

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 120007-EI
ORDER NO. PSC-12-0584-PHO-EI
ISSUED: October 26, 2012

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on October 17, 2012, in Tallahassee, Florida, before Commissioner Eduardo E. Balbis, as Prehearing Officer.

APPEARANCES:

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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PREHEARING ORDER

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 November 5-7, 2012. Staff is prepared to present the Commission 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 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

The parties have agreed to entering the witnesses' testimony into evidence and waiving cross examination. Since no Commissioner has questions for a witness, all witnesses have been excused from this proceeding.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
R.R. KENNEDY	FPL	1
R.R. LABAUVE	FPL	9A, 9B, 9D, 9F, 9H, 9J, 9K, 9L, 9M
T.J. KEITH	FPL	1, 2, 3-8, 9C, 9E, 9G, 9I
Patricia Q. West	PEF	1-3, 10A
Jeff Swartz	PEF	1-3, 10A
Joel Moran	PEF	2
George Hixon	PEF	3
Corey Ziegler	PEF	1-3
Will Garrett	PEF	1

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Thomas G. Foster	PEF	2-8
Howard T. Bryant	TECO	1, 2, 3, 4, 5, 6, 7, 8
Paul L. Carpinone	TECO	3
J. O. Vick	GULF	1, 2, 3, 11A
R.W. Dodd	GULF	1, 2, 3, 4, 5, 6, 7, 8

VII. BASIC POSITIONS

FPL: None necessary.

PEF: None necessary.

TECO: The Commission should approve the compliance programs described in the testimony and exhibits of Tampa Electric Witnesses Bryant and Carpinone for environmental cost recovery. The Commission should also approve Tampa Electric's calculation of its environmental cost recovery final true-up for the period January 2011 through December 2011, the actual/estimated environmental cost recovery true-up for the current period January 2012 through December 2012, and the company's projected ECRC revenue requirement and the company's proposed ECRC factors for the period January 2013 through December 2013.

GULF: It is the basic position of Gulf Power Company that the environmental cost recovery factors proposed by the Company present the best estimate of Gulf's environmental compliance costs recoverable through the Environmental Cost Recovery Clause (ECRC) for the period January 2013 through December 2013 including the true-up calculations and other adjustments allowed by the Commission.

OPC: None.

FIPUG: FIPUG maintains that the respective utilities must satisfy their burden of proof for any and all monies sought in this proceeding.

FEA: FEA's positions are preliminary and based on materials filed by the parties and on discovery. FEA's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

PCS: At this time, PCS Phosphate generally accepts and adopts the positions taken by the Florida Industrial Power Users Group ("FIPUG").

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

The following proposed stipulations have been agreed to by the companies. The interveners take no position on the issues.

PROPOSED STIPULATION

ISSUE 1: What are the final environmental cost recovery true-up amounts for the period ending December 31, 2011?

POSITION: The final environmental cost recovery true-up amounts for the period ending December 31, 2011, follow:

FPL \$976,912
PEF (\$1,688,551)
Gulf (\$5,275,632)
TECO (\$3,232,451).

PROPOSED STIPULATION

ISSUE 2: What are the actual/estimated environmental cost recovery true-up amounts for the period January 2012 through December 2012?

POSITION: The actual/estimated environmental cost recovery true-up amounts for the period January 2012 through December 2012, follow:

FPL \$7,620
PEF \$14,632,974
Gulf \$7,453,359
TECO (\$11,754,826).

PROPOSED STIPULATION

ISSUE 3: What are the projected environmental cost recovery amounts for the period January 2013 through December 2013?

POSITION: The projected environmental cost recovery amounts for the period January 2013 through December 2013, follow:

FPL \$215,032,494
PEF \$195,365,653
Gulf \$141,059,079
TECO \$86,025,744.

PROPOSED STIPULATION

ISSUE 4: What are the environmental cost recovery amounts, including true-up amounts and revenue taxes for the period January 2013 through December 2013?

POSITION: The environmental cost recovery amounts, including true-up amounts and revenue taxes for the period January 2013 through December 2013, follow:

FPL \$214,202,076
PEF \$182,552,573
Gulf \$138,981,347
TECO \$101,085,751.

PROPOSED STIPULATION

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 2013 through December 2013?

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.

PROPOSED STIPULATION

ISSUE 6: What are the appropriate jurisdictional separation factors for the projected period January 2013 through December 2013?

POSITION: The appropriate jurisdictional separation factors for the projected period January 2013 through December 2013, follow:

FPL	Retail Energy Jurisdictional Factor	98.03238%
	Retail CP Demand Jurisdictional Factor	97.97032%
	Retail 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 –70.203%
Distribution Primary demand jurisdictional factor – 99.561%
Production Demand jurisdictional factors:
Production Base – 92.885%
Production Intermediate – 72.703%
Production Peaking – 95.924%
Production A&G – 93.221%

Gulf The demand jurisdictional separation factor is 96.57346%. Energy jurisdictional separation factors are calculated each month based on retail KWH sales as a percentage of projected total territorial KWH sales.

TECO The demand jurisdictional separation factor is 100.00%. 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.

PROPOSED STIPULATION

ISSUE 7: What are the appropriate environmental cost recovery factors for the period January 2013 through December 2013 for each rate group?

