

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 040007-EI
ORDER NO. PSC-04-1073-PHO-EI
ISSUED: November 3, 2004

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on October 25, 2004, in Tallahassee, Florida, before Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer.

APPEARANCES:

JOHN T. BUTLER, ESQUIRE, Steel Hector & Davis LLP, 200 South Biscayne Boulevard, Suite 4000, Miami, Florida 33131-2398 and R. WADE LITCHFIELD, ESQUIRE, 700 Universe Boulevard, Juno Beach, Florida 33408-0420

On behalf of Florida Power & Light Company (FPL)

GARY V. PERKO, ESQUIRE, Hopping, Green & Sams, P.A., Post Office Box 6526, Tallahassee, Florida 32314

On behalf of Progress Energy Florida (PEF)

LEE L. WILLIS, ESQUIRE and JAMES D. BEASLEY, ESQUIRE, Ausley & McMullen, Post Office Box 391, Tallahassee, Florida 32302

On behalf of Tampa Electric Company (TECO)

JEFFREY A. STONE, ESQUIRE, and RUSSELL A. BADDERS, ESQUIRE, Beggs & Lane, Post Office Box 12950, Pensacola, Florida 32591-2950

On behalf of Gulf Power Company (Gulf)

JOHN W. MCWHIRTER, JR., ESQUIRE, McWhirter Reeves McGlothlin Davidson Kaufman & Arnold, P.A., 400 North Tampa Street, Suite 2450, Tampa, Florida 33601-3350, VICKI GORDON KAUFMAN, ESQUIRE, and TIMOTHY J. PERRY, ESQUIRE, McWhirter Reeves McGlothlin Davidson Decker Kaufman & Arnold, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301

On Behalf of the Florida Industrial Power Users Group (FIPUG)

PATRICIA A. CHRISTENSEN, ESQUIRE, Room 812, 111 W. Madison Street, Tallahassee, Florida, 32399-1400

On behalf of the Citizens of the State of Florida (OPC)

DOCUMENT NUMBER-DATE

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MARLENE K. STERN, ESQUIRE, Florida Public Service Commission, 2540
Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (FPSC)

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

As part of the Commission's ongoing fuel cost recovery, energy conservation cost recovery, gas conservation cost recovery, and environmental cost recovery proceedings, a hearing is set for November 8 through 10, 2004, in this docket and in Docket No. 040001-EI, Docket No. 040002-EI, Docket No. 040003-GU and Docket No. 040004-GU. The Commission has the option to render a bench decision in this matter.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes. This hearing will be governed by said Chapter and Chapters 25-22, and 28-106, Florida Administrative Code.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

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

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

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

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

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1. above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) 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 Division of Commission Clerk and Administrative Service's confidential files.

V. POST-HEARING PROCEDURES

A bench decision may be made at the conclusion of the hearing, in which case post-hearing statements and briefs will not be necessary. If a bench decision is not 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 the 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; provided, however, that the parties do not need to file post-hearing statements as to any issue that is resolved by the Commission at the hearing.

Pursuant to Rule 28-106.215, Florida Administrative Code, 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.

VI. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

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

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

VII. ORDER OF WITNESSES

As a result of discussions at the prehearing conference, each witness whose name is preceded by an asterisk (*) has been excused from this hearing if no Commissioner assigned to this case seeks to cross-examine the particular witness. Parties shall be notified by Wednesday, November 3, 2004, as to whether any such witness shall be required to be present at the hearing. The testimony of excused witnesses will be inserted into the record as though read, and all exhibits submitted with those witnesses' testimony shall be identified as shown in Section X of this Prehearing Order and be admitted into the record.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
*K.M. Dubin	FPL	1,2,3,4,5,6,7,8,9A,9B,9C, and 9D
*R.R. LaBauve	FPL	9B
*J.O. Vick	Gulf	1,2,4,12A,12C, and 12E (lines 1-18 on page 19 of the 9/03/04 testimony has been withdrawn)
*T.A. Davis	Gulf	1,2,3,4,5,6,7,8,12B,12D, and 12F
*Javier Portuondo	PEF	1,2,3,4,5,6,7,8, and 10A
*Kent D. Hedrick	PEF	2, 3, and 10B
*Patricia Q. West	PEF	2 and 3
*Howard T. Bryant	TECO	1,2,3,4,5,6,7, 8, and 11A
*Greg M. Nelson	TECO	1,2,3, and 4

VIII. BASIC POSITIONS

FPL: None necessary.

