

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 100007-EI  
ORDER NO. PSC-11-0042-PHO-EI  
ISSUED: January 25, 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:

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

VICKI GORDON KAUFMAN and JON C. MOYLE, JR., , ESQUIRES, Keefe, Anchors, Gordon & Moyle, P.A., 118 North Gadsden Street, Tallahassee, Florida 32312  
On behalf of the Florida Industrial Power Users Group (FIPUG)

PATRICIA A. CHRISTENSEN, CHARLIE BECK and J.R. KELLY, ESQUIRES, 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)

KAREN WHITE and CAPTAIN ALLEN JUNGELS, USAF, ESQUIRES, c/o AFLSA/JACL-ULFSC, 139 Barnes Drive, Suite 1, Tyndall Air Force Base, Florida 32403-5319  
On behalf of the Federal Executive Agencies (FEA)

MARTHA CARTER BROWN and ANNA R. WILLIAMS, 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, Assistant General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
Advisor to the Florida Public Service Commission.

DOCUMENT NUMBER DATE

00524 JAN 25 =

FPSC-COMMISSION CLERK

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

I. CASE BACKGROUND

As part of the Commission's continuing environmental cost recovery clause proceedings, the Commission has set a hearing in this docket for January 26 and 27, 2011. This Order sets forth the order of witnesses, issues and positions, list of exhibits, and other procedural matters to be addressed at the hearing.

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 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 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

Each witness whose name is preceded by an asterisk (\*) will be excused from the hearing if no Commissioners have questions for them.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
*T.J. KEITH	FPL	1-8, 9C, 9E, 9F
*R.R LABAUVE	FPL	9A, 9B, 9D, 9G

VII. BASIC POSITIONS

**FPL:** None necessary.

**FIPUG:** None.

**OPC:** None.

**FEA:** The FEA respectfully recommends that Commission review all items submitted for recovery through the environmental cost recovery clause to ensure that the criteria for recovery are met.

**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

**ISSUE 1:** What are the final environmental cost recovery true-up amounts for the period ending December 31, 2009?

**PROPOSED STIPULATION**

**POSITION**

**FPL:** \$4,500,429 over-recovery.

**ISSUE 2:** What are the estimated environmental cost recovery true-up amounts for the period January 2010 through December 2010?

**PROPOSED STIPULATION**

**POSITION**

**FPL:** \$35,720,891 over-recovery.

**ISSUE 3:** What are the projected environmental cost recovery amounts for the period January 2011 through December 2011?

**PROPOSED STIPULATION**

**POSITION**

**FPL:** \$172,374,599.

**ISSUE 4:** What are the environmental cost recovery amounts, including true-up amounts, for the period January 2011 through December 2011?

**PROPOSED STIPULATION**

**POSITION**

**FPL:** The total environmental cost recovery amount, adjusted for prior period true-ups and revenue taxes, is \$132,248,429.

**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 2011 through December 2011?

**PROPOSED STIPULATION**

**POSITION**

**FPL:** 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.

**ISSUE 6:     What are the appropriate jurisdictional separation factors for the projected period January 2011 through December 2011?**

**PROPOSED STIPULATION**

**POSITION**

<b><u>FPL:</u></b>	Retail Energy Jurisdictional Factor	98.02710%
	Retail CP Demand Jurisdictional Factor	98.03105%
	Retail GCP Demand Jurisdictional Factor	100.00000%

**ISSUE 7:     What are the appropriate environmental cost recovery factors for the period January 2011 through December 2011 for each rate group?**

**PROPOSED STIPULATION**

**POSITION**

<b><u>FPL:</u></b>	<b><u>Rate Class</u></b>	<b><u>Environmental Recovery Factor (\$/kWh)</u></b>
	RS1/RST1	.00140
	GS1/GST1	.00135
	GSD1/GSDT1/HLFT (21-499 kW)	.00121
	OS2	.00135
	GSLD1/GSLDT1/CS1/CST1/ HLFT (500-1,999 kW)	.00117
	GSLD2/GSLDT2/CS2/CST2/ HLFT (2,000 kW+)	.00106
	GSLD3/GSLDT3/CS3/CST3	.00100
	ISST1D	.00125
	ISST1T	.00077
	SST1T	.00077
	SST1D1/SST1D2/SST1D3	.00125
	CILC D/CILC G	.00104
	CILC T	.00097
	MET	.00124
	OL1/SL1/PL1	.00062
	SL2/GSCU1	.00097

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

**PROPOSED STIPULATION**

**POSITION**

The revised environmental cost recovery factors should become effective with the first billing cycle starting 30 days after the Commission renders its decision. Thereafter, FPL's environmental 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 environmental cost recovery factors.

**COMPANY-SPECIFIC ISSUES**

**ISSUE 9A:** Should FPL be allowed to recover the costs associated with its proposed St. Lucie Turtle Net - Update Project?

