

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition to recover natural gas storage project costs through fuel cost recovery clause, by Florida Power & Light Company. DOCKET NO. 060362-EI
ORDER NO. PSC-06-0921-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:

R. WADE LITCHFIELD, ESQUIRE, and JOHN T. BUTLER, ESQUIRE, 700 Universe Boulevard, Juno Beach, Florida 33408
On behalf of FLORIDA POWER & LIGHT COMPANY (FPL).

MICHAEL B. TWOMEY, SR., ESQUIRE, P. O. Box 5256, Tallahassee, Florida 32314-5256
On behalf of AARP (AARP).

JOHN W. MCWHIRTER, JR., ESQUIRE, McWhirter, Reeves & Davidson, P.A., 40 North Tampa Street, Suite 2450, Tampa, Florida 33601-3350
On behalf of the FLORIDA INDUSTRIAL POWER USERS GROUP (FIPUG).

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 the FLORIDA RETAIL FEDERATION (FRF).

CHARLES J. CRIST, JR., ESQUIRE, JACK SHREVE, ESQUIRE, and CECILIA BRADLEY, ESQUIRE, Office of the Attorney General, The Capitol - PL01, Tallahassee, Florida 32399-1050
On behalf of the Citizens of Florida (AG).

CHARLES J. BECK, ESQUIRE, PATRICIA A. CHRISTENSEN, ESQUIRE and JOSEPH A. McGLOTHLIN, 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).

LISA C. BENNETT, ESQUIRE, and WM. COCHRAN KEATING, IV, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the FLORIDA PUBLIC SERVICE COMMISSION (STAFF).

DOCUMENT NUMBER-DATE

10152 NOV-28

FPSC-COMMISSION CLERK

PREHEARING ORDER

I. CASE BACKGROUND

As part of the continuing fuel and purchased power adjustment and generating performance incentive clause proceedings, an administrative hearing will be held by the Public Service Commission on November 6-8, 2006. By Order No. PSC-06-0207-PCO-EI, issued September 21, 2006, the cost recovery issues concerning the storage of natural gas, were consolidated with Docket No. 060001-EI, for purposes of evidentiary hearing. The Commission will address those issues listed in this prehearing order.

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

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
G. Yupp	FPL	1A, 1B, 1C, 1D
K.M. Dubin	FPL	1A, 1B, 1C, 1D
Patricia W. Merchant	OPC	1A, 1B, 1C, 1D
<u>Rebuttal</u>		
G. Yupp	FPL	1A, 1B, 1C, 1D
K.M. Dubin	FPL	1A, 1B, 1C, 1D

VII. BASIC POSITIONS

FPL: FPL's participation in the MoBay and Bay Gas gas storage facilities will substantially increase FPL's ability to hedge the physical supply of natural gas, resulting in a significant increase in system reliability and a reduction in natural gas volatility. As a physical hedge, the prudently incurred costs associated with these gas storage projects are recoverable through the FCR Clause pursuant to the Proposed Resolution of Issues (the "Hedging Resolution") approved by the Commission in Order No. PSC-02-1484-FOF-EI, dated October 30, 2002. Recovery of gas storage project costs through the FCR Clause is consistent with FPL's 2005 Rate Case Stipulation and the stipulation approved by the Commission in Order No. PSC-05-1252-FOF-EI, Docket No. 050001-EI, dated December 23, 2005, which permitted FPL to recover hedging costs through the FCR Clause throughout the term of the 2005 Rate Case Stipulation. In addition, the monthly storage reservation charge, injection/ withdrawal charges, and insurance charges are also conventional gas transportation costs that are recoverable through the FCR Clause pursuant to Commission Order No. 14546, Docket No. 850001-EI-B, dated July 8, 1985.

AARP: AARP agrees with the Office of Public Counsel's statement of basic position.

