**FLORIDA PUBLIC SERVICE COMMISSION**

**Fletcher Building**

**101 East Gaines Street**

**Tallahassee, Florida 32399-0850**

**M E M O R A N D U M**

**September 30, 1993**

**TO: DIRECTOR, DIVISION OF RECORDS & REPORTING**

**FROM: DIVISION OF ELECTRIC & GAS [SHEA, WHEELER, BERG, BREMAN, TAYLOR]**

**DIVISION OF LEGAL SERVICES [CANZANO, PALECKI]**

**DIVISION OF RESEARCH & REGULATORY REVIEW [ADAMS, HARLOW]**

**DIVISION OF AUDITING & FINANCIAL ANALYSIS [MAUREY, JOHNSON, L.ROMIG, HICKS, MERTA]**

**RE: DOCKET NO. 930661-EI - FLORIDA POWER & LIGHT COMPANY - PETITION FOR RECOVERY OF ENVIRONMENTAL COMPLIANCE COSTS BY FLORIDA POWER & LIGHT COMPANY**

**AGENDA: OCTOBER 12, 1993 - REGULAR AGENDA - PROPOSED AGENCY ACTION - PARTIES MAY PARTICIPATE**

**CRITICAL DATES: NONE**

**SPECIAL INSTRUCTIONS: I:\PSC\EAG\WP\930661.RCM**

**ATTACHMENTS I & II ARE NOT ON-LINE**

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**CASE BACKGROUND**

Florida Power & Light (FPL) first requested recovery of environmental compliance costs (air permit fees) in the February 1993 fuel adjustment hearing. At that time, the Commission decided that it would be more appropriate to consider the recovery of those dollars in Docket No. 930169-EI, which was a generic investigation into the appropriate method for utilities to recover compliance costs associated with the Clean Air Act. This generic docket evolved into a rulemaking proceeding until the August 17, 1993 Agenda, when the Commission determined that it would be better to proceed with the FPL and Gulf environmental cost recovery petitions prior to enacting a rule on the subject.

On July 7, 1993, FPL filed a petition for recovery of environmental compliance costs through an Environmental Cost Recovery Factor (ECRF) pursuant to Section 366.8255, Florida Statutes. FPL has included the air permit fees (originally requested in the February 1993 fuel adjustment hearing) in this docket. In its petition, FPL requested that an environmental cost recovery factor be established for the October 1993 through March 1994 billing period. This is the same billing period for which rates were set in the August 1993 fuel adjustment hearing. The Commission decided that there was not sufficient discovery time to address FPL's petition at, or before, the August, 1993 fuel adjustment hearing. Therefore, a new docket, Docket No. 930661-EI was established to address the issues.

At a FPL issue identification meeting held on September 9, 1993, all parties agreed to limit the issues in Docket No. 930661-EI to the appropriateness of the dollars requested by FPL and the method by which FPL would allocate and recover the dollars from the various rate classes. The parties also agreed that it would be appropriate to wait until March 1994 to determine an environmental cost recovery factor for the April 1994 through September 1994 billing period. This will allow the ECRF to be implemented in conjunction with the fuel cost recovery factor which will be set during the March 1994 fuel adjustment hearing.

If required, a prehearing in this docket is scheduled to be held on November 19, 1993 and a hearing is scheduled for November 30, 1993.

Gulf Power Company filed a similar petition to recover environmental compliance costs in Docket No. 930613-EI with a hearing scheduled to be held December 8-9, 1993 and a Commission decision scheduled to be made at the December 21, 1993 Agenda.

**DISCUSSION OF ISSUES**

**ISSUE 1: (Legal)** Is it appropriate to recover costs through the Environmental Cost Recovery (ECR) Factor pursuant to Section 366.8255, Florida Statutes, which were incurred before the effective date of the legislation?

