

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 110007-EI
ORDER NO. PSC-11-0505-PHO-EI
ISSUED: October 28, 2011

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on October 20, 2011, in Tallahassee, Florida, before Commissioner Ronald A. Brisé, as Prehearing Officer.

APPEARANCES:

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On behalf of FLORIDA POWER & LIGHT COMPANY (FPL)

R. ALEXANDER GLENN and JOHN T. BURNETT, ESQUIRES, Post Office Box 14042, St. Petersburg, Florida 33733-4042; GARY V. PERKO, ESQUIRE, Hopping, Green & Sams, P.A., 119 S. Monroe Street (32301), Post Office Box 6526, Tallahassee, FL 32314
On behalf of PROGRESS ENERGY FLORIDA, INC. (PEF)

JAMES D. BEASLEY and J. JEFFRY WAHLEN, ESQUIRES, Ausley & McMullen, Post Office Box 391, Tallahassee, Florida 32302
On behalf of Tampa Electric Company (TECO)

JEFFREY A. STONE, RUSSELL A. BADDERS, and STEVEN R. GRIFFIN, ESQUIRES, Beggs & Lane, Post Office Box 12950, Pensacola, Florida 32591-2950
On behalf of Gulf Power Company (GULF)

PATRICIA A. CHRISTENSEN, J.R. KELLY, JOSEPH A. MCGLOTHLIN, and CHARLES REHWINKEL, ESQUIRES, 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 (OPC)

VICKI GORDON KAUFMAN and JON C. MOYLE, JR., ESQUIRES, Keefe, Anchors, Gordon & Moyle, P.A., 118 North Gadsden Street, Tallahassee, Florida 32312
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On behalf of the Federal Executive Agencies (FEA)

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On behalf of the Florida Public Service Commission (STAFF)

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Advisor to the Florida Public Service Commission.

PREHEARING ORDER

I. CASE BACKGROUND

As part of the Commission's continuing environmental cost recovery clause proceedings, the Commission has set a hearing in this docket for November 1-3, 2011. This Order sets forth the order of witnesses, issues and positions, list of exhibits, and other procedural matters to be addressed at the hearing.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Section 366.8255, Florida Statutes (F.S.). This hearing will be governed by that statute, Chapter 120, F.S., and Rules 25-22.075 and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be

returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. 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.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

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 Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and 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 timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

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. After all parties and Staff have had the opportunity to cross-examine the witness, 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.

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.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

Each witness whose name is preceded by an asterisk (*) is excused from the hearing. The parties have agreed to the entering of the witnesses' testimony and evidence into the record, waiving cross-examination.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
*T.J. KEITH	FPL	1-8, 9B, 9D, 9F
*R.R. LABAUVE	FPL	9A, 9C, 9E, 9G-9I
WILL GARRETT	PEF	1
*COREY ZIEGLER	PEF	1-3
PATRICIA Q. WEST	PEF	1-3, 10A, 10C, 10E, 10F
*KEVIN MURRAY	PEF	1
*DAVID SORRICK	PEF	2-3, 10E
THOMAS G. FOSTER	PEF	2-8, 10B, 10D, 10F, 10G
*HOWARD T. BRYANT	TECO	1, 2, 3, 4, 5, 6, 7, 8
*PAUL L. CARPINONE	TECO	3
J. O. VICK	GULF	1-3, 11A, 11C-11E

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
*R. W. DODD	GULF	1-8 11B-11D

VII. BASIC POSITIONS

FPL: None necessary.

PEF: None necessary.

TECO: The Commission should approve for environmental cost recovery the compliance programs described in the testimony and exhibits of Tampa Electric Witnesses Bryant and Carpinone. The Commission should also approve Tampa Electric's calculation of its environmental cost recovery final true-up for the period January 2010 through December 2010, the actual/estimated environmental cost recovery true-up for the current period January 2011 through December 2011, and the company's projected ECRC revenue requirement and the company's proposed ECRC factors for the period January 2012 through December 2012.

GULF: It is the basic position of Gulf Power Company that the environmental cost recovery factors proposed by the Company present the best estimate of Gulf's environmental compliance costs recoverable through the Environmental Cost Recovery Clause (ECRC) for the period January 2012 through December 2012 including the true-up calculations and other adjustments allowed by the Commission.

OPC: None.

FIPUG: PEF should not be permitted to recover any environmental costs related to the purchase of replacement power due to the extended outage at CR3. PEF assumed in last year's proceeding that CR3 would be back on line by this time. However, CR3 is now expected to be out of service until at least the end of 2014. At this point, it is unclear if that will occur or if CR3 will ever return to service. Issues related to the outage, including the prudence of PEF's actions, will be considered in a separate docket. Ratepayers should not be expected to pay for expenses related to this outage, whose duration is now expected to be measured in years, until a determination is made in Docket No. 100437-EI.

Gulf should not be permitted to recover the costs of its turbine upgrade through the ECRC as such costs do not meet the standard for recovery under the clause.

FEA: Agree with OPC.

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 stated herein.

VIII. ISSUES AND POSITIONS

ISSUE 1: What are the final environmental cost recovery true-up amounts for the period ending December 31, 2010?

POSITION:

PROPOSED STIPULATION

FPL: \$5,036,426 over-recovery.

PEF: \$6,232,839 over-recovery. (GARRETT, WEST, ZEIGLER, MURRAY)

OPC: Agree with FIPUG.

FIPUG: FIPUG is opposed to ratepayers being charged now for replacement power costs, capacity costs, environmental cost recovery costs or any other charges resulting from the continued extended outage of Crystal River 3 until prudence issues related to this outage are determined by the Commission.

FEA: Agree with FIPUG and OPC.

STAFF: \$6,232,839 over-recovery.

PROPOSED STIPULATION

TECO: \$2,616,798 under-recovery

GULF: \$861,325 over-recovery. (VICK, DODD)

OPC: The Crist 6 and 7 turbine upgrades are not required to comply, or remain in compliance with, a governmentally imposed environmental rule or regulation, and thus do not meet the established criteria for cost recovery through the ECRC. As they are ineligible for inclusion within the clause, all costs associated with the Crist 6 and 7 turbine upgrades should be removed from the ECRC.

FIPUG: Agree with OPC.

FEA: Agree with OPC.

STAFF: \$861,325 over-recovery.

ISSUE 2: **What are the estimated environmental cost recovery true-up amounts for the period January 2011 through December 2011?**

POSITIONS:

PROPOSED STIPULATION

FPL: \$8,708,673 over-recovery. This amount has been adjusted from \$8,708,682 to include the correct 2010 end of year amount of non-interest-bearing CWIP for the Desoto Next Generation Solar Energy Center.

PEF: \$2,552,337 over-recovery (FOSTER, ZEIGLER, WEST, SORRICK)

OPC: Due to the changed circumstances caused by the subsequent discovery of a delamination in Bay 5-6 on or about March 14, 2011, due to the recent announcement by the Company that there may be other further possible delaminations or structural problems in other areas of containment building, and due to the fact that CR3 will not come online at any time during 2012, PEF should not be permitted to recover any costs for capacity or energy, including any capacity cost payments that would otherwise be recovered through the Capacity Cost Recovery Clause, that PEF incurred due to the extended outage at Crystal River 3 until after the conclusion of current pending prudence review in Docket No. 100437-EI.

