

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Environmental Cost) DOCKET NO. 950007-EI
Recovery Clause.) ORDER NO. PSC-95-0312-PHO-EI
_____) ISSUED: March 6, 1995

Pursuant to Notice, a Prehearing Conference was held on February 20, 1995, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

Matthew M. Childs, P.A., Steel Hector & Davis, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301
On behalf of Florida Power and Light Company.

G. Edison Holland, Jr., Esquire, Jeffery A. Stone, Esquire, and Russell A. Badders, Esquire, of Beggs & Lane, 700 Blount Building, 3 West Garden Street, P.O. Box 12950, Pensacola, Florida 32576-2950
On behalf of Gulf Power Company.

Joseph A. McGlothlin, Esquire, Vicki Gordon Kaufman, Esquire, McWhirter, Reeves, McGlothlin, Davidson and Bakas, 315 South Calhoun Street, Suite 716, Tallahassee, Florida 32301.
On behalf of the Florida Industrial Power Users Group.

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

Martha Carter Brown, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0863
On behalf of the Commission Staff.

Prentice Pruitt, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0862
On behalf of the Commissioners.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

PREHEARING ORDER

I. CASE BACKGROUND

Pursuant to the provisions of Section 366.8255, Florida Statutes, the Commission has established an environmental cost recovery clause. A formal administrative hearing for this docket is set for March 8 and 9, 1995. The hearing will address the issues set out in the body of this order.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093(2), Florida Statutes.

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

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

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

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

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to 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. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

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 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

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

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

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

IV. ORDER OF WITNESSES

The witness schedule is set forth below in order of appearance by the witness' name, party, and the issues that will be covered by that witness' testimony.

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

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
*B. T. Birkett	FPL	1-8
*W. M. Reichel	FPL	10A & 10B
*J. O. Vick	Gulf	1, 2, 4
*S. D. Cranmer	Gulf	1, 2, 3, 4, 5, 6

V. BASIC POSITIONS

FPL: None necessary.

GULF: It is the basic position of Gulf Power Company that the proposed environmental cost recovery factors present the best estimate of Gulf's cost for its environmental compliance activities for the period April 1995 through September 1995, including the true-up calculations and other adjustments allowed by the Commission.

FIPUG: None at this time.

OPC: None necessary.

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

VI. ISSUES AND POSITIONS

GENERIC ENVIRONMENTAL COST RECOVERY ISSUES

STIPULATED

ISSUE 1: What are the appropriate final environmental cost recovery true-up amounts for the period ending September 30, 1994?

POSITION: FPL: \$111,561 overrecovery for the period including interest.

GULF: Over recovery \$72,442.

STIPULATED

ISSUE 2: What are the estimated environmental cost recovery true-up amounts for the period October, 1994 through March, 1995?

POSITION: FPL: \$351,379 overrecovery for the period including interest.

GULF: Over recovery \$333,228.

STIPULATED

ISSUE 3: What are the total environmental cost recovery true-up amounts to be collected during the period April, 1995 through September, 1995?

POSITION: FPL: \$462,940 net overrecovery for the period including interest.

GULF: Refund of \$405,670 (excluding revenue taxes).

STIPULATED

ISSUE 4: What are the appropriate projected environmental cost recovery amounts for the period April, 1995 through September, 1995?

POSITION: FPL: The appropriate projected environmental cost recovery amount to be collected during the period is \$3,956,201.

GULF: \$5,705,000.

STIPULATED

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

POSITION: FPL: The Company is requesting that these new charges become effective starting with meter readings scheduled to be read on or after April 1, 1995 (Cycle Day 3) and continue through September 30, 1995 (Cycle Day 2). Billing cycles may start before April 1, 1995, and the last cycle may be read after September 30, 1995, so that each customer is billed six months regardless of when the factor becomes effective.

GULF: The factors should be effective beginning with the specified billing cycle and thereafter for the period April 1, 1995, through September 30, 1995. Billing cycles may start before April 1, 1994, and the last cycle may be read after September 30, 1995, so that each customer is billed for six months regardless of when the adjustment factor became effective.

STIPULATED

ISSUE 6: What depreciation rates should be used to develop the depreciation expense included in the total environmental cost recovery true-up amounts to be collected during the period April, 1995 through September, 1995?

