

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 080007-EI
ORDER NO. PSC-08-0716-PHO-EI
ISSUED: October 30, 2008

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on October 20, 2008, in Tallahassee, Florida, before Commissioner Katrina J. McMurrian, as Prehearing Officer.

APPEARANCES:

JOHN T. BUTLER and R. WADE LITCHFIELD, ESQUIRES, 700 Universe Boulevard, Juno Beach, Florida 33408-0420
On behalf of FLORIDA POWER & LIGHT COMPANY (FPL)

R. ALEXANDER GLENN and JOHN T. BURNETT, ESQUIRES, Progress Energy Service Company, LLC, Post Office Box 14042, St. Petersburg, Florida 33733-4042; GARY V. PERKO, ESQUIRE, Hopping, Green & Sams, P.A., P.O. Box 6526, Tallahassee, Florida 32314-6526
On behalf of Progress Energy Florida, Inc. (PEF)

JAMES D. BEASLEY and LEE L. WILLIS, ESQUIRES, Ausley & McMullen, Post Office Box 391, Tallahassee, Florida 32302
On behalf of Tampa Electric Company (TECO)

JEFFREY A. STONE, RUSSELL A. BADDERS, and STEVEN R. GRIFFIN, ESQUIRES, Beggs & Lane, Post Office Box 12950, Pensacola, Florida 32591-2950 and CHARLES A. GUYTON, ESQUIRE, of Squire, Sanders & Dempsey, L.L.P., 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301
On behalf of Gulf Power Company (Gulf)

JOHN W. MCWHIRTER, JR., ESQUIRE, McWhirter, Reeves & Davidson, P.A., 400 North Tampa Street, Suite 2450, Tampa, Florida 33602
On behalf of Florida Industrial Power Users Group (FIPUG)

PATRICIA A. CHRISTENSEN, JOSEPH A. MCGLOTHLIN, and J.R. KELLY, ESQUIRES, Office of Public Counsel, 111 W. Madison St., Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC)

KAREN S. WHITE and CAPTAIN SHAYLA L. MCNEILL, ESQUIRES, AFCESA/ULT, 139 Barnes Drive, Suite 1, Tyndall Air Force Base, Florida 32403
On behalf of the Federal Executive Agencies (FEA)

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

MARTHA CARTER BROWN and ERIK L. SAYLER, ESQUIRES, 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 continuing environmental cost recovery clause proceedings, an administrative hearing is set for November 4-6, 2008. The parties have reached agreement concerning all the issues identified for resolution at this hearing. Staff is prepared to present the panel with a recommendation at the hearing for approval of the stipulated positions set forth herein. The Commission may render a bench decision in this matter.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code (F.A.C.), this Prehearing 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 Section 366.8255, Florida Statutes (F.S.). This hearing will be governed by that statute, Chapter 120, F.S., and Rules 25-22.075 and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., 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, F.S. 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, F.S., 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, F.S., 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 confidential files of the Office of the Commission Clerk. 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), F.A.C., 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 and 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 timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. 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.

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. After all parties and Staff have had the opportunity to cross-examine the witness, 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.

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

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 as soon as possible if any 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 IX of this Prehearing Order and admitted into the record.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
*K.M. DUBIN	FPL	1, 2, 3-8, 9D, 9F
*R.R. LABAUVE	FPL	9A, 9E, 9G
E. SILAGY	FPL	9B, 9C
*WILL GARRETT	PEF	1
*DONALD R. ENNIS	PEF	1-3
*PATRICIA Q. WEST	PEF	1-3, 10A, 10E
*DALE WILTERDINK	PEF	2-3, 10E
*J. MICHAEL KENNEDY	PEF	10E
*JOSEPH MCCALLISTER	PEF	2
*DANIEL L. RODERICK	PEF	10C
*LORI CROSS	PEF	2-8, 10A-10E
*HOWARD T. BRYANT	TECO	1, 2, 3, 4, 5, 6, 7, 8
*PAUL L. CARPINONE	TECO	3, 12A
*J. O. VICK	Gulf	1, 2, 3, 4, 11A, 11C, 11E, 11G, 11I
*RHONDA J. MARTIN The prefiled testimony & exhibit of Rhonda J. Martin will be adopted by Susan Ritenour.	Gulf	
*S. D. RITENOUR (Adopts Martin)	Gulf	1, 2, 3, 4, 5, 6, 7, 8, 11B, 11D, 11F, 11H

VII. BASIC POSITIONS

The parties have proposed stipulations to all the issues in this Docket, with OPC taking no position on the issues.