FIPUG: FIPUG is opposed to ratepayers being charged now for replacement power costs, capacity costs, environmental cost recovery costs or any other charges resulting from the continued extended outage of Crystal River 3 until prudence issues related to this outage are determined by the Commission.

FEA: Agree with FIPUG and OPC.

STAFF: No position at this time.

PROPOSED STIPULATION

TECO: \$464,090 under-recovery.

GULF: \$14,380,513 over-recovery. (VICK, DODD)

OPC: The Crist 6 and 7 turbine upgrades are not required to comply, or remain in compliance with, a governmentally imposed environmental rule or regulation, and thus do not meet the established criteria for cost recovery through the ECRC. As they are ineligible for inclusion within the clause, all costs associated with the Crist 6 and 7 turbine upgrades should be removed from the ECRC.

FIPUG: Agree with OPC.

FEA: Agree with OPC.

STAFF: \$14,380,513 over-recovery. ***This amount does not include any projected costs associated with the Crist turbine upgrades, per Gulf's revisions to Schedules 1P, 3P, 4P, and 7P, dated October 19, 2011.***

ISSUE 3: **What are the projected environmental cost recovery amounts for the period January 2012 through December 2012?**

POSITIONS:

PROPOSED STIPULATION

FPL: \$188,014,660. This amount has been adjusted from \$195,667,760 to remove projected 2012 costs associated with FPL's 800 MW ESP Project and to remove from the Industrial Boiler MACT Project the projected 2012 costs associated with Subpart DDDDD of the IB MACT rules.

PEF: \$207,302,671 (FOSTER, ZEIGLER, WEST, SORRICK)

OPC: Due to the changed circumstances caused by the subsequent discovery of a delamination in Bay 5-6 on or about March 14, 2011, due to the recent announcement by the Company that there may be other further possible delaminations or structural problems in other areas of containment building, and due to the fact that CR3 will not come online at any time during 2012, PEF should not be permitted to recover any costs for capacity or energy, including any capacity cost payments that would otherwise be recovered through the Capacity Cost Recovery Clause, that PEF incurred due to the extended outage at Crystal River 3 until after the conclusion of current pending prudence review in Docket No. 100437-EI.

FIPUG: FIPUG is opposed to ratepayers being charged now for replacement power costs, capacity costs, environmental cost recovery costs or any other charges resulting from the continued extended outage of Crystal River 3 until prudence issues related to this outage are determined by the Commission.

FEA: Agree with FIPUG and OPC.

STAFF: No position at this time.

PROPOSED STIPULATION

TECO: \$84,067,581

GULF: \$169,103,827. (VICK, DODD)

OPC: The Crist 6 and 7 turbine upgrades are not required to comply, or remain in compliance with, a governmentally imposed environmental rule or regulation, and thus do not meet the established criteria for cost recovery through the ECRC. As they are ineligible for inclusion within the clause, all costs associated with the Crist 6 and 7 turbine upgrades should be removed from the ECRC.

FIPUG: Agree with OPC.

FEA: Agree with OPC.

STAFF: \$165,075,432. * This amount does not include any projected costs associated with the Crist turbine upgrades, per Gulf's revisions to Schedules 1P, 3P, 4P, and 7P, dated October 19, 2011.*

ISSUE 4: What are the environmental cost recovery amounts, including true-up amounts, for the period January 2012 through December 2012?

POSITIONS:

PROPOSED STIPULATION

FPL: \$174,395,035, including prior period true-up amounts and taxes. This amount has been adjusted from \$182,053,636 to include the revised 2010 actual/estimated true-up amount of \$8,708,673 (Issue 2) and to include the revised projected environmental cost recovery amount for the period January 2012 through December 2012 of \$188,014,660 (Issue 3).

PEF: \$198,660,428 (FOSTER)

OPC: Due to the changed circumstances caused by the subsequent discovery of a delamination in Bay 5-6 on or about March 14, 2011, due to the recent announcement by the Company that there may be other further possible delaminations or structural problems in other areas of containment building, and due to the fact that CR3 will not come online at any time during 2012, PEF should not be permitted to recover any costs for capacity or energy, including any capacity cost payments that would otherwise be recovered through the Capacity Cost Recovery Clause, that PEF incurred due to the extended outage at Crystal River 3 until after the conclusion of current pending prudence review in Docket No. 100437-EI.

FIPUG: FIPUG is opposed to ratepayers being charged now for replacement power costs, capacity costs, environmental cost recovery costs or any other charges resulting from the continued extended outage of Crystal River 3 until prudence issues related to this outage are determined by the Commission.

FEA: Agree with FIPUG and OPC.

STAFF: No position at this time.

PROPOSED STIPULATION

TECO: \$87,211,216 after the adjustment for taxes. (BRYANT)

GULF: \$153,861,989 (excluding revenue taxes). (DODD)

OPC: The Crist 6 and 7 turbine upgrades are not required to comply, or remain in compliance with, a governmentally imposed environmental rule or regulation, and thus do not meet the established criteria for cost recovery through the ECRC. As they are ineligible for inclusion within the clause, all costs associated with the Crist 6 and 7 turbine upgrades should be removed from the ECRC.

FIPUG: Agree with OPC.

FEA: Agree with OPC.

STAFF: \$149,941,474. * This amount does not include any projected costs associated with the Crist turbine upgrades, per Gulf's revisions to Schedules 1P, 3P, 4P, and 7P, dated October 19, 2011.*

PROPOSED STIPULATION

ISSUE 5: What depreciation rates should be used to develop the depreciation expense included in the total environmental cost recovery amounts for the period January 2012 through December 2012?

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.

PROPOSED STIPULATION

ISSUE 6: What are the appropriate jurisdictional separation factors for the projected period January 2012 through December 2012?

POSITION:

<u>FPL:</u>	Retail Energy Jurisdictional Factor	98.08128%
	Retail CP Demand Jurisdictional Factor	98.01395%
	Retail GCP Demand Jurisdictional Factor	100.00000%

PEF: The jurisdictional energy separation factor is calculated for each month based on retail kWh sales as a percentage of projected total system kWh sales.
Production Base – 92.792%
Production Intermediate – 72.541%

Production Peaking – 91.972%
 Transmission – 69.516%
 Distribution Primary– 99.624%
 A&G – 92.374%

TECO: The demand jurisdictional separation factor is 99.58152%. The energy jurisdictional separation factors are calculated for each month based on projected retail kWh sales as a percentage of projected total system kWh sales. These are shown on the schedules sponsored by witness Bryant.

GULF: The demand jurisdictional separation factor is 96.44582%. Energy jurisdictional separation factors are calculated each month based on retail KWH sales as a percentage of projected total territorial KWH sales.

