

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 160007-EI  
ORDER NO. PSC-16-0474-PHO-EI  
ISSUED: October 21, 2016

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on October 11, 2016, in Tallahassee, Florida, before Commissioner Art Graham, as Prehearing Officer.

APPEARANCES:

R. WADE LITCHFIELD, ESQUIRE, Vice President and General Counsel, JOHN T. BUTLER, ESQUIRE, Assistant General Counsel – Regulatory, and MARIA J. MONCADA, ESQUIRE, Senior Attorney, 700 Universe Boulevard, Juno Beach, Florida 33408-0420

On behalf of Florida Power & Light Company (FPL)

DIANNE M. TRIPLETT, ESQUIRE, Associate General Counsel, 299 First Avenue North, St. Petersburg, Florida 33701, and MATTHEW R. BERNIER, ESQUIRE, Senior Counsel, 106 East College Avenue, Suite 800, Tallahassee, Florida 32301

On behalf of Duke Energy Florida, LLC. (DEF)

JAMES D. BEASLEY, ESQUIRE, J. JEFFRY WAHLEN, ESQUIRE, and ASHLEY M. DANIELS, ESQUIRE, Ausley McMullen, P. O. Box 391, Tallahassee, Florida 32302

On behalf of Tampa Electric Company (TECO)

JEFFREY A. STONE, ESQUIRE, RUSSELL A. BADDERS, ESQUIRE, and STEVEN R. GRIFFIN, ESQUIRE, Beggs & Lane, P. O. Box 12950, Pensacola, Florida 32591-2950

On behalf of Gulf Power Company (Gulf)

JON C. MOYLE, JR., ESQUIRE, and KAREN PUTNAL, ESQUIRE, Moyle Law Firm, P.A., 118 North Gadsden Street, Tallahassee, FL 32312

On behalf of Florida Industrial Power Users Group (FIPUG).

J. R. KELLY, ESQUIRE, Public Counsel, PATRICIA A. CHRISTENSEN, ESQUIRE, CHARLES REHWINKEL, ESQUIRE, ERIK SAYLER, ESQUIRE, and STEPHANIE MORSE, ESQUIRE 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)

JAMES W. BREW, ESQUIRE, and LAURA A. WYNN, ESQUIRE, Stone Mattheis Xenopoulos & Brew, P.C., 1025 Thomas Jefferson Street, N.W., Eighth Floor, West Tower, Washington, D.C. 20007,

On behalf of White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs (PCS)

CHARLES W. MURPHY, ESQUIRE, and BIANCA LHERISSON, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Florida Public Service Commission (Staff).

KEITH HETRICK, ESQUIRE, General Counsel, and MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

Advisors 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 2-4, 2016.

### **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 Chapters 366 and 120, F.S., and Chapters 25-6, 25-22, 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 that has not been filed as prefiled testimony or prefiled exhibits, 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

All witnesses are excused from the hearing in this docket. The testimony of excused witnesses shall be inserted into the record as though read, and staff's exhibit and all exhibits submitted with those witnesses' testimony shall be identified as shown in Section IX of this Prehearing Order and shall be admitted into the record.

VI. ORDER OF WITNESSES

Each witness whose name is followed by an asterisk (\*) is excused from the hearing.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
R. B. Deaton* (adopting Terry J. Keith)	FPL	1-8, 10
Christopher Menendez*	DEF	1-8, 11, 12
Michael Delowery*	DEF	1-3
Tim Hill*	DEF	1-3
Jeffrey Swartz*	DEF	1-3
Patricia Q. West*	DEF	1-3
Penelope A. Rusk*	TECO	1-8, 12
Paul L. Carpinone*	TECO	3
R. M. Markey* (adopting James O. Vick)	GULF	1-3, 9A-9B
C. S. Boyett*	GULF	1-8, 9A-9C, 12
J. T. Deason*	GULF	9A-9B
J. A. Burleson*	GULF	9A
X. Liu*	GULF	9A

VII. BASIC POSITIONS

**FPL:** FPL's 2017 Environmental Cost Recovery factors, including the prior period true-ups, are reasonable and should be approved. The Commission also should approve deferral of issues related to FPL's Turkey Point Cooling Canal Monitoring Plan ("TPCCMP") project for resolution in the 2017 ECRC docket and approve FPL's recovery of projected TPCCMP costs subject to refund through the ECRC true-up mechanism.

