

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy conservation cost recovery  
clause.

DOCKET NO. 100002-EG  
ORDER NO. PSC-11-0039-PHO-EG  
ISSUED: January 21, 2011

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on January 19, 2011, in Tallahassee, Florida, before Lisa Polak Edgar, as Prehearing Officer.

APPEARANCES:

R. WADE LITCHFIELD, JOHN T. BUTLER, and KEN RUBIN, ESQUIRES,  
700 Universe Boulevard, Juno Beach, Florida 33408-0420  
On behalf of Florida Power & Light Company (FPL).

PATRICIA A. CHRISTENSEN, Associate Public Counsel, and CHARLES  
BECK, Deputy Public Counsel, Office of Public Counsel, c/o The Florida  
Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-  
1400  
On behalf of the Citizens of the State of Florida (OPC).

JON MOYLE, JR, and VICKI GORDON KAUFMAN, ESQUIRES, 118 North  
Gadsden Street, Tallahassee, Florida 32312 and JOHN W. McWHIRTER, JR.,  
ESQUIRE, McWhirter & Davidson, P.A., P.O. Box 3350, Tampa, Florida 33601-  
3350  
On behalf of the Florida Industrial Power Users Group (FIPUG).

LEE ENG TAN and KATHERINE E. FLEMING, ESQUIRES, Florida Public  
Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-  
0850  
On behalf of the Florida Public Service Commission (STAFF).

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public  
Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-  
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Advisor to the Florida Public Service Commission.

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

**PREHEARING ORDER**  
**FLORIDA POWER & LIGHT COMPANY**

I. CASE BACKGROUND

As part of the Commission's continuing energy conservation cost recovery proceedings, an administrative hearing is set for January 26, 27, and 28, 2011. The parties have reached agreement concerning all 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, 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 Chapter 366, Florida Statutes (F.S.), including Chapter 366.04, 366.05, and 366.06, F.S. This hearing will be governed by said Chapter and Chapters 25-22, and 28-106, F.A.C.

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 Office of Commission Clerk's 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), 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.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

As a result of discussions at the prehearing conference, each witness whose name is preceded by an asterisk (\*) will be 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 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 IX of this Prehearing Order and be admitted into the record.

| <u>Witness</u>  | <u>Proffered By</u> | <u>Issues #</u> |
|-----------------|---------------------|-----------------|
| <u>Direct</u>   |                     |                 |
| *Terry J. Keith | FPL                 | 1, 3, 4         |
| *Anita Sharma   | FPL                 | 2               |

VII. BASIC POSITIONS

**FPL:** FPL's proposed Conservation Cost Recovery Factors for the January 2011 through December 2011 recovery period and true-up amounts for the prior periods should be approved.

**OPC:** No position.

**FIPUG:** No position.

**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

**PROPOSED STIPULATION**

**ISSUE 1:** What are the final conservation cost recovery true-up amounts for the period January 2009 through December 2009?

**POSITION:**

|                             |             |               |
|-----------------------------|-------------|---------------|
| Florida Power & Light (FPL) | \$5,558,900 | Underrecovery |
|-----------------------------|-------------|---------------|

**OPC:** No position.

**FIPUG:** No position.

**PROPOSED STIPULATION**

**ISSUE 2:** What are the total conservation cost recovery amounts to be collected during the period January 2011 through December 2011?<sup>1</sup>

**POSITION:**

|                             |               |
|-----------------------------|---------------|
| Florida Power & Light (FPL) | \$234,764,765 |
|-----------------------------|---------------|

**OPC:** No position.

**FIPUG:** No position.

**PROPOSED STIPULATION**

**ISSUE 3:** What are the conservation cost recovery factors for the period January 2011 through December 2011?

**POSITION:**

| <b>FPL</b> | <b>Rate Class</b>                         | <b>ECCR Factor</b> |
|------------|---|--------------------|
|            | RS1/RST1                                  | 0.244 cents/Kwh    |
|            | GS1/GST1                                  | 0.237 cents/Kwh    |
|            | GSD1/GSDT1/HLTF (21-499kW)                | 0.78 \$/KW         |
|            | OS2                                       | 0.228 cents/Kwh    |
|            | GSLD1/GSLDT1/CS1/CST1/HLTF (500-1,999 kW) | 1.00 \$/KW         |
|            | GSLD2/GSLDT2/CS2/CST2/HLTF (2,000+kW)     | 1.00 \$/KW         |