VIII. ISSUES AND POSITIONS

STIPULATED

ISSUE 1: What are the final environmental cost recovery true-up amounts for the period ending December 31, 2007?

POSITION: FPL: \$3,174,379 over-recovery including interest.

PEF: \$5,553,115 over-recovery.

TECO: \$12,464,395 over-recovery.

Gulf: \$1,470,471 over-recovery.

STIPULATED

ISSUE 2: What are the estimated environmental cost recovery true-up amounts for the period January 2008 through December 2008?

POSITION: FPL: \$5,728,576 under-recovery including interest.

PEF: \$9,872,429 under-recovery.

TECO: \$7,753,224 under-recovery.

Gulf: \$2,810,290 under-recovery.

STIPULATED

ISSUE 3: What are the projected environmental cost recovery amounts for the period January 2009 through December 2009?

POSITION: FPL: \$91,077,343.

PEF: \$132,908,857.

TECO: \$50,107,327.

Gulf: \$84,761,585.

STIPULATED

ISSUE 4: What are the environmental cost recovery amounts, including true-up amounts, for the period January 2009 through December 2009?

POSITION: **FPL:** The total environmental cost recovery amount, adjusted for prior period true-ups and revenue taxes, is \$93,698,955.

PEF: \$137,326,975.

TECO: The total environmental cost recovery amount, including true-up amounts, for the period January 2009 through December 2009 is \$45,428,841 after the adjustment for taxes.

Gulf: Recovery of \$86,101,404 (excluding revenue taxes).

STIPULATED

ISSUE 5: What depreciation rates should be used to develop the depreciation expense included in the total environmental cost recovery true-up amounts for the period January 2009 through December 2009?

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 2009 through December 2009?

POSITION: **FPL:**

Energy Jurisdictional Factor	98.69261%
CP Demand Jurisdictional Factor	98.76729%
GCP Demand Jurisdictional Factor	100.00000%

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%.

TECO: The demand jurisdictional separation factor is 95.87232%. 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 96.42160%. Energy jurisdictional separation factors are calculated each month based on retail KWH sales as a percentage of projected total territorial KWH sales.

STIPULATED

ISSUE 7: What are the appropriate environmental cost recovery factors for the period January 2009 through December 2009 for each rate group?

<u>POSITION:</u>	<u>FPL:</u>	<u>Rate Class</u>	<u>Environmental Recovery Factor (\$/kWh)</u>
		RS-1/RST1	0.00094
		GS-1/GST1/WIES1	0.00095
		GSD1/GSDT1/HLFT1 (21-499 kW)	0.00084
		OS2	0.00077
		GSLD1/GSLDT1/CS1/CST1/ HLFT2 (500-1,999 kW)	0.00081
		GSLD2/GSLDT2/CS2/CST2/ HLFT3 (2,000 +)	0.00075
		GSLD3/GSLDT3/CS3/CST3	0.00071
		ISST1D	0.00067
		ISST1T	0.00068
		SST1T	0.00068
		SST1D1/SST1D2/SST1D3	0.00067
		CILC D/CILC G	0.00074
		CILC T	0.00070
		MET	0.00085
		OL1/SL1/PL1	0.00038
		SL2/GSCU-1	0.00066

PEF: The appropriate factors are as follows:

RATE CLASS	ECRC FACTORS
Residential	0.368 cents/kWh
General Service Non-Demand	
@ Secondary Voltage	0.343 cents/kWh
@ Primary Voltage	0.340 cents/kWh
@ Transmission Voltage	0.336 cents/kWh
General Service 100% Load Factor	0.291 cents/kWh

