

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 060007-EI
ORDER NO. PSC-06-0917-PHO-EI
ISSUED: November 2, 2006

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on October 23, 2006, in Tallahassee, Florida, before Commissioner Matthew M. Carter II, as Prehearing Officer.

APPEARANCES:

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

On behalf of Gulf Power Company (GULF).

GARY V. PERKO, ESQUIRE, and CAROLYN R. RAEPPLE, ESQUIRE, Hopping Green & Sams, P.A., P. O. Box 6526, Tallahassee, Florida 32314 and JOHN T. BURNETT, ESQUIRE, and R. ALEXANDER GLENN, ESQUIRE, Progress Energy Service Company, LLC, 100 Central Avenue, St. Petersburg, Florida 33701-3324

On behalf of Progress Energy Florida, Inc. (PEF).

JOHN T. BUTLER, ESQUIRE, and R. WADE LITCHFIELD, ESQUIRE, 700 Universe Boulevard, Juno Beach, Florida 33408

On behalf of Florida Power & Light Company (FPL).

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

On behalf of Tampa Electric Company (TECO).

PATRICIA A. CHRISTENSEN, ESQUIRE, JOSEPH A. MCGLOTHLIN, ESQUIRE, and CHARLES J. BECK, ESQUIRE, 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 (OPC).

ROBERT SCHEFFEL WRIGHT, ESQUIRE, and JOHN T. LAVIA, III, ESQUIRE, Young van Assenderp, P.A. 225 South Adams Street, Suite 200, Tallahassee, Florida 32301

On behalf of Florida Retail Federation. (FRF).

DOCUMENT NUMBER-DATE

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FPSG-COMMISSION CLERK

JOHN W. MCWHIRTER, JR., ESQUIRE, McWhirter Reeves & Davidson, P.A.,
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On behalf of Florida Industrial Power Users Group (FIPUG).

MARTHA CARTER BROWN, ESQUIRE, Florida Public Service Commission,
2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (STAFF)

PREHEARING ORDER

I. 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 6 through 8, 2006, in this docket and in Docket No. 060001-EI, Docket No. 060002-EI, Docket No. 060003-GU and Docket No. 060004-GU. The Commission has the option to render a bench decision in this matter.

II. 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.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, 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

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, shall be treated by the Commission 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 pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, Florida Statutes. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Division of the Commission Clerk and Administrative Services' confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), Florida Administrative Code, if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) 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.

VI. 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 1, 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>		
J. O. Vick	GULF	1, 2, 3, 4, 12A, 12B
R. J. Martin ¹	GULF	1, 2, 3, 4, 5, 6, 7, 8, 12C
*J. Portuondo	PEF	1, 2, 3, 4, 5, 6, 7, 8, 10A, 10B
*Kent D. Hedrick	PEF	2, 3, 4
*Patricia Q. West	PEF	2, 3, 4
*Daniel J. Roeder	PEF	10B
*John Holler	PEF	10B
*Thomas Lawery	PEF	10A
K.M. Dubin	FPL	1, 2, 3, 4, 5, 6, 7, 8, 9A, 9B, 9C
R. R. LaBauve	FPL	9A
*Howard T. Bryant	TECO	1, 2, 3, 4, 5, 6, 7, 8
*Greg M. Nelson	TECO	1, 2, 3, 4

¹ Gulf's Witness Martin adopts the direct testimony of Terry A. Davis filed on April 3, 2006.

VII. BASIC POSITIONS

- 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 2007 through December 2007 including the true-up calculations and other adjustments allowed by the Commission.
- PEF: None.
- FPL: None.
- 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 2005 through December 2005, the actual/estimated environmental cost recovery true-up for the current period January 2006 through December 2006, and the company's projected ECRC revenue requirement and the company's proposed ECRC factors for the period January 2007 through December 2007.
- OPC: None.
- FRF: None
- FIPUG: FIPUG has concluded that some utilities fail to allocate environmental costs for capital improvements in a manner that is consistent with cost allocations in base rate cases. The matter remains under study. It will take no position on cost allocations in this docket this year, but reserves the right to raise the issue when the study is complete.
- 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.