ISSUE 7: **What are the appropriate environmental cost recovery factors for the period January 2012 through December 2012 for each rate group?**

POSITIONS:

PROPOSED STIPULATION

<u>FPL:</u>	<u>Rate Class</u>	Environmental Recovery Factor (\$/kWh)
	RS1/RST1	.00192
	GS1/GST1	.00154
	GSD1/GSDT1/HLFT1 (21-499 kW)	.00150
	OS2	.00096
	GSLD1/GSLDT1/CS1/CST1/HLFT2 (500-1,999 kW)	.00151
	GSLD2/GSLDT2/CS2/CST2/HLFT3 (2,000 kW+)	.00129
	GSLD3/GSLDT3/CS3/CST3	.00125
	ISST1D	.00098
	ISST1T	.00171
	SST1T	.00171
	SST1D1/SST1D2/SST1D3	.00098
	CILC D/CILC G	.00118
	CILC T	.00113
	MET	.00154
	OL1/SL1/PL1	.00039
	SL2/GSCU1	.00125
		(KEITH)

PEF: The appropriate factors are as follows (FOSTER):

Rate Class	ECRC Factors
Residential	0.545 cents/kWh
General Service Non-Demand	
@ Secondary Voltage	0.539 cents/kWh
@ Primary Voltage	0.534 cents/kWh
@ Transmission Voltage	0.528 cents/kWh
General Service 100% Load Factor	0.532 cents/kWh
General Service Demand	
@ Secondary Voltage	0.534 cents/kWh
@ Primary Voltage	0.529 cents/kWh
@ Transmission Voltage	0.523 cents/kWh
Curtaillable	
@ Secondary Voltage	0.528 cents/kWh
@ Primary Voltage	0.523 cents/kWh
@ Transmission Voltage	0.517 cents/kWh
Interruptible	
@ Secondary Voltage	0.520 cents/kWh
@ Primary Voltage	0.515 cents/kWh
@ Transmission Voltage	0.510 cents/kWh
Lighting	0.529 cents/kWh

OPC: Due to the changed circumstances caused by the subsequent discovery of a delamination in Bay 5-6 on or about March 14, 2011, due to the recent announcement by the Company that there may be other further possible delaminations or structural problems in other areas of containment building, and due to the fact that CR3 will not come online at any time during 2012, PEF should not be permitted to recover any costs for capacity or energy, including any capacity cost payments that would otherwise be recovered through the Capacity Cost Recovery Clause, that PEF incurred due to the extended outage at Crystal River 3 until after the conclusion of current pending prudence review in Docket No. 100437-EI.

FIPUG: FIPUG is opposed to ratepayers being charged now for replacement power costs, capacity costs, environmental cost recovery costs or any other charges resulting from the continued extended outage of Crystal River 3 until prudence issues related to this outage are determined by the Commission.

FEA: Agree with Staff.

STAFF: The factors are a mathematical calculation based on the resolution of company-specific issues. Staff asks for administrative authority to review the calculations reflecting the Commission’s vote and include the resulting factors in the Order.

PROPOSED STIPULATION

TECO: The appropriate environmental cost recovery factors are as follows:

<u>Rate Class</u>	<u>Factor at Secondary Voltage (¢/kWh)</u>
RS	0.460
GS, TS	0.460
GSD, SBF	
Secondary	0.458
Primary	0.453
Transmission	0.449
IS	
Secondary	0.450
Primary	0.446
Transmission	0.441
LS1	0.456
Average Factor (BRYANT)	0.459

GULF: See table below: (DODD)

RATE CLASS	ENVIRONMENTAL COST RECOVERY FACTORS ¢/KWH
RS, RSVP	1.328
GS	1.320
GSD, GSDT, GSTOU	1.308
LP, LPT	1.278
PX, PXT, RTP, SBS	1.261
OS-I/II	1.267
OSIII	1.289

OPC: The Crist 6 and 7 turbine upgrades are not required to comply, or remain in compliance with, a governmentally imposed environmental rule or regulation, and thus do not meet the established criteria for cost recovery through the ECRC. As they are ineligible for inclusion within the clause, all costs associated with the Crist 6 and 7 turbine upgrades should be removed from the ECRC.

FIPUG: Agree with OPC.

FEA: Agree with Staff.

STAFF:

RATE CLASS	ENVIRONMENTAL COST RECOVERY FACTORS ¢/KWH
RS, RSVP	1.294
GS	1.286
GSD, GSDD, GSTOU	1.273
LP, LPT	1.245
PX, PXT, RTP, SBS	1.227
OS-I/II	1.233
OSIII	1.255

These factors do not include any projected costs associated with the Crist turbine upgrades, per Gulf's revisions to Schedules 1P, 3P, 4P, and 7P, dated October 19, 2011.

The factors are a mathematical calculation based on the resolution of company-specific issues. Staff asks for administrative authority to review the calculations reflecting the Commission's vote and include the resulting factors in the Order.

PROPOSED STIPULATION

ISSUE 8: What should be the effective date of the new environmental cost recovery factors for billing purposes?

POSITION:

The new factors should be effective beginning with the first billing cycle for January 2012. The first billing cycle may start before January 1, 2012, and thereafter the environmental cost recovery factors should remain in effect until modified by the Commission.

COMPANY-SPECIFIC ISSUES

Florida Power & Light (FPL)

PROPOSED STIPULATION

ISSUE 9A: Should FPL be allowed to recover the costs associated with its proposed St. Lucie Cooling Water Monitoring Project?

POSITION: Yes. This project is required to comply with Florida Department of Environmental Protection (FDEP) Administrative Order AO022TL (AO) and conditions in Industrial Wastewater (IWW) Permit No. FL0002208, which became effective on December 23, 2010 and relate to operation and limitations for the St. Lucie Plant Cooling Water System (CWS). The extended power uprate at St. Lucie Units 1 and 2 will result in an increased heat output which, in turn, will cause an increase in the discharge temperature of the plant's cooling water. FPL submitted to the FDEP a request to modify the IWW Permit in this regard. The FDEP has approved an increase in the current permitted discharge temperature limit, subject to FPL's complying with new study and monitoring requirements (and corrective action requirements if necessary) that are contained in the AO and IWW Permit. The proposed project meets the criteria for cost recovery established by the Commission in Order No. PSC-94-0044-FOF-EI. In addition, FPL's compliance with the IWW permit is legally mandated under a governmentally imposed environmental regulation.

The estimated total expenditures associated with the project are approximately \$3 million, of which approximately \$1.2 million has been included in the calculation of the 2012 ECRC factor. At this time, the project consists of preparing and implementing plans for (1) monitoring the ambient and CWS discharge water temperature, and (2) biological monitoring to demonstrate that conditions allow for the existence of a balanced, indigenous community of fish, shellfish and wildlife near the CWS discharge of the St. Lucie Plant. If any corrective actions are required as a result of the monitoring activities, FPL should petition the Commission to amend the project at that time for further ECRC cost recovery.

PROPOSED STIPULATION

ISSUE 9B: How should the costs associated with FPL's proposed St. Lucie Cooling Water Monitoring Project be allocated to the rate classes?

POSITION: Capital and O&M costs for FPL's proposed St. Lucie Plant Cooling Water Discharge Monitoring Project should be allocated to the rate classes on an average 12 CP demand basis.

PROPOSED STIPULATION

ISSUE 9C: Should FPL be allowed to recover the costs associated with its proposed Industrial Boiler MACT Project?