General Service Demand	
@ Secondary Voltage	0.307 cents/kWh
@ Primary Voltage	0.304 cents/kWh
@ Transmission Voltage	0.301 cents/kWh
Curtailable	
@ Secondary Voltage	0.287 cents/kWh
@ Primary Voltage	0.284 cents/kWh
@ Transmission Voltage	0.281 cents/kWh
Interruptible	
@ Secondary Voltage	0.296 cents/kWh
@ Primary Voltage	0.293 cents/kWh
@ Transmission Voltage	0.290 cents/kWh
Lighting	0.252 cents/kWh

TECO:

Rate Class

Factor at Secondary *
Voltage (¢/kWh)

RS, RST Secondary	0.229
GS, GST, TS Secondary	0.229
GSD, GSDT	
Secondary	0.228
Primary	0.225
Transmission	0.223
GSLD, GSLDT, SBF	
Secondary	0.226
Primary	0.224
Transmission	0.222
IS1, IST1, SBI1, IS3, IST3, SBI3	
Secondary	0.223
Primary	0.221
Transmission	0.219

SL, OL Secondary 0.225
 Average Factor 0.228

* The factors are subject to change pending the resolution of certain rate design modifications in TECO's pending base rate proceeding in Docket No. 080317-EI.

Gulf: See table below:

RATE CLASS	ENVIRONMENTAL COST RECOVERY FACTORS ¢/KWH
RS, RSVP	.735
GS	.729
GSD, GSDT, GSTOU	.720
LP, LPT	.703
PX, PXT, RTP, SBS	.690
OS-I/II	.686
OSIII	.710

STIPULATED

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

POSITION: The new factors should be effective beginning with the first billing cycle for January 2009, and thereafter through the last billing cycle for December 2009. The first billing cycle may start before January 1, 2009, and the last billing cycle may end after December 31, 2009, so long as each customer is billed for twelve months regardless of when the factors became effective.

COMPANY-SPECIFIC ISSUES

Florida Power & Light (FPL)

STIPULATED

ISSUE 9A: Should the Commission grant FPL's petition to modify the scope of its CWA 316(b) Phase II Rule Project?

POSITION: Yes. On July 9, 2007, several key provisions of the Clean Water Act (CWA) 316(b) Phase II Rule were remanded to the U.S. Environmental Protection Agency by the U.S. Court of Appeals for the Second Circuit for further rulemaking. On March 31, 2008, FPL petitioned the Commission for approval to modify the scope of its CWA Phase II Rule project to encompass additional activities undertaken to minimize the compliance cost impact of the Second Circuit Court of Appeals' remand of certain portions of the rule in July of 2007. FPL is requesting to recover costs associated with legal support to help limit the compliance cost impact of a revision to the Phase II Rule, which could potentially require FPL to install cumbersome and very expensive compliance technologies on the cooling water intake structures at eight FPL power plants. Initial estimates indicate that compliance costs for FPL to retrofit its eight facilities with cooling towers would exceed \$1.5 billion.

The Operation & Maintenance cost estimate for funding these additional legal and consulting activities is \$525,000. FPL has asserted that this amount of litigation and consulting costs will not be covered in FPL's base rates for 2008. FPL states that the EPA is proposing to issue a draft rule by December 2008, with a final rule published by late 2009.

FPL has engaged in similar actions, i.e. participating in the EPA rulemaking process and educating government agencies, associated with the Clean Air Interstate Rule (CAIR). Recovery of FPL's costs associated with the technical analysis and legal challenges to CAIR was approved in Order No. PSC-05-1251-FOF-EI, issued December 22, 2005, in Docket No. 050007-EI, In re: Environmental Cost Recovery Clause; and the related costs are currently being recovered through the ECRC. Utilities are expected to take steps to control the level of costs that must be incurred for environmental compliance. An effective way to control the costs of complying with a particular environmental law or regulation can be participation in the regulatory and legal processes involved in defining compliance.