VIII. ISSUES AND POSITIONS

STIPULATED

ISSUE 1: What are the final environmental cost recovery true-up amounts for the period ending December 31, 2005?

POSITION:

GULF: \$1,659,043 Over recovery (Vick, Martin)
PEF: \$237,170 under-recovery (Portuondo)
FPL: \$2,642,893 over recovery including interest (Dubin)
TECO: (\$23,609,173) under-recovery (Bryant, Nelson)

STIPULATED

ISSUE 2: What are the estimated environmental cost recovery true-up amounts for the period January 2006 through December 2006?

POSITION:

GULF: \$2,874,720 Over recovery (Vick, Martin)
PEF: \$16,770,646 under-recovery (Portuondo, Hedrick, West)
FPL: \$13,409,744 over recovery including interest (Dubin)
TECO: \$58,347,408 over-recovery (Bryant, Nelson)

ISSUE 3: What are the projected environmental cost recovery amounts for the period January 2007 through December 2007?

GULF: \$48,178,803. (Vick, Martin)
PEF: \$36,759,254 STIPULATED (Portuondo, Hedrick, West)
FPL: \$40,688,413 (Dubin)
TECO: (\$34,064,523) STIPULATED (Bryant, Nelson)
OPC: No position.
FRF: No position.
FIPUG: No position.
STAFF: GULF: No position pending resolution of company specific issues.
FPL: No position pending resolution of company specific issues.

ISSUE 4: What are the environmental cost recovery amounts, including true-up amounts, for the period January 2007 through December 2007?

GULF: \$43,645,040, excluding revenue taxes. (Vick, Martin)

PEF: \$53,805,782 **STIPULATED** (Portuondo, Hedrick, West)

FPL: The total environmental cost recovery amount, adjusted for prior period true-ups and revenue taxes, is \$24,653,514. (Dubin)

TECO: (\$68,852,296) **STIPULATED** (Bryant, Nelson)

OPC: No position.

FRF: No position.

FIPUG: No position.

STAFF: GULF: No position pending resolution of company specific issues.
FPL: No position pending resolution of company specific issues.

STIPULATED

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 2007 through December 2007?

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.

STIPULATED

ISSUE 6: What are the appropriate jurisdictional separation factors for the projected period January 2007 through December 2007?

POSITION:

GULF: The demand jurisdictional separation factor is 96.64872%. Energy jurisdictional separation factors are calculated each month based on retail KWH sales as a percentage of projected total territorial KWH sales. (Martin)

PEF: The jurisdictional energy separation factor is calculated for each month based on retail kWh sales as a percentage of projected total system kWh sales.
Transmission Average 12 CP demand jurisdictional factor - 70.597%

Distribution Primary demand jurisdictional factor - 99.597%
 Jurisdictional Separation Study factors were used for production demand jurisdictional factor as Production Base – 93.753%,
 Production Intermediate – 79.046%, and Production Peaking – 88.979%. (Portuondo)

FPL: Energy Jurisdictional Factor 98.59030%
 CP Demand Jurisdictional Factor 98.68536%
 GCP Demand Jurisdictional Factor 100.00000% (Dubin)

TECO: The demand jurisdictional separation factor is 96.66743%. 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. These are shown on the schedules sponsored by witness Bryant. (Witness: Bryant)

ISSUE 7: What are the appropriate environmental cost recovery factors for the period January 2007 through December 2007 for each rate group?