**RECOMMENDATION:** No. (Canzano)

**STAFF ANALYSIS:** Section 366.8255, Florida Statutes was intended to be implemented prospectively, for the purpose of allowing Florida utilities to recover costs for expenditures made in complying with environmental laws and regulations. The statute has an effective date of April 13, 1993.

This statute was intended to be implemented on a prospective basis. Subsection (d)(2) of the statute allows the electric utility to submit a petition describing proposed environmental compliance activities and projected environmental compliance costs. The statute was simply not intended to be implemented retrospectively and this Commission should refuse to do so.

**ISSUE 2:** Florida Power & Light has requested to recover $4,598,753 through an Environmental Cost Recovery Factor. Are these compliance costs appropriate for recovery through the Environmental Cost Recovery Factor?

**RECOMMENDATION:** Florida Power & Light should be allowed to recover $3,943,132 spent on environmental compliance activities after April 13, 1993 through the environmental compliance factor. The $618,484 spent prior to April 13, 1993 should be recovered through the fuel cost recovery clause. (Shea)

**STAFF ANALYSIS:** Staff's analysis will separate FPL's request into costs incurred before and after the enactment date of the environmental cost recovery factor legislation. Those costs incurred after April 13, 1993 will be discussed first.

**POST-ECRF LEGISLATION EXPENSES**

Florida Power & Light has petitioned to recover $3,971,784 relating to nine different environmental compliance activities implemented during the period April 13, 1993 through March 31, 1994. Staff recommends that the Commission approve FPL's request for this period with three minor modifications. The first modification corrects a typographical error included in FPL's filing and the second relates to the appropriate return on equity to use for the period of July 13, 1993 through September 30, 1993. The third modification relates to the rates used to compute returns on investment within the company's capital structure. This modification is addressed in Issue No. 4.

After making these corrections, the remaining FPL request of $3,943,132 (system) should be recoverable through the environmental cost recovery clause because they were prudently incurred expenses which comply with the statutory mandates of Section 366.8255, Florida Statutes. The prudence and legality of the FPL request is discussed below.

Staff recommends that the Commission approve recovery of the $3,943,132 spent for environmental compliance activities because those activities meet the following criteria:

1. The expenses were incurred on, or after April 13, 1993, which is the enactment date of Section 366.8255, Florida Statutes;
2. The expenses were the direct result of activities required to comply with governmentally imposed environmental regulations;
3. The expenses were prudently incurred. That is, the environmental compliance activities implemented were selected as the most reasonable from viable lists of alternative compliance actions and the dollars spent within the implemented activities were reasonable;
4. The expenses are not being recovered in any other cost recovery mechanism; and,
5. The activities were not considered at the time of the company's last rate case. Thus, no amounts are being recovered through base rates for the activities considered for the environmental cost recovery clause.

The nine activities included in FPL's petition are shown in Attachment I. The first page of this schedule shows the revenue requirements resulting from O&M expenses and capital outlays for each activity. The second page shows actual in-period expenditures for O&M and capital outlays. A brief description of each of the activities follows.

Air Operating Permit Fees.

Florida Power & Light has projected spending over $1.4 million through March 1994 on air permit fees. Of this total, $757,773 will be incurred after April 13, 1993. These air operating permit fees are required by Section 403.0872, Florida Statute to fund the Department of Environmental Protection's regulation of the Clean Air Act. Annual fee amounts are based on fuel consumption and will vary year by year according to the type and amount of fuel consumed. The legal requirement for this fee occurred after FPL's last rate case and collections began in 1993. The fee is a legal mandate and no alternatives exist. FPL should be allowed to recover $757,773 for air permit fees incurred after April 13, 1993 through the environmental cost recovery clause.

Air permit fees expended prior to the enactment date of the environmental cost recovery factor legislation will be discussed later.