**PROPOSED STIPULATION**

**POSITION**

Yes. The St. Lucie Turtle Net Project was originally filed for recovery through the Environmental Cost Recovery Clause (ECRC) in Docket No. 020648-EI, on June 18, 2002, and subsequently approved through Order No. PSC-02-1421-PAA-EI, issued on October 17, 2002. The Incidental Take Statement contained in the Endangered Species Act Section 7 Biological Opinion, issued to FPL on May 4, 2001, by the National Marine Fisheries Service, limits the number of lethal turtle takings FPL is permitted at its St. Lucie Power Plant. Also, Appendix B of the Facility Operating License for St. Lucie Unit 2, which was granted to FPL by the United States Nuclear Regulatory Commission, requires FPL to maintain a specified net system and to limit lethal takes of sea turtles to prescribed levels. In 2009, an unforeseen intrusion of large quantities of algae occurred that damaged the existing net support structure. The proposed update project will create a more robust barrier structure for effectively securing the turtle net to help FPL to remain in compliance with Appendix B to the Facility Operating License. FPL expects to begin the project during the last quarter of 2010 and expects to complete the project during the last quarter of 2011. The company projects to

incur \$1.4 million of capital costs and currently there are no operating and maintenance (O&M) costs projected for these activities.

**ISSUE 9B:** Should FPL be allowed to recover the costs associated with its proposed Martin Plant Barley Swamp Iron (BBS-Iron) Project?

**PROPOSED STIPULATION**

**POSITION**

Yes. FPL's Martin Plant received a renewed Industrial Wastewater Facility Permit No. FL0030988 from the Florida Department of Environmental Protection, which included Administrative Order AO-15-TL (AO). The AO requests that FPL conduct an engineering evaluation of methods for meeting the water quality standard at the outfall of the Barley Barber Swamp (BBS), and comply with the Class III Fresh water quality standard for iron (4.8 mg/L before June 11, 2011, and 1.0 mg/L forward). Per the AO, FPL conducted an engineering evaluation at the BBS which determined that the BBS was above the allowable iron levels. The proposed BBS-Iron project will engineer and install a siphon and a new discharge piping system to turn the existing flow away from the BBS and back into the Martin Plant's cooling pond. FPL believes that the project will enable the company to remain in compliance with the new requirements set forth by the AO. FPL plans to complete the project by March 1, 2011, with projected total costs of \$255,000.

**ISSUE 9C:** How should the costs associated with FPL's proposed Martin Plant BBS-Iron Project be allocated to the rate classes?

**PROPOSED STIPULATION**

**POSITION**

Capital and O&M costs for BBS-Iron Project should be allocated to the rate classes on an average 12 CP demand basis.



**ISSUE 9D:** Should FPL be allowed to recover the costs associated with its proposed 800 MW Unit Electro Static Precipitators (ESPs) Project for complying with the proposed maximum achievable control technology (MACT) rule?

**PROPOSED STIPULATION**

**POSITION**

FPL shall be allowed to recover the reasonable and prudent costs associated with its proposed 800 MW Units Electro Static Precipitators (ESPs) Project (the “ESP Project”) for compliance with the United States Environmental Protection Agency’s (EPA’s) maximum achievable control technology (MACT) rule in the following manner and under the following conditions:

1. FPL is authorized to proceed with implementation of the ESP Project at the time that EPA issues a proposed MACT rule that has the effect of requiring ESPs at oil-fired power plants, such as FPL’s 800 MW units. FPL will consult with Staff and interested parties at the time that EPA issues the proposed MACT rule, concerning the rule’s requirement for ESPs and FPL’s decision on whether to proceed with the ESP Project pursuant to those proposed requirements.
2. During the period between EPA’s issuance of the proposed MACT rule and issuance of the final MACT rule, FPL will exclude the costs incurred for the ESP project from the ECRC-recoverable accounts and instead will be authorized to record the cost of the ESP work in non-ECRC construction accounts and accrue a return at the then-current authorized AFUDC rate on the amounts recorded in the non-ECRC construction accounts.
3. If the final MACT rule requires ESPs, then FPL would be authorized to transfer the balance of all reasonable and prudent costs from the non-ECRC construction accounts, which would include all accrued AFUDC, to ECRC-recoverable accounts and begin the normal process of ECRC recovery for those and future reasonable and prudent capital expenditures and O&M expenses associated with the ESP Project.
4. If the final MACT rule does not require ESPs, FPL will be authorized to recover the reasonable and prudent amounts expended, including the accrued AFUDC, on the ESP Project as follows:
  - a. If FPL determines, based on consultation with Staff and interested parties, that completing the first ESP installation or otherwise continuing with the ESP Project is not cost-effective for FPL and its customers and that the ESP Project should be cancelled, FPL will establish a regulatory asset for the reasonable and prudent amount that FPL had incurred and irrevocably committed to the ESP project prior to issuance of the final

MACT rule (“cancellation costs”). On the effective date of new base rates set for FPL in a general base rate proceeding, whether by Commission determination or settlement approved by the Commission, FPL will be authorized to recover the cancellation costs through such base rates by (i) amortizing the balance over five years as an expense, and (ii) including the unamortized balance in rate base and earning a return thereon at FPL’s then-current cost of capital. Accrual of AFUDC on the ESP project will cease on the date that the regulatory asset is established.

b. If FPL determines, based on consultation with Staff and interested parties, that it is cost-effective for FPL and its customers to complete the first ESP installation notwithstanding that the final MACT rule does not require ESPs, then FPL will continue to record the expenditures for the first ESP in the non-ECRC construction accounts and accrue AFUDC on the balance until the ESP is completed. At the time of completion, FPL will be authorized to (i) transfer the balance in those non-ECRC construction accounts to rate base Plant in Service accounts and (ii) include all O&M expenses associated with the first ESP in the determination of net operating income, for all surveillance and rate-setting purposes thereafter.