GULF: See table below: (Martin)

RATE CLASS	ENVIRONMENTAL COST RECOVERY FACTORS ¢/kWh
RS, RSVP	.387
GS	.385
GSD, GSDT, GSTOU	.379
LP, LPT	.367
PX, PXT, RTP, SBS	.357
OS-I/II	.354
OSIII	.367

PEF: The appropriate factors are as follows:

Rate Class	ECRC Factor cents/kWh
Residential	0.153
General Service Non-Demand	
@ Secondary Voltage	0.137

@ Primary Voltage	0.136
@ Transmission Voltage	0.134
General Service 100% Load Factor	0.088
General Service Demand	
@ Secondary Voltage	0.111
@ Primary Voltage	0.110
@ Transmission Voltage	0.109
Curtaillable	
@ Secondary Voltage	0.107
@ Primary Voltage	0.106
@ Transmission Voltage	0.105
Interruptible	
@ Secondary Voltage	0.089
@ Primary Voltage	0.088
@ Transmission Voltage	0.087
Lighting	0.111

FPL:

Rate Class	Environmental Recovery Factor (\$/kWh)
RS-1/RST1	0.00024
GS-1/GST1	0.00023
GSD1/GSDT1/HLFT(21-499 kW)	0.00022
OS2	0.00020
GSLD1/GSLDT1/CS1/CST1/	
HLFT (500-1,999 kW)	0.00022
GSLD2/GSLDT2/CS2/CST2/	
HLFT(2,000 +)	0.00021
GSLD3/GSLDT3/CS3/CST3	0.00020

ISST1D	0.00022
ISST1T	0.00017
SST1T	0.00017
SST1D1/SST1D2/SST1D3	0.00022
CILC D/CILC G	0.00021
CILC T	0.00020
MET	0.00022
OL1/SL1/PL1	0.00016
SL2/GSCU-1	0.00020
	(Dubin)

TECO:

Rate Class	Factor (cents/kWh)
RS, RST	(0.344)
GS, GST, TS	(0.345)
GSD, GSDT	(0.347)
GSLD, GSLDT, SBF	(0.345)
IS1, IST1, SBI1, SBIT1, IS3, IST3, SBI3	(0.340)
SL, OL	(0.358)
Average Factor	(0.345)
	(Witness: Bryant)

OPC: No position.

FRF: No position.

FIPUG: No position in this docket.

STAFF: The factors are a mathematical calculation based on the resolution of company-specific issues. Staff asks for administrative authority to review the calculations reflecting the Commission's vote and include the resulting factors in the Order.

STIPULATED

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

POSITION: For billing purposes, the new environmental cost recovery factors should become effective beginning with the first billing cycle for January 2007, and thereafter through the last billing cycle for December 2007. The first billing cycle may start before January 1, 2007, and the last billing cycle may end after December 31, 2007, so long as each customer is billed for 12 months regardless of when the factors became effective.

COMPANY-SPECIFIC ISSUES

FLORIDA POWER & LIGHT COMPANY (FPL)

ISSUE 9 A: Should the Commission approve FPL's request for recovery of compliance costs relating to the Clean Air Mercury Rule as a project that qualifies for recovery through the ECRC?

FPL: Yes. This project is required in order to comply with nation-wide standards of performance for mercury emissions from coal fired electric generation units imposed by the U.S. Environmental Protection Agency (EPA) and the Florida Department of Environmental Protection (FDEP). (Dubin, LaBauve)

OPC: No. Recovery at this time would be premature. Given the truncated nature to the annual fuel and ECRC proceedings, FPL should be required to file a separate petition for its CAMR and CAIR projects to allow parties sufficient opportunity to review said projects in a comprehensive and thorough manner.

FRF: Agree with OPC.

FIPUG: Agree with OPC.

STAFF: Yes, FPL must comply with the provisions of CAMR and such environmental compliance costs are eligible for recovery through the ECRC. These costs will be subject to evaluation and true-up in the ongoing ECRC proceedings.

STIPULATED

ISSUE 9 B: How should the projected environmental costs for the CAMR Compliance Project be allocated to the rate classes?

POSITION: Proposed capital costs for the CAMR Compliance Project should be allocated to the rate classes on an average 12 CP demand basis. This is consistent with FPL's current cost of service methodology, as contemplated by the stipulation approved by Order No. PSC-05-0902-S-EI, in Docket No. 050045-EI. Projected operating and maintenance costs should be allocated to the rate classes on an energy basis. (Dubin)

ISSUE 9 C: Are FPL's Legal Expenses for challenging implementation of the CAIR rule included in base rates?