Low NOx Burner Technology

The Clean Air Act Amendments of 1990 (CAA) requires FPL to reduce NOx emissions by May 15, 1995 for Port Everglades Units 1-4, Riviera Units 3&4 and Turkey Point Units 1&2. FPL will spend approximately $2.6 million in capital outlays for equipment through March 1994 and has not requested any operating expenses for this project. Revenue requirements associated with these capital outlays are $104,917 for the April 13, 1993 through March 31, 1994 period.

Low NOx burner technology was selected as the most cost effective method to comply with the CAA requirements. Other alternatives considered, but not selected, included overfire air ports, flue gas recirculation, selective non-catalytic reduction and selective catalytic reduction. FPL's selection process considered the percent reduction achieved by the various alternatives, the capital and annualized costs, total tons removed, the $/ton removal rate, impact on heat rates and other factors relating to feasibility. FPL's analysis was done on a unit specific basis and the company selected low NOx burner technology as the most cost effective alternative for each site. Staff concurs with FPL's analysis and believes that the selection of low NOx burner technology for each of the eight sites was both reasonable and prudent.

Staff's discovery indicates that FPL may have incurred as much as $7.6 million in capital outlays for this project prior to April 13, 1993 which is not included in FPL's petition.

Continuous Emission Monitoring Systems

The CAA requires installation of continuous emission monitoring (CEM) systems on each of FPL's units and specifies that all of FPL's units have CEMs installed and certified as accurate prior to January 1, 1995. This requirement was established after FPL's last rate case and FPL has no alternative other than to install CEMs prior to the required installation dates. FPL selected CEM equipment and software using a competitive bidding procedure. FPL's projected capital expenditure of $4.8 million relating to the installation of CEMs is both reasonable and prudent. This capital outlay requires a revenue requirement of $136,606.

Clean Closure Equivalency

FPL has requested to recover $786,708 for compliance activities which relate to the closure of collection basins at nine plant locations which were used to store slightly corrosive liquid material which is classified as hazardous waste. These activities have been implemented to comply with 40 CFR 270.1(c)(5) and (6) issued by the Environmental Protection Agency in 1991.

EPA regulations require FPL to close these locations now and prove that contamination has not occurred, or to continue to operate the facilities and prove later, using a more strict set of standards, that contamination has not occurred. If closed now, FPL will have to monitor groundwater to show no contamination has occurred. If closure is postponed, FPL will have to monitor groundwater for 30 years after the closure date to assure that no pollution has occurred. FPL has selected the less stringent requirements associated with the current closure alternative as the most cost effective. Staff concurs that this approach is both reasonable and prudent. Capital costs of about $80,000 relate to the installation of monitoring wells to collect groundwater samples. Operation and maintenance expenses are $781,200. Total revenue requirements are $786,423 for the April 13, 1993 through March 31, 1994 period.

Maintenance of Above Ground Storage Tanks

The Florida Department of Environmental Protection (DEP) required all above ground fuel storage tanks to meet additional safety standards after March 12, 1991 pursuant to Chapter 17-762, Florida Administrative Code. All above ground tanks have to be inspected, repaired or replaced and certified by the DEP. The DEP has published a schedule setting the new certification period based on the fuel type, date of the facility and the size of the tank. All of FPL's above ground storage tanks are subject to these regulations. FPL's compliance plan includes static testing, draining, cleaning and inspection during normal plant scheduled outage periods. The plans for each above ground tank are site specific and include cathodic protection for tank bottoms, overfill protection, exterior coatings, and 110% impervious secondary containment for light oil. FPL's program is both reasonable and prudent. All costs were incurred since FPL's last rate case. Capital outlays for the period of April 13, 1993 through March 31, 1994 are projected to be $3.6 million. Operation & maintenance expenses for the same period are projected to be approximately $0.9 million. Total revenue requirements are $1,248,044.