**DEF:** None necessary.

**TECO:** The Commission should approve the compliance programs described in the testimony and exhibits of Tampa Electric Witnesses Rusk and Carpinone for environmental cost recovery. The Commission should also approve Tampa Electric's calculation of its environmental cost recovery final true-up for the period January 2015 through December 2015, the actual/estimated environmental cost recovery true-up for the current period January 2016 through December 2016, and the company's projected ECRC revenue requirement and the company's proposed ECRC factors for the period January 2017 through December 2017.

**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 2017 through December 2017, including the true-up calculations and other adjustments allowed by the Commission.

**OPC:** The utilities have the burden of proof to justify and support the recovery of costs and their proposal(s) seeking the Commission's adoption of policy statements (whether new or changed) or other affirmative relief sought, regardless of whether the Interveners provide evidence to the contrary. Regardless of whether the Commission has previously approved a program as meeting the Commission's requirements, the utilities must still meet their burden of demonstrating that the costs submitted for final recovery meet the statutory test(s) and are reasonable in amount and prudently incurred. Issues that are being deferred until 2017 carry no presumption of correctness as to the reasonableness, prudence or retail ratepayer responsibility for the type or category of cost for which recovery is being sought.

**FIPUG:** Only costs legally authorized should be recovered through the environmental cost recovery clause. FIPUG maintains that the respective utilities must satisfy their burden of proof for any and all monies or other relief sought in this proceeding.

**PCS:** PCS Phosphate generally accepts and adopts the positions taken by the Florida Office of Public Counsel ("OPC").

**STAFF:** Staff supports the proposed stipulations of all issues in this case as set forth in Section X of this order.

VIII. ISSUES AND POSITIONS

Please see Section X of this order for the proposed stipulation of each of the issues in this Docket.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
			<u>Direct</u>
R. B. Deaton (adopting Terry J. Keith)	FPL	TJK-1	Appendix I Environmental Cost Recovery Final True-up January 2015- December 2015 Commission Forms 42-1A through 42-9A
R. B. Deaton	FPL	TJK-2	Appendix I Environmental Cost Recovery Actual/Estimated Period January 2016-December 2016 Commission Forms 42-1E through 42-9E
R. B. Deaton	FPL	TJK-3	Appendix I Environmental Cost Recovery Revised 2016 Actual/Estimated True-Up January 2016-December 2016
R. B. Deaton	FPL	TJK-4	Appendix II Environmental Cost Recovery Proposed Cost Allocation Methodology 12 CP and 25% Commission Forms 42-1P through 42-8P January 2017–December 2017

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
R. B. Deaton	FPL	TJK-5	Appendix III Environmental Cost Recovery Current Cost Allocation Methodology 12 CP and 1/13 <sup>th</sup> Commission Forms 42-1P through 42-3P and 42-6P through 7P January 2017–December 2017
C. Menendez	DEF	CAM-1	Forms 42-1A – 42-9A January 2015–December 2015
C. Menendez	DEF	CAM-2	Capital Program Detail January 2015–December 2015
C. Menendez	DEF	CAM-3	Forms 42-1E – 42-9E January 2016–December 2016
C. Menendez	DEF	CAM-4	Capital Program Detail January 2016–December 2016
C. Menendez	DEF	CAM-5	Forms 42-1P – 42-8P January 2017–December 2017
C. Menendez	DEF	CAM-6	Capital Program Detail January 2017–December 2017
T. Hill	DEF	CAM-5	Form 42-5P, page 23 of 23
J. Swartz	DEF	JS-1	Crystal River Clean Air Projects Organizational Chart
J. Swartz	DEF	CAM-5	Form 42-5P, pages 7, 21 and 22 of 23
P. West	DEF	PQW-1	Review of Integrated Clean Air Compliance Plan
P. West	DEF	CAM-5	Form 42-5P, pages 1-4, and 6- 20 of 23
P. Rusk	TECO	PAR-1	Final Environmental Cost Recovery Commission Forms 42-1A through 42-9A for the period January 2015 through December 2015