FPL: No. FPL did not include any costs associated with its legal challenge of the CAIR rule in the MFRs that were filed in Docket No. 050045-EI. Those MFRs were prepared before the final CAIR rule was published by EPA, and FPL had no reason at the time to anticipate that it would need to pursue a legal challenge. (Dubin)

OPC: Yes. Base rates are designed to recover a total revenue requirement that encompasses the various categories of costs of conducting the utility business, one of which is legal expenses. Once base rates take effect, the actual levels of expenses will vary from the amounts reflected in the overall revenue requirement. Increases in one category may be offset by reductions in others, and the total change may be more than offset by increases in revenues resulting from customer growth or increases in usage. So even if the cost of a particular legal action was not used in setting the revenue requirement, these costs are still recovered. Thus, attempting to roll these costs through the ECRC clause would be an inappropriate abuse of the clause.

If the cost/revenue relationship alters to the extent base rates are inadequate, the utility (subject to the terms of a settlement, where applicable) may request authority to adjust the base rates. The utility cannot circumvent the distinction between items properly recovered through base rates and those appropriate for recovery through a special clause—or the terms of a settlement in which the utility pledged to withhold requests for an adjustment to base rates—by flowing costs normally recovered through base rates through a cost recovery clause on the grounds that the specific costs were not in the MFRs.

FRF: Agree with OPC.

FIPUG: Agree with OPC.

STAFF: No. FPL's Legal Expenses challenging implementation of the CAIR rule are not included in base rates.

PROGRESS ENERGY FLORIDA, INC. (PEF)

STIPULATED

ISSUE 10 A: Should the Commission approve inclusion of the costs in the 2007 ECRC factors of PEF's Modular Cooling Tower Project subject to refund including interest pending resolution of Docket No. 060162-EI?

POSITION: Yes. The Commission should approve inclusion of the costs in the 2007 ECRC factors of PEF's Modular Cooling Tower Project subject to refund including interest pending resolution of Docket No. 060162-EI. (Portuondo, Lawery)

STIPULATED

ISSUE 10 B: Are PEF's incurred costs related to the CAIR/CAMR Program for the years 2005 and 2006 reasonable and prudent?

POSITION: Yes. The costs incurred for CAIR/CAMR compliance for 2005 and 2006 are reasonable and prudent. (Portuondo, Roeder, Holler)

TAMPA ELECTRIC COMPANY (TECO)

STIPULATED

ISSUE 11: Should the Commission approve inclusion of the costs in the 2007 ECRC factors of TECO's Flue Gas Desulphurization Reliability Project subject to refund including interest pending resolution of Docket No. 050958-EI?

POSITION: Yes, the Commission should allow inclusion of the costs in the 2007 ECRC factors of TECO's Flue Gas Desulphurization Reliability Project subject to refund including interest pending the resolution of Docket No. 050958-EI.

GULF POWER COMPANY (GULF)

ISSUE 12 A: Should the Commission approve Gulf's request for recovery of compliance costs relating to the Clean Air Interstate Rule and the Clean Air Mercury Rule as a project that qualifies for recovery through the ECRC?

GULF: Yes. The Clean Air Interstate Rule (CAIR) and Clean Air Mercury Rule (CAMR) Compliance Program is necessary to comply with the CAIR and CAMR regulations promulgated by the United States Environmental Protection Agency (EPA) in March 2005 and subsequently adopted by the Florida Department of Environmental Protection (FDEP) in June 2006. Gulf expects portions of the program totaling approximately \$35.8 million to close to plant-in-service during

2007. 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. (Vick)

OPC: No. Recovery at this time would be premature. Given the truncated nature to the annual fuel and ECRC proceedings, Gulf should be required to file a separate petition for its CAMR and CAIR projects to allow parties sufficient opportunity to review said projects in a comprehensive and thorough manner.

FRF: Agree with OPC.

FIPUG: Agree with OPC.

STAFF: Yes, Gulf must comply with the provisions of CAIR/CAMR and such environmental compliance costs are eligible for recovery through the ECRC. These costs will be subject to evaluation and true-up in the ongoing ECRC proceedings.