Secondary Containment around Pollutant Storage

The Dade County Department of Environmental Resource Management imposed new standards for secondary containment of pollutants and hazardous materials in June 1992. In addition, FAC 17-762.500(6) requires the installation of secondary containment systems around all storage tanks (except vehicular fuel) by December 31, 1999. All O&M costs requested for this activity will occur after April 13, 1993 and are reasonable and prudent. FPL has incurred approximately $0.2 million in expenses prior to April 13, 1993 which are not included in the request.

Relocation of Underground Lube Oil Piping to Above Ground

Rule 17-762, Florida Administrative Code, issued by the DEP requires FPL to either relocate underground lube oil piping to above ground locations or to install secondary containment to underground locations. FPL examined the alternatives and found relocation to be the most cost effective. Staff concurs with this evaluation. FPL is expected to spend $163,000 in capital outlays on this project which results in revenue requirements of $19,675 for the period of April 13, 1993 through March 31, 1994.

Oil Spill Cleanup and Response Equipment

The Oil Pollution Act of 1990 requires FPL to be able to provide oil spill clean up services at 15 separate locations. FPL used a bidding procedure and 10‑year cash flow analysis to select the lowest cost program to comply with these legal requirements. FPL's alternatives included complete outside contracting for oil spill clean up services, FPL sole ownership and operation of oil spill equipment, and a blend of FPL ownership and outside contracting. FPL's cash flow analysis indicated that sole ownership and operation of oil spill response equipment was the lowest cost alternative. FPL estimates that $268,687 will be spent on O&M and $68,999 on capital outlays during the April 13, 1993 through March 31, 1994 period. This results in a $276,099 revenue requirement for the period. Staff finds this level of expense to be both reasonable and prudent.

Low-Level Radioactive Waste Access Fees

FPL is mandated to pay fees pursuant to an agreement entered into by the State of Florida and the Southeast Interstate Low-Level Radioactive Waste Management Compact. FPL will be required to dispose of all low-level nuclear wastes at a designated facility in the southeast region (currently Barnwell, South Carolina). These fees were not required at the time of FPL's last rate case and FPL has no option but to comply. FPL has requested $480,000 in expenses for the April 13, 1993 through March 31, 1994 period.

**PRE-ECRF LEGISLATION EXPENSES**

Florida Power & Light has requested to recover $618,484 in air operating permit fees which were expensed prior to April 13, 1993. The company originally requested that the Commission include these expenses in its fuel cost recovery clause at the February 1993 fuel adjustment hearing. In February 1993, the Commission decided that it would be more appropriate to consider the recovery of air permit fees in a generic docket. Docket No. 930169-EI was opened to consider how to allow utilities to recover money spent to comply with the Clean Air Act. This generic docket evolved into a rule making proceeding. In August 1993, the Commission decided not to proceed with rulemaking in Docket No. 930169-EI and that it would be better to gain experience in the evidentiary environmental cost recovery proceedings filed by FPL and Gulf before considering any rule. As such, FPL has included the air permit fees originally requested in the February 1993 fuel adjustment hearing in this docket's petition.

The air permit fees spent prior to April 13, 1993 were reasonable and prudent, they were not recovered in any other cost recovery mechanism, they were not considered in the company's last rate case, and they were spent to comply with a governmental regulation. The only thing to prevent the recovery of these fees through the environmental cost recovery clause is that they were incurred prior to April 13, 1993. There was no environmental cost recovery factor in effect when those fees were expensed. To allow FPL to recover those fees through the environmental cost recovery factor would amount to retroactive ratemaking.

Staff recommends that FPL be allowed to recover the $618,494 spent on air permit fees prior to April 13, 1993 through the fuel adjustment clause. The amount of the fees paid were directly related to the type and volume of fuel consumed. FPL originally requested that the fees be recovered through the fuel adjustment mechanism. The amount of fees paid was mandated by government regulation and was reasonable and prudently incurred. No environmental cost recovery clause existed when these fees were incurred. In the future, such fees should be recovered through the environmental cost recovery clause.