POSITION: Yes. This project is required by the United States Environmental Protection Agency (EPA), which regulates Hazardous Air Pollutants (HAPs) under Section 112 of the Clean Air Act (CAA) and promulgates emission standards for HAPs under 40 CFR Part 63 for stationary source categories. On February 21, 2011, the final Industrial/Commercial/Institutional Boiler Maximum Achievable Control Technology (IB MACT) rules were signed by the EPA Administrator. EPA's two rules address boilers and process heaters under Subpart DDDDD (40 CFR 63.7480) for affected units at major sources, and under Subpart JJJJJ (40 CFR 63.11193) for affected units at area sources. The IB MACT rules impose new emission limitations, work practice standards, and operating limits on the affected source categories to reduce the emissions of HAPs. FPL's plans to comply with the requirements of these rules include developing site-specific monitoring plans, conducting emissions stack testing, performing fuel oil sampling and analyses, conducting biennial tune-up practices, performing one-time energy assessment, and installing emission controls or replacing existing units. Subpart JJJJJ became effective on March 21, 2011. EPA has stayed the effectiveness of Subpart DDDDD.

FPL estimated that the costs associated with complying with Subpart JJJJJ are \$41,453, and the costs associated with the complying with Subpart DDDDD are \$337,895. FPL should be allowed to recover through the ECRC the Subpart JJJJJ-related compliance costs. This portion of the proposed project meets the criteria for cost recovery established by the Commission in Order No. PSC-94-0044-FOF-EI. In addition, FPL's compliance with the Subpart JJJJJ is legally mandated under a governmentally imposed environmental regulation. FPL has removed the projected Subpart DDDDD costs from its 2012 ECRC projections and will petition to recover its reasonable and prudent 2012 compliance costs under Subpart DDDDD via ECRC true-up process for 2012.

PROPOSED STIPULATION

ISSUE 9D: How should the costs associated with FPL's proposed Industrial Boiler MACT Project be allocated to the rate classes?

POSITION: Capital and O&M costs for FPL's proposed Industrial Boiler MACT Project should be allocated to the rate classes on an average 12 CP demand basis.

PROPOSED STIPULATION

ISSUE 9E: Should FPL be allowed to recover the costs associated with its proposed NPDES Permit Renewal Requirement Project?

POSITION: Yes. This project is designed to comply with the Federal Clean Water Act, which requires all point source discharges to navigable waters from industrial facilities to obtain permits under the National Pollutant Discharge Elimination System (NPDES) program. (33 U.S.C. Section 1342) NPDES permits must be renewed every five years. The FDEP has been delegated authority by the EPA to

implement the NPDES program in Florida. The FDEP has amended Rule 62-620.620 (3), F.A.C., to require that all new or renewed wastewater discharge permits for major facilities, including power plants, contain whole effluent toxicity (WET) limits. Additionally, the FDEP has required that facilities prepare a Storm Water Pollution Prevention Plan (SWPPP) that conforms to Rule 62-620.100 (m), F.A.C., and 40 CFR Part 122.44(k) when their NPDES permits are renewed. The proposed project is associated with these new requirements for WET monitoring and reporting, as well as for preparing Storm Water Pollution Prevention Plans that are or will be contained in the latest renewals for FPL's NPDES permits. The WET testing requirements of the project will be on-going. The estimated 2011 and 2012 O&M cost for compliance with the new WET testing requirement is approximately \$77,000. The SWPPP activities of the proposed project are expected to be completed by 2014 and the current estimates of the total expenditures are \$100,000 in O&M costs. The estimated 2011 and 2012 O&M costs for the development of SWPPPs at FPL's facilities are approximately \$30,000. FPL's proposed project meets the criteria for cost recovery established by the Commission in Order No. PSC-94-0044-FOF-EI. In addition, FPL's compliance with the NPDES permit is legally mandated under a governmentally imposed environmental regulation.

PROPOSED STIPULATION

ISSUE 9F: How should the costs associated with FPL's proposed NPDES Permit Renewal Requirement Project be allocated to the rate classes?

POSITION: Capital and O&M costs for FPL's proposed NPDES Permit Renewal Requirements Project should be allocated to the rate classes on an average 12 CP demand basis.

PROPOSED STIPULATION

ISSUE 9G: Should FPL be allowed to include the costs associated with its 800 MW ESP Project in its 2012 ECRC factor?

POSITION: FPL has agreed to remove the projected 800 MW ESP Project costs from the calculation of its 2012 ECRC factors.

The EPA issued the proposed Air Toxics Rule (also referred to as the MACT Rule) on March 16, 2011, which was published in the Federal Register on June 21, 2011. FPL believes that the installation of ESPs at the Martin and Manatee plants is the most effective method to comply with the requirements of the proposed rule. FPL anticipates that the EPA will finalize the Air Toxics Rule by the November 16, 2011 deadline, in compliance with the D.C Circuit Court of Appeal's order.

In Order No. PSC-11-0083-FOF-EI, in Docket No. 100007-EI, issued January 31, 2011, Re: Environmental Cost Recovery Clause, the Commission approved a stipulation regarding whether FPL should be allowed to recover the costs associated with its proposed 800 MW ESP project for complying with the proposed MACT rule. Consistent with this order, FPL is authorized to include all the prudently incurred costs associated with the project in the normal process of ECRC recovery after the EPA publishes the final MACT rule. FPL will be allowed to recover reasonable and prudent ESP project costs via the ECRC true-up mechanism in the 2012 ECRC proceeding in the event that the final MACT rule requires ESPs and is adopted before or during 2012.

PROPOSED STIPULATION

ISSUE 9H: Should FPL be allowed to recover the costs associated with the additional activities required for the Manatee Temporary Heating System Project at Cap Canaveral Plant?

POSITION: Yes. In Order No. PSC-09-0759-FOF-EI, in Docket No. 090007-EI, issued November 18, 2009, Re: Environmental Cost Recovery Clause, the Commission approved the MTHS-Cape Canaveral Plant project for cost recovery through the ECRC. FPL notified the Commission on January 4, 2011, that the heating system installed did not have enough thermal capacity to maintain the manatee embayment area at the necessary temperature to comply with the requirements of the FDEP's Industrial Wastewater Facility Permit FL0001473 for the Cape Canaveral Plant during periods of extreme cold. FPL determined that a light oil-fired water heating system (Supplemental Heating System) was the best solution to provide the incremental heating capacity needed in the event that the thermal capacity of the existing electric heating system is exceeded. Due to the approximately two-week anticipated delivery time of the Supplemental Heating System, FPL also entered into a short-term lease for a smaller light oil-fired heater to be used at the Cape Canaveral Plant site during the extreme cold snap that Florida experienced in early December 2010. Once the reliability and effectiveness of the Supplemental Heating System was proven, FPL terminated the lease and returned the smaller heater. Other associated activities are the modification of discharge pipes in the primary heating system and the installation of booms to direct and control the flow of warm water in the embayment area.

PROPOSED STIPULATION

ISSUE 9I: Should the Commission approve FPL's updated Clean Air Interstate Rule (CAIR), Clean Air Mercury Rule (CAMR) and Clean Air Visibility Rule (CAVR)/Best Available Retrofit Technology (BART) Projects that are reflected in FPL's April 1, 2011, supplemental filing as reasonable and prudent?