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
P. Rusk	TECO	PAR-2	Environmental Cost Recovery Commission Forms 42-1E through 42-9E for the period January 2016 through December 2016
P. Rusk	TECO	PAR-3	Forms 42-1P through 42-8P Forms for the January 2017 through December 2017
C. Boyett	GULF	CSB-1	Calculation of Final True-up 1/15 – 12/15
C. Boyett	GULF	CSB-2	Calculation of Estimated True-up 1/16 – 12/16
C. Boyett	GULF	CSB-3	Calculation of Projection 1/17 – 12/17
R. Markey (adopting James O. Vick)	GULF	RMM-1	Schedule 5P – Description and Progress Report of Environmental Compliance Activities and Projects
R. Markey	GULF	RMM-2	Schedule 1 – Plant Scherer Existing Air Quality Compliance Projects; Georgia Multipollutant Control for Electric Utility Steam Generating Units; Plant Scherer Title V permit; Plant Scherer NPDES permit; Plant Scholz NPDES permit; Plant Scholz NPDES permit modification; Plant Scholz closure plan approval
J. Deason	GULF	JTD-1	Curriculum Vitae
J. Deason	GULF	JTD-2	Reference Compendium
J. Burleson	GULF	JAB-1	Chronology of Key Planning Regulatory Events



<u>Witness</u>	<u>Proffered By</u>	<u>Description</u>
J. Deason	STAFF	Joint Motion for Approval of Settlement Agreement, filed in Docket Nos. 160021-EI, 160061-EI, 160062-EI and 160088-EI.

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

#### X. PROPOSED STIPULATIONS

Staff supports the proposed stipulations of all issues in this case as set forth below. DEF, FPL, Gulf, and TECO support the stipulations.

OPC is agreeable to “Type 2” stipulations on all issues except Issues 9A (addressing Gulf’s Scherer Unit 3) and Issue 10 (addressing FPL’s projected 2017 costs for its Turkey Point Cooling Canal Monitoring Plan project). OPC agrees to a “Type 1” stipulation for the deferral of those issues.

PCS Phosphate and FIPUG are agreeable to Type 2 stipulation of all issues.

All witnesses are excused. Testimony and hearing exhibits are included in the record.

#### **ISSUE 1: What are the final environmental cost recovery true-up amounts for the period January 2015 through December 2015?**

FPL	\$17,817,012	Over-Recovery
Duke	\$1,951,488	Over-Recovery
TECO	\$1,721,184	Over-Recovery
Gulf	\$3,061,120	Over-Recovery

#### **ISSUE 2: What are the actual/estimated environmental cost recovery true-up amounts for the period January 2016 through December 2016?**

FPL	\$6,424,842	Under-Recovery
Duke	\$6,606,430	Over-Recovery
TECO	\$5,755,973	Over-Recovery
Gulf	\$7,840,455	Over-Recovery

**ISSUE 3: What are the projected environmental cost recovery amounts for the period January 2017 through December 2017?**

FPL*	\$256,332,720	12 CP and 25% allocation
FPL*	\$256,370,332	12 CP and 1/13th allocation
Duke	\$66,227,010	
TECO	\$81,235,918	
Gulf	\$218,646,595	