POSITION: The appropriate environmental cost recovery factors for the period January 2013 through December 2013 for each rate group follow:

FPL

RATE CLASS	Environmental Cost Recovery Factor (\$/KWH)
RS1/RST1	0.00229
GS1/GST1/WIES1	0.00195
GSD1/GSDT1/HLFT1	0.00191
OS2	0.00203
GSLD1/GSLDT1/CS1/CST1/HLFT2	0.00186
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.00166
GSLD3/GSLDT3/CS3/CST3	0.00150
SST1T	0.00180
SST1D1/SST1D2/SST1D3	0.00205
CILC D/CILC G	0.00166
CILC T	0.00158
MET	0.00183
OL1/SL1/PL1	0.00089
SL2, GSCU1	0.00160
Total	0.00208

PEF

Rate Class	ECRC Factors 12CP & 1/13 AD
Residential	0.494 cents/kWh
General Service Non-Demand @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.490 cents/kWh 0.485 cents/kWh 0.480 cents/kWh
General Service 100% Load Factor	0.484 cents/kWh
General Service Demand @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.485 cents/kWh 0.480 cents/kWh 0.475 cents/kWh

Curtaillable	
@ Secondary Voltage	0.485 cents/kWh
@ Primary Voltage	0.480 cents/kWh
@ Transmission Voltage	0.475 cents/kWh
Interruptible	
@ Secondary Voltage	0.474 cents/kWh
@ Primary Voltage	0.469 cents/kWh
@ Transmission Voltage	0.465 cents/kWh
Lighting	0.476 cents/kWh

Gulf

RATE CLASS	ENVIRONMENTAL COST RECOVERY FACTORS ¢/KWH
RS, RSVP	1.253
GS	1.244
GSD, GSDT, GSTOU	1.233
LP, LPT	1.195
PX, PXT, RTP, SBS	1.167
OS-I/II	1.193
OSIII	1.214

TECO

<u>Rate Class</u>	<u>Factor (¢/kWh)</u>
RS	0.558
GS, TS	0.557
GSD, SBF	
Secondary	0.555

	Primary	0.550
	Transmission	0.544
IS		
	Secondary	0.545
	Primary	0.540
	Transmission	0.534
LS1		0.553
	Average Factor	0.556.

PROPOSED STIPULATION

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 specified environmental cost recovery cycle, and thereafter for the period January 2013 through December 2013. Billing cycles may start before January 1, 2013, and the last cycle may be read after December 31, 2013, so that each customer is billed for twelve months regardless of when the adjustment factor became effective. The new factors should continue in effect until modified by the Commission.

Company Specific Issues
Florida Power & Light (FPL)

PROPOSED STIPULATION

ISSUE 9A: Should FPL be allowed to recover the costs associated with the Manatee Temporary Heating System (MTHS) Project at Port Everglades Plant (PPE)?

POSITION: Yes. FPL is undertaking a major modernization project at Port Everglades Plant (PPE).¹ This Commission has previously approved ECRC cost recovery for Manatee Temporary Heating System (MTHS) projects at plants Riviera and Cape Canaveral which were triggered, respectively, by a Commission-approved modernization project at each plant site.² On January 13, 2012, FPL filed a petition in which FPL proposes to install an electric heating system at PPE in 2012, in order to continue to provide warm water when necessary into the manatee warm water refuge, starting in January 2013, and continuing until the modernization project is completed in mid-2016. The purpose of the project is to help ensure that FPL can comply with PPE's Manatee Protection Plan (MPP), which is Specific Condition I.D. 10 to the Industrial Waste Water (IWW) Facility

¹ See Order No. PSC-12-0187-FOF-EI, issued April 9, 2012, in Docket No. 110309-EI, In re: Petition to determine need for modernization of Port Everglades Plant, by Florida Power & Light Company.

² See Order No. PSC-09-0759-FOF-EI, issued November 18, 2009, in Docket No. 090007-EI, In re: Environmental cost recovery clause, at pages 8 – 10, and Order No. PSC-11-0553-FOF-EI, issued December 7, 2011, in Docket No. 110007-EI, In re: Environmental cost recovery clause, at pages 9 – 10.

Permit Number FL0001538, issued by the Florida Department of Environmental Protection (FDEP) for PPE on February 27, 2010. Specific Condition I.D. 10 to the IWW Permit states that “the permittee shall continue compliance with the facility’s Manatee Protection Plan approved by the Department in August 13, 1999 et seq.” The manatee is protected by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, et. seq.), and the Endangered Species Act of 1973 (16 U.S.C. 1531, et. seq.). The U.S. Fish and Wildlife Service (FWS) notified FPL that measures will be necessary to protect the manatees from cold water impacts during the transition period of the Port Everglades Modernization Project.³

The total estimated capital costs for the MTHS – PPE is \$3.25 million. FPL proposed to recover these costs through the ECRC starting January 2013 when the proposed system goes into service. Because the Company does not expect to need the MTHS once the modernized combined cycle unit goes into service, FPL plans to dismantle the system at that time. FPL proposes to amortize the cost of the system over its operating life at PPE (i.e., the 42 months from January 2013 through June 2016). FPL expects to begin incurring O&M expenses, projected to be \$250,000 in 2012, to monitor the manatees at PPE. Once installation and commissioning of the MTHS – PPE is completed in January 2013, FPL will incur Operating and Maintenance (O&M) expenses associated with system maintenance. The total estimated O&M costs is \$1.25 million for the period 2012 through 2016.⁴