POSITION: Yes. Completion of the compliance activities discussed in FPL's Supplemental CAIR/CAMR/CAVR Filing of April 1, 2011, is required by existing federal and state environmental rules and regulatory requirements at that time for air quality control and monitoring; and the associated project costs appear reasonable and prudent. On February 21, 2011, the EPA published final IB MACT rules, of which Subpart JJJJJ became effective on March 21, 2011, and Subpart DDDDD was stayed. On March 16, 2011, the EPA issued the proposed Air Toxics Rule, also referred to as the MACT Rule. FPL anticipates that the EPA will finalize this Rule by the November 16, 2011 deadline, in compliance with the D.C Circuit Court of Appeal's order. On July 16, 2011, the EPA issued the Cross State Air Pollution Rule (CSAPR) which serves as the replacement for the CAIR rule. FPL shall continue to file, as part of its annual ECRC final true-up testimony, a review of the efficacy of its CAIR/CAMR/CAVR compliance plans. In its review, FPL shall update the Commission on the developments of the aforementioned new and/or proposed rules, as well as the cost-effectiveness of the company's retrofit options for each generating unit in relation to expected changes in environmental regulations. The reasonableness and prudence of individual expenditures, and FPL's decisions on the future compliance plans made in light of subsequent developments, will continue to be subject to the Commission's review in future ECRC proceedings on these matters.

Progress Energy Florida (PEF)

PROPOSED STIPULATION

ISSUE 10A: **Should the Commission grant PEF's Petition for approval of ECRC cost recovery for the National Pollutant Discharge Elimination System (NPDES) Permit Renewal Requirement Project?**

POSITION: Yes. This project is necessary to comply with renewed NPDES permits issued or to be issued for PEF's facilities by the FDEP pursuant to the EPA approved NPDES permitting program in Florida and applicable FDEP regulations. The new compliance requirements included in the Bartow, Anclote, Crystal River, and Suwannee permits are composed of Thermal Studies, Aquatic Organism Return Studies & Implementation, and Whole Effluent Toxicity Testing (WET). For the Bartow Plant, there are additional regulatory requirements and activities, including a Dissolved Oxygen Study and freeboard Limitation and Related Studies. The proposed project meets the criteria for cost recovery established by the Commission in Order No. PSC-94-0044-FOF-EI. In addition, PEF's compliance with the NPDES permit is legally mandated under a governmentally-imposed environmental regulation. The Company estimated that the total costs for complying with the new NPDES permit requirements are approximately \$1.5 million for the period of 2011 through 2012. PEF indicated that costs for the chronic WET testing would recur annually. It also indicated that costs for implementing the various studies cannot be estimated at this time, but

would be submitted for Commission review and approval at the appropriate time in future ECRC filings.

PROPOSED STIPULATION

ISSUE 10B: How should the costs associated with PEF's proposed NPDES Permit Renewal Requirement Project be allocated to the rate classes?

POSITION: Capital costs for the NPDES project should be allocated to rate classes on a demand basis. O&M costs for the project should be allocated to the rate classes on an energy basis.

PROPOSED STIPULATION

ISSUE 10C: Should the Commission grant PEF's Petition for approval of ECRC cost recovery for the Maximum Achievable Control Technology (MACT) Project?

POSITION: Yes. On March 16, 2011, the EPA issued a proposed Electric Generating Unit (EGU) MACT Rule. In accordance with a D.C Circuit Court of Appeal's order, the EPA Administrator will sign a final rule by November 16, 2011. Adoption of the new EGU MACT rule will require PEF to modify its Integrated Clean Air Compliance Plan, which was approved by the Commission in the previous year's ECRC hearings, to comply with new emission standards. The proposed new activities for 2011 include diagnostic stack testing, and emissions testing at Crystal River Units 4 and 5 to assess emissions of mercury, HCl and condensable particulate matter while testing hydrated lime injection and various operational conditions. Upon issuance of the final EGU MACT rule, PEF will conduct detailed engineering and other analyses necessary to develop compliance strategies for inclusion in an updated Integrated Clean Air Compliance Plan. The proposed project meets the criteria for cost recovery established by the Commission in Order No. PSC-94-0044-FOF-EI, and is consistent with the Commission's decision set in Order No. PSC-08-0775-FOF-EI. In addition, PEF's proposed activities are necessary for the Company to assess the proposed rule, prepare comments to the EPA, and develop compliance strategies within aggressive regulatory timeframes. The estimates of the O&M costs associated with this Project are approximately \$85,000 in 2011 and \$300,000 for 2012.

PROPOSED STIPULATION

ISSUE 10D: How should the costs associated with PEF's proposed MACT Project be allocated to the rate classes?

POSITION: O&M costs for the MACT Project should be allocated to the rate classes on an energy basis.

PROPOSED STIPULATION

ISSUE 10E: Should the Commission approve PEF's proposed treatment of its CAIR-related annual NOx allowances?

POSITION: On July 16, 2011, the EPA issued the Cross State Air Pollution Rule (CSAPR) to replace the Clean Air Interstate Rule (CAIR) starting January 1, 2012. The new rule significantly alters the SO₂ and NO_x allowance programs. Under the CAIR, Florida was required to comply with the requirements related to emissions of SO₂ and NO_x, as well as separate requirements regulating NO_x emissions during the ozone season. Under the CSAPR, Florida is no longer included in the group of states required to comply with SO₂ and NO_x emissions requirements; it is only subject to the ozone season portions of the rule. The effective compliance start day for Florida is May 1, 2012, when the ozone season begins. Moreover, the emission allowances previously issued to utility companies under CAIR and/or the Acid Rain Program cannot be used to comply with CSAPR requirements.

Since any NO_x allowances not used by the end of 2011 are not expected to be useful for compliance with the new CSAPR rule, PEF proposes to treat its approximately \$22.5 million of NO_x allowances in inventory as a regulatory asset as of January 1, 2012, and amortize it over the course of 2012 until fully recovered at year end, with a return on the unamortized balance of the emission allowances during 2012. PEF asserts that all of the \$22.5 million was incurred purchasing NO_x allowances and represents investments PEF has made in this inventory.

CAIR established new seasonal and annual emission compliance requirements for NO_x. Beginning in 2009, CAIR required affected sources to complete a seasonal NO_x emission allowance submittal for the May 1 through September 30 time period and annual NO_x emission allowance compliance submittal for the January 1 through December 31 time period each year. When PEF first asked the Commission to approve its Integrated Clean Air Compliance Plan in March 2006, its detailed economic analyses of five potential compliance scenarios indicated that its "Plan D," which relied on strategic purchases of annual and seasonal NO_x allowances rather than installing NO_x controls on Crystal River Units 1 and 2, was the most cost-effective option for compliance with CAIR and related regulatory requirements. In the 2007 ECRC docket, PEF submitted updated economic analyses confirming that Plan D, which included its reliance on NO_x allowance purchases, was the most cost-effective option. The Commission agreed that "PEF's Integrated Clean Air Compliance Plan represents the most cost-effective alternative for achieving compliance with CAIR, CAMR CAVR."¹ In the subsequent years, 2008 through 2010, PEF updated the Commission annually on its Integrated Clean Air Compliance Plan, each of which included strategic

¹ Order No. PSC-07-0922-FOF-EI, issued November 16, 2007, in Docket 070007-EI, In re: Environmental Cost Recovery.

NOx allowance purchases and were granted approval. Therefore, PEF's purchases of NOx allowance were pre-approved by the Commission.