PEF: The Commission should approve PEF's petition for approval of its environmental cost recovery true-up and proposed environmental cost recovery factors for the

period January 2005 to December 2005.

TECO: The Commission should approve for environmental cost recovery the compliance programs described in the testimony and exhibits of Tampa Electric Witnesses Bryant and Nelson. The Commission should also approve Tampa Electric's calculation of its environmental cost recovery final true-up for the period January 2003 through December 2003, the actual/estimated environmental cost recovery true-up for the current period January 2004 through December 2004, and the company's projected ECRC revenue requirement and the company's proposed ECRC factors for the period January 2005 through December 2005.

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 for the period January 2005 through December 2005 including the true-up calculations and other adjustments allowed by the Commission.

FIPUG: None.

OPC: None at this time.

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.

Generic Environmental Cost Recovery Issues

PROPOSED STIPULATION

ISSUE 1:

What are the final environmental cost recovery true-up amounts for the period ending December 31, 2003?

POSITION:

FPL: \$ 43,877 over recovery

PEF: \$ 951,437 over recovery

TECO: \$ 260,351 under recovery

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GULF: \$ 631,135 over recovery

STAFF: Agrees with FPL, PEF, TECO, and Gulf.

FIPUG and OPC take no position.

PROPOSED STIPULATION
ISSUE 2:

What are the estimated environmental cost recovery true-up amounts for the period January 2004 through December 2004?

FPL: \$103,793 under recovery

PEF: \$19,027,266 under recovery

GULF: \$113,651 under recovery

TECO: \$7,329,011 over recovery

STAFF: Agrees with FPL, PEF, TECO, and Gulf.

FIPUG and OPC take no position.

PROPOSED STIPULATION
ISSUE 3:

What are the projected environmental cost recovery amounts for the period January 2005 through December 2005? (Fall out issue. Based on the resolution of generic issues 6 and 7, and company specific issues 9A through 12H.)

POSITION:

FPL: \$ 24,476,832

PEF: \$30,504,449

TECO: \$26,845,492

GULF: \$25,771,942

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STAFF: Agrees with FPL, PEF, TECO and Gulf.

FIPUG and OPC take no position.

PROPOSED STIPULATION

ISSUE 4:

What are the environmental cost recovery amounts, including true-up amounts, for the period January 2005 through December 2005? (Fall out issue. Based on the resolution of generic issues 1, 2, 3, 6 and 7, and company specific issues 9A through 12H.)

FPL: \$24,928,600 adjusted for taxes

PEF: \$48,615,256 adjusted for taxes

TECO: \$19,791,071 adjusted for taxes

GULF: \$25,272,642 adjusted for taxes

STAFF: Agrees with FPL, PEF, TECO, and Gulf.

FIPUG and OPC take no position.

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 2005 through December 2005?

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.

FIPUG and OPC take no position.

PROPOSED STIPULATION

ISSUE 6:

What are the appropriate jurisdictional separation factors for the projected period January 2005 through December 2005?

POSITION:

FPL: Energy Jurisdictional factor - 98.56595%;
 CP Demand Jurisdictional Factor - 98.6339%;
 GCP Demand Jurisdictional Factor - 100%.

PEF: The energy jurisdictional separation factors are calculated for each month based on retail kWh sales as a percentage of projected total system kWh sales.
 Production Demand Jurisdictional Factors
 Base 95.957%,
 Intermediate 86.574%,
 Peaking 74.562%
 Transmission Demand Jurisdictional Factor 72.115%
 Distribution Demand Jurisdictional Factor 99.529%

TECO: The demand jurisdictional separation factor is 96.41722%. 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.

GULF: The demand jurisdictional separation factor is 96.64872%. 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.

STAFF: Agrees with FPL, PEF, TECO, and Gulf.

FIPUG and OPC take no position.