FIPUG: FPL is a subsidiary of FPL Group which also owns and operates an energy trading subsidiary. Before imposing any costs on FPL's retail customers for gas storage it should be proven that the gas is dedicated to the retail customers and not available for opportunity sales into the wholesale market unless the wholesale sale includes an equitable share of the storage costs and all profits from the sales flow directly to retail consumers through a reduction in fuel costs. FPL is currently operating under a base rate freeze which places a strong incentive on the utility to shift costs normally allocated to base rates into cost recovery clauses. Carrying costs on stored gas inventory is a frozen base rate item and should not be added to retail consumer fuel costs. If the gas is held exclusively for retail customers storage operating costs could logically be collected through the fuel charge.

FRF: The Florida Retail Federation agrees with the statement of basic position set forth by the Office of Public Counsel, representing the Citizens of the State of Florida.

AG: The Attorney General's Office agrees with the Office of Public Counsel's statement of basic position.

OPC: A Firm Storage Monthly Demand Charge based on the amount of storage space reserved; a variable Injection and Withdrawal Charge based on the gas injection and withdrawal from storage; and a Fuel Charge calculated on a percentage of all volumes of gas received for injection are appropriate for inclusion in the fuel clause. On the other hand, carrying costs of natural gas inventory are currently and appropriately recovered through base rates.

Base gas associated with natural gas storage should be amortized over the life of the 15-year gas storage contract with the annual amortization expensed through the fuel docket. However, inclusion of the carrying costs on the MoBay and Bay Gas inventory balances and the unamortized balance of MoBay base gas in the fuel clause are inappropriate.

The estimated \$11 million in annual carrying charges are not appropriate to be recovered through the fuel clause for several reasons. First, these costs are carrying costs on fuel inventory, which are typically and historically base rate items and, as such, inappropriate to include in the fuel clause. Second, these costs do not result in any fuel savings, nor are they volatile or related to inventory adjustments, as required by Order No. 14546. Third, the physical hedging costs allowed by the Hedging Order were hedging transaction costs or incremental operating and maintenance expenses. The Hedging Order did not provide for rate of return components on fuel inventory to be recovered through the fuel docket. Finally, requesting recovery of costs which would typically and historically be recovered in base rates violates the 2005 Rate Case Settlement approved by the Commission.

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.

VIII. ISSUES AND POSITIONS

ISSUE 1A: STIPULATED (See Section X)

ISSUE 1B: Should the Commission approve cost recovery through the fuel clause by Florida Power & Light Company for the following natural gas storage project costs and charges at both the MoBay storage facility and the Bay Gas storage facility: *base gas charges*?

FPL: Yes. Base gas is required in order to maintain pressure in a gas storage facility. Because gas storage is a form of physical hedging, the cost of base gas is a hedging-related cost that is properly recoverable through the FCR Clause.

At the Bay Gas facility, all base gas is provided by Bay Gas. FPL compensates Bay Gas for FPL's share of the base gas as part of the monthly storage reservation charge. The parties to this docket have stipulated that monthly storage reservation charges are properly recoverable through the FCR Clause.

FPL could have compensated MoBay for base gas as part of the monthly storage reservation charge as well, but negotiated to have the base gas charge separately stated and to have the alternative of supplying the base gas itself. After evaluating the alternatives, FPL determined that it would be less expensive to supply the base gas and intends to take this approach to reduce the cost to it and its customers of storing gas at the MoBay facility. FPL should not be penalized for negotiating and exercising this cost-saving measure for the benefit of its customers.

Base gas is directly analogous to the "non-recoverable oil" that sits at the bottom of oil storage tanks (*i.e.*, "tank bottoms") and should be recovered in the same manner. Order No. 12645, Docket No. 830001-EI, dated November 3, 1983, authorizes utilities to charge the cost of non-recoverable oil to the FCR Clause when the oil is loaded into the tanks, with a credit to the FCR Clause when it is ultimately removed and burned. This is the same manner in which FPL proposes to recover the cost of the Base Gas it supplies for the MoBay gas storage facility: the Commission should authorize FPL to charge the cost of base gas to the FCR Clause when the base gas is initially injected into the storage facility, with a credit to the FCR Clause at the end of the storage arrangement, when the base gas is

either removed and burned or FPL receives compensation for leaving the gas in the facility. (YUPP/DUBIN)

AARP: Agree with OPC.