POSITION: FPL: 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.

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

STIPULATED

ISSUE 7: How should the newly proposed environmental costs be allocated to the rate classes?

POSITION: FPL: The cost of the operation and maintenance of the Continuous Emission Monitoring System should be allocated on an energy basis, and the cost of the Resource Conservation and Recovery Act (RCRA) Corrective Action Operation and Maintenance project should be allocated on a demand basis.

GULF: The allocation of dismantlement associated with ECRC investments should be based on the allocation of the ECRC investments, and the costs of the Clean Air Act Amendments of 1990, Title V Permit Operation and Maintenance activity should be allocated on an energy basis. Furthermore, the costs of the Plant Daniel Groundwater Monitoring Program associated with the closure of the Plant Daniel Ash Pond activity should be allocated on a demand basis.

STIPULATED

ISSUE 8: What are the appropriate Environmental Cost Recovery Factors for the period April, 1995 through September, 1995 for each rate group?

POSITION: Stipulated adjustments reflect the expensing of Sulfur Dioxide allowances through the Environmental Cost Recovery clause rather than through the Fuel Adjustment Clause.

<u>FPL:</u>	Rate Class	Environmental Recovery Factor (\$/KWH)
	RS1	0.00010
	GS1	0.00010
	GSD1	0.00010
	OS2	0.00009
	GSLD1/CS1	0.00010
	GSLD2/CS2	0.00009
	GSLD3/CS3	0.00009
	ISST1D	0.00010
	SST1T	0.00009
	SST1D	0.00009
	CILC D/CILC G	0.00009
	CILC T	0.00009

Rate Class	Environmental Recovery
MET	0.00010
OL1/SL1	0.00008
SL2	0.00009

GULF: See table below:

RATE CLASS	ENVIRONMENTAL COST RECOVERY FACTORS ¢/KWH
RS, RST	0.135
GS, GST	0.134
GSD, GSDT, SBS	0.120
LP, LPT, SBS	0.111
PX, PXT, RPT, SBS	0.102
OSI, OSII	0.076
OSIII	0.109
OSIV	0.076

COMPANY - SPECIFIC ENVIRONMENTAL COST RECOVERY ISSUES

Gulf Power Company

STIPULATED

ISSUE 9A: Should the Commission approve Gulf Power Company's request to recover the cost for dismantlement associated with ECRC investments through the Environmental Cost Recovery Clause?

POSITION:

This issue is deferred until the August hearing to allow for testimony from all parties on the appropriate methodology for determining the projected dismantlement amounts, if any, to be included in the clause. During the August proceedings, if the

Commission decides dismantlement costs are not recoverable through the clause, Gulf should refund all amounts included in its calculation of the ECRC over/under recovery since the inception of the clause, with interest.

STIPULATED

ISSUE 9B: Should the Commission approve Gulf Power Company's request to recover the cost for the Title V Permit Operation and Maintenance activity through the Environmental Cost Recovery Clause?

POSITION: This activity is a requirement of the Clean Air Act Amendments of 1990. All expenses were incurred after April 13, 1993, are not being recovered in any other cost recovery mechanism and were not considered at the time of Gulf Power Company's last rate case.

STIPULATED

ISSUE 9C: Should the Commission approve Gulf Power Company's request to recover the cost for the Plant Daniel Groundwater Monitoring Program through the Environmental Cost Recovery Clause?

POSITION: Yes. This activity is a requirement of the Mississippi Department of Environmental Quality associated with the closure of the Plant Daniel Ash Pond. All expenses were incurred after April 13, 1993, are not being recovered in any other cost recovery mechanism and were not considered at the time of Gulf Power Company's last rate case.

STIPULATED

ISSUE 9D: Should Gulf Power Company be allowed to recover the cost of meals through the environmental cost recovery clause?

POSITION: Only the meal costs incurred for an employee's own consumption while traveling on environmental cost recovery clause business should be charged to ECRC accounts and recovered through the ECRC. Any meal costs incurred for employees of other companies, and any meal costs incurred in connection with

meetings held at local restaurants as a matter of convenience, should not be recovered through the ECRC. Gulf Power Company should make the necessary adjustments to remove the costs of meals previously charged to ECRC accounts that do not comply with the above stated policy.