There are specific environmental laws and regulations that require FPL to comply with the MPP at PPE, and thus warrant the implementation of the MTHS at PPE. FPL should be permitted to install the MTHS at PPE, and consolidate the MTHS-PPE with the existing MTHS projects in the ECRC for the purpose of ECRC filing and cost recovery. The proposed MTHS-PPE project meets the requirements of Section 366.8255, F.S., for recovery through the ECRC. The Company is not presently recovering the costs of the proposed project through base rates or any other recovery mechanism, nor has it included the costs in FPL’s 2013 test year Minimum Filing requirements in its pending base rate case.

To be consistent with the existing MTHS – Riviera project and MTHS – Cape Canaveral project approved by the Commission previously in Order No. PSC-09-0759-FOF-EI, the capital costs of the MTHS – PPE Project should be allocated to the rate classes on an average 12 CP demand basis and 1/13th energy basis. O&M costs should be allocated to the rate classes on an energy basis.

³ In FWS’s letter to FPL dated December 16, 2011.

⁴ These projected O&M costs do not include the electricity costs to operate the heating system, for which FPL is not seeking recovery through the ECRC.

PROPOSED STIPULATION

ISSUE 9B: Should FPL be allowed to recover the costs associated with its proposed Thermal Discharge Standards Project?

POSITION: Yes. FPL power plants with once-through cooling water systems that were built before July 1, 1972, must meet a "narrative" thermal standard found in Rule 62-302.520(1) (a)-(c) F.A.C. This standard is implemented through the National Pollutant Discharge Elimination System (NPDES) program.⁵ Subject to the U.S. Environmental Protection Agency's (EPA) approval, the FDEP implements the NPDES permitting program in Florida. Affected facilities are required to apply for renewal of 5-year-duration NPDES permits before the permits expire. Facilities that cannot meet the FDEP narrative standard for thermal discharges may apply for a "variance" (i.e., less stringent standards) under Section 316(a) of the Federal Clean Water Act (CWA). In 2008, the EPA issued additional guidance which makes the variance application process more stringent, resulting in the requirement to submit expanded biological and thermal modeling/monitoring studies to justify the variances. In addition, many plants that have once-through cooling water systems that discharge heated effluent and were originally deemed compliant with the standard have been under scrutiny by the FDEP. Oversight of these facilities is also implemented via the NPDES permitting process. During recent permit renewals the FDEP has also taken a more stringent approach to the required demonstration that substantial damage to aquatic organisms is not occurring in the receiving water bodies.

The Cape Canaveral plant (PCC) has been impacted by the EPA's more stringent CWA 316(a) variance guidance. The renewed NPDES Permit for the PCC site, issued February 11, 2011, contains the requirement that a Plan of Study (POS) to justify a CWA 316(a) variance be developed. FPL anticipates, based on the new EPA guidance and conversations with officials with EPA Region 4 and the FDEP, that the scope of the POS may need to be significantly expanded; this would result in substantial increases in compliance costs. FPL submitted a proposed POS to the FDEP in August 2011 and is currently awaiting comments from the EPA and FDEP. The POS proposes baseline (pre-operational) and operational near-field seagrass and benthic sampling, augmented by ongoing seagrass monitoring conducted by the St. Johns River Water Management District, as well as ongoing fisheries monitoring surveys conducted by the Florida Fish and Wildlife Conservation Commission (FFWCC). FPL has begun baseline sampling which is essential in order to stay on track for implementation of the proposal once approved. FPL intends to continue this baseline sampling until the Canaveral Clean Energy Center (CCEC) is operational in 2013. After CCEC is operational, FPL plans to conduct operational sampling in accordance with its proposal, in order to assess impacts of the plant's operation.

⁵ See 33 U.S.C. Section 1342.

For the Riviera plant (PRV), the most recent version of the site's State IWW Permit Number FL0001546, issued August 28, 2010, contains language that could result in a substantially higher level of effort to demonstrate compliance with Rule 62-302.520(1), F.A.C. It requires a POS that may include baseline biological sampling of the modernized plant and address monitoring of aquatic species, as necessary, as well as incorporating relevant existing data. FPL intends to negotiate a POS with FDEP in 2012 that will take a similar approach to the POS that has been proposed for the PCC site.

FPL's preliminary estimate of O&M costs for this project is \$175,000 for 2012 and \$175,000 for 2013, which reflects activities needed to implement the POS approach that FPL is proposing for the PCC and the PRV. The actual compliance costs incurred will depend on the scope of the final POS that is approved for the PCC and PRV. O&M activities are related to baseline biological studies, other data collection and modeling for both facilities, and are expected to begin after August 1, 2012. At this time, FPL does not expect to incur capital costs. However, if studies determine that substantial environmental impacts are occurring, particularly at PCC, substantial capital expenditures could be required.

The proposed Thermal Discharge Standards project meets the criteria for ECRC cost recovery established by Order No. PSC-94-0044-FOF-EI.⁶ FPL should be allowed to recover its costs associated with the project.