FIPUG: Agree with OPC.

FRF: Agree with OPC.

AG: Agree with OPC.

OPC: Base gas should be recovered over the 15-year life of the contract and amortized through the fuel clause. The decision to expense or capitalize an item should be directly matched with the period in which the cost incurred provides a benefit. Because the gas has to remain in storage for the full length of the contract and cannot be burned it should be capitalized and amortized over that same time period. Moreover, base gas correlates closer with base coal than non-recoverable oil. Base coal is used to support the coal pile and is not burned. Non-recoverable oil is removed as often as the storage tank is cleaned, and represents a minimal amount of the total capacity of the storage tank.

STAFF: No position pending testimony and evidence presented at hearing.

ISSUE 1C: **Should the Commission approve cost recovery through the fuel clause by Florida Power & Light Company for the following natural gas storage project costs and charges at both the MoBay storage facility and the Bay Gas storage facility: *carrying costs on natural gas stored in inventory?***

FPL: Yes. FPL should be permitted to recover carrying costs incurred on the quantity of gas that it stores in the Bay Gas and MoBay gas storage facilities. Because the purpose of storing gas is to effect a physical hedge, the stored gas carrying costs are appropriately considered hedging costs and recoverable through the FCR Clause.

It would be misleading and unfair to FPL to treat stored gas as “fuel inventory” that may only earn a return through inclusion in the base rate working capital determination. Such treatment would effectively deny FPL recovery of the stored gas carrying charges, because FPL’s base rate MFRs have not reflected any stored gas costs in the calculation of working capital. Moreover, stored natural gas is not “fuel inventory” in the conventional sense; storing the gas serves the purpose of hedging rather than meeting ordinary operational needs of FPL’s gas-fired plants. Gulf Power Company’s inclusion of stored gas in its 2002 base rate working capital calculation is not analogous precedent. Gulf was already storing gas at the time of its 2002 base rate proceeding, and because the Hedging Resolution had

not yet been approved at that time, there was no mechanism for recovering the carrying costs for the stored gas through the FCR Clause. Inclusion of the stored gas cost in the working capital calculation was thus Gulf's only avenue of recovery. In contrast, FPL did not begin any program of firm gas storage until after the Hedging Resolution was approved and has never included, or sought to include, any of the costs associated with gas storage in the determination of base rates.

FPL has included costs associated with the Bay Gas Storage Contract in the FCR Clause since the contract's inception in 2003. However, until now FPL has inadvertently failed to include the carrying cost associated with natural gas stored at the Bay Gas facility in the FCR Clause. Commencing upon the Commission's approval in this proceeding, FPL proposes to begin including in the FCR Clause the natural gas inventory carrying costs associated with the Bay Gas Storage Contract. FPL is not seeking recovery of these costs retroactively, even though such costs should have been appropriately recovered through the FCR Clause. (YUPP/DUBIN)

AARP: Agree with OPC.

FIPUG: Agree with OPC.

FRF: Agree with OPC.

AG: Agree with OPC.

OPC: No. The estimated \$7 million in annual carrying charges are not appropriate to be recovered through the fuel clause for several reasons. Carrying costs on fuel inventory are typically and historically base rate items and inappropriate to include in the fuel clause. These costs also do not result in any fuel savings, nor are they volatile or related to inventory adjustments, as required by Order No. 14546. Further, the physical hedging costs allowed by the Hedging Order were hedging transaction costs or incremental operating and maintenance expenses and the Hedging Order did not provide for rate of return components on fuel inventory to be recovered through the fuel docket. Finally, requesting recovery of costs which would typically and historically be recovered in base rates violates the 2005 Rate Case Settlement approved by the Commission. Accordingly, the carrying costs on gas inventory should be recovered through base rates not the fuel clause.