The definition of environmental compliance costs in Section 366.8255, Florida Statutes, includes the estimated prudently incurred litigation costs associated with FPL's complying with Section 316(b) of Clean Water Act. FPL's petition to modify the scope of its CWA 316(b) Phase II Rule project should be granted. FPL should be allowed to recover the reasonable litigation and consulting costs associated with compliance with Section 316(b) of the Clean Water Act.

STIPULATED

ISSUE 9B: What are the environmental cost recovery amounts of FPL's three Next Generation Solar Energy Centers for the period January 2008 through December 31, 2008?

POSITION: The Commission granted FPL's petition for approval of the eligibility of three Next Generation Solar Energy Centers for recovery through the ECRC, in Order No. PSC-08-0491-PAA-EI, issued August 4, 2008, in Docket 080281-EI, In re: Petition for approval of Solar Energy Projects for Recovery through Environmental Cost Recovery Clause, by Florida Power & Light Company. The environmental cost recovery amount of \$115,688 in return on investment for capital costs associated with FPL's three Next Generation Solar Energy Centers is reasonable for the period January 2008 through December 31, 2008.

STIPULATED

ISSUE 9C: What are the environmental cost recovery amounts of FPL's three Next Generation Solar Energy Centers for the period January 2009 through December, 2009?

POSITION: The Commission granted FPL's petition for approval of the eligibility of three Next Generation Solar Energy Centers for recovery through the ECRC, in Order No. PSC-08-0491-PAA-EI, issued August 4, 2008, in Docket 080281-EI, In re: Petition for approval of Solar Energy Projects for Recovery through Environmental Cost Recovery Clause, by Florida Power & Light Company. The environmental cost recovery amounts of \$24,521,316 in return on investment for capital costs, and \$487,475 for operations and maintenance costs (totalling \$25,008,791) associated with FPL's three Next Generation Solar Energy Centers are reasonable for the period January 2009 through December, 2009.

STIPULATED

ISSUE 9D: How should the costs associated with the three Next Generation Solar Energy Centers be allocated to the rate classes?

POSITION: Capital costs for the three Next Generation Solar Energy Centers should be allocated to the rate classes on an average 12 CP demand and 1/13th energy basis. Operating and maintenance costs should be allocated to the rate classes on an average 12 CP demand basis.

STIPULATED

ISSUE 9E: Should FPL be allowed to recover the costs associated with its proposed Greenhouse Gas Reduction Program?

POSITION: Yes. The Florida Climate Protection Act, section 403.44, Florida Statutes, requires major GHG emitters to register and report GHG emissions. It also requires FDEP to implement a GHG Cap and Trade program to address required reductions. The Act also includes provisions allowing recovery of the costs and expenses prudently incurred to comply with the Act and FDEP's rule through the ECRC clause.

FPL should be allowed to recover costs, beginning in 2009, associated with participation in the Climate Registry, including the development of a GHG reporting and tracking system.

STIPULATED

ISSUE 9F: How should the costs associated with the Greenhouse Gas Reduction Program be allocated to the rate classes?

POSITION: Capital costs for the Greenhouse Gas (GHG) Reduction Program should be allocated to the rate classes on an average 12 CP demand and 1/13th energy basis. Operating and maintenance costs should be allocated to the rate classes on an energy basis.

STIPULATED

ISSUE 9G: Should FPL continue to recover Capital and O&M costs associated with its CAVR, CAIR and CAMR compliance projects in light of the vacatur of CAMR and potential vacatur of CAIR?

POSITION: Yes. It is prudent and necessary for FPL to continue these projects. On July 11, 2008 the D.C. Circuit Court of Appeals vacated CAIR in its entirety and remanded it to EPA for further action consistent with the court's opinion. CAIR will, however, remain in effect until the court issues its mandate. On September 24, 2008, EPA and other parties petitioned for rehearing of the D.C. Circuit's decision. On February 2, 2008 the D.C. Circuit Court of Appeals vacated EPA's CAMR. The vacatur became effective with the issuance of the court's mandate on March 14, 2008. FPL's CAIR, CAMR and CAVR compliance plans were approved in Order No. PSC-07-0922-FOF-EI, issued on November 16, 2007, in Docket 070007-EI, In re: Environmental Cost Recovery Clause. Per that order, FPL updated its compliance projects on April 2, 2008, in light of the vacated CAMR. In its August 4, 2008, Estimated True-up filing and August 29 2008, Projection filing, FPL further updated the compliance projects in light of the potential vacatur of CAIR.