PROPOSED STIPULATION

ISSUE 9C: How should the costs associated with the Thermal Discharge Standards Project be allocated to the rate classes?

POSITION: O&M costs for the project should be allocated to the rate classes on a demand basis.

PROPOSED STIPULATION

ISSUE 9D: Should FPL be allowed to recover the costs associated with its proposed Gopher Tortoise Relocations Project?

POSITION: Yes. The Gopher tortoise (*Gopherus polyphemus*) is a state-designated threatened species. Rule 68A-27.003(2)(d)3, F.A.C., Designation of Endangered Species; Prohibitions states:

No person shall take, attempt to take, pursue, hunt, harass, capture, possess, sell or transport any gopher tortoise or parts thereof or their eggs, or molest, damage, or destroy gopher tortoise burrows, except as authorized by Commission permit or

⁶ Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.0825, F.S., by Gulf Power Company.

when complying with Commission approved guidelines for specific actions which may impact gopher tortoises and their burrows.

Gopher tortoises have been creating burrows in the cooling pond embankments at FPL's Martin (PMR), Manatee (PMT) and Sanford (PSN) power plants over time, as well as in the oil tank farm embankments at PMR and PMT. Gopher tortoise burrows must be inspected and then filled as necessary to ensure the integrity of the embankments.

In 2008, the FFWCC issued new gopher tortoise guidelines that have changed the permitting process for relocations of tortoises; an authorized gopher tortoise agent is now required to conduct surveys and perform relocations and all tortoises now must be sent to a recipient site. The embankments at PMT, PMR and PSN were surveyed from 2008-2011 by plant personnel and no burrows were found that appeared to be compromising the integrity of the embankments. In March 2012, however, surveys were conducted that found gopher tortoise burrows at PMT that could compromise the embankment integrity. In order to fill the burrows at PMT, the gopher tortoises need to be relocated by an authorized gopher tortoise agent in order to comply with Rule 68A-27.003, F.A.C..

As part of normal plant maintenance, FPL conducts periodic surveys at all three sites to ensure that the integrity of the embankments is maintained. This project is, however, limited only to recovery of costs associated with relocations that are required as a result of those surveys. Thus, when FPL plant personnel identify a gopher tortoise burrow requiring filling, an authorized gopher tortoise agent will be contracted to start the relocation process.

FPL's preliminary estimate of 2012 O&M costs of this project is \$37,500 for an estimated 15 tortoise relocations. At this time, a conservative estimate of the cost per tortoise needing relocation is \$2,500, which can include confirmation surveying, permitting, bucket trapping, relocation, and recipient site costs. FPL cannot predict the costs that it will incur for this project beyond 2012, because the level of activity depends on how many, if any, gopher tortoises require relocation in the future. However, at this time FPL estimates that \$37,500 of O&M will be spent for the three plant sites in 2013.

The proposed Gopher Tortoises Relocations project meets the criteria for ECRC cost recovery established by Order No. PSC-94-0044-FOF-EI. FPL should be allowed to recover its incurred costs associated with the project.

PROPOSED STIPULATION

ISSUE 9E: How should the costs associated with the Gopher Tortoise Relocations Project be allocated to the rate classes?

POSITION: O&M costs for the project should be allocated to the rate classes on a demand basis.

PROPOSED STIPULATION

ISSUE 9F: Should FPL be allowed to recover the costs associated with its proposed Effluent Guidelines Revised Rule Project?

POSITION: Yes. Title 40 Code of Federal Regulations Part 423, which was promulgated under the authority of the CWA, limits the discharge of pollutants into navigable waters and into publicly owned treatment works by existing and new sources of steam electric power plants. The EPA has been undertaking a process to revise the current rule since September 2009. In early April 2012, the EPA announced that a draft rule will be signed in November 2012, with a final rule expected by April 28, 2014.

The revised Guidelines would set minimum standards for treatment of wastewater from steam electric power plants. These revisions are directed primarily at waste streams such as ash sluice water and scrubber wastewater from coal-burning facilities, but there could be impacts to nuclear as well as oil and gas-burning facilities. Based on recent information obtained from the EPA, it appears that the EPA has decided that water containing oil ash will likely be impacted by the rule revisions to the guidelines and may require either dry handling of all ash, or require water oil containing ash to be segregated from other waste streams and not discharged to waters of the state.

Starting in the latter part of 2012, FPL will be conducting extensive chemical analyses of oil ash handling effluent streams. Results from these analyses will be presented to the EPA to demonstrate the difference between these types of waste streams and waste streams from flue gas scrubbers and other coal ash related processes, which are significantly more complex and difficult to treat prior to a discharge. FPL's goal is to convince the EPA that oil ash handling effluent does not need to be regulated under the same strict requirements that apply to coal ash handling effluent.

In 2012, FPL expects to spend approximately \$5,000 for the aforementioned analyses. In 2013, FPL projects to spend \$45,000 in contractor fees to assist with developing and submitting comments on the draft rule. O&M costs beyond 2013 will be associated with the operation of any oil ash or coal ash related treatment and/or handling systems that are required by the rule.⁷ In addition, there could be requirements for other power plant waste streams that may be impacted by the

⁷ Examples of potential expenses are flue gas scrubber and other wastewater treatment and disposal, ash contact water treatment and disposal.

new rule.⁸ It is very likely that these O&M costs, which will begin to be incurred in the 2018-2020 time frame, will be significant. FPL anticipates that the capital costs will also be significant, and may also occur in the 2018-2020 timeframe. FPL will not know what those costs might be until the rule is final.

