

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 050007-EI
ORDER NO. PSC-05-1251-FOF-EI
ISSUED: December 22, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR
ISILIO ARRIAGA

APPEARANCES:

JOHN T. BUTLER, ESQUIRE, Squire, Sanders & Dempsey, LLP, including Steel, Hector & Davis, LLP, 200 S. Biscayne Blvd., Suite 4000, Miami, FL 33131-2398 and R. WADE LITCHFIELD, ESQUIRE, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408-0420
On behalf of Florida Power & Light Company (FPL)

GARY V. PERKO, ESQUIRE, and CAROLYN S. RAEPPE, ESQUIRE, Hopping, Green & Sams, P.O. Box 6526, Tallahassee, Florida 32314 and R. ALEXANDER GLENN, ESQUIRE, Progress Energy Service Co., LLC, 100 Central Ave., St. Petersburg, FL 33701-3324.
On behalf of Progress Energy Florida (PEF)

LEE L. WILLIS, ESQUIRE and JAMES D. BEASLEY, ESQUIRE, Ausley & McMullen, P.O. Box 391, Tallahassee, Florida 32302 and ANGELA LLEWELLYN, ESQUIRE, P.O. Box 111, Tampa, FL 33601-0111
On behalf of Tampa Electric Company (TECO)

JOHN W. MCWHIRTER, JR., ESQUIRE, McWhirter Reeves & Davidson, P.A., 400 North Tampa Street, Suite 2450, Tampa, Florida 33601-3350, and TIMOTHY J. PERRY, ESQUIRE, McWhirter Reeves & Davidson, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301
On behalf of the Florida Industrial Power Users Group (FIPUG)

ROBERT SCHEFFEL WRIGHT, ESQUIRE and JOHN T. LAVIA, III, ESQUIRE, Landers & Parsons, P.A., 310 West College Avenue, Tallahassee, Florida 32301
On behalf of the Florida Retail Federation

DOCUMENT NUMBER-DATE

11831 DEC 22 05

FPSC-COMMISSION CLERK

CHARLES BECK, ESQUIRE AND PATRICIA CHRISTENSEN, ESQUIRE, 111 West
Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC)

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

**FINAL ORDER APPROVING PROJECTED EXPENDITURES AND TRUE-UP
AMOUNTS FOR ENVIRONMENTAL COST RECOVERY FACTORS**

BY THE COMMISSION:

I. CASE BACKGROUND

As part of the Commission's ongoing environmental cost recovery proceedings, a hearing was held on November 7, 2005, in this docket. At the hearing, the parties addressed the issues set out in Order No. PSC-05-1107-PHO-EI, the Prehearing Order. Part II of this Order addresses the stipulated generic issues and Part III addresses the contested generic issues. Part IV addresses the stipulated company-specific issues and Part V addresses the contested company-specific issues.

II. STIPULATED GENERIC ENVIRONMENTAL COST RECOVERY ISSUES

A. We approve as reasonable the following final environmental cost recovery true-up amounts for the period ending December 31, 2004:

FPL: \$505,074 over recovery including interest.
PEF: \$5,961,886 over recovery including interest.
TECO: \$35,849 over recovery including interest.
GULF: \$628,050 over recovery including interest.

OPC, FIPUG and FRF took no position.

B. We approve as reasonable the following estimated environmental cost recovery true-up amounts for the period January 2005 through December 2005:

GULF: \$ 646,587 over recovery including interest.
TECO: \$ 101,061,442 over recovery including interest.

OPC, FIPUG and FRF took no position.

C. We approve as reasonable the following projected environmental cost recovery amounts for the period January 2006 through December 2006:

GULF: \$41,572,348.
TECO: \$27,754,796.

OPC, FIPUG and FRF took no position.

- D. We approve as reasonable the following environmental cost recovery amounts, including true-up amounts for the period January 2006 through December 2006:

GULF: \$40,326,725 (adjusted for revenue taxes).
TECO: \$73,395,302 adjusted for taxes, to be refunded.