FPL also has obligations to comply with environmental requirements other than CAIR and CAMR that include: (1) the Clean Air Visibility Rule (CAVR); (2) the 8-hours Ozone National Ambient Air Quality Standards (NAAQS); and (3) the Georgia Multi-Pollutant Rule that applies to FPL Co-owned Plant Scherer. FPL's updated plans appear reasonable at this time.

FPL shall file, as part of its annual ECRC final true-up testimony or as a separate filing if necessary, a review of the efficiency of its CAIR and CAMR and CAVR plans, and the cost-effectiveness of its retrofit options for each generating unit in relation to expected changes in environmental regulations and ongoing federal CAIR legal challenges. The reasonableness and prudence of individual expenditures, and the prudence of future decisions on the compliance plans made

in light of subsequent developments, shall continue to be subject to the Commission's review in future proceedings on these matters.

Progress Energy Florida (PEF)

STIPULATED

ISSUE 10A: Should PEF be allowed to recover the costs associated with its proposed Crystal River Thermal Discharge Compliance Project?

POSITION: Yes. By Order No. PSC-07-0722-FOF-EI, issued September 5, 2007, in Docket No. 060162, In re: Petition by progress Energy Florida, Inc. for approval to recover modular cooling tower costs through the Environmental Cost Recovery Clause, the Commission approved recovery of costs associated with the installation and operation of leased Modular Cooling Towers to maintain compliance with thermal discharge limits in the FDEP industrial wastewater discharge permit for Crystal River Units 1, 2 and 3 (CR1,2&3). PEF has continued to evaluate the long term nature and extent of the issue associated with increased inlet water temperatures that triggered the need for additional cooling capacity to maintain compliance with its FDEP permit while minimizing derates of CR1 and 2. The Project's study phase recommendation is to install a 12 cell circular cooling tower and expand the number of Helper Cooling Tower cells because such a permanent solution makes more sense from both a technical and financial perspective, compared to continuation of the current lease. PEF should be permitted to recover the capital and operating costs it will incur in implementing a permanent solution to ensure thermal discharge compliance. The costs for this project meet the requirements of Section 366.8255 for recovery through the ECRC, and they are not recovered in base rates or through any other cost recovery mechanism.

STIPULATED

ISSUE 10B: How should the newly proposed environmental costs for the Crystal River Thermal Discharge Compliance Project be allocated to the rate classes?

POSITION: Operating and maintenance costs should be allocated on an energy basis and capital costs should be allocated on a demand basis.

STIPULATED

ISSUE 10C: Should the Commission approve PEF's request for recovery through the Environmental Cost Recovery Clause of costs for its Greenhouse Gas Inventory and Reporting Program?

POSITION: Yes. The Florida Climate Protection Act, section 403.44, Florida Statutes, requires major GHG emitters to register and report GHG emissions. It also requires FDEP to implement a GHG Cap and Trade program to address required reductions. The Act also includes provisions allowing recovery of the costs and

expenses prudently incurred to comply with the Act and FDEP's rule through the ECRC clause.

PEF should be allowed to recover the operating and maintenance costs incurred in 2008 associated with the GHG inventory and reporting project, including training and inventory development. PEF should also be allowed to recover the operations and maintenance costs associated with the GHG inventory and reporting project, including continued inventory development, third party verification and reporting to FDEP projected for the period January 2009 through December, 2009. The costs for this program meet the requirements of Section 366.8255 for recovery through the Environmental Cost Recovery Clause.

STIPULATED

ISSUE 10D: How should the costs of the Greenhouse Gas Inventory and Reporting Program be allocated to the rate classes?

POSITION: Capital costs for the Greenhouse Gas Inventory and Reporting Program should be allocated to the rate classes on an average 12 CP demand and 1/13th energy basis. Operating and maintenance costs should be allocated to the rate classes on an energy basis.