The proposed Effluent Guidelines Revised Rule project meets the criteria for ECRC cost recovery established by Order No. PSC-94-0044-FOF-EI. FPL should be allowed to recover its incurred costs associated with the project.

PROPOSED STIPULATION

ISSUE 9G: How should the costs associated with the Effluent Guidelines Revised Rule Project be allocated to the rate classes?

POSITION: O&M costs for the project should be allocated to the rate classes on a demand basis.

PROPOSED STIPULATION

ISSUE 9H: Should FPL be allowed to recover the costs associated with its proposed Numeric Nutrient Criteria Project?

POSITION: Yes. The EPA is under a federal court order to implement numeric nutrient criteria (NNC) to comply with the Federal CWA. The FDEP has drafted its own NNC rule and has strongly communicated to the EPA that it prefers to implement the state rule. The EPA supports the FDEP in that effort; it has until the January 6, 2013, implementation date to review and approve the FDEP's proposed NNC rule. Either the EPA or FDEP numeric nutrient criteria rule will be implemented through NPDES IWW permit renewals for the reduction of total nitrogen and total phosphorus discharges in Florida freshwaters.

FPL's Ft. Myers, Manatee, Martin, Putnam, and Sanford plants will be affected by the new flowing streams (freshwater) numeric nutrient criteria. The NPDES IWW permits for these facilities will expire and require subsequent renewals beginning in 2012 proceeding through 2017. Compliance requirements under the new rules will begin prior to permit renewal and continue for the life of each facility.

The rule changes will require sampling, monitoring, reporting, and possible biological health assessments both prior to application for permit renewal and ongoing thereafter. Based on nutrient data, facilities may have to alter water treatment processes to comply with the new standards. FPL's plan to comply with the new requirements includes: (i) total phosphorus and total nitrogen

⁸ Potential examples are dechlorination systems at facilities that currently chlorinate once-through cooling water and disposal of combustion turbine off-line washes.

sampling, monitoring, and reporting; (ii) biological health assessments; and (iii) anticipated modifications to the Martin plant water treatment system.

FPL expects to incur O&M costs concerning aforementioned plans (i) and (ii). The total O&M costs are estimated to be \$1.6 million for the period 2013 through 2017. Costs associated with the new regulation will continue for the life of each facility. FPL also expects to incur capital costs concerning aforementioned plan (iii). The total capital costs are estimated to be \$1.2 million for the period 2015 through 2017. For 2012, FPL does not anticipate incurring any costs for the project. For 2013, FPL projects to spend \$0.442 million for O&M activities, including monthly water sampling (intake and discharge structures) and reporting, biological health assessments (stream condition index assessment upstream and downstream of the discharges) and reporting, and changes to water chemistry. No capital costs are projected for 2012 and 2013.

The proposed Numeric Nutrient Criteria project meets the criteria for ECRC cost recovery established by Order No. PSC-94-0044-FOF-EI. FPL should be allowed to recover its incurred costs associated with the project.

PROPOSED STIPULATION

ISSUE 9I: How should the costs associated with the Numeric Nutrient Criteria Project be allocated to the rate classes?

POSITION: O&M and capital costs for the project should be allocated to the rate classes on a demand basis.

PROPOSED STIPULATION

ISSUE 9J: Should FPL be allowed to recover the costs associated with the additional activities of the existing NPDES Permit Renewal Requirements Project?

POSITION: Yes. The renewed NPDES permit for the plant St. Lucie (PSL), which became effective September 29, 2011, contains a requirement that PSL prepare, submit and conduct a Total Residual Oxidants (TRO) Plan of Study (TROPOS). Because the renewed NPDES permit was not issued until late September last year, FPL did not have an opportunity to reflect the projected costs of complying with the TROPOS requirement in its 2012 ECRC projection filed in August 2011.

The purpose of the TROPOS is to demonstrate that discharges from the PSL cooling water system meet the State's Class III water quality standard of 0.01 mg/l for total residual oxidants. In the previous permit, PSL had to meet a limit of 0.1 mg/l at the Point of Discharge (POD), which is at the end of the plant's discharge canal before the effluent is discharged to the Atlantic Ocean via diffusers. With the TROPOS, PSL will demonstrate that meeting the previous 0.1

mg/l TRO limit at the POD is equivalent to meeting the 0.01 mg/l Class III water quality standard at the actual discharge point in the Atlantic Ocean.

FPL retained a consultant to prepare and submit the TROPOS to the FDEP for approval. Following FDEP approval, which is expected in September 2012, another consultant will be selected via a bidding process to conduct the TROPOS, which includes a dye study, TRO decay study, a plant-level verification study and a final report, over a 25-month period.

FPL expects to incur total O&M costs of approximately \$190,000 to complete the TROPOS. The Company projects spending \$20,000 in 2012 and \$50,000 in 2013 for O&M costs associated with a dye study, a TROPOS decay study, and a plant-level verification study. There will be no capital costs incurred for 2012 and 2013.