STAFF: No position pending testimony and evidence presented at hearing.

ISSUE 1D: Should the Commission approve cost recovery through the fuel clause by Florida Power & Light Company for the following natural gas storage project costs and charges at both the MoBay storage facility and the Bay Gas storage facility: *carrying costs on unamortized amounts of base gas?*

FPL: As discussed in FPL’s position on Issue 1-B above, the Commission should authorize FPL to charge the cost of the base gas to the FCR Clause when base gas is initially injected into the MoBay storage facility, with a credit to the FCR Clause at the end of the storage arrangement, when the base gas is either removed and burned or FPL receives compensation for leaving the gas in the facility. Under that approach, there is no need to recover carrying costs on unamortized base gas. However, if base gas costs are instead amortized and recovered through the FCR clause, the carrying charges on the unamortized balance are properly recovered through the FCR clause as a hedging cost. (YUPP/DUBIN)

AARP: Agree with OPC.

FIPUG: Agree with OPC.

FRF: Agree with OPC.

AG: Agree with OPC.

OPC: No. The carrying costs associated with the unamortized balance of base gas should be recovered through base rates, not the fuel clause. Purchasing base gas is a capital asset similar to gas inventory. Consistent with Citizen’s position in Issue 1B above, this unamortized asset is normally included in base rates as a component of the working capital calculation and included in rate base to which the company’s rate of return is applied. The carrying costs on the unamortized balance of base gas will be approximately \$4 million in first year assuming a 15-year amortization period.

STAFF: No position pending testimony and evidence presented at hearing.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Yupp	FPL	<u> </u> (GJY – 3)	Petition to Recover Natural Gas Storage Costs

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Yupp	FPL	<u> </u> (GJY - 4)	Gas Storage Costs
Merchant	OPC	<u> </u> (PWM - 1)	Curriculum Vitae
Merchant	OPC	<u> </u> (PWM - 2)	Gulf Power Company Rate Case MFRs – Docket No. 010949-EI – Schedule of Fuel Inventory

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

X. PROPOSED STIPULATIONS

ISSUE 1A: Should the Commission approve cost recovery through the fuel clause by Florida Power & Light Company for the following natural gas storage project costs and charges at both the MoBay storage facility and the Bay Gas storage facility: *monthly storage reservation charges; fuel retention and commodity charges for injection and withdrawal; and monthly insurance charges?*

POSITION: Yes. The monthly storage reservation charges, fuel retention and commodity charges for injection and withdrawal, and the monthly insurance charges should be recovered annually through the fuel clause.

XI. PENDING MOTIONS

The following motions are pending as of the issuance date of this Prehearing Order:

FPL's Motion for Temporary Protective Order dated June 1, 2006 related to OPC's request for G.J. Yupp affidavit and attachments to FPL's Petition for Approval of the MoBay Gas Storage project filed on April 28, 2006.

FPL's Motion for Temporary Protective Order dated June 15, 2006 related to OPC's request for FPL's responses to Staff's formal and informal discovery requests in Docket No. 060362-EI.

FPL's Motion for Temporary Protective Order dated October 20th, 2006 supplementing the June 15, 2006 Motion.

XII. PENDING CONFIDENTIALITY MATTERS

FPL's Request for Confidential Classification of Responses to Staff's Data Request Nos. 1 and 8 dated September 14, 2006.

XIII. POST-HEARING PROCEDURES

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 25 pages, and shall be filed at the same time.

XIV. RULINGS

The following are granted intervenor status in this docket: AARP; Florida Industrial Power Users Group; Florida Retail Federation; Office of the Attorney General; and Office of Public Counsel.


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

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.

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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)

LCB/WCK

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.