STIPULATED

ISSUE 10E: Should PEF continue to recover Capital and O&M costs associated with its CAVR, CAIR and CAMR compliance projects in light of the vacatur of CAMR and potential vacatur of CAIR?

POSITION: Yes. It is prudent and necessary for PEF to continue these projects. PEF's CAIR, CAMR and CAVR compliance plans were approved by the Commission in Order No. PSC-07-0922-FOF-EI, issued on November 16, 2007, in Docket 070007-EI, In re: Environmental Cost Recovery. On July 11, 2008, the D.C. Circuit Court of Appeals vacated CAIR in its entirety and remanded it to the EPA for further action consistent with the court's opinion. CAIR will, however, remain in effect until the court issues its mandate. On February 2, 2008 the D.C. Circuit Court of Appeals vacated CAMR. The vacatur became effective with the issuance of the court's mandate on March 14, 2008.

PEF has obligations to comply with environmental requirements other than CAIR and CAMR that include: (1) the Clean Air Visibility Rule (CAVR); and (2) the 8-hours Ozone National Ambient Air Quality Standards (NAAQS).

On April 2, 2008, PEF filed its Review of Integrated Clean Air Compliance Plan in light of the vacatur of CAMR. PEF's updated Integrated Clean Air Compliance Plan represents the most cost-effective alternative for achieving and maintaining compliance with CAIR, CAVR, and other environmental requirements. PEF shall file as part of its true-up testimony in the Environmental Cost Recovery Clause a yearly review of the efficiency of its plan and the cost-

effectiveness of PEF's retrofit options for each generating unit in relation to expected changes in environmental regulations.

Gulf Power Company (Gulf)

STIPULATED

ISSUE 11A: Should Gulf be allowed to recover the costs associated with its proposed Plant Smith SPCC Compliance Project?

POSITION: Yes. The Plant Smith SPCC project is required as a result of the revisions to Title 40 Code of Federal Regulation (CFR) Part 112.8(c), which is commonly referred to as the Spill Prevention Control Countermeasures (SPCC) regulation. Facilities that were in operation on or before August 16, 2002, are required to amend and implement their SPCC plans in accordance with the new regulations no later than July 1, 2009. As a result, Plant Smith will modify the drum storage containment areas and install secondary containment for a small fuel tank. Gulf should be allowed to recover prudently incurred costs associated with this proposed SPCC Compliance Project.

STIPULATED

ISSUE 11B: How should the costs associated with the Plant Smith SPCC Compliance Project be allocated to the rate classes?

POSITION: Capital costs for the Plan Smith SPCC Compliance Project should be allocated to the rate classes on an average 12 CP and 1/13 Average Demand basis.

STIPULATED

ISSUE 11C: Should Gulf be allowed to recover the costs associated with its proposed Plant Crist Water Conservation Project?

POSITION: Yes. This project is the additional part of the water conservation measures at Plant Crist that the Commission approved for cost recovery in Order No. PSC-05-1251-FOF-EI, issued December 22, 2005, in Docket No. 050007, In re: Environmental Cost Recovery Clause. The Northwest Florida Water Management District Individual Water Use Permit No. 19850074 issued January 27, 2005 requires Plant Crist to implement measures to increase water conservation and efficiency at the facility. Gulf has entered into negotiations with Emerald Coast Utilities Authority to utilize reclaimed water from their new wastewater treatment plant. This water use will increase groundwater and surface water conservation as require in the Consumptive Use Permit. The newly proposed capital project will include the necessary engineering and infrastructure for Gulf to connect to the local reclaimed water source. Gulf shall be allowed to recover prudently incurred costs associated with the Plan Crist Water Conservation Project.

STIPULATED

ISSUE 11D: How should the costs associated with the Plant Crist Water Conservation Project be allocated to the rate classes?

POSITION: The proposed capital and operation and maintenance costs associated with this project should be allocated to the rate classes on a 12 CP and 1/13 Average Demand basis.