PROPOSED STIPULATION

ISSUE 7:

What are the appropriate environmental cost recovery factors for the period January 2005 through December 2005, for each rate group?

POSITION:

FPL:

Rate Class	Environmental Recovery Factor (\$/kWh)
RS-1/RST1	0.00025
GS-1/GST1	0.00024
GSD1/GSDT1	0.00023
OS2	0.00023

GSLD1/GSLDT1/CS1/CST1	0.00023
GSLD2/GSLDT2/CS2/CST2	0.00022
GSLD3/GSLDT3/CS3/CST3	0.00021
ISST1D	0.00021
ISST1T	0.00022
SST1T	0.00022
SST1D1/SST1D2/SST1D3	0.00021
CILC D/CILC G	0.00022
CILC T	0.00021
MET	0.00024
OL1/SL1/PL1	0.00016
SL2	0.00021

PEF:

Rate Class	ECR Factor (cents/kWh)
Residential	0.127
General Service Non-Demand	
@ Secondary Voltage	0.124
@ Primary Voltage	0.123
@ Transmission Voltage	0.122
General Service 100% Load Factor	0.103
General Service Demand	
@ Secondary Voltage	0.115
@ Primary Voltage	0.114
@ Transmission Voltage	0.113
Curtaillable	
@ Secondary Voltage	0.125
@ Primary Voltage	0.124
Interruptible	
@ Secondary Voltage	0.106
@ Primary Voltage	0.105

Rate Class	ECR Factor (cents/kWh)
@ Transmission Voltage	0.104
Lighting	0.115

TECO:

Rate Class	Factor (cents/kWh)
RS, RST	0.104
GS, GST, TS	0.104
GSD, GSDT	0.103
GSLD, GSLDT, SBF	0.102
IS1, IST1, SBI1, SBIT1, IS3, IST3, SBI3	0.100
SL, OL	0.101
Average Factor	0.103

GULF:

See table below:

RATE CLASS	ENVIRONMENTAL COST RECOVERY FACTORS ¢/KWH
RS, RSVP	.235
GS	.234
GSD, GSDT, GSTOU	.229
LP, LPT	.221
PX, PXT, RTP, SBS	.214
OS-I/II	.210
OSIII	.220

STAFF: Agrees with FPL, PEF, TECO, and Gulf.

FIPUG and OPC take no position.

PROPOSED STIPULATION

ISSUE 8:

What should be the effective date of the environmental cost recovery factors for billing purposes?

POSITION:

The factors should be effective beginning with the specified environmental cost recovery cycle and thereafter for the period January 2005 through December 2005. Billing cycles may start before January 1, 2005, and the last cycle may be read after December 31, 2005, so that each customer is billed for twelve months regardless of when the adjustment factor became effective.

COMPANY SPECIFIC ENVIRONMENTAL COST RECOVERY ISSUES

Florida Power & Light (FPL)

PROPOSED STIPULATION

ISSUE 9A:

How should FPL's environmental costs for the Comprehensive Demonstration Study for Cooling Water Intake structures be allocated to the rate classes?

POSITION:

The proposed O&M costs should be allocated to the rate classes on an average 12 coincident peak demand basis.

OPC takes no position.

PROPOSED STIPULATION

ISSUE 9B:

Should the Commission approve FPL's request for recovery of costs for SCR Consumables at Plant Manatee Unit 3 and Plant Martin Unit 8 through the Environmental Cost Recovery Clause?

POSITION:

Yes. Prudently incurred costs for SCR consumables at Plant Manatee Unit 3 and Plant Martin Unit 8 are appropriate for recovery through the ECRC.

FIPUG and OPC take no position.

PROPOSED STIPULATION

ISSUE 9C:

How should FPL's newly proposed environmental costs for SCR Consumables at Plant Manatee Unit 3 and Plant Martin Unit 8 be allocated to the rate classes?

POSITION:

If approved, the proposed O&M and capital costs should be allocated to the rate classes on an energy basis.

FIPUG and OPC take no position.

PROPOSED STIPULATION

ISSUE 9D:

On a going forward basis, what is the appropriate method for calculating the return on average net investment for Environmental Cost Recovery Clause projects?