FPL's proposed additional activities of the existing NPDES Permit Renewal Requirements project meets the criteria for ECRC cost recovery established by Order No. PSC-94-0044-FOF-EI. FPL should be allowed to recover its incurred costs associated with these activities.

PROPOSED STIPULATION

ISSUE 9K: Should the Commission approve FPL's proposal to expand the existing CAMR Compliance Project as reasonable?

POSITION: Yes. On December 16, 2011, the EPA finalized its Mercury and Air Toxics Standards (MATS) rule as a replacement for CAMR under 40 CFR Parts 60 and 63 to meet its obligation under Section 112 for the control of Hazardous Air Pollutants (HAP) emissions. The MATS rule establishes performance standards for HAPs emissions from coal and oil-fired steam electric generating units, including a mercury emission standard that applies only to coal-fired units. In response to the final MATS rule, FPL, and its ownership partner JEA, have identified the need for additional information regarding emissions of HAPs from the St. John River Power Plant (SJRPP) units. An engineering and economic study for MATS compliance at SJRPP is now being initiated to develop a lowest cost alternative compliance plan. The engineering study will evaluate cost and performance options of emission controls available to meet the MATS specifications while maintaining or improving fuel diversity options.

FPL currently recovers through the ECRC its share of costs associated with the operation and maintenance of the baghouse/sorbent injection system on Scherer Unit 4, and the Continuous Mercury Emission Monitors on Scherer Unit 4 and SJRPP Units 1 & 2. Considering that the MATS rule has replaced CAMR, FPL believes that it is appropriate to rename the CAMR Project (Project 33) to now be referred to as the MATS Project.

FPL intends to include only those costs for the environmental compliance engineering study for SJRPP at this time. FPL has adjusted its 2012 MATS O&M projections to include the estimated \$28,000 cost for its ownership share of the engineering study. However, in the future FPL intends to present under the MATS project for the Commission's review and approval, those costs which FPL determines to be necessary for compliance at SJRPP and Scherer with the MATS rule.

It is appropriate for FPL to rename the existing CAMR project as the MATS project to reflect the current environmental rule in effect. FPL's proposed new activities of the MATS project meet the criteria for ECRC cost recovery established by Order No. PSC-94-0044-FOF-EI. FPL should be allowed to recover the costs associated with these new activities under the MATS project.

PROPOSED STIPULATION

ISSUE 9L: Should the Commission approve FPL's Supplemental Clean Air Interstate Rule (CAIR), Clean Air Mercury Rule (CAMR) and Clean Air Visibility Rule (CAVR)/Best Available Retrofit Technology (BART) Filing as reasonable?

POSITION: Yes. Completion of the compliance activities discussed in FPL's Supplemental CAIR/CAMR/CAVR Filing of April 2, 2012, 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. FPL should continue to 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 environmental rule developments, will continue to be subject to the Commission's review in future ECRC proceedings on these matters.

PROPOSED STIPULATION

ISSUE 9M: Should the Commission approve FPL's proposed capital cost recovery schedule for the Port Everglades electrostatic precipitators (ESPs)?

POSITION: Yes. FPL is currently recovering the costs associated with the Electrostatic Precipitators (ESPs) on the existing Units 1 through 4 at the Port Everglades Plant (PPE) through the ECRC. The Commission granted FPL an affirmative determination of need to modernize the PPE into a high-efficiency combined cycle natural gas energy center.⁹ Assuming final approval of site certification for this modernization plan, all of the existing PPE units will be retired effective

⁹ Order No. PSC-12-0187-FOF-EI, in Docket No. 110309-EI, issued April 9, 2012, In re: Petition to determine need for modernization of Port Everglades Plant, by Florida Power & Light Company.

January 2013. FPL proposed to complete recovery of the PPE ESPs project in the ECRC through a capital recovery schedule.

The four ESPs at the PPE were placed in-service during the period April 2005 through May 2007. The original capital investment associated with the project is \$81,901,169. As the year progressed, these capital expenditures have been recovered through the ECRC, leaving a net book value of \$65,372,158, or 80% of the original investments, to be recovered as of March 31, 2012. The ESPs at PPE cannot be removed, modified, and reinstalled to serve other units, such as the 800 MW units at PMR and PMT for which new ESPs will be installed.¹⁰ Therefore, FPL is requesting to include in its 2013 ECRC factors the recovery of the unrecovered net investment balance of the PPE ESPs at the time of the planned retirement.

FPL proposed a 4-year capital cost recovery schedule for the PPE ESPs beginning January 1, 2013. Given that the PPE ESPs were included in the overall plant-in-service and reserve balances used in establishing the depreciation rates currently approved at the generating unit and plant account level for the PPE,¹¹ and that the overall unrecovered plant investments at the PPE will be recovered in a 4-year schedule,¹² FPL's proposed 4-year capital cost recovery schedule in the ECRC for the PPE ESPs is appropriate.

Company Specific Issues
Progress Energy Florida (PEF)

PROPOSED STIPULATION

ISSUE 10A: Should the Commission approve PEF's Review of Integrated Clean Air Compliance Plan as reasonable?