The evidence in this docket indicates that PEF exercised a prudent NOx emissions allowance strategy. During the relevant time period, in order to determine if PEF would need to purchase seasonal and annual NOx emission allowances, the Company compared its total seasonal and annual NOx emissions projections from fuel and generation forecasts to the number of the allowances held by PEF, which included allowance allocations from the EPA, purchases made over time, and allowances carry-overs. In the aggregate, if the number of allowances that PEF would need to comply with CAIR based on forecasted emissions was greater than the number of allowances PEF held, the Company purchased additional allowances in the market. The historical data of PEF's allowance purchases, inventories and expenses submitted by the Company, indicates that PEF acted prudently in implementing its procurement strategy of purchasing NOx allowances over time, to gradually increase inventory levels based on emission forecasts developed using the best information available at the time.

Based on the above, the \$22.5 million investments associated with PEF's NOx allowances under the CAIR were prudently incurred under a Commission approved environmental compliance plan. It is appropriate for PEF to treat these \$22.5 million now-unusable NOx allowances as a regulatory asset and recover them through the ECRC. However, the amortization period should be a three-year amortization period, so as to reduce the volatility in customer bills while balancing the level of carrying costs associated with the \$22.5 million investment. Recognizing that historically many of the EPA's final rules were subsequently challenged in court after their publication, the CSAPR rule too may be litigated and ultimately revised in the future. If there are changes to the CSAPR that result in the \$22.5 million NOx allowances regaining value, PEF should refund the amount it recovered associated with these NOx allowances through the ECRC, and expense the amount into the ECRC based on actual usage consistent with current practice.

PROPOSED STIPULATION

ISSUE 10F: **Should the Commission approve PEF's updated Review of Integrated Clean Air Interstate Rule Compliance Plan that was submitted on April 1, 2011?**

POSITION: Yes. PEF's Updated Integrated Clean Air Compliance Plan is a reasonable means to achieve timely compliance with the applicable regulations in a cost-effective manner. All of the major components of the Crystal River Units 4 and 5 emissions control projects included in PEF's Integrated Clean Air Compliance Plan have been completed. PEF shall continue evaluating future compliance options in light of the EPA's recently finalized CSAPR rule and proposed EGU MACT standards for coal and oil-fired generating units. Once the EGU MACT rule is finalized and the Company determines its most cost-effective compliance

options, PEF should submit revisions to PEF's Integrated Clean Air Compliance Plan to the Commission for review. The revised Plan should discuss the impacts and estimated costs associated with PEF's integrated strategy for complying with CSAPR, MACT and related environmental regulatory programs. The reasonableness and prudence of PEF's decisions on the future compliance plans made in light of subsequent environmental rule and regulation developments, will continue to be subject to the Commission's review in future ECRC proceedings on these matters.

Company Specific Environmental Cost Recovery Issues Raised by Other Parties

ISSUE 10G: Should PEF be permitted to recover any environmental costs related to its purchases of replacement power due to the Crystal River 3 outage? [Raised by Florida Industrial Power Users Group]

PEF: Yes. The Commission has already decided the issue of whether replacement fuel (and related environmental) costs should be recovered in this instance. Specifically, in Order No. PSC-10-0734-FOF-EI issued in Docket No. 100001-EI, the Commission held that PEF shall be allowed to recover all replacement power costs due to the Crystal River 3 outage, subject to refund, prior to the determination of prudence of such costs in Docket No. 100437-EI. Such replacement power costs include costs of emission allowances needed to ensure that emissions associated with the replacement power complied with the Clean Air Interstate Rule (CAIR). PEF has demonstrated the reasonableness of these environmental costs, consistent with the requirements set forth in Order PSC-10-0734 and thus should similarly be permitted to recover these costs, subject to refund pending the determination in Docket 100437-EI.

OPC: Agree with FIPUG.

FIPUG: No. PEF should not be permitted to recover any further costs related to the CR3 extended outage until the issues in Docket No. 100437-EI are resolved.

FEA: Agree with FIPUG.

STAFF: This issue should be resolved consistent with the decision the Commission will make on Issue 1C in Docket No. 110001-EI.

ISSUE 10H: If yes, does this recovery violate provisions addressing due process or taking of property set forth in the Florida constitution? [Raised by Florida Industrial Power Users Group] projected

This issue will not be included in this proceeding. See ruling in Section XIV.

Gulf Power Company (Gulf)

PROPOSED STIPULATION

ISSUE 11A: Should Gulf be allowed to recover the costs associated with its proposed Impoundment Integrity Inspection Project?

POSITION: Yes. The proposed project addresses costs associated with Gulf's compliance with a new condition in the Plant Crist National Pollutant Discharge Elimination System (NPDES) permit renewal issued during January of 2011. This new condition requires inspection of all ash impoundments at Plant Crist annually. These inspections must include observations of dike and toe areas for erosion, cracks, or bulges, seepage, wet or soft soil, changes in geometry, the depth and elevation of the impounded water, sediment or slurry, freeboard, changes in vegetation and any other change which may indicate a potential compromise to impoundment integrity. The permit condition requires that summarized findings of all monitoring activities, inspections, and corrective actions pertaining to the impoundment integrity, and operation and maintenance of all impoundments must be documented and kept onsite and made available to FDEP inspectors. All findings and corrective actions related to impoundment integrity at Plant Crist must be complied with per the permit condition. The proposed project meets the criteria for cost recovery established by the Commission in Order No. PSC-94-0044-FOF-EI. In addition, Gulf's compliance with the NPDES permit is legally mandated under a governmentally imposed environmental regulation. The estimated costs associated with the project will total \$156,000 during 2012.

PROPOSED STIPULATION

ISSUE 11B: How should the costs associated with Gulf's proposed Impoundment Integrity Inspection Project be allocated to the rate classes?

POSITION: The costs associated with this project shall be allocated to the rate classes on an average 12 CP demand and 1/13th energy basis.

ISSUE 11C: Should Gulf be allowed to recover the costs associated with the Plant Crist Units 6 and 7 turbine upgrades?

POSITIONS:

GULF: Yes. The Plant Crist Unit 6 and 7 turbine upgrades were planned as part of the Plant Crist Flue Gas Desulfurization (scrubber) project. These upgrades, which include the Plant Crist Unit 7 HP/IP turbine upgrades placed in service January 2010, are needed to regain generating capacity at Plant Crist to offset the increased station service requirements associated with installation of the Plant

Crist scrubber. The increased station service requirements associated with the scrubber reduces the amount of generation capacity from Plant Crist available to serve Gulf’s customer load. The installation of the Plant Crist turbine upgrade components presented in the table below were incorporated into the scrubber project to ensure that the overall project provides for its own electric service requirements.