STIPULATED

ISSUE 11E: Should Gulf be allowed to recover the costs associated with its proposed Impaired Waters Rule (IWR) Project?

POSITION: Yes. The Impaired Water Rule (IWR) adopted by the Environmental Regulation Commission in 2001, Chapter 62-203, Florida Administrative Code, calls for the evaluation of whether waters meet their designed uses based upon specific criteria. The FDEP has proposed listing waters in watersheds surrounding Gulf's generating facilities for nutrients and mercury. The IWR project will enable Gulf to conduct necessary modeling and evaluations to determine if a permitted discharge will contribute to a water body listing and whether additional wastewater reductions are required to meet new total daily maximum load requirements. GULF should be allowed to recover prudently incurred costs associated with the IWR Project.

STIPULATED

ISSUE 11F: How should the costs associated with the IWR Project be allocated to the rate classes?

POSITION: The operation and maintenance costs associated with this project should be allocated to the rate classes on a 12 CP and 1/13 Average Demand basis.

STIPULATED

ISSUE 11G: Should Gulf be allowed to recover the costs associated with its proposed Annual Climate Registry Project?

POSITION: Yes. The Florida Climate Protection Act, section 403.44, Florida Statutes, requires major GHG emitters to register and report GHG emissions. It also requires FDEP to implement a GHG Cap and Trade program to address required reductions. The Act also includes provisions allowing recovery of the costs and expenses prudently incurred to comply with the Act and FDEP's rule through the ECRC clause.

Gulf should be allowed to recover prudently incurred costs associated with joining the Climate Registry during 2009, as well as future expenses for monitoring and reporting GHG emissions.

STIPULATED

ISSUE 11H: How should the costs associated with the Annual Climate Registry Project be allocated to the rate classes?

POSITION: Capital costs for the Annual Climate Registry Project should be allocated to the rate classes on an average 12 CP demand and 1/13th energy basis. Operating and maintenance costs should be allocated to the rate classes on an energy basis.

STIPULATED

ISSUE 11I: Should Gulf continue to recover Capital and O&M costs associated with its CAVR, CAIR and CAMR compliance projects in light of the vacatur of CAMR and potential vacatur of CAIR?

POSITION: Yes. It is prudent and necessary for Gulf to continue these projects. On July 11, 2008 the D.C. Circuit Court of Appeals vacated CAIR in its entirety and remanded it to the EPA for further action consistent with the court's opinion. CAIR will, however, remain in effect until the court issues its mandate. On February 2, 2008 the D.C. Circuit Court of Appeals vacated CAMR. The vacatur became effective with the issuance of the court's mandate on March 14, 2008.

Gulf has obligations to comply with environmental requirements other than CAIR and CAMR that include: (1) the Clean Air Visibility Rule (CAVR); (2) the 8-hours Ozone National Ambient Air Quality Standards (NAAQS); and (3) the Mississippi Regional Haze State Implementation Plan (SIP) which applies to Plant Daniel.

On September 18, 2008, Gulf filed its Environmental Compliance Program Update in light of the vacatur of CAMR and the potential vacatur of CAIR. Gulf's Updated Program represents the most cost-effective alternative for achieving and maintaining compliance with CAVR, and with CAIR, which remains in effect at this time, and the NAAQs, Mississippi SIP and related regulatory requirements. It is reasonable for Gulf to continuing to recover prudently incurred costs to implement the program. Gulf shall file as part of its true-up testimony in the Environmental Cost Recovery Clause a yearly review of the efficiency of its program and the cost-effectiveness of Gulf's retrofit options for each generating unit in relation to expected changes in environmental regulations.

Tampa Electric Company (TECO)

STIPULATED

ISSUE 12A: Should TECO continue to recover Capital and O&M costs associated with its CAVR, CAIR and CAMR compliance projects in light of the vacatur of CAMR and potential vacatur of CAIR?