POSITION: Yes. PEF's Integrated Clean Air Compliance Plan is for achieving timely compliance with the applicable environmental regulations in a cost-effective manner. All of the major components of the Crystal River Units 4 and 5 emission control projects included in PEF's Integrated Clean Air Compliance Plan have been completed. PEF is continuing to evaluate future compliance options concerning the EPA's recently remanded Cross-State Air Pollution Rule (CSAPR), finalized Mercury & Air Toxics Standards (MATS), and other

¹⁰ This is due to their specific design and size for the 200 and 400 MW units at the PPE, which are significantly different from what would be required for the 800 MW units at PMR and PMT. The ESPs at PMR and PMT are retrofits into existing plants and are custom designed to fit in the limited and specific space between the boilers and stacks. Each ESP is sized for the specific exhaust gas volumes and flows of the specific unit.

¹¹ The depreciation rates FPL utilizes to depreciate the ESPs at PPE were approved in Order No. PSC-10-0153-FOF-EI, in Docket Nos. 080677-EI and 090130-EI (consolidated), issued March 17, 2010, In re: Petition for increase in rates by Florida Power & Light Company and In re: 2009 depreciation and dismantlement study by Florida Power & Light Company, at page 42.

¹² Addressed in Issue No. 23, stipulated, in Docket No. 120015-EI, In re: Petition for increase in rates by Florida Power & Light Company, which is currently before the Commission.

environmental regulatory developments affecting fossil fuel-fired generating units. PEF should continue to file, as part of its annual ECRC final true-up testimony, an update of its Integrated Clean Air Compliance Plan to review the cost-effectiveness of PEF's retrofit options for each generating unit in relation to expected changes in environmental regulations. The reasonableness and prudence of individual expenditures, and PEF's decisions on the future compliance plans made in light of subsequent environmental rule developments, will continue to be subject to the Commission's review in future ECRC proceedings on these matters.

Company Specific Issues
Gulf Power Company (Gulf)

PROPOSED STIPULATION

ISSUE 11A: Should the Commission approve Gulf's Environmental Compliance Program Update as reasonable?

POSITION: Yes. On April 2, 2012, Gulf filed an Environmental Compliance Program Update for Clean Air Interstate Rule, Cross State Air Pollution Rule, National Ambient Air Quality Standards, Mercury and Air Toxics Standards, and Clean Air Visibility Rule.¹³ In the Compliance Program Update Gulf outlines its ongoing compliance projects and the reasons Gulf plans to continue these projects, and presents the compliance components that are in the planning stage for possible future implementation.

Gulf is currently evaluating potential options to comply with the MATS. Gulf indicated that compliance with this rule is likely to require substantial capital expenditures and compliance costs at the Company's facilities. These costs may arise from a variety of actions including generating unit retirements, installation of additional emission controls, changing fuel sources for certain existing units, the addition of new generating resources, etc. Once Gulf determines the most cost-effective compliance options, the Company will submit revisions to the Compliance Program for Commission review.

Gulf should continue to file, as part of its annual ECRC final true-up testimony, an update of its Environmental Compliance Program to review the cost-effectiveness of Gulf's retrofit options for each generating unit in relation to expected changes in environmental regulations. The reasonableness and prudence of individual expenditures, and Gulf's decisions on the future compliance plans made in light of subsequent environmental rule developments, will continue to be subject to the Commission's review in future ECRC proceedings on these matters.

¹³ Gulf's original CAIR/CAMR/CAVR Compliance Plan set forth in the stipulation between OPC, FIPUG and Gulf, was approved by the Commission in Order No. PSC-07-0721-S-EI, issued September 5, 2007, in Docket No. 070007-EI, In re: Environmental cost recovery clause.

IX. EXHIBIT LIST

The Parties have agreed to enter all witness exhibits into the record.¹⁴

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Direct</u>			
Name	Utility/Staff	ABC-1	
R.R. LABAUVE	FPL	(RRL-1)	Port Everglades Manatee Heating System Conceptual Location of heated refuge, heater and pump systems
R.R. LABAUVE	FPL	(RRL-2)	Florida Department of Environmental Protection ("FDEP") Industrial Wastewater Facility Permit Number FL0001538 for PPE
R.R. LABAUVE	FPL	(RRL-3)	PPE Manatee Protection Plan ("MPP")
R.R. LABAUVE	FPL	(RRL-4)	U. S. Fish and Wildlife Service ("FWS") letter to FPL regarding manatee protection at PPE
T.J. KEITH	FPL	(TJK-1)	Appendix I Environmental Cost Recovery Final True- Up January 2011- December 2011 Commission Forms 42-1A through 42-9A
R.R. LABAUVE	FPL	(RRL-5A)	FPL Supplemental CAIR/CAMR/CAVR Filing
T.J. KEITH	FPL	(TJK-2)	Appendix I Environmental Cost Recovery Actual/ Estimated Period January 2012- December 2012 Commission Forms 42-1E through 42-9E

¹⁴ This includes revisions to PEF exhibits needed to comport with the proposed stipulation of Issue 5.