Florida Power & Light Company

STIPULATED

ISSUE 10A: Should the Commission approve Florida Power & Light Company's request to recover the cost for the Resource Conservation and Recovery Act (RCRA) Corrective Action Operation and Maintenance project through the Environmental Cost Recovery Clause?

POSITION:

Yes. The expenses are required to comply with the RCRA Facility Assessments and other activities associated with the RCRA Corrective Action process. All expenses were incurred after April 13, 1993, are not being recovered in any other cost recovery mechanism and were not considered at the time of Florida Power & Light Company's last rate case.

STIPULATED

ISSUE 10B: Should the Commission approve Florida Power & Light Company's request to recover the cost for the Continuous Emission Monitoring Systems Operation and Maintenance activity?

POSITION:

Yes. This activity is associated with the Continuous Emission Monitoring Systems capital investments already included in the ECRC and is required to comply with the Clean Air Act Amendments of 1990. All expenses were incurred after April 13, 1993, are not being recovered in any other cost recovery mechanism and were not considered at the time of Florida Power & Light Company's last rate case.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
*Birkett	FPL	_____ (BTB - 1)	Document 1/Environmental Compliance Cost Projections April 1995 - September 1995
*Birkett	FPL	_____ (BTB - 2)	Document 2/Calculation of Allocation by Rate Class
*Birkett	FPL	_____ (BTB - 3)	Document 3/Calculation of Factors
*Birkett	FPL	_____ (BTB - 4)	Document 4/Schedule of Capital Investment Depreciation and Return April 1995-September 1995
*Birkett	FPL	_____ (BTB - 5)	Document 5/Calculation of Estimated Actual Variance October 1994 - March 1995
*Birkett	FPL	_____ (BTB - 6)	Document 6/Estimated/ Actual Environmental Compliance Costs October 1994-March 1995
*Birkett	FPL	_____ (BTB - 7)	Document 7/Calculation of Over/Under Recovery October 1994-March 1995
*Birkett	FPL	_____ (BTB - 8)	Document 8/Schedule of Capital Investment Depreciation and Return October 1994-March 1995
*Reichel	FPL	_____ (WMR - 1)	Document 1/Clean Air Act Amendments of 1990, Public Law 101-549
*Reichel	FPL	_____ (WMR - 2)	Document 2/40 CFR Part 75.10

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
*Reichel	FPL	<u>(WMR - 3)</u>	Document 3/40 CFR Part 75, Appendix B
*Reichel	FPL	<u>(WMR - 4)</u>	Document 4/Resource Conservation and Recovery Act (RCRA) Section 3004(u)
*Reichel	FPL	<u>(WRM - 5)</u>	Document 5/Resource Conservation and Recovery Act (RCRA) Section 3008(h)
*Reichel	FPL	<u>(WRM - 6)</u>	Document 6/Letter from the U.S. EPA to FPL regarding corrective action
*Reichel	FPL	<u>(WRM - 7)</u>	Document 7/Project Description and Progress Report
*Vick	Gulf	<u>(JOV - 1)</u>	ECR Investment Expenditures, Operations and Maintenance Expenses, Florida's Title V - Program, Approval of Post-Closure/Closure Plan of Fly Ash pond at Plant Daniel
*Cranmer	Gulf	<u>(SDC - 1)</u>	Calculation of final true-up, 4/94 through 9.94; Calculation of true-up and interest provision, 4/94 through 9/94; Calculation of interest provision, 4/94 through 9/94; Recoverable ECR costs related to investment by Plant Expenditure item ("PE"), 4/94 through 9/94; Recoverable O & M costs by FERC account, 4/94 through 9/94

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
*Cranmer	Gulf	_____ (SDC - 2)	Total Recoverable Revenue Requirements, Plant Schedules, Recoverable Operations and Maintenance Expenses, Calculation of Environmental Cost Recovery Factors.
	FPSC	_____	Staff Audit Report

VIII. PROPOSED STIPULATIONS

FPL and Gulf have stipulated to all issues in the Prehearing Order.

IX. PENDING MOTIONS

None at this time.

X. OTHER MATTERS


FPL and Gulf have no other matters pending Commission review.

It is therefore,

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

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By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 6th day of March, 1995.



J. Terry Deason, Commissioner
and Prehearing Officer

(S E A L)

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.