POSITION: Yes. To honor its Clean Air Act Settlement and Consent Decree with the EPA, TECO must continue its emission control projects. It is reasonable for TECO to continue to recover prudently incurred costs associated with these environmental compliance projects.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
	<u>Direct</u>		
K.M. DUBIN	FPL	KMD-1	Appendix I Environmental Cost Recovery Final True-up January - December 2007 Commission Forms 42-1A through 42-8A
K.M. DUBIN	FPL	KMD-2	Appendix I: Environmental Cost Recovery Estimated/Actual Period January-December 2008 Commission Forms 42-1E through 42-8E
K.M. DUBIN	FPL	KMD-3	Appendix I: Environmental Cost Recovery Projections January – December 2009 Commission Forms 42-1P through 42-7P
R.R. LABAUVE	FPL	RRL-1	FPL’s Supplemental CAIR/CAMR/CAVR Filing
R.R. LABAUVE	FPL	RRL-2	Executive Order 07-127
R.R. LABAUVE	FPL	RRL-3	HB 7135
E. SILAGY	FPL	ES-1	Martin Solar Project Milestones
E. SILAGY	FPL	ES-2	Desoto Solar Project Milestones
E. SILAGY	FPL	ES-3	Space Coast Solar Project Milestones

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
WILL GARRETT	PEF	WG-1	PSC Forms 42-1A through 42-8A, January 2007 – December 2007
WILL GARRETT	PEF	WG-2	Capital Program Detail January 2008 – December 2008
PATRICIA Q. WEST (Confidential)	PEF	PQW-1	Review of PEF's Integrated Clean Air Compliance Plan - 4/2/08
DALE WILTERDINK	PEF	DW-1	Crystal River Project Organizational Structure
LORI CROSS	PEF	LC-1	PSC Forms 42-1E through 42-8E, January 2008 – December 2008
LORI CROSS	PEF	LC-2	Capital Program Detail January 2008 – December 2008
LORI CROSS	PEF	LC-3	PSC Forms 42-IP through 42-7P, January 2009 – December 2009
LORI CROSS	PEF	LC-4	Capital Program Detail January 2009 – December 2009
HOWARD T. BRYANT	TECO	HTB-1	Final Environmental Cost Recovery Commission Forms 42-1A through 42-8A for the period January 2007 through December 2007
HOWARD T. BRYANT	TECO	HTB-2	Environmental Cost Recovery Commission Forms 42-1E through 42-8E for the period January 2008 through December 2008

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
HOWARD T. BRYANT	TECO	HTB-3	Environmental Cost Recovery Commission Forms 42-1P through 42-7P for the period January 2009 through December 2009
JAMES O. VICK	Gulf	JOV-1	FDEP Letter of Clarification
JAMES O. VICK	Gulf	JOV-2	2009 Projection Filing – Plant Crist Consumptive Use Permit; NFWMD correspondence to Gulf Power dated July 3, 2008
RHONDA J. MARTIN <small>The prefiled testimony & exhibit of Rhonda J. Martin will be adopted by Susan Ritenour.</small>	Gulf	RJM-1	Calculation of Final True-up 1/07 – 12/07
S. D. RITENOUR (Adopts Martin)	Gulf	SDR-2	Calculation of Estimated True-up 1/08 – 12/08
S. D. RITENOUR (Adopts Martin)	Gulf	SDR-3	Calculation of Projection 1/09 - 12/09

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

X. PROPOSED STIPULATIONS

All issues in this Docket have been stipulated.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

FPL has a pending request for confidential classification of certain information provided pursuant to Audit No. 08-029-4-1, filed in this docket on August 1, 2008.

PEF has three pending requests for confidential classification.

Gulf Power has one pending request for confidential classification.

These confidentiality matters will be addressed by separate order.

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 this 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, F.A.C., 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

FEA's Petition to Intervene, which is unopposed, is granted.


FPL's Request for Official Notice of Petitions for Rehearing of the D.C. Circuit Opinion Vacating CAIR on October 1, 2008, is granted.

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

It is therefore,

ORDERED by Commissioner Katrina McMurrian, 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 Katrina J. McMurrian, as Prehearing Officer, this 30th day of October, 2008.


KATRINA J. MCMURRIAN
Commissioner and Prehearing Officer

(S E A L)

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(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 Office of Commission Clerk, 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.