POSITION:

Based on FPL's 2002 Rate Agreement, and until FPL's next rate case, FPL will use the 2002 capital cost and capital structure from the December 2002 Surveillance Report to calculate the return on assets included in FPL's Environmental Cost Recovery Clause.

FIPUG and OPC take no position.

Progress Energy Florida, Inc. (PEF)

PROPOSED STIPULATION

ISSUE 10A:

How should PEF's environmental costs for the Comprehensive Demonstration Study for Cooling Water Intake structures be allocated to the rate classes?

POSITION:

The proposed O&M costs should be allocated to the rate classes on a 12 coincident peak demand basis and 1/13th average demand basis.

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OPC take no position

Tampa Electric Company (TECO)

PROPOSED STIPULATION

ISSUE 11A:

How should TECO's environmental costs for the Big Bend Unit 4 SCR and Pre SCR retrofit activities on Big Bend Units 1, 2, and 3 be allocated to the rate classes?

POSITION:

The proposed costs should be allocated to the rate classes on an energy basis.

FIPUG and OPC take no position.

Gulf Power Company

PROPOSED STIPULATION

ISSUE 12A:

Should the Commission approve Gulf's request for recovery of costs for precipitator upgrades for compliance assurance monitoring of particulate air emissions and flue-gas opacity at Plant Smith Unit 2 through the Environmental Cost Recovery Clause?

POSITION:

Yes. The precipitator upgrades are required to comply with the new requirements in Gulf's Title V Permit which is expected to become final in December 2004. Title V requires continuous monitoring of particulate emissions. Opacity monitoring is an acceptable surrogate for particulate emissions monitoring. Gulf will monitor opacity in lieu of particulate emission monitoring. As a result, Gulf must upgrade the precipitators on certain of its generating units to meet the new opacity requirements in its new Title V Permit.

Although the final Title V permit has not yet been issued, several factors provide assurance that approval of this project at this time is appropriate. First, issuance of the final permit is expected imminently, in January 2005. Second, neither Gulf nor staff is aware of any controversy surrounding the issuance of the final permit. Finally, if for any reason the final permit does not contain a new opacity standard, then any money passed through the clause for this project will be refunded to the customers with interest.

FIPUG and OPC take no position.

PROPOSED STIPULATION

ISSUE 12B:

How should Gulf's newly proposed environmental costs for the precipitator upgrades for compliance assurance monitoring at Plant Smith Unit 2 be allocated to the rate classes?

POSITION:

The capital costs associated with this project should be allocated to the rate classes on an energy basis.

FIPUG and OPC take no position.

PROPOSED STIPULATION

ISSUE 12C:

Should the Commission approve Gulf's request for recovery of Cooling Water Intake Studies pursuant to Section 316(b) of the Clean Water Act through the Environmental Cost Recovery Clause?

POSITION:

Yes. Gulf must comply with new performance standards of Section 316(b) of the Clean Water Act. The studies will enable Gulf to determine the best compliance strategy and implementation schedule for achieving compliance with these new standards. Prudently incurred costs for biological sampling and data collection for the Comprehensive Demonstration Project are appropriate for recovery through the ECRC. Costs for anything other than the Comprehensive Demonstration Project are not appropriate for recovery at this time.

FIPUG and OPC take no position.

PROPOSED STIPULATION

ISSUE 12D:

How should Gulf's newly proposed environmental costs for the Cooling Water Intake Studies be allocated to the rate classes?

POSITION:

The operation and maintenance costs associated with his project should be allocated to the rate classes on a 12 Coincident Peak demand basis.

OPC takes no position.

PROPOSED STIPULATION

ISSUE 12E:

Should the Commission approve Gulf's request for recovery of costs for compliance studies due to the new arsenic standard, Rule 62-550.310(1)(c), Florida Administrative Code, through the Environmental Cost Recovery Clause?