**ISSUE 3:** What rate of return on equity (ROE) should FPL be allowed to earn on capital investment costs?

**RECOMMENDATION:** FPL should be allowed to earn its midpoint ROE on capital investment costs. For the period April 13, 1993 through July 12, 1993, this return was 12.80%. From July 13, 1993 until the Commission addresses the issue of ROE again, the return is 12.00%. (Maurey)

**STAFF ANALYSIS:** Each time the Commission approves a clause for the recovery of utility expenses or capital costs, the overall volatility of the utility's earnings before interest and taxes (EBIT) is reduced. This has the effect of reducing business risk. This reduced risk, in turn, should result in a lower average cost of capital (required rate of return) over the long run. While it can be argued that currently authorized ROEs may not reflect the reduced risk resulting from the guaranteed recovery of prudently incurred environmental costs, ROEs set prospectively should reflect this reduced risk.

Staff recommends that FPL be allowed to earn its midpoint ROE on capital investment costs. Based on Commission Order No. 22490 issued January 16, 1991, the authorized ROE for FPL was 12.80% when Section 366.8255, Florida Statutes went into effect on April 13, 1993. However, in Order No. PSC-93-1024-FOF-EI issued July 13, 1993, the Commission reduced FPL's ROE to 12.00% for all regulatory purposes on a prospective basis from the date of the Order. Therefore, staff recommends that FPL be allowed to earn 12.80% on capital investment costs for the period April 13, 1993 through July 12, 1993 and a return of 12.00% for the period July 13, 1993 through March 31, 1994, the period covered in the FPL's petition.

**ISSUE 4:** What are the appropriate weighted rates of return for the recovery of capital investment costs?

**RECOMMENDATION:** The appropriate weighted rate of return for the debt component is 3.7650%. The appropriate weighted rate of return for the equity component is 5.0827% for April through June 1993, 4.9113% for July 1993, and 4.8031% on a prospective basis for the period August 1, 1993 through March 31, 1994. (Maurey)

**STAFF ANALYSIS:** The recommended returns are reported on a 13 month average, FPSC adjusted basis consistent with the capital structure approved in FPL's last rate case in Order Nos. 13537 and 13948 (Docket No. 830465-EI). The debt component return recommended by staff was calculated in the same manner as the return requested by FPL with the exception that the cost rates staff used were taken from the Utility's July 31, 1993 Rate of Return Surveillance Report while the Utility used the cost rates approved in its 1983 rate case. Likewise, the equity component return staff recommends was determined in the same manner as the return requested by FPL with the exception of the cost rates. Staff used the cost of preferred stock from FPL's July 31, 1993 Surveillance Report while the Utility used the cost rate that was approved in its 1983 rate case. In addition, as discussed in Issue 3, staff used the ROE of 12.80% through July 12, 1993 and a return of 12.00% from July 13, 1993 through March 31, 1994. The equity component return requested by FPL used an ROE of 12.80% through September 30, 1993 and a return of 12.00% from October 1, 1993 through March 31, 1994. Finally, the equity component return Staff recommends for July 1993 reflects the fact that the Utility's ROE was 12.80% for the first twelve days of the month and 12.00% for the remainder of the month.

**ISSUE 5:** How should environmental costs be allocated to the rate classes?

**RECOMMENDATION:** Those costs necessary to insure compliance with the Clean Air Act Amendments of 1990 should be allocated to the rate classes on an energy (per kilowatt hour) basis. All other costs for which FPL is seeking recovery at this time should be allocated using the 12 CP and 1/13 demand allocation methodology.

**STAFF ANALYSIS:** FPL has proposed to allocate all environmental compliance costs on a demand basis, using the 12 CP and 1/13 demand allocation method. This method was used to allocate non-nuclear production plant costs in FPL's last rate case.