OPC, FIPUG and FRF took no position.

- E. We approve as reasonable that the depreciation rates to be used to develop the depreciation expense included in the total environmental cost recovery amounts for the period January 2006 through December 2006 shall be the depreciation rates that are in effect during the period the allowed capital investment is in service.

FIPUG and FRF took no position.

- F. We approve as reasonable the following jurisdictional separation factors for the projected period January 2006 through December 2006:

FPL: Energy Jurisdictional factor - 98.553348%;
CP Demand Jurisdictional Factor - 98.62224%;
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 93.753%,
Intermediate 79.046%,
Peaking 88.979%
Transmission Demand Jurisdictional Factor 70.597%
Distribution Demand Jurisdictional Factor 99.597%

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.

OPC, FIPUG and FRF took no position.

- G. We approve as reasonable the following environmental cost recovery factors for the period January 2006 through December 2006:

TECO:

<u>Rate Class</u>	<u>Factor (cents/k Wh)</u>
RS, RST	(0.372)
GS, GST, TS	(0.374)
GSD, GSDT	(0.376)
GSLD, GSLDT, SBF	(0.373)
IS1, IST1, SBI1, SBIT1, IS3, IST3, SBI3	(0.368)
SL,OL	(0.384)
Average Factor	(0.373)

GULF:

RATE CLASS	ENVIRONMENTAL COST RECOVERY FACTORS ¢/k Wh
RS, RSVP	.364
GS	.362
GSD, GSDT, GSTOU	.356
LP, LPT	.346
PX, PXT, RTP, SBS	.337
OS-I/II	.334
OSIII	.345

OPC, FIPUG and FRF took no position.

- H. For billing purposes, the new environmental cost recovery factors shall be effective beginning with the first billing cycle for January 2006, and thereafter through the last billing cycle for December 2006. The first billing cycle may start before January 1, 2006,

and the last billing cycle may end after December 31, 2006, so long as each customer is billed for twelve months regardless of when the factors became effective.

OPC and FRF took no position.

III. RULINGS ON CONTESTED GENERIC ENVIRONMENTAL COST RECOVERY ISSUES

A. We find that the estimated environmental cost recovery true-up amounts for the period January 2005 through December 2005 shall be:

PEF: \$11,922,307 under-recovery.
 FPL: \$4,418,213 over recovery including interest.

B. We find that the projected environmental cost recovery amounts for the period January 2006 through December 2006 shall be:

PEF: \$17,526,546.
 FPL: \$31,263,335.

C. We find that the environmental cost recovery amounts, including true-up amounts, for the period January 2006 through December 2006 shall be:

PEF: \$23,503,878 (adjusted for revenue taxes).
 FPL: The total environmental cost recovery amount, adjusted for prior period true-ups and revenue taxes, is \$26,359,013.

D. We find that the environmental cost recovery factors for the period January 2006 through December 2006 for each rate group shall be:

PEF:

RATE CLASS	ECRC Factor Cents/k Wh
Residential	0.062
General Service Non-Demand	
@ Secondary Voltage	0.060
@ Primary Voltage	0.059
@Transmission Voltage	0.059
General Service 100% Load Factor	0.048
General Service Demand	
@ Secondary Voltage	0.056
@ Primary Voltage	0.055
@Transmission Voltage	0.055
Curtable	

@ Secondary Voltage	0.055
@ Primary Voltage	0.054
@Transmission Voltage	0.054
Interruptible	
@ Secondary Voltage	0.049
@ Primary Voltage	0.049
@Transmission Voltage	0.048
Lighting	0.050

FPL:

Rate Class	Environmental Recovery Factor (\$/kWh)
RS-1/RST1	0.00026
GS-1/GST1	0.00025
GSD1/GSDT1/HLFT-1(21-499 kW)	0.00024
OS2	0.00025
GSLD1/GSLDT1/CS1/CST1/ HLFT-1 (500-1,999 kW)	0.00024
GSLD2/GSLDT2/CS2/CST2/ HLFT-1 (2,000 +)	0.00023
GSLD3/GSLDT3/CS3/CST3	0.00021
ISST1D	0.00022
ISST1T	0.00020
SST1T	0.00020
SST1D1/SST1D2/SST1D3	0.00022
CILC D/CILC G	0.00022
CILC T	0.00021
MET	0.00025
OL1/SL1/PL1	0.00019
SL2/GSCU-1	0.00022

IV. STIPULATED COMPANY SPECIFIC ISSUES

Florida Power & Light (FPL)

- A. We approve as reasonable the following stipulation regarding FPL's request for recovery of costs for a 10 year Hydrobiological Monitoring Program associated with FPL's makeup water withdrawals from the Little Manatee River for its Manatee Unit 3 generating unit:

The Hydrobiological Monitoring Program (HBMP) as described in the prepared testimony of FPL witness R.R. LaBauve filed on August 8, 2005 is eligible for recovery through the environmental cost recovery clause. FPL is undertaking the HBMP project to

comply with “environmental laws or regulations,” and the costs it seeks to recover for the HBMP project are “environmental compliance costs,” as those terms are used in §366.8255, Fla. Stat.

OPC, FIPUG and FRF took no position.

- B. We approve as reasonable the following stipulation regarding recovery of study costs and costs to retrofit various power plants to comply with the Clean Air Interstate Rule:

The Clean Air Interstate Rule (CAIR) is an “environmental law or regulation” as defined in Section 366.8255(1)(c), Florida Statutes, and costs spent to comply with the rule are eligible for recovery. It is FPL’s burden to show that costs it seeks to recover are for activities required by the rule and that the proposed activities are reasonable in light of the rule, and that the costs it seeks to recover are reasonable and prudent. FPL’s proposed preliminary engineering evaluation of all fossil electric generating units, and development of the most cost-effective compliance strategy are required to comply with CAIR at this time and are reasonable, and the projected costs for these studies are reasonable. FPL represents that its testimony regarding the return on investment is associated with tentative capital expenditures for long lead-time equipment for CAIR-related technology. FPL’s ECRC filing estimates the 2006 return on such investment to be \$495,164 (see Form 42-4P, page 32 of 38); there are no estimated CAIR-related capital expenditures included in FPL’s filing for 2005. FPL’s testimony filed in 2005 will be used for purposes of setting the ECRC factors for 2006. FPL will file testimony addressing the results of the ongoing studies and the final State Implementation Plan for CAIR in Docket No. 060007-EI. Any consideration of the prudence and reasonableness of specific technologies and associated project costs is premature and shall be deferred. The deferral shall not prejudice the rights of any party to conduct discovery and challenge the reasonableness and prudence of any projects or associated costs incurred, nor the rights of FPL to seek recovery of such costs. FPL will hold an informal meeting with Staff and parties to the then-current ECRC docket at a mutually agreed time and place each summer until the CAIR compliance deadlines have passed, in order to provide an update on FPL’s anticipated CAIR compliance activities.

OPC, FIPUG and FRF took no position.

- C. We approve as reasonable the following stipulation regarding allocation of FPL’s legal costs to challenge the Clean Air Interstate Rule to the rate classes:

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

OPC, FIPUG and FRF took no position.

- D. We approve as reasonable the following stipulation regarding FPL's request for recovery of costs to model potential visibility degradation in any Class 1 Federal Area associated with air emissions from its electric generating units pursuant to the Regional Haze Rule:

The Regional Haze Rule is an "environmental law or regulation" as defined in Section 366.8255(1)(c), Florida Statutes, and costs spent to comply with the rule are eligible for recovery. It is FPL's burden to show that costs it seeks to recover are for activities required by the rule and that the proposed activities are reasonable in light of the rule, and that the costs it seeks to recover are reasonable and prudent. The modeling described in the testimony of R. R. LaBauve on September 8, 2005, and the associated costs appear to be reasonable and necessary at this time.

