have been excused. The parties have stipulated that the testimony of those witnesses will be inserted into the record as though read, and cross-examination will be waived.

#### IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
*B. T. Birkett	FPL	1-9, 12b
*W. M. Reichel	FPL	10, 12a, 12c
J. O. Vick	GPC	1,2,4,11a,11b,11c,11d
S. D. Cranmer	GPC	1,2,3,4,6,7,8,9,11d

#### V. BASIC POSITIONS

FLORIDA POWER & LIGHT COMPANY (FPL): None necessary.

GULF POWER COMPANY (GULF): It is the basic position of Gulf Power Company that the proposed environmental cost recovery factors present the best estimate of Gulf's environmental costs for the period October, 1994 through March, 1995 including the true-up calculations and other adjustments allowed by the Commission.

FLORIDA INDUSTRIAL POWERS USERS GROUP (FIPUG): None necessary.

OFFICE OF PUBLIC COUNSEL: None necessary.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VI. ISSUES AND POSITIONS

Generic Environmental Cost Recovery Issues

ISSUE 1: What are the appropriate final environmental cost recovery true-up amounts for the period ending March 31, 1994?

STIPULATED

FPL: \$474,109 overrecovery for the period including interest.

GULF: Under recovery \$2,527,112. (Vick, Cranmer)

FIPUG: No position.

OPC: No position.

STAFF: GULF: No position at this time pending the resolution of other issues.

ISSUE 2: What are the estimated environmental cost recovery true-up amounts for the period April, 1994 through September, 1994?

STIPULATED

FPL: \$619,962 overrecovery for the period including interest.

GULF: Overrecovery \$2,756,286. (Vick, Cranmer)

FIPUG: No position.

OPC: No position.

STAFF: GULF: No position at this time pending the resolution of other issues.

**ISSUE 3:** What are the total environmental cost recovery true-up amounts to be collected during the period October, 1994 through March, 1995?

**STIPULATED**

**FPL:** \$1,094,072 net overrecovery identified in Issues 1 and 2.

**GULF:** Refund of \$229,174 (excluding revenue taxes). (Cranmer)

**FIPUG:** No position.

**OPC:** No position.

**STAFF:** GULF: No position at this time pending the resolution of other issues.

**ISSUE 4:** What are the appropriate projected environmental cost recovery amounts for the period October, 1994 through March, 1995?

**STIPULATED**

**FPL:** The appropriate projected environmental cost recovery amount to be collected during the period is \$3,028,634. This amount consists of \$4,122,706 of projected cost for the period net of the prior period overrecovery.

**GULF:** \$5,358,000. (Vick, Cranmer)

**FIPUG:** No position.

**OPC:** No position.

**STAFF:** GULF: No position at this time pending the resolution of other issues.

**STIPULATED**

**ISSUE 5:** What should be the effective date of the new environmental cost recovery factors for billing purposes?

**POSITION:** The factor should be effective beginning with the specified environmental cost recovery cycle and thereafter for the period October, 1994 through

March, 1995. Billing cycles may start before October 1, 1994, and the last cycle may be read after March 31, 1995, so that each customer is billed for six months regardless of when the adjustment factor became effective.

**STIPULATED  
ISSUE 6:**

What depreciation rates should be used to develop the depreciation expense included in the total environmental cost recovery true-up amounts to be collected during the period October, 1994 through March, 1995?

**POSITION:**

The depreciation rates used to calculate the depreciation expense should be the rates that are in effect during the period the allowed capital investment is in service.

**STIPULATED  
ISSUE 7:**

Should investment tax credit (ITC) amortization be reflected in the income tax expense recovered through the clause beginning April 1, 1994?

**POSITION:**

Not at this time. The allocation of ITC's and the related amortization should be reviewed in the companies' next base rate proceeding.

**STIPULATED  
ISSUE 8:**

How should the newly proposed environmental costs be allocated to the rate classes?

**POSITION:**

FPL: The costs of the Scherer discharge pipeline should be allocated using the 12 CP and 1/13th demand allocation method. The costs for the new CEM activities at St. Johns River Power Park and Plant Scherer should be allocated on an energy basis.

GULF: The costs of the Fuel Emission Evaluation should be allocated on an energy basis. The costs of the Plant Smith Stormwater Collection System should be allocated using the 12 CP and 1/13th demand allocation method.