POSITION:

Yes. The Florida Department of Environmental Protection has adopted a new groundwater standard for arsenic, which lowers the standard from 0.05 mg/L to 0.01 mg/L. The rule states that the new standard becomes effective on January 1, 2005. Gulf must conduct a groundwater study during 2005 at Plant Scholz and Plant Crist due to projected groundwater impacts in excess of the new arsenic standard. The study is necessary to determine the nature of the impacts on the aquifer and identify the appropriate strategy for compliance with the new arsenic standards.

FIPUG and OPC take no position

PROPOSED STIPULATION

ISSUE 12F:

How should Gulf's newly proposed environmental costs for compliance studies due to the proposed new arsenic standard be allocated to the rate classes?

POSITION:

The operation and maintenance costs for the compliance studies should be allocated on a 12 Coincident Peak demand basis.

OPC takes no position.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
K.M. Dubin	FPL	<u>KMD-1</u>	Appendix I Environmental Cost Recovery Final True-up January – December 2003 Commission Forms 42 – 1A Through 42 – 8A
		<u>KMD-2</u>	Appendix I Environmental Cost Recovery Estimated/Actual Period January Through December 2004 Commission Forms 42-1E – 42-8E
		<u>KMD-3</u>	Appendix I Environmental Cost Recovery Projections January – December 2005 Commission Forms 42-1P – 42-7P
R.R. Labauve	FPL	<u>RRL-1</u>	Martin Unit 8 Power Plant Siting Application PA 89-27A Final Order of Certification and Excerpt from Conditions of Certification – Section IV – Air
		<u>RRL-2</u>	Manatee Unit 3 Power Plant Siting Application PA 02-44 Final Order of Certification and Excerpt from Conditions of Certification – Section XXIII - Air
		<u>RRL-3</u>	Drawing of a Typical SCR Module

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Javier Portuondo	PEF	JP-1	ECR Forms 42-1A through 42-8A
		JP-2 (revised 9/3/04)	ECR Forms 42-1E through 42-8E
		JP-3	ECR Forms 42-1P through 42-7P
Howard T. Bryant	TECO	HTB-1	Final Environmental Cost Recovery Commission Forms 42-1A through 42-8A for the period January 2003 through December 2003
		HTB-2	Environmental Cost Recovery Commission Forms 42-1E through 42-8E for the Period January 2004 through December 2004
		HTB-3	Forms 42-1P through 42-7P Forms for the January 2005 through December 2005
J.O. Vick	Gulf	JOV-1 (pages 10-26 withdrawn)	Correspondence; Program Documentation
T.A. Davis	Gulf	TAD-1	Calculation of Final True-up 1/03 – 12/03
		TAD-2	Calculation of Estimated True-up 1/04 – 12/04

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		TAD-3 (revised 10/12/04 and 10/22/04)	Calculation of Projection 1/05 – 12/05

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

X. PROPOSED STIPULATIONS

Generic Issues

The following issues are stipulated between staff and the utilities with FIPUG and OPC taking no position: 1,2,3,4,5,6, and 7.

The following issue is stipulated between staff and all parties: 8.

FPL's Issues

The following issue is stipulated between staff, FPL, and FIPUG with OPC taking no position: 9A

The following issues are stipulated between staff and FPL with OPC and FIPUG taking no position: 9B,9C, and 9D.

PEF's Issues

The following is stipulated between staff, PEF, and FIPUG with OPC taking no position: 10A.

TECO's Issue

The following issue is stipulated between staff and TECO with FIPUG and OPC taking no position: 11A.

Gulf's Issues

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The following issues are stipulated between staff and Gulf with FIPUG and OPC taking no position: 12A,12B,12C, and 12E.

The following issues are stipulated between staff, Gulf, and FIPUG with OPC taking no position: 12D and 12F.

XI. PENDING MOTIONS

There are no pending motions.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters.

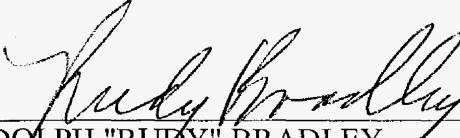
XIII. RULINGS

Opening statements shall be no longer than ten minutes for each party.

It is therefore,

ORDERED by Commissioner Rudolph "Rudy" Bradley, 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 Rudolph "Rudy" Bradley, as Prehearing Officer, this
3rd day of November, 2004.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)

MKS

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 Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.