\*Based on the 12 CP and 25% cost allocation for Production Plant proposed by FPL in Docket 1600021-EI, the projected environmental cost recovery amounts for the period January 2017 through December 2017 is \$256,332,720. On October 6, 2016, FPL, the Office of Public Counsel, the South Florida Hospital and Healthcare Association and the Florida Retail Federation jointly moved for approval of a proposed stipulation and settlement of FPL's rate case in Docket No. 160021-EI and consolidated dockets (the "Proposed Settlement Agreement"). The Proposed Settlement Agreement would provide for FPL to continue using the 12 CP and 1/13<sup>th</sup> production cost methodology. If the Commission approves the Proposed Settlement Agreement or otherwise declines to accept FPL's proposed cost allocation methodology, the amount calculated using 12CP and 1/13<sup>th</sup> is \$256,370,332. Upon approval of this stipulation by the Commission, FPL will file and serve tariff sheets that reflect the 2017 ECRC factors under the two alternative methodologies so that the Commission may direct Staff to approve administratively whichever set corresponds to the Commission's decision on the allocation methodology in Docket No. 160021-EI and consolidated dockets.

**ISSUE 4: What are the environmental cost recovery amounts, including true-up amounts and revenue taxes, for the period January 2017 through December 2017?**

FPL *	\$245,116,908	12 CP and 25% allocation
FPL *	\$245,154,547	12 CP and 1/13th allocation
Duke	\$57,710,613	
TECO	\$73,811,867	
Gulf	\$207,894,596	

\*Based on the 12 CP and 25% Production Plant cost allocation method proposed by FPL in Docket 1600021-EI, the projected environmental cost recovery amounts for the period January 2017 through December 2017 is \$245,116,908. If the Commission approves the Proposed Settlement Agreement or otherwise declines to accept FPL's proposed cost allocation methodology, the amount calculated using 12CP and 1/13<sup>th</sup> is \$245,154,547. Upon approval of this

stipulation by the Commission, FPL will file and serve tariff sheets that reflect the 2017 ECRC factors under the two alternative methodologies so that the Commission may direct Staff to approve administratively whichever set corresponds to the Commission's decision on the allocation methodology in Docket No. 160021-EI and consolidated dockets.

**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 2017 through December 2017?**

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

**ISSUE 6: What are the appropriate jurisdictional separation factors for the projected period January 2017 through December 2017?**

**FPL**

Retail Energy Jurisdictional Factor	94.89172%
Retail CP Demand Jurisdictional Factor	95.04658%
Retail GCP Demand Jurisdictional Factor	100.00000%

**DEF**

The Energy separation factor is calculated for each month based on retail kWh sales as a percentage of projected total kWh sales. The remaining separation factors are below, consistent with the Revised Stipulation and Settlement Agreement approved in Order No. PSC-13-0598-FOF-EI, at p. 54.

Transmission Average 12 CP Demand – 70.203%

Distribution Primary Demand – 99.561%

Production Demand:

Production Demand (2012) – 91.683%

Production Base – 92.885%

Production Intermediate – 72.703%

Production Peaking – 95.924%

Production A&G – 93.221%

**TECO**

The demand jurisdictional separation factor is 99.58992%. The energy jurisdictional separation factors are calculated for each month based on retail kWh sales as a percentage of projected total system kWh sales. These are shown on the schedules sponsored by witness Rusk.

**GULF**

The demand jurisdictional separation factor is 97.21125%. 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 2017 through December 2017 for each rate group?**

**FPL**

FPL’s environmental cost recovery factors based on 12 CP & 25% Production Plant cost allocation methodology proposed by FPL in Docket 160021-EI are as follows:\*

Proposed Cost Allocation Methodology - 12 CP and 25%	Environmental Cost Recovery Factor (cents/KWH)
RS1/RTR1	0.241
GS1/GST1	0.230
GSD1/GSDT1/HLFT1	0.217
OS2	0.200
GSLD1/GSLDT1/CS1/CST1/HLFT2	0.216
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.197
GSLD3/GSLDT3/CS3/CST3	0.194
SST1T	0.180
SST1D1/SST1D2/SST1D3	0.206
CILC D/CILC G	0.197
CILC T	0.188
MET	0.213
OL1/SL1/PL1/SL1-M	0.126
SL2/ GSCU1/SL2-M	0.191
Total	0.228