5. Any determination of the prudence and reasonableness of FPL’s costs for the ESP Project will be made at the time FPL seeks to recover such costs through the ECRC or base rates, depending on the circumstances described above; provided, however, that pursuant to this stipulation the prudence of FPL’s decision to proceed with the ESP Project will not be subject to further review.

6. This stipulation is entered into by the parties for the purpose of settlement and shall have no precedential value.

**ISSUE 9E: How should the costs associated with FPL’s proposed 800 MW Units ESPs Project be allocated to the rate classes?**

**PROPOSED STIPULATION**

**POSITION**

Capital costs for the Project should be allocated to the rate classes on an average 12 CP demand basis. O&M costs should be allocated to the rate classes on an energy basis.

**ISSUE 9F: Should FPL submit to the Commission monthly schedules to report the operation status of its three Next Generation Solar Energy Centers?**

**PROPOSED STIPULATION**

**POSITION**

Yes. Gathering cost and performance data as well as information pertaining to reduced fuel consumption and emission reductions resulting from the output of the solar projects is consistent with the intent of Section 366.92(1), F.S. Monthly filings by FPL would provide the most efficient means of gathering such data. Information not directly ascertainable from operating data can be manually calculated for the purposes of the monthly filing; however, staff would reserve the opportunity to pursue simulated approximations, for comparison purposes, through a discovery request each year in the ECRC proceeding, recognizing that FPL will require additional time to respond to such discovery in the event that simulated approximations are requested that cover a period of more than one month.

**ISSUE 9G: Should the Commission approve FPL's 2010 Supplemental Clean Air Interstate Rule (CAIR), Clean Air Mercury Rule (CAMR) and Clean Air Visibility Rule (CAVR) Filing?**

**PROPOSED STIPULATION**

**POSITION**

Yes. Completion of the compliance activities discussed in FPL's Supplemental CAIR/CAMR/CAVR Filing of April 1, 2010, is required by existing federal and state environmental rules and regulatory requirements for air quality control and monitoring; and the associated project costs appear reasonable and prudent. FPL shall file, as part of its annual ECRC final true-up testimony, a review of the efficacy of its CAIR/CAMR/CAVR compliance plans, and the cost-effectiveness of its retrofit options for each generating unit in relation to expected changes in environmental regulations and ongoing state and federal CAIR legal challenges. The reasonableness and prudence of individual expenditures, and FPL's decisions on the future compliance plans made in light of subsequent developments, shall continue to be subject to the Commission's review in future ECRC proceedings on these matters.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
	<u>Direct</u>		
T.J. KEITH	FPL	(TJK-1)	Appendix I Environmental Cost Recovery Final True-up January- December 2009 Commission Forms 42-1A Through 42-9A – Revised 10/13/10
T.J. KEITH	FPL	(TJK-2)	Appendix I Environmental Cost Recovery Estimated/Actual Period January – December 2010 Commission Forms 42-IE through 42-9E – Revised 10/13/10
T.J. KEITH	FPL	(TJK-3)	Appendix I Environmental Cost Recovery Projections January – December 2011 Commission Forms 42-1P through 42-8P – Revised 01/20/11
R.R. LABAUVE	FPL	(RRL-1)	Proposed Design of New Barrier Structure
R.R. LABAUVE	FPL	(RRL-2)	EPA Transport Rule Fact Sheet
R.R. LABAUVE	FPL	(RRL-3)	Environmental Protection Agency – Proposed Consent Decree, Clean Air Act Citizen Suit, October 28, 2009
R.R. LABAUVE	FPL	(RRL-4)	EPA’s January 30, 2004 proposed National Emission Standards for Hazardous Air Pollutants (NESHAP) 40 CFR Parts 60 and 63

<u>Witness</u>	<u>Proffered By</u>	<u>Description</u>
R.R. LABAUVE	FPL (RRL-5)	FPL Letter to FDEP regarding Martin Plant Industrial Wastewater Facility Permit No. FL0030988 – Administrative Order AO-15-TL – Engineering Feasibility Study Report dated July 16, 2009

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

X. PROPOSED STIPULATIONS

There are proposed stipulations for all issues. The parties join the stipulations on Issues 5, 8, 9D, and 9F. They take no position on all other issues.

XI. PENDING MOTIONS

There are no pending motions.

XII. PENDING CONFIDENTIALITY MATTERS

To date, FPL has one request for confidentiality pending on the following, which will be addressed by separate order:

- Audit No. 09-363-4-1. Filed on July 14, 2010, and revised on November 2, 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 25th day of January, 2011.

  
LISA POLAK EDGAR  
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 25-22.0376, 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.