These turbine upgrades were discussed in testimony of James O. Vick in the following Environmental Cost Recovery Clause filings: 1) 2009 ECRC Projection filing dated August 28, 2008, 2) 2009 ECRC Estimated True-Up filing dated August 3, 2009, 3) 2010 ECRC Projection filing dated August 28, 2009, and 4) 2012 ECRC Projection filing dated August 26, 2011. Revenue requirements for the Plant Crist Unit 7 HP/IP components were initially included for recovery and reflected in Gulf’s 2009 ECRC factors approved in Commission Order PSC-08-0775-FOF-EI. Subsequently, Gulf’s ECRC factors for 2010 and 2011 approved by the Commission continued to reflect costs related to this equipment. In addition to the Plant Crist Unit 7 HP/IP, Gulf’s proposed 2012 ECRC factors include the revenue requirements for the Crist Unit 6 HP/IP and the Crist Unit 7 LP components projected to be placed in service in May and December 2012. Gulf’s pending rate case in Docket No. 110138-EI assumes continued ECRC recovery for all components of the Plant Crist scrubber project, including those turbine upgrades already in-service and those projected to be placed in-service in 2012. (VICK, DODD)

Turbine Upgrades	Description	Projected Placed-in-Service Date	Actual Placed-in-Service Date
Plant Crist Unit 7 HP/IP	Upgraded inner and outer High Pressure and Intermediate Pressure cylinder and rotor	Dec 2009	Jan 2010
Plant Crist Unit 6 HP/IP	Upgraded inner and outer High Pressure and Intermediate Pressure cylinder and rotor.	May 2012	N/A
Plant Crist Unit 7 LP	Upgraded both LP turbine sets with inner Low Pressure cylinder and rotor.	Dec 2012	N/A

OPC: The Crist 6 and 7 turbine upgrades are not required to comply, or remain in compliance with, a governmentally imposed environmental rule or regulation, and thus do not meet the established criteria for cost recovery through the ECRC. As they are ineligible for inclusion within the clause, all costs associated with the

Crist 6 and 7 turbine upgrades should be removed from the ECRC otherwise OPC takes no position.

FIPUG: No. As noted by Staff, these costs do not qualify for recovery under the standard the Commission has set and should be removed.

FEA: Agree with staff.

STAFF: No. As part of its Plant Crist Units 4 through 7 scrubber systems of the CAIR/CAMR/CAVR Compliance Program, which was approved by the Commission in Order No. PSC-07-0721-S-EI, issued September 5, 2007, In re: Environmental Cost Recovery, Gulf decided to install turbine upgrades for Units 6 and 7 to offset increased station losses due to the scrubber installation. The total costs associated with the Crist Units 6 and 7 turbine upgrades (Upgrade Project) are projected to be approximately \$64 million. The Upgrade Project has three components: U7 HP/IP, U6 HP/IP and U7 LP's, with associated costs being approximately \$15.3 million, \$21.7 million and \$26.9 million, respectively. The first component of the Upgrade Project was placed in-service in January 2010, and the second and the third components will be placed in-service in 2012.

The purpose of these turbine upgrades is to offset the parasitic load imposed by the Plant Crist's environmental control equipment, the scrubbers. Gulf confirmed this in its response to Staff's Fifth Set of Interrogatories, No. 9, in this proceeding, that "[t]he Plant Crist Unit 6 and 7 turbine upgrades are needed to offset the increased station service due to the scrubber being placed in service. The station service being consumed by the scrubber reduces the amount of generation capacity available to serve our customer load. New turbine design features in the rotors, inner and outer cylinders, blade airfoils, steam paths, as well as advanced sealing and blade path thermodynamic optimization are utilized to improve the turbines' efficiencies." However, the Upgrade Project itself is not required to comply, or remain in compliance with, a governmentally imposed environmental rule or regulation. Staff believes that the Upgrade Project does not meet established criteria for ECRC cost recovery. Thus, the costs associated with the Upgrade Project should not be recovered through the ECRC. This is consistent with the Commission's decision set out in Order No. PSC-11-0080-PAA-EI, issued on January 31, 2011, in Docket No. 100404-EI, In re: Petition by Florida Power & Light Company to recover Scherer Unit 4 Turbine Upgrade costs through environmental cost recovery clause.

The Upgrade Project appears to be cost-effective and beneficial to Gulf and its ratepayers. It would be appropriate for Gulf to recover the costs associated with the Crist Units 6 and 7 turbine upgrades through base rates. Gulf should remove the net investments associated with the U7 HP/IP and the projected costs associated with the U6 HP/IP and U7 LP's from the 2011 ECRC proceeding, and

at its option seek to recover these costs in its pending rate case in Docket No. 110138-EI.

PROPOSED STIPULATION

ISSUE 11D: Should the Commission approve Gulf's proposed treatment of its CAIR-related NOx allowances?

POSITION: Yes. On July 16, 2011, the EPA issued the CSAPR rule to replace the CAIR rule starting January 1, 2012. It appears that the annual NOx emission allowances previously issued to Florida utility companies under CAIR and/or the Acid Rain Program cannot be used to comply with CSAPR requirements, and Florida is no longer included in the group of states required to comply with annual NOx emissions requirements. As reported in Gulf's Schedule 8E, filed on August 1, 2011, and Schedule 4P, filed on August 26, 2011, the Company will have approximately \$1.3 million of annual NOx allowances as of December 31, 2011. Gulf indicated in its response to Staff's Fourth Set of Interrogatories, No. 6a, that "[a] decision as to whether or not the balance of annual NOx allowances on hand at the end of 2011 will have any value in the future is yet to be determined pending potential litigation related to the new Cross State Air Pollution Rule (CSAPR). Regardless of whether these allowances are ultimately deemed to have any value or not beyond 2011, the costs of these allowances were prudently incurred expenses that are recoverable through the Environmental Cost Recovery Clause."

It is reasonable for the Company to have a "waiting period" to obtain more information before making a decision on how to treat its CAIR-related annual NOx allowances on hand. Gulf should update the Commission, in a timely manner, on the Company's decision on how it proposes to treat its remaining annual NOx allowances inventory in light of the future developments in the CSAPR. Staff also believes that it would be reasonable to limit this "waiting period" to a three-year time frame so that it would not result in a significant amount of carrying costs associated with this \$1.3 million capital investment being incurred.

PROPOSED STIPULATION

ISSUE 11E: Should the Commission approve Gulf's Environmental Compliance Program Update that was submitted on April 1, 2011?

POSITION: Yes. Gulf's updated Environmental Compliance Program reflects a comprehensive assessment of requirements Gulf and its customers face in meeting various existing environmental rules and the pending EGU MACT rule. In assessing the most cost-effective means of meeting these significant regulatory requirements, the Company considered four primary compliance options: fuel switching, purchase of allowances, retrofit installations, and retirement and

replacement of existing units. Based upon comprehensive technical and economic evaluations of alternatives, Gulf assessed the best means of meeting plan-by-plan emission requirements through retrofit measures supplemented by allowance purchases and compared those options to retiring and replacing existing units. It appears that Gulf's Environmental Compliance Program is the most reasonable and cost effective option available to Gulf under the planning assumptions at that time.

On July 16, 2011, the EPA issued the Cross State Air Pollution Rule (CSAPR) which serves as the replacement for the CAIR rule. According to the Company's response to Staff's Fifth Set of Interrogatories No. 10c, filed September 26, 2011, Gulf's current strategy to comply with CSAPR relies on the ability to purchase allowances above the annual allowances provided to the company or to import power to supplement Gulf's territorial load; Gulf will continue to evaluate these options pursuant to the development of the seasonal emission allowance market and the availability of purchased power agreements. Gulf also indicated that it is currently evaluating the existing particulate emission controls (ESPs) at Plant Crist and Daniel to determine whether they will be able to ensure compliance with the EGU MACT rule. Once the rule is finalized, Gulf will be able to determine whether or not the existing controls will be adequate or if a baghouse(s) will have to be installed.