\*If the Commission approves the Proposed Settlement Agreement or otherwise declines to accept FPL’s proposed cost allocation methodology, the amounts calculated using 12CP and 1/13th are set forth below. Upon approval of this stipulation by the Commission, FPL will file and serve tariff sheets that reflect the 2017 ECRC factors under the two alternative methodologies so that the Commission may direct Staff to approve administratively whichever set

corresponds to the Commission's decision on the allocation methodology in Docket No. 160021-EI and consolidated dockets.

Proposed Cost Allocation Methodology - 12 CP and 1/13th	Environmental Cost Recovery Factor (cents/KWH)
RS1/RTR1	0.244
GS1/GST1	0.230
GSD1/GSDT1/HLFT1	0.215
OS2	0.194
GSLD1/GSLDT1/CS1/CST1/HLFT2	0.214
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.192
GSLD3/GSLDT3/CS3/CST3	0.188
SST1T	0.172
SST1D1/SST1D2/SST1D3	0.203
CILC D/CILC G	0.192
CILC T	0.182
MET	0.211
OL1/SL1/PL1/SL1-M	0.106
SL2/ GSCU1/SL2-M	0.185
Total	0.228

**DEF**

Rate Class	ECRC Factors
Residential	0.151 cents/kWh
General Service Non-Demand	
@ Secondary Voltage	0.147 cents/kWh
@ Primary Voltage	0.146 cents/kWh
@ Transmission Voltage	0.144 cents/kWh
General Service 100% Load Factor	0.139 cents/kWh
General Service Demand	
@ Secondary Voltage	0.144 cents/kWh
@ Primary Voltage	0.143 cents/kWh
@ Transmission Voltage	0.141 cents/kWh
Curtable	
@ Secondary Voltage	0.168 cents/kWh
@ Primary Voltage	0.166 cents/kWh
@ Transmission Voltage	0.165 cents/kWh
Interruptible	
@ Secondary Voltage	0.137 cents/kWh
@ Primary Voltage	0.136 cents/kWh
@ Transmission Voltage	0.134 cents/kWh
Lighting	0.144 cents/kWh

**TECO**

<u>Rate Class</u>	<u>Factor (¢/kWh)</u>
RS	0.389
GS, TS	0.388
GSD, SBF	
Secondary	0.386
Primary	0.382
Transmission	0.378
IS	
Secondary	0.379
Primary	0.375
Transmission	0.371
LS1	0.381
Average Factor	0.387

**GULF**

<b>RATE CLASS</b>	<b>ENVIRONMENTAL COST RECOVERY FACTORS ¢/KWH</b>
RS, RSVP, RSTOU	2.158
GS	1.988
GSD, GSDT, GSTOU	1.761
LP, LPT	1.549
PX, PXT, RTP, SBS	1.480
OS-I/II	0.580
OSIII	1.383

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

The factors shall be effective beginning with the specified environmental cost recovery cycle and thereafter for the period January 2017 through December 2017. Billing cycles may start before January 1, 2017 and the last cycle may be read after December 31, 2017, so that each customer is billed for twelve months

regardless of when the adjustment factor became effective. These charges shall continue in effect until modified by subsequent order of this Commission.