OPC, FIPUG and FRF took no position.

- E. We approve as reasonable the following stipulation regarding allocation of FPL's environmental costs for modeling potential visibility degradation pursuant to the Regional Haze Rule to the rate classes:

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

OPC, FIPUG and FRF took no position.

Progress Energy Florida (PEF)

- F. We approve as reasonable the following stipulation regarding PEF's request for recovery of costs for certain Sea Turtle street lighting activities in Franklin County, Gulf County, and within the City of Mexico Beach:

The costs for the Sea Turtle Lighting Program meet the requirements of Section 366.8255 for recovery through the Environmental Cost Recovery Clause.

OPC, FIPUG and FRF took no position.

- G. We approve as reasonable the following stipulation regarding allocation of the costs for PEF's Sea Turtle street lighting activities to the rate classes:

The operating and maintenance costs and capitalized costs for the Sea Turtle Lighting Program should be allocated to the rate classes on a non-coincident peak demand basis.

OPC, FIPUG and FRF took no position.

- H. We approve as reasonable the following stipulation regarding PEF's request for recovery of costs to assess groundwater arsenic levels and consultant costs for development of an arsenic remediation plan at Plants Anclote, Bartow, Hines, and Crystal River:

The costs for Arsenic Groundwater Standard Program meet the requirements of Section 366.8255 for recovery through the Environmental Cost Recovery Clause.

OPC, FIPUG and FRF took no position.

- I. We approve as reasonable the following stipulation regarding PEF's request for recovery of costs for installing secondary containment for certain underground storage tanks and small diameter piping at the Bartow and Crystal River Power Plant sites:

The costs for the Underground Storage Tank Program meet the requirements of Section 366.8255 for recovery through the Environmental Cost Recovery Clause.

OPC, FIPUG and FRF took no position.

- J. We approve as reasonable the following stipulation regarding recovery of costs associated with planning and construction of SCR and FGD on four Crystal River coal fired units, and recovery of costs associated with installation of low NOx burners and overfire air at Anclote:

PEF represents that the testimony of Patricia Q. West filed on September 8, 2005, regarding the costs associated with certain pollution control projects that PEF tentatively has identified as part of its strategy for complying with the Clean Air Interstate Rule (CAIR) and Clean Air Mercury Rule (CAMR), was based on a preliminary analysis of compliance options based on the language of CAIR as originally proposed, and was submitted for informational purposes. PEF is presently conducting a more detailed analysis of options based on final CAIR rule language. PEF intends to file testimony addressing the results of the more detailed study and its effect on PEF's compliance strategy in Docket No. 060007 when it has completed the analysis. PEF and OPC agree that Issues 10(G) and 10(H)¹ and any consideration of the prudence and reasonableness of specific technologies and associated project costs related to PEF's CAIR/CAMR activities are premature and shall be deferred. The deferral shall not prejudice the rights of OPC and other parties to conduct discovery and challenge the reasonableness or prudence of any projects or associated costs related to PEF's CAIR/CAMR compliance strategy in future proceedings. Ms. West's testimony shall be entered in the record, but receipt thereof shall not be considered as the Commission's approval of the reasonableness and prudence of PEF's CAIR and CAMR compliance projects. PEF, OPC and any interested intervenors will attempt cooperatively to develop and submit for approval a procedure and schedule designed to govern proceedings on PEF's additional

¹ Issue 10(G) is: Should the Commission approve recovery of costs associated with planning and construction of SCR and FGD on four Crystal River coal fired units?

Issue 10(H) is: Should the Commission approve recovery of costs associated with installation of low NOx burners and overfire air at Anclote?

submission. In the event parties cannot agree on appropriate procedural milestones, by motion any party may ask the Commission to establish such a schedule.