The 12 CP and 1/13 demand allocation method allocates about 92% of all costs based on each class' relative demand contribution at the time of the 12 monthly system peak demand hours. This method tends to allocate relatively more costs to rate classes which have low load factors, such as residential and general service non-demand. Low load factor customers use less kilowatt hours relative to their demand than do high load factor customers.

Of the nine types of costs for which FPL is seeking recovery, three are due to the requirements of the Clean Air Act Amendments of 1990 (CAA): air operating permit fees, low NOx burners, and continuous emissions monitoring systems. The CAA mandates reductions in emissions of sulphur dioxide and nitrogen oxides. Since the emission of these pollutants is directly related to the number of kilowatt hours generated, staff believes that costs associated with their reduction should be allocated to the rate classes on an energy (per kilowatt hour) basis. This treatment of CAA compliance costs more accurately assigns the costs of compliance to those classes that cause them to be incurred than does a demand allocator, which allocates heavily on peak demand.

Staff believes that use of the 12 CP and 1/13 demand allocator is appropriate for the remaining types of costs for which FPL is seeking recovery.

**ISSUE 6:** How should environmental costs be recovered from the rate classes?

**RECOMMENDATION:** The environmental costs should be recovered from all rate classes on an energy basis.

**STAFF ANALYSIS:** FPL has proposed to recover the ECRC costs on an energy basis (a per kWh factor) for customers in non-demand rate classes and on demand basis (a billing kW factor) for customers in the demand rate classes. Staff believes FPL should recover all environmental costs on an energy basis.

FPL asserts that the costs which are allocated on a demand basis should also be recovered on demand basis through an increased demand charge. While staff can see the logic behind FPL's assertion, staff does not believe the environmental costs should be recovered in this fashion for two reasons. First, staff does not believe that all of the environmental costs should be allocated to the customer classes on a 12 CP and 1/13 demand basis. Rather, staff believes the CAAA costs should be allocated on an energy basis and consequently recovered on an energy basis. The second problem lies with the way the demand charge recovers costs from the customer. Demand costs are allocated to the customer classes based on each class' contribution to the monthly system peak-hour demand. Customers are billed, however, on their maximum monthly demand whenever it occurs. A customer's maximum demand may or may not occur when the monthly system peak-hour demand occurs. The result is an inconsistency between the manner in which the costs were allocated and the way they are recovered.

Consequently, staff believes recovery on an energy basis is a more appropriate method of recovery. Attachment 2 provides the correlations between the contributions to the twelve monthly system peaks and billing kW and kWh, taken from FPL's 1992 load research data. These data show there to be, in most cases, a greater correlation between a demand rate customer's contribution to system peak and kWh usage than with billing demand. The interpretation of such data is simply that a customers kWh usage is more highly correlated to FPL's system peak than the customers billed kW. Therefore, the environmental compliance costs should be recovered through an energy charge.

**ISSUE 7:** What is the appropriate billing period for recovery of environmental compliance costs?

**RECOMMENDATION:** The environmental cost recovery factor should be set in conjunction with the March 1994 fuel adjustment hearing to be collected during the period of April 1994 through September 1994.

**STAFF ANALYSIS:** Florida Power & Light should be allowed to recover dollars spent on the environmental compliance activities approved in this docket during the next full fuel adjustment period of April 1994 through September 1994. The Commission should open an environmental cost recovery docket and hold regular hearings in conjunction with the fuel adjustment docket. For administrative convenience, the Commission should select Docket No. 9x0005-EI for the environmental cost recovery docket in a manner similar to the 9x0001-EI fuel adjustment docket series. (Note: -001, -002, -003 and -004 are already taken for other recurrent dockets.) In the beginning, environmental cost recovery hearings should be held every six months in conjunction with the fuel cost recovery docket. After gaining some experience in the matter, the Commission may wish to move to annual environmental cost recovery hearings.