STIPULATED

ISSUE 12 B: Should the Commission approve Gulf's request for recovery of its General Water Sampling Quality Boat as a project that qualifies for recovery through the ECRC?

POSITION: Yes. Gulf expects to incur capital expenditures of \$28,600 during 2007 to purchase a boat for new surface water sampling that is required by the Plant Crist and Plant Scholz National Pollutant Discharge Elimination System (NPDES) permits. Pursuant to Chapter 62 Part 302.520(1), Florida Administrative Code, the FDEP has included new biological evaluation requirements in Gulf's recently issued NPDES permits for both Plants Crist and Scholz. In addition, these NPDES permits, also have a condition that requires compliance with Chapter 40 of the Code of Federal Regulation (CFR) Parts 125.95(a)(1) and (2), also known as 316(b), which requires monitoring aquatic communities within each plant's once through cooling water systems. Purchasing a boat to conduct these studies in-house will reduce a portion of the compliance expenses. 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. (Vick)

STIPULATED

ISSUE 12C: How should the projected environmental costs for the CAIR and CAMR Compliance Projects be allocated to the rate classes?

POSITION: The projected costs should be allocated to the rate classes on an energy basis consistent with Commission Order No. PSC-94-0044-FOF-EI, issued January 12,

1994, in Docket No. 930613-EI, In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.825, F.S., by Gulf Power Company.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
J. O. Vick	GULF	<u>(JOV-1)</u>	Florida Clean Air Interstate Rule; Florida Clean Air Mercury Rule; NPDES permits for Plants Crist and Scholz
R. J. Martin	GULF	<u>(TAD-1)</u>	Calculation of Final True-up 1/05-12/05.
		<u>(RJM-2)</u>	Calculation of Estimated True-up 1/06-12/06.
		<u>(RJM-3)</u>	Calculation of Projection 1/07-12/07.
J. Portuondo	PEF	<u>(JP-1)</u>	ECRC Forms 42-1A through 42-8A
		<u>(JP-2)</u>	ECRC Forms 42-1E through 42-8E.
		<u>(JP-3)</u>	ECRC Forms 42-1P through 42-7P.
Thomas Lawery	PEF	<u>(TL-1)</u>	Expected Crystal River 1 & 2 Derates Without Modular Cooling Towers
		<u>(TL-2)</u>	Crystal River Intake Temperatures – 2005 & 2006
Daniel J. Roeder	PEF	<u>(DJR-1)</u>	Progress Energy Florida Integrated Clean Air Compliance Plan
		<u>(DJR-2)</u>	Summary of Alternative Compliance Plans

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		(DJR-3)	Comparison of Cumulative Present Value of Revenue Requirements
		(DJR-4)	Impact of Allowance Price Uncertainty
John Holler	PEF	(JH-1)	Conceptual Level Schematic of Emission Controls for Utility Boilers
K. M. Dubin	FPL	(KMD-1)	Appendix I Environmental Cost Recovery Final True up January – December 2005 Commission Forms 42-1A through 42-8A
		(KMD-2)	Appendix I Environmental Cost Recovery Estimated/Actual Period January-December 2006 Commission Forms 42-1E through 42-8E
		(KMD-3) Revised 10/13/06	Appendix I Environmental Cost Recovery Projections January-December 2007 Commission Forms 42-1P through 42-7P
R. R. LaBauve	FPL	(RRL-1)	U.S. Environmental Protection Agency – Clean Air Mercury Rule – Regulatory Text
		(RRL-2)	Department of Environmental Protection – Clean Air Mercury Rule as proposed to the Environmental Regulation Commission Chapters 62-204, 62-210, 62-296 FAC

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		<u>(RRL-3)</u>	Department of Environmental Protection – Clean Air Interstate Rule as proposed to the Environmental Regulation Commission Chapters 62-204, 62-210, 62-296 FAC
		<u>(RRL-4)</u>	Clean Air Interstate Rule and Clean Air Mercury Rule State Notices of change in the Florida Administrative Weekly – pp. 5-8, Published July 21, 2006 – changes by the Environmental Regulation Commission
Howard T. Bryant	TECO	<u>(HTB-1)</u>	Final Environmental Cost Recovery Commission Forms 42-1A through 42-8A for the period January 2005 through December 2005.
		<u>(HTB-2)</u>	Environmental Cost Recovery Commission Forms 42-1E through 42-8E for the period January 2006 through December 2006.
		<u>(HTB-3)</u>	Forms 42-1P through 42-7P for January 2007 through December 2007.