**ISSUE 9A: Should all issues related to Gulf's recovery of its identified environmental compliance investment and expenses associated with Gulf's 25% ownership interest in Scherer Unit 3 be carved out and deferred for resolution in Gulf's rate case ending in Docket No. 160186-EI?**

Yes. In order to preserve the relative positions of the parties pending the final decision in Docket No. 160186-EI, and in recognition that all other issues for Gulf in this ECRC proceeding are not contested by any party, Gulf may recover in its 2017 ECRC factors \$2,626,661 of O&M expense (\$963,913 estimated/actual true-up for 2016 and \$1,662,748 projected for 2017) and \$22,695,829 of capital investment recoverable costs (\$10,296,496 estimated/actual true-up for 2016 and \$12,399,333 projected for 2017) for environmental compliance activities associated with that portion of Gulf's 25% ownership interest in Scherer Unit 3 not committed to long-term off-system sales after December 31, 2015. Accordingly, Gulf's proposed 2017 cost recovery rates in the ECRC mechanism are approved, without change. The portion attributable to Scherer 3, -- up to 100%, however, is subject to future true-up as set forth below.

Qualification for ECRC Recovery. There is no dispute that (a) all of the environmental compliance investment and expenses for Scherer Unit 3 identified by Gulf for recovery through the ECRC mechanism were incurred after April 13, 1993 (the effective date of the ECRC enabling statute); (b) all such costs are for activities that are legally required to comply with a governmentally imposed environmental regulation that was created, became effective, or whose effect was triggered after 1990, which was the last test year in which any portion of Gulf's investment in Scherer Unit 3 was considered in setting Gulf's base rates; and (c) none of the environmental compliance investment and expenses for Scherer Unit 3 identified by Gulf for recovery through the ECRC mechanism are currently being recovered by Gulf through base rates or some other cost recovery mechanism. Therefore, subject to the ultimate ruling on the issue of whether any of the costs associated with the ongoing ownership and operation of Scherer 3 are recoverable from Gulf's retail customers (the "threshold issue"), these costs qualify for recovery through the ECRC. These costs remain subject to a potential Commission determination to roll them into base rates on a prospective basis in accordance with the ECRC enabling statute.

Admission of Testimony and Exhibits. The testimony and exhibits of Gulf witnesses Boyett, Burlison, Deason, Liu, Markey and Vick shall be inserted into the record of this proceeding, without objection, as a basis for recovery of all costs identified therein, including the environmental compliance costs associated with Scherer Unit 3, through the ECRC mechanism. That testimony shall also be



admitted in Docket No. 160186-EI, subject to appropriate cross-examination, as a basis for Gulf's positions on the carved out and deferred issues and any position that Gulf takes with respect to base rate recovery of Scherer Unit 3 environmental costs.

Eligibility for Base Rate Recovery. In the event Gulf prevails on the threshold issue, the Commission retains the authority to determine whether recovery of the Scherer 3 environmental compliance costs on a prospective basis shall continue through the ECRC or shall be included in base rates. The fact that these costs are not included in the 2017 test year revenue requirements requested through the petition, minimum filing requirements, testimony and exhibits submitted by Gulf in Docket No. 160186-EI, and are not included in the proposed base rates filed in that docket, shall not disqualify the annualized amount of such costs from being considered or incorporated in the base rates established in Docket No. 160186-EI. The statutory time frames otherwise applicable to Docket No. 160186-EI shall not be affected by consideration of the deferred issues in that docket, the potential for base rate recovery of those costs, or Gulf's submission of supplemental information necessary to identify the annualized test year amount of Scherer 3 investment and expenses to be included in the ultimate determination of prospective base rates.

Future True-up. In the event that Gulf prevails on the threshold issue, and the Commission decides that any portion of the Scherer Unit 3 environmental compliance costs should be recovered prospectively through base rates established in Docket 160186-EI rather than through the ECRC mechanism, then the portion of the environmental compliance costs included in prospective base rate recovery shall be excluded from the actual expenditures addressed through the ECRC mechanism beginning with the effective date of the new base rates. Any over-recovery through the ECRC mechanism that results from such prospective base rate recovery shall be credited to customers with interest in accordance with and through the normal true-up mechanism associated with the ECRC.

In the event that Gulf does not ultimately prevail on the threshold issue, the amounts related to Scherer 3 collected through the 2017 cost recovery rates in the ECRC mechanism will be credited to customers with interest, in accordance with and through the normal true-up mechanism associated with the ECRC.