FPL should submit testimony during the March 1994 fuel adjustment hearing which trues-up actual costs for the environmental compliance activities approved in this docket. An environmental cost recovery factor should be set for the April through March 1994 period based on projected sales and cost data. The cycle of true-ups and projections will continue on a six month cycle with hearings held in conjunction with the fuel adjustment hearings.

In the future, the Commission should require a two step procedure for environmental cost recovery. The first step is a petition which documents the need for each environmental compliance activity. This petition will initiate a prudence review by Commission staff which will be similar to a mini-rate case. This initial petition should describe the environmental activity, the governmental regulation requiring the activity, justify that the activity implemented is the most cost effective compliance alternative and show that the cost of the activity is not being recovered through some other rate making mechanism. The Commission should review each activity to ensure reasonableness and prudence. The second step is a routine cost recovery true-up mechanism for pre-approved activities similar to the fuel adjustment proceedings. The company would be required to submit testimony which would include true-up of actual expenses associated with approved activities and projections of future expenditures.

**ISSUE 8:** Should FPL be required to maintain separate subaccounts for all items included in the environmental cost recovery factor?

**RECOMMENDATION:** Yes, Florida Power & Light should be required to maintain subaccounts consistent with the Uniform System of Accounts prescribed by the Commission.

**STAFF ANALYSIS:** FPL currently maintains subaccounts to record costs associated with conservation and oil back-out cost recovery items pursuant to Commission Rules 25-17.015 and 25-17.016 F.A.C. respectively. The company currently maintains subaccounts to record not only fuel revenues and expenses but other revenue and expense categories as well.

FPL filed a response to the staff's proposed draft rule to implement the Environmental Cost Recovery Clause, Docket No. 930169-EI. In its comments regarding the use of subaccounts, the company stated: "We do not believe that the use of only subaccounts should be mandated. Other vehicles for capturing costs (e.g. work orders and budget items) would be much more practical in many instances than establishing a separate subaccount and would still separately capture the costs as well as provide an audit trail."

In staff's opinion the requirement to maintain subaccounts associated with environmental costs is consistent with the above referenced conservation and oil back-out rules. This requirement would not preclude the company from using a work order system to capture the environmental costs.

Other reasons that staff is recommending the requirement to maintain subaccounts are:

1. To ensure that there is no double recovery. It is easier for auditors to verify that amounts have been removed from the filing when subaccounts are used than when amounts are charged to workorders;

2. To ensure the separation of ECRC costs from other costs; and,

3. Capital costs, revenues and expenses may be more easily extracted from the computerized general ledger and supporting accounting detail ledger when subaccounts are used.

**ISSUE 9:** Should the Commission provide that the time for requesting a Section 120.57 hearing be 14 days from the issuance of the notice of proposed agency action?

**RECOMMENDATION:** Yes, in order to proceed with the dates that have already been established to meet the November 30, 1993 hearing date if the notice of proposed agency action is protested.

**STAFF ANALYSIS:** Ordinarily after agenda conference, the Commission issues a written notice of proposed agency action and permits a substantially affected person 21 days after the date of the issuance of the notice in which to file a request for a Section 120.57 hearing (Florida Statutes). Rule 25-22.029(2), Florida Administrative Code, provides in part that

(f)or good cause shown, the Commission may provide that the time for requesting a 120.57 hearing shall be 14 days from issuance of the notice.

In this instance, we have set this matter for hearing on November 30, 1993. After meeting with the parties, staff believes that the Commission may be able to resolve this matter without the necessity of proceeding with a formal hearing. In the event, however, that a substantially affected person files a protest and requests a Section 120.57 hearing, in order to proceed with the dates that have already been established to meet the November 30, 1993 hearing date, we request that the Commission allow 14 days, rather than customary 21 days, for the protest period.

**ISSUE 10:** Should this docket be closed?

**RECOMMENDATION:** Yes.

**STAFF ANALYSIS:** If no substantially affected person files a timely request for a Section 120.57, Florida Statutes, hearing, no further action will be required and this docket should be closed.