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

X. PROPOSED STIPULATIONS

NOTE: OPC, FIPUG and FRF have taken no position on the stipulated issues identified below and in Section VII above. They do not object to, but do not join in, those stipulations.

Generic Issues

ISSUES 1, 2, 5, 6, and 8, are stipulated. Issues 3, and 4 are stipulated for PEF and TECO. Issue 7 is a fall-out issue.

GULF's Specific Issues

ISSUES 12B and 12C are stipulated.

PEF's Specific Issues

ISSUES 10A and 10B are stipulated.

FPL's Specific Issues

ISSUE 9B is stipulated.

TECO's Specific Issues

ISSUE 11 is stipulated.

XI. PENDING MOTIONS

PEF Motion for Temporary Protective Order for DN 02883-06.

PEF Motion for Temporary Protective Order for certain responses to OPC's 1st Request for Production of Documents.

PEF October 13, 2006 Motion for Leave to File Supplemental Testimony.

FPL Motion for Temporary Protective Order for certain responses to OPC's 1st Request for Production of Documents.

FPL Motion for Temporary Protective Order for certain responses to OPC's 2nd Request for Production of Documents.

XII. PENDING CONFIDENTIALITY MATTERS

PEF request for DN 02883-06.

FPL 1st request for extension of confidentiality for DN03931-06.

FPL request for DN 06062-06.

XIII. 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 no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no

more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of 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.

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.

XIV. RULINGS

A. **Opening Statements**

Opening Statements, if any, shall not exceed ten minutes per party.

B. **PEF's October 13, 2006, Motion for Leave to File Supplemental Testimony**

PEF's unopposed October 13, 2006, Motion for Leave to File Supplemental Testimony is granted.

C. FPL Issue 9A: Should the Commission approve FPL's request for recovery of compliance costs relating to the Clean Air Mercury Rule as a project that qualifies for recovery through the ECRC?

GULF Issue 12A: Should the Commission approve Gulf's request for recovery of compliance costs relating to the Clean Air Interstate Rule and the Clean Air Mercury Rule as a project that qualifies for recovery through the ECRC

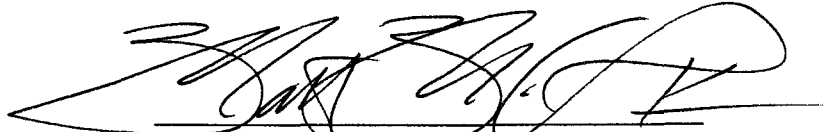
OPC suggests in its position on these issues that the Commission should not consider the issues in this proceeding but should require FPL and Gulf to file a separate petition for approval of their CAIR/CAMR projects. According to OPC the "truncated" nature of the yearly ECRC proceedings prohibits careful evaluation of complex and costly compliance activities. FPL and Gulf respond that they have complied with established Commission procedures for requesting approval of proposed projects in the ECRC docket.

Upon review, I find that these issues shall be addressed in this proceeding. This decision recognizes that the companies filed their requests for cost recovery consistent with current Commission procedure, which contemplates the filing of requests for approval of new environmental compliance activities in the yearly ECRC docket. On a going forward basis the Commission could revise this procedure if it sees fit, and the companies would have notice that the procedures had changed. At present, however, these issues should be addressed now.

It is therefore,

ORDERED by Commissioner Matthew M. Carter II, 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 Matthew M. Carter II, as Prehearing Officer, this 2nd day of November, 2006.



MATTHEW M. CARTER II
Commissioner and Prehearing Officer

(SEAL)

MCB

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.