**ISSUE 9B: Should Gulf be allowed to recover, through the ECRC, prudently incurred costs associated with its Plant Scholz CCR Unit Closure project?**

Yes. The Plant Scholz CCR Unit Closure project meets the criteria for cost recovery set forth in Section 366.8255, Florida Statutes and the Commission's Order No. PSC-94-0044-FOF-EI. This project is necessary for Gulf to meet new

legally mandated requirements under a governmentally imposed environmental regulation. These new legal requirements are found in the National Pollutant Discharge Elimination System (NPDES) renewal permit for Plant Scholz (FL0002283-005) issued by the Florida Department of Environmental Protection (FDEP) on October 20, 2015 and in the draft NPDES permit modification issued on August 25, 2016. NPDES permit FL0002283-005 requires closure of the existing on-site ash pond at Plant Scholz during the 2015-2020 permit cycle. Pursuant to the permit, Gulf was required to submit a closure plan to the FDEP for its review and approval. After completion of engineering design work, the Plant Scholz closure plan was submitted to FDEP on May 26, 2016, and Gulf received approval of the closure plan on August 26, 2016. The Plant Scholz closure plan requires the construction of an industrial wastewater pond, a groundwater cut-off wall, a wastewater treatment system, a stormwater management system, removing the coal combustion residuals (CCR) material from portions of the pond, transferring CCR material upland to a dry stack area primarily within the footprint of pond, and installing new groundwater monitoring wells at Plant Scholz. The costs for this activity are \$845,000 O&M expenses for 2016 and \$26,191,933 O&M expenses for 2017. These costs are not recovered through any other cost recovery mechanism or through base rates.

**ISSUE 9C: How should costs associated with Gulf's Plant Scholz CCR Unit Closure project be allocated to the rate classes.**

The Plant Scholz CCR Unit Closure project shall be allocated to the rate classes on a demand basis.

**ISSUE 10: Should issues related to FPL's recovery of its projected 2017 costs for the Turkey Point Cooling Canal Monitoring Plan project be deferred for resolution in the 2017 ECRC docket?**

Yes. FPL may recover in its 2017 ECRC factors the projected \$73,776,441 of O&M expense shown on Form 42-2P and \$1,449,647 of capital investment recoverable costs shown on Form 42-3P, filed on September 6, 2016 as part of FPL's 2017 projection filing, with both amounts subject to refund through the ECRC true-up mechanism, including interest calculated as provided therein. FPL will file its direct testimony in support of the 2017 TPCCMP project costs as part of its 2017 actual/estimated true-up filing. It is the parties' desire that, to the extent possible, the order establishing procedure for Docket 170007-EI reflect a schedule for the TPCCMP project issues that provides intervenor and Staff no fewer than five weeks to file testimony after FPL's direct testimony; and provides FPL no fewer than three weeks thereafter to file its rebuttal testimony.

**ISSUE 11: Should the Commission approve DEF's proposed treatment for Bartow-Anclote Pipeline and Turner CT projects, as proposed in DEF's 2016 Estimated Actual and 2017 Projection Filings?**

Yes. DEF's proposed treatment for the Bartow-Anclote Pipeline and Turner CT projects is consistent with prior Commission approvals in Order No. PSC-11-0553-FOF-EI and PSC-13-0381-PAA-EI.

**ISSUE 12: Should the Commission approve revised tariffs reflecting the environmental cost recovery amounts and environmental cost recovery factors determined to be appropriate in this proceeding?**

Yes. The Commission approves the revised tariffs reflecting the environmental cost recovery amounts and environmental cost recovery factors determined to be appropriate in this proceeding. Staff is directed to verify that the revised tariffs are consistent with the Commission's decision.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

None.

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


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

It is therefore,

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ORDERED by Commissioner Art Graham, 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 Art Graham, as Prehearing Officer, this 21st day of October, 2016.



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

CWM

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.