**ISSUE 9:** What are the appropriate Environmental Cost Recovery Factors for the period October, 1994 through March, 1995 for each rate group?

**STIPULATED**  
**FPL:**

<u>Rate Class</u>	<u>Environmental Recovery Factor (\$/KWH)</u>
RS1	0.00010
GS1	0.00009
GSD1	0.00009
OS2	0.00008
GSLD1/CS1	0.00009
GSLD2/CS2	0.00009
GSLD3/CS3	0.00008
ISST1D	0.00009

<u>Rate Class</u>	<u>Environmental Recovery Factor (\$/KWH)</u>
SST1T	0.00008
SST1D	0.00008
CILC D/CILC G	0.00009
CILC T	0.00008
MET	0.00009
OL1/SL1	0.00008
SL2	0.00009



**GULF:** See table below: (Cranmer)

<b>RATE CLASS</b>	<b>ENVIRONMENTAL COST RECOVERY FACTORS ¢/KWH</b>
RS, RST	0.155
GS, GST	0.154
GSD, GSDT	0.140
LP, LPT	0.130
PX, PXT	0.121
OSI, OSII	0.095
OSIII	0.129
OSIV	0.096
SS	0.190

**FIPUG:** No position.

**OPC:** GPC: No position.

**STAFF:** GULF: No position at this time pending the resolution of other issues.

Company -Specific Environmental Cost Recovery Issues

Gulf Power Company

**STIPULATED ISSUE 10a:**

Should the Commission approve GULF's request to recover the costs for capital project PE 1446, the Smith Stormwater Collection System through the Environmental Cost Recovery Clause?

**POSITION:**

Yes, at least on a prospective basis. See Issue 10b.

**ISSUE 10b:** Should costs for capital project PE 1446, the Smith Stormwater Collection System be included in the final true-up amount for the period June 1993 through March 1994?

**GPC:** Yes. The statute specifically provides that "The environmental compliance cost-recovery factor must provide for periodic true-up of the utility's actual environmental compliance costs with the projections on which past factors have been set..." §366.8255(3), F.S. Where a utility incurs actual costs during the true-up period, which were not anticipated or projected in the initial projection but which are otherwise recoverable environmental compliance costs, the Commission should not deny recovery of those actual costs. If the project is properly categorized as an environmental compliance activity, costs associated with that project should be allowed for recovery once identified during the true-up period. In this case, the expenditures associated with the project were inadvertently omitted from Gulf's filing in Docket No. 930613-EI. (Vick)

**FIPUG:** No.

**OPC:** No. There can be no "true-up" of costs that were never considered previously.

**STAFF:** No. Environmental compliance cost recovery should be prospective. Section 366.8255(2), Florida Statutes, is very specific and clear. A utility's petition for cost recovery must describe the proposed activities and projected costs. Utilities may not recover costs incurred in past periods for activities not previously approved when the utility has had reasonable opportunity to request recovery. Gulf has had two opportunities to petition for cost recovery of these activities, in Docket No. 930613-EI and in the February hearings of this Docket. As a general policy, absent extenuating circumstances, a utility should not be allowed to go back to prior periods and pursue cost recovery of activities and projects that were not currently approved and include those costs in the final true-up amount.

**ISSUE 10c:** Should the Commission approve Gulf's request to recover the costs for operation and maintenance expense activity 4a, Fuel Emission Evaluation in the final true-up amount for the period June 1993 through March 1994?

**GPC:** Yes. In this case, the expenses were not included in the Company's prior projections because the expenses were not anticipated at that time. Expenses which are otherwise recoverable should not be lost to the Company forever due to the timing of the activity necessitating the expense. (Vick)

**FIPUG:** No.

**OPC:** Agree with Staff.

**STAFF:** No. Environmental compliance cost recovery should be prospective. Absent extraordinary circumstances, a utility should not be allowed to go back to prior periods and pursue cost recovery of activities and projects that were not currently approved and include those costs in the final true-up amount, even though the expenses would otherwise have been approved.

Florida Power & Light Company

**STIPULATED  
ISSUE 11a:**

Should the Commission approve FPL's request to recover the costs for the Scherer Discharge Pipeline project through the Environmental Cost Recovery Clause?