<u>Witness</u>	<u>Proffered By</u>	<u>Description</u>
R.R. LABAUVE	FPL (RRL-5B)	Relevant excerpt from the Cape Canaveral Plant (PCC) State IWW Permit
R.R. LABAUVE	FPL (RRL-6)	Relevant excerpt from the Riviera Plant (PRV) NPDES Permit
R.R. LABAUVE	FPL (RRL-7)	New Gopher Tortoise Guidelines
R.R. LABAUVE	FPL (RRL-8)	Relevant excerpt from the St. Lucie Plant (PSL) NPDES Permit
T.J. KEITH	FPL (TJK-3)	Appendix I Environmental Cost Recovery Projections January 2013- December 2013 Commission Forms 42-1P through 42-8P
R.R. LABAUVE	FPL (RRL-9)	Chapter 62-302, Florida Administrative Code, Surface Water Quality Standards (FDEP Proposed)
R.R. LABAUVE	FPL (RRL-10)	Title 40 Code of Federal Regulations Part 131, Water Quality Standards for the State of Florida's Lakes and Flowing Waters (EPA)
Patricia Q. West	PEF (PQW-1)	Review of Integrated Clean Air Compliance Plan
Patricia Q. West	PEF (PQW-2)	Letter re: Progress Energy Florida's NPDES Renewal Program and associated Administrative Order Filed on February 8, 2012;
Patricia Q. West	PEF (PQW-3)	Verified Petition to Modify Scope of Existing Environmental Program that PEF filed on March 29, 2012

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Patricia Q. West	PEF	(PQW-4)	Letter re: Progress Energy Florida's Integrated Clean Air Compliance Plan filed on May 14, 2012
Patricia Q. West	PEF	(TGF-3)	Form 42-5P, pages 3 of 20, 4 of 20, 5 of 20, 6 of 20, 7 of 20, 8 of 20, 9 of 20, 11 of 20, 12 of 20, 13 of 20, 14 of 20, 15 of 20, 16 of 20, 17 of 20, and 18 of 20, 19 of 20, and 20 of 20
Jeff Swartz	PEF	(JS-1)	Crystal River Project Organizational Structure
Jeff Swartz	PEF	(TGF-3)	Form 42-5P page 7 of 20
George Hixon	PEF	(TGF-3)	Form 42-5P page 20 of 20
Corey Zeigler	PEF	(TGF-3)	Form 42-5P, pages 1 of 20, 2 of 20, and 10 of 20
Will Garrett	PEF	(WG-1)	PSC Forms 42-1A through 42-8A January 2011 – December 2011
Will Garrett	PEF	(WG-2)	Capital Program Detail January 2011 – December 2011
Thomas G. Foster	PEF	(TGF-1)	PSC Forms 42-1E through 42-9E January 2012 – December 2012
Thomas G. Foster	PEF	(TGF-2)	Capital Program Detail January 2012 – December 2012
Thomas G. Foster	PEF	(TGF-3) (revised)	PSC Forms 42-1P through 42-8P January 2013– December 2013
Thomas G. Foster	PEF	(TGF-4)	Capital Program Detail January 2013 – December 2013

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Howard T. Bryant	TECO	(HTB-1)	Final Environment Cost Recovery Commission Forms 42-1A through 42-9A for the period January 2011 through December 2011
Howard T. Bryant	TECO	(HTB-2)	Environmental Cost Recovery Commission Forms 42-1E through 42-9E for the Period January 2012 through December 2012
Howard T. Bryant	TECO	(HTB-3)	Forms 42-1P through 42-8P Forms for the January 2013 through December 2013
R.W. Dodd	GULF	(RWD-1)	Calculation of Final True-up 1/11 – 12/11
R.W. Dodd	GULF	(RWD-2)	Calculation of Estimated True-up 1/12 – 12/12
R.W. Dodd	GULF	(RWD-3) (revised)	Calculation of Projection 1/13 - 12/13

X. PROPOSED STIPULATIONS

The companies have agreed to stipulate positions for each issue in the docket. The interveners take no position on the issues.

XI. PENDING MOTIONS

FPL: FPL has no pending motions at this time.

PEF: PEF has no pending motions at this time.

TECO: None at this time.

GULF: None.

OPC: OPC has no pending motions at this time.

FIPUG: None at this time.

FEA: FEA has no pending motions.

PCS: None.

STAFF: None at this time

XII. PENDING CONFIDENTIALITY MATTERS

FPL: To date, FPL has the following requests for confidentiality pending:

- Florida Power & Light Company's request for confidential classification of Audit No. 12-019-4-1, DN 3667-12, dated June 5, 2012.
- Florida Power & Light Company's request for confidential classification of Staff's Third Set of Interrogatories Nos. 30 and 34, DN 3446-12, dated May 30, 2012.

PEF: PEF has a pending request for confidential classification filed on September 13, 2012 [for DN 06171-12].

TECO: None at this time.

GULF: Request for confidentiality filed June 11, 2012, relating to a portion of Staff's audit work papers (ACN 12-019-1-1) (DN 03797-12).

OPC: OPC has no pending confidentiality claims or requests at this time.

FIPUG: None.

FEA: FEA has no pending confidentiality claims or requests.

PCS: None.

STAFF: There are several confidentiality requests pending.

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

The parties have waived opening statements.

It is therefore,

ORDERED by Commissioner Eduardo E. Balbis 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 Eduardo E. Balbis, as Prehearing Officer, this 26th day of October, 2012.



EDUARDO E. BALBIS
Commissioner and Prehearing Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

CWM

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.