Gulf Power Company

- K. We approve as reasonable the following stipulation regarding GULF's request for recovery of costs for groundwater arsenic remediation activities at Plants Crist and Scholz:

The FDEP published a new arsenic groundwater standard that lowered the limit from 0.5 mg/L to 0.01 mg/L, effective January 1, 2005. Historical groundwater monitoring data from Plant Crist and Plant Scholz indicate that these facilities are not likely to be able to comply with the lower standard without remediation or other solutions. GULF projects capital expenditures of \$500,000 during 2006 to complete and evaluate the results from studies to determine the nature of the potential impacts to groundwater and identify solutions necessary to ensure compliance with the new standard. Depending on the results, mitigation measures may also be implemented during 2006. These are costs incurred to comply with new environmental legal requirements imposed on the Company and this compliance activity is not being recovered through base rates or any other means.

OPC, FIPUG and FRF took no position.

- L. We approve as reasonable the following stipulation regarding allocation of the costs for GULF's arsenic groundwater remediation activities at Plants Crist and Scholz to the rate classes:

The proposed capitalized costs should be allocated to the rate classes on 12 coincident peak demand and 1/13 average demand basis.

OPC took no position.

- M. We approve as reasonable the following stipulation regarding GULF's request for recovery of costs for water conservation measures at Plant Crist:

This program is part of GULF's water conservation and consumptive use efficiency program required by the consumptive water use permit issued to GULF for Plant Crist by the Northwest Florida Water Management District (NFWFMD). GULF plans to install automatic level controls on the fire water tanks at Plant Crist to reduce groundwater consumption by an estimated 1.3 million gallons per year. The NFWFMD has agreed that this plan is a valid project to pursue for continued implementation of the water conservation effort as required by the consumptive use permit. The costs associated with this project are being incurred to comply with new environmental legal requirements imposed on the Company and this compliance activity is not being recovered through base rates or any other means.

OPC, FIPUG and FRF took no position.

- N. We approve as reasonable the following stipulation regarding allocation of the costs for GULF's Plant Crist water conservation measures to the rate classes:

The proposed capitalized costs should be allocated to the rate classes on 12 coincident peak demand and 1/13 average demand basis.

OPC took no position.

- O. We approve as reasonable the following stipulation regarding GULF's request for recovery of costs for replacement of the copper condenser tubes at Plant Crist with stainless steel condenser tubes:

The water quality based copper effluent limitations included in Chapter 62, Part 302, Florida Administrative Code, were amended in April 2002 with an effective date of May 2002 to create a more stringent hardness based standard. The more stringent standard has been included by reference in the industrial wastewater permit issued to GULF for Plant Crist. Surface water studies conducted from 2003 through 2005 have determined that the Crist Unit 6 condenser is the main source of the incremental copper increase in the Plant Crist discharge. GULF plans to install stainless steel condenser tubes on Crist Unit 6 to eliminate this source of copper in the plant's discharge canal in order to meet the new water quality standard. The new tubes are expected to be placed in service during May 2006 with estimated project expenditures totaling \$5.5 million. These are costs incurred to comply with new environmental legal requirements imposed on the Company and this compliance activity is not being recovered through base rates or any other means.

OPC, FIPUG and FRF took no position.

- P. We approve as reasonable the following stipulation regarding allocation of the costs for GULF's Plant Crist condenser tube replacement to the rate classes:

The proposed capitalized costs should be allocated to the rate classes on 12 coincident peak demand and 1/13 average demand basis.

OPC and FRF took no position.

- Q. We approve as reasonable the following stipulation regarding recovery of costs associated with planning and construction of the proposed Scrubber Project at Plant Crist, and recovery of costs associated with planning and construction of the proposed baghouse project at Smith Unit 2.