**POSITION:**

Yes. The expenses are required to comply with the Georgia Department of Natural Resources rules for control of toxic pollutants as revised in January, 1991, and as required by Administrative Order No. EPD-WQ-1855 from the Georgia Department of Natural Resources to Plant Scherer before reissuance of a new NPDES Permit. The construction of the pipeline is the most cost-effective alternative available. All expenses were incurred after April 13, 1993, are not being recovered in any other cost recovery mechanism and were not considered at the time of FPL's last rate case.

STIPULATED  
ISSUE 11b:

Should FPL modify its determination of the rate of return for the recovery of capital investment costs?

POSITION:

Not at this time. FPL calculated the rate of return for the recovery of capital investment costs consistent with Commission Order PSC-93-1580-FOF-EI issued October 29, 1993. The calculation methodology should be reviewed at the conclusion of FPL's MMFR Docket that will be heard in 1995.

STIPULATED  
ISSUE 11c:

Should the Commission approve FPL's request to include in the Continuous Emission Monitoring System (CEMS) project FPL's ownership portion of the CEMS costs for Scherer Unit No. 4 and St. Johns River Power Park Units Nos. 1 and 2?

POSITION:

Yes. These units must meet the same Federal Requirements under the clean Air Act Amendments of 1990 as FPL's other units. All expenses were incurred after April 13, 1993, are not being recovered in any other cost recovery mechanism, and were not considered at the time of FPL's last rate case.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
*Birkett	FPL	<u>BTB-1</u>	Document 1/Environmental Compliance Cost Projections October 1994-March 1995
*Birkett	FPL	<u>BTB-2</u>	Document 2/Calculation of Allocation by Rate Class
*Birkett	FPL	<u>BTB-3</u>	Document 3/Calculation of Factors

*Birkett	FPL	<u>BTB-4</u>	Document 4/Schedule of Capital Investment Depreciation and Return October 1994-March 1995
*Birkett	FPL	<u>BTB-5</u>	Document 5/Calculation of Estimated Actual Variance April 1994-September 1994
*Birkett	FPL	<u>BTB-6</u>	Document 6/Estimated/Actual Environmental Compliance Costs April 1994-September 1994
*Birkett	FPL	<u>BTB-7</u>	Document 7/Calculation of Over/Under Recovery April 1994-September 1994
*Birkett	FPL	<u>BTB-8</u>	Document 8/Schedule of Capital Investment Depreciation and Return April 1994-September 1994
*Reichel	FPL	<u>WMR-1</u>	Document 1/Georgia Department of Natural Resources Administrative Order
*Reichel	FPL	<u>WMR-2</u>	Document 2/Plant Scherer wastewater pipeline schematic
*Reichel	FPL	<u>WMR-3</u>	Document 3/Project Description and Progress Report
Vick	GPC	<u>          </u>	40 CFR Part 122
Vick	GPC	<u>JOV-2</u>	Capital expenditures 3/94 - 3/95; O&M expenses 10/94 - 3/95; O&M expenses by FERC; Chapter 17-792, F.A.C.

Cranmer	GPC	<u>SDC-1</u>	Calculation of final true-up 7/93 - 3/94; Calculation of true-up and interest provision 7/93 - 3/94; Calculation of interest provision 7/93 - 3/94; Recoverable ECR costs related to investment by PE 7/93 - 3/94; Recoverable O&M costs by FERC account 7/93 - 3/94
Cranmer	GPC	<u>SDC-2</u>	Calculation of recoverable revenue requirements; Calculation of true-up 10/94 - 3/95; Calculation of estimated true-up 4/94 - 9/94; Plant-in-service 10/94 - 3/95; O&M expenses by FERC, 10/94 - 3/95; Calculation of ECR factors 10/94 - 3/95 Progress Report
Birkett	FPL	<u>BTB-1</u>	Document 2/Calculation of Allocation by Rate Class

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

#### VIII. PROPOSED STIPULATIONS

The proposed stipulations represent the position of the parties who chose to take a position on the issue. FPL: Issues 1-9, 11a, 11b, 11c. Gulf: Issues 5-8, 10a.

#### IX. PENDING MOTIONS

None at this time.

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X. RULINGS

None at this time.

It is therefore,

ORDERED by Commissioner Susan F. Clark, Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 10th day of August, 1994.

  
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SUSAN F. CLARK, Commissioner and  
Prehearing Officer

( S E A L )

MCB:bmi

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request:

- 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer;
- 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, 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.