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<sup>1</sup> Amounts include taxes.

| <b>FPL</b> | <b>Rate Class</b>     | <b>ECCR Factor</b> |
|------------|-----------------------|--------------------|
|            | GSLD3/GSLDT3/CS3/CST3 | 1.02 \$/KW         |
|            | CILC D/CILC G         | 1.09 \$/KW         |
|            | CILC T                | 1.11 \$/KW         |
|            | MET                   | 0.96 \$/KW         |
|            | OL1/SL1/PL1           | 0.144 cents/Kwh    |
|            | SL2, GSCU1            | 0.190 cents/Kwh    |

| <b>FPL</b> | <b>Rate Class</b>    | <b>Demand Charge (\$/KW)</b> | <b>Sum of Daily Demand Charge (\$/KW)</b> |
|------------|----------------------|------------------------------|---|
|            | ISST1D               | \$0.11                       | \$0.05                                    |
|            | ISST1T               | \$0.11                       | \$0.05                                    |
|            | SST1T                | \$0.11                       | \$0.05                                    |
|            | SST1D1/SST1D2/SST1D3 | \$0.11                       | \$0.05                                    |

**OPC:** No position.

**FIPUG:** No position.

**PROPOSED STIPULATION**

**ISSUE 4:** What should be the effective date of the new conservation cost recovery factors for billing purposes?

**POSITION:** The revised conservation cost recovery factors should become effective with the first billing cycle starting 30 days after the Commission renders its decision. Thereafter, FPL's conservation cost recovery factors should remain in effect until modified by the Commission.

Staff believes that the currently approved factors should remain in effect until such time as the Commission renders its decision in this docket. FPL may make the appropriate adjustments in its 2011 actual/estimated true-up calculation to reflect 2011 actual revenues and actual expenses affected by the delayed implementation of the 2011 conservation cost recovery factors.

**OPC:** No position.

**FIPUG:** No position.

IX. EXHIBIT LIST

| <u>Witness</u>              | <u>Proffered By</u> |      | <u>Description</u>                      |
|-----------------------------|---------------------|------|---|
|                             | <u>Direct</u>       |      |   |
| Terry J. Keith/Anita Sharma | FPL                 | AS-1 | Schedules CT-1 through CT-6, Appendix A |
| Terry J. Keith/Anita Sharma | FPL                 | AS-2 | Schedules C-1 through C-2               |
| Terry J. Keith/Anita Sharma | FPL                 | AS-3 | Schedules C-1 through C-5               |

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

X. PROPOSED STIPULATIONS

There are proposed stipulations on all issues, noting that OPC and FIPUG have taken no position.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are five pending confidentiality requests:

- 1) FPL's Request for Confidential Classification of Certain Materials Provided in Audit No. 09-350-4-1 (Document No. 05373-10).
- 2) FPL's Second Request for Extension of Confidential Classification of Certain Materials Provided in Audit No. 06-040-4-1 (Document No. 08082-10).
- 3) FPL's Fourth Request for Extension of Confidential Classification of Certain Materials Provided in Audit No. 02-064-4-1 (Document No. 08087-10).
- 4) FPL's First Request for Extension of Confidential Classification of Certain Materials Provided in Audit No. 08-037-4-2 (Document No. 08091-10).
- 5) FPL's Request for Confidential Classification of Certain Materials Provided in Audit No. 09-028-4-1 (Document No. 01281-10). (Revised on February 25, 2010).

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

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

It is therefore,

ORDERED by Commissioner Lisa Polak Edgar, 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 Lisa Polak Edgar, as Prehearing Officer, this 21st day of January, 2011.

  
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LISA POLAK EDGAR  
Commissioner and Prehearing Officer

( S E A L )

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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 25-22.0376, 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.