The Scrubber Project (Line Item 1.26) discussed in Issue 11G² and the Plant Smith Baghouse Project (Line Item 1.27) discussed in Issue 11H³ are proposed as additions to Gulf's Air Quality programs in order for Gulf to comply with new environmental regulations, including the EPA's Clean Air Interstate Rule (CAIR) and Clean Air Mercury Rule (CAMR), as described in the testimony of Gulf's witness James O. Vick filed on September 15, 2005. CAIR and CAMR are "environmental regulations" as defined in Section 366.8255(1)(c), and costs incurred to comply with these rules are eligible for recovery through the Environmental Cost Recovery Clause. The Scrubber Project and the Baghouse Project are capital projects of such magnitude in dollars and construction time that the Commission's policy regarding AFUDC is applicable. As a result, there is no dollar impact on the ECRC factors for 2006 from these programs. Any money actually spent on these projects in 2006 will be capitalized along with the applicable AFUDC and will be reflected in the proposed ECRC factors for the year when the projects are expected to close to plant-in-service. Although the EPA's CAIR and CAMR are subject to on-going rule challenges which may change the need for the proposed action, at this time the effective date of the rules as promulgated by the EPA have not been stayed. The FDEP has not yet adopted its rules implementing CAIR/CAMR at the state level, but is expected to do so during 2006. As a result, Gulf's decisions regarding the appropriate strategy for CAIR/CAMR compliance are still subject to review. For this reason, Issues 11G and 11H and any consideration of the prudence and reasonableness of specific technologies and associated project costs related to Gulf's CAIR/CAMR activities, including the costs to implement these projects during 2006, shall be deferred to later proceedings in this ongoing docket after Gulf has finalized its decisions regarding these two projects and has submitted additional testimony supporting its choice of CAIR/CAMR compliance options. The deferral of these issues shall not prejudice the rights of Gulf or any parties to this docket with respect to the projects identified in these issues. The deferral shall not be construed as a restriction on Gulf's ability to spend money during 2006 on these projects that are intended for future recovery through the ECRC mechanism and such money shall remain eligible for ECRC recovery subject to future reasonableness and prudence review by the Commission following the filing of Gulf's additional evidence regarding its final compliance strategy. Likewise, the deferral shall not prejudice the rights of OPC and other parties to conduct discovery and possibly challenge the reasonableness or prudence of any projects or associated costs related to Gulf's CAIR/CAMR compliance strategy in such future proceedings. Mr. Vick's testimony shall be entered in the record, but receipt thereof shall not be considered as the Commission's approval of the reasonableness and prudence of Gulf's CAIR and CAMR compliance projects.

FIPUG and FRF took no position.

² Issue 11(G) is: Should the Commission approve recovery of costs associated with planning and construction of the proposed scrubber project at Plant Crist?

³ Issue 11(H) is: Should the Commission approve recovery of costs associated with planning and construction of the proposed baghouse project at Smith Unit 2?

V. RULINGS ON CONTESTED COMPANY SPECIFIC ENVIRONMENTAL COST RECOVERY ISSUES

Florida Power & Light (FPL)

- A. Allocation of FPL's environmental costs for the Little Manatee River Hydrobiological Monitoring Program to the rate classes.

We find that the proposed O&M costs for the HBMP Program shall be allocated to the rate classes on a 12 coincident peak demand basis. It is not appropriate to address the issue of non-firm credits in this docket. No evidence has been presented that the currently existing non-firm credits are inappropriate or that additional non-firm credits in this docket are appropriate.

- B. Allocation of FPL's environmental costs for compliance with the Clean Air Interstate Rule to the rate classes.

We find that the operating and maintenance costs shall be allocated to the rate classes on an energy basis. The capitalized costs should be allocated to the rate classes on a 12 coincident peak demand and 1/13 energy basis consistent with Commission Order No. PSC-05-0902-S-EI, issued September 14, 2005, in Docket No. 050045-EI, In Re: Petition for rate increase by Florida Power & Light Company. It is not appropriate to address the issue of non-firm credits in this docket. No evidence has been presented that the currently existing non-firm credits are inappropriate or that additional non-firm credits in this docket are appropriate.

- C. Recovery of FPL's legal costs to challenge the Clean Air Interstate Rule.