Gulf should continue to evaluate future compliance options in light of the EPA's recently finalized CSAPR rule and the EGU MACT standards. Once the EGU MACT rule is finalized and the Company determines its most cost-effective compliance options, Gulf should submit for the Commission's review revisions to Gulf's Environmental Compliance Program. The revised Program should discuss the impacts and estimated costs associated with Gulf's integrated strategy for complying with CSAPR, EGU MACT and related environmental regulatory programs. The reasonableness and prudence of individual expenditures, and Gulf's decisions on the future compliance plans made in light of subsequent environmental rule and regulation developments, will continue to be subject to the Commission's review in future ECRC proceedings on these matters.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>Description</u>
<u>Direct</u>		

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
T.J. KEITH	FPL	(TJK-1)	Appendix Environmental Cost Recovery Final True-up January 2010 - December 2010 Commission Forms 42-1A through 42-9A.
T.J. KEITH	FPL	Revised (TJK-2)	Appendix Environmental Cost Recovery Actual/Estimated Period January 2011 - December 2011 Commission Forms 42-1E through 42-9E.
T.J. KEITH	FPL	Revised (TJK-3)	Appendix I Environmental Cost Recovery Projections January 2012- December 2012 Commission Forms 42-1P through 42-8P
R.R. LABAUVE	FPL	(RRL-1)	Florida Department of Environmental Protection Industrial Wastewater Facility Permit No. FL0002208 St. Lucie Power Plant
R.R. LABAUVE	FPL	(RRL-2)	Florida Department of Environmental Protection Administrative Order No. AO022TL St. Lucie Power Plant
R.R. LABAUVE	FPL	(RRL-3)	FPL Supplemental CAIR/CAMR/CAVR Filing
R.R. LABAUVE	FPL	(RRL-4)	Changes and Anticipated Changes in WET Testing for FPL Facilities
R.R. LABAUVE	FPL	(RRL-5)	NPDES Permit No. FL0001538 – Port Everglades Plant
R.R. LABAUVE	FPL	(RRL-6)	Pertinent Excerpts from Final Industrial Boiler MACT Rule for Area Sources 40-CFR Part 63 Subpart DDDDD

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
R.R. LABAUVE	FPL	(RRL-7)	Pertinent Excerpts from Final Industrial Boiler MACT Rule for Area Sources 40-CFR Part 63 Subpart JJJJ
R.R. LABAUVE	FPL	(RRL-8)	EPA Delay of Subpart DDDDD
R.R. LABAUVE	FPL	(RRL-9)	ERG Memorandum
R.R. LABAUVE	FPL	(RRL-10)	FPL IBM ACT Cost Matrix
WILL GARRETT	PEF	(WG-1)	PSC Forms 42-1A through 42-8A January 2010 – December 2010
WILL GARRETT	PEF	(WG-2)	Capital Program Detail January 2010 – December 2010
PATRICIA Q. WEST	PEF	(PQW-1)	Review of Integrated Clean Air Compliance Plan
PATRICIA Q. WEST	PEF	(PQW-2) Confidential	Verified Petition for Approval of Cost Recovery for New Environmental Program and associated exhibits filed on March 11, 2011
PATRICIA Q. WEST	PEF	(PQW-3)	Verified Petition to Modify Scope of Existing Environmental Program and filed on May 24, 2011
PATRICIA Q. WEST	PEF	(TGF-3)	Form 42-5P, pages 3 of 18, 4 of 18, 6 of 18, 8 of 18, 10 of 18, 11 of 18, 12 of 18, 13 of 18, 14 of 18, 15 of 18, 16 of 18, 17 of 18, and 18 of 18
COREY ZEIGLER	PEF	(TGF-3)	Form 42-5P, pages 1 of 18, 2 of 18, and 9 of 18
KEVIN MURRAY	PEF	(KM-1)	Crystal River Project Organizational Structure
DAVID SORRICK	PEF	(DS-1)	Crystal River Project Organizational Structure

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
DAVID SORRICK	PEF	(TGF-3)	Form 42-5P, page 7 of 16
THOMAS G. FOSTER	PEF	(TGF-1)	PSC Forms 42-1E through 42-9E January 2011 – December 2011
THOMAS G. FOSTER	PEF	(TGF-2)	Capital Program Detail January 2011 – December 2011
THOMAS G. FOSTER	PEF	Revised (TGF-3)	PSC Forms 42-1P through 42-8P January 2012– December 2012
THOMAS G. FOSTER	PEF	(TGF-4)	Capital Program Detail January 2012 – December 2012
THOMAS G. FOSTER	PEF	(TGF-5)	Commission Form 42-8E, Page 15, Revised
HOWARD T. BRYANT	TECO	(HTB-1)	Final Environmental Cost Recovery Commission Forms 42-1A through 42-8A for the period January 2010 through December 2010
HOWARD T. BRYANT	TECO	(HTB-2)	Environmental Cost Recovery Commission Forms 42-1E through 42-9E for the Period January 2011 through December 2011
HOWARD T. BRYANT	TECO	(HTB-3)	Forms 42-1P through 42-8P Forms for the January 2012 through December 2012
J. O. VICK	GULF	(JOV-1)	Plant Crist NPDES Permit
R. W. DODD	GULF	(RWD-1)	Calculation of Final True-up 1/10 – 12/10
R. W. DODD	GULF	(RWD-2)	Calculation of Estimated True-up 1/11 – 12/11
R. W. DODD	GULF	(RWD-3)	Calculation of Projection 1/12 – 12/12

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

FIPUG does not object to Staff's entry of the listed discovery in the Composite Exhibit List, however, this does not constitute its waiver in future proceedings of the requirement that exhibits be sponsored by a witness who is available for cross examination.

X. PROPOSED STIPULATIONS

For FPL there are proposed stipulations on Issues 1-8 and 9A-9I. For PEF there are proposed stipulations on Issues 5, 6, 8, and 10A-10F. For TECO there are proposed stipulations on Issues 1-8. For Gulf there are proposed stipulations on Issues 5, 6, 8, 11A, 11B, 11D, and 11E. OPC agrees with the proposed stipulation in Issue 11E with the understanding that Gulf will petition for approval of any new programs in the regular course of the ECRC proceedings. OPC and FIPUG have taken no position on the other stipulated issues.

XI. PENDING MOTIONS

None at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are four pending confidentiality requests for Florida Power & light Company:

Florida Power & Light Company's request for confidential classification of Audit No. 11-005-4-3, DN 3909-11, dated June 6, 2011.

Florida Power & Light Company's request for extension of confidential classification of Audit for the year ended December 31, 2005, Audit No. 06-044-4-1, DN 3514-11, dated May 19, 2011.

Florida Power & Light Company's request for extension confidential classification of Audit for the Historical Test Year ended December 31, 2007, Audit No. 08-029-4-1, DN 3349-11, dated May 13, 2011.

Florida Power & Light Company's request for extension of confidential classification of Audit No. 07-071-4-1, DN 2779-11, dated April 22, 2011.

The requests will be addressed by separate order.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this

Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS


ISSUE 10H proposed by FIPUG shall not be addressed as a separate issue in this proceeding. FIPUG may address the constitutionality of the Commission's action in its position on ISSUE 10G, and thereby preserve the question for appeal. It is not necessary for the Commission to make a finding of constitutionality in a separate issue.

Opening statements, if any, shall not exceed five minutes per party.

It is therefore,

ORDERED by Commissioner Ronald A. Brisé, as 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 Ronald A. Brisé, as Prehearing Officer, this 28th day of October, 2011.



RONALD A. BRISÉ
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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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

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