We find that the definition of environmental compliance costs in Section 366.8255, Florida Statutes, includes prudently incurred litigation costs associated with FPL's complying with the Clean Air Interstate Rule. The costs of compliance with a rule and the cost of litigating the legitimacy of a rule are closely linked. To comply with a rule, the utility must understand the rule, and whether the rule is consistent with the statute under which it was adopted. If there is a legitimate argument that the rule is not consistent with the statute being implemented then the utility may recover the costs of challenging the rule through the ECRC.

FPL shall be allowed to recover the reasonable litigation costs (estimated at \$170,000), incurred in 2005 and 2006, associated with compliance with the Clean Air Interstate Rule, contingent upon a review of whether such costs are included in base rates. All efforts shall be made to answer this question by next year's hearing.

Progress Energy Florida, Inc. (PEF)

- D. Allocation of the costs for PEF's arsenic groundwater monitoring and studies to the rate classes.

We find that PEF's operating and maintenance costs for its Arsenic Groundwater Standard Program shall be allocated to the rate classes on a 12 coincident peak demand and 1/13 average demand basis. It is not appropriate to address the issue of non-firm credits in this docket. No evidence has been presented that the currently existing non-firm credits are inappropriate or that additional non-firm credits in this docket are appropriate.

- E. Allocation of the costs for PEF's secondary containment facilities at the Bartow and Crystal River Power Plant sites to the rate classes.

We find that the capitalized costs for PEF's Underground Storage Tank Program shall be allocated to the rate classes on a 12 coincident peak demand and 1/13 average demand basis. It is not appropriate to address the issue of non-firm credits in this docket. No evidence has been presented that the currently existing non-firm credits are inappropriate or that additional non-firm credits in this docket are appropriate.

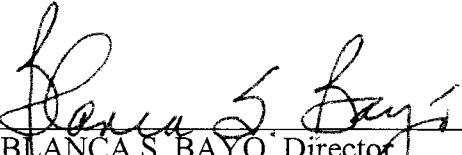
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that that the stipulations and findings set forth in the body of this order are hereby approved. It is further

ORDERED that each utility that was a party to this docket shall abide by the stipulations and findings herein which are applicable to it. It is further

ORDERED that the utilities named herein are authorized to collect the environmental cost recovery amounts and use the factors approved herein beginning with the specified environmental cost recovery cycle and thereafter for the period of January 2006 through December 2006. Billing cycles may start before January 1, 2006, and the last cycle may be read after December 31, 2006, so that each customer is billed for 12 months regardless of when the adjustment factor became effective.

By ORDER of the Florida Public Service Commission this 22nd day of December, 2005.


BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

MKS

Dissent

Commissioner Lisa Polack Edgar dissents from the Commission's decision with the following opinion.

I agree with the Commission's decision that Section 366.8255, Florida Statutes, gives the Commission the authority to consider prudently incurred litigation expenses for recovery as part of environmental compliance costs. This decision recognizes that legal costs may necessarily be incurred as part of rulemaking, modeling, and other costs associated with compliance. I disagree, however, with the majority's decision to allow FPL to currently recover an estimated \$170,000 of legal costs subject to a future review for two reasons.

First, I do not agree with allowing current recovery of costs that may already be recovered through base rates. Litigation and compliance expenses are on-going costs of utility operations and some allowance for recovery of such costs is included when establishing base rates. More certain information as to base rate recovery should be available to the Commission before cost recovery is approved. I do not believe any financial harm to the utility would result from delaying recovery of these litigation costs until the base rate recovery threshold question is answered. Second, statutory allowance to request reimbursement of certain costs grants the applicant with the option to submit such a request for Commission review. In this instance, the litigation costs of \$170,000 requested by FPL are de minimus to a utility of FPL's size. Time, money and resources utilized in making and reviewing this request could have been better spent.

For these reasons, I dissent from the majority's decision to allow FPL to recover \$170,000, contingent upon a review as to whether any or all of that amount is part of base rate recovery.

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.