

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 20200007-EI  
ORDER NO. PSC-2020-0411-PHO-EI  
ISSUED: October 27, 2020

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on October 26, 2020 in Tallahassee, Florida, before Commissioner Andrew Giles Fay, as Prehearing Officer.

APPEARANCES:

MARIA JOSE MONCADA, ESQUIRE, and DAVID LEE, ESQUIRE, 700 Universe Boulevard, Juno Beach, Florida 33408  
On behalf of FLORIDA POWER & LIGHT COMPANY (FPL).

RUSSELL A. BADDERS, ESQUIRE, One Energy Place, Pensacola, Florida 32520-0100 and MARIA JOSE MONCADA, ESQUIRE, 700 Universe Boulevard, Juno Beach, Florida 33408  
On behalf of GULF POWER COMPANY (Gulf).

DIANNE M. TRIPLETT, ESQUIRE, 299 First Avenue North, St. Petersburg, Florida 33701 and MATTHEW R. BERNIER, ESQUIRE, 106 East College Avenue, Suite 800, Tallahassee, Florida 32301  
On behalf of DUKE ENERGY FLORIDA, LLC (DEF).

JAMES D. BEASLEY, ESQUIRE, J. JEFFRY WAHLEN, ESQUIRE, and MALCOLM N. MEANS, ESQUIRE, Post Office Box 391, Tallahassee, Florida 32302  
On behalf of TAMPA ELECTRIC COMPANY (TECO).

JON C. MOYLE, JR., ESQUIRE and KAREN PUTNAL, ESQUIRE, 118 North Gadsden Street, Tallahassee, Florida 32312  
On behalf of FLORIDA INDUSTRIAL POWER USERS GROUP (FIPUG).

JAMES W. BREW, ESQUIRE, and LAURA WYNN BAKER, ESQUIRE, 1025 Thomas Jefferson Street, NW, Eighth Floor, West Tower, Washington, D.C. 20007  
On behalf of PCS PHOSPHATE (PCS).

JR KELLY, ESQUIRE, PATRICIA A. CHRISTENSEN, ESQUIRE, THOMAS A. (TAD) DAVID, ESQUIRE, A. MIREILLE FALL-FRY, ESQUIRE, STEPHANIE MORSE, ESQUIRE, and CHARLES REHWINKEL, ESQUIRE, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400  
On behalf of OFFICE OF THE PUBLIC COUNSEL (OPC).

CHARLES MURPHY, ESQUIRE, 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 32399-0850  
Advisor to the Florida Public Service Commission.

KEITH C. HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
Florida Public Service Commission General Counsel

## **I. CASE BACKGROUND**

As part of the Florida Public Service Commission's (Commission) continuing Environmental Cost Recovery Clause (ECRC) proceeding, undertaken pursuant to Section 366.8255, Florida Statutes (F.S.), a hearing has been set in this Docket for November 3-5, 2020. The ECRC proceeding allows investor-owned electric utilities to seek recovery of their costs for approved environmental programs on an annual basis.

## **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.

State buildings are currently closed to the public and other restrictions on gathering remain in place due to COVID-19. Accordingly, the hearing will be conducted remotely, and all parties and witnesses shall be prepared to present argument and testimony by communications media technology. The Commission shall act as the host of the hearing and will use a combination of technologies to ensure full participation. The Commission will employ GoToMeeting as an audio and video platform for the hearing, which will include a telephone number for audio-only participation.

A GoToMeeting invitation shall be provided to counsel for each party. It shall be the responsibility of counsel to provide their clients, client representatives, and witnesses with the

invitation, which will allow them to access the hearing, as necessary. Counsel for each party will also be provided the call-in number for audio participation.

Any member of the public who wants to observe or listen to the proceedings may do so by accessing the live video broadcast on each day of the hearing, which is available from the Commission website. Upon completion of the hearing, the archived video will also be available.

### **III. JURISDICTION**

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, F.S. This hearing will be governed by Chapter 366, and by Chapters 25-6, 25-22, 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 that has not been filed as prefiled testimony or prefiled exhibits, parties must follow the procedures for providing confidential electronic exhibits to the Commission Clerk prior to the hearing.
- (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 electronic exhibit.

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 three 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.

\*All witnesses have been excused with testimony and exhibits to be included in the record.

**VI. ORDER OF WITNESSES**

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Renae B. Deaton	FPL	1-10, 14
Michael W. Sole	FPL	1-3, 13, 15
Richard L. Hume	Gulf	1-10
Michael W. Sole	Gulf	1-3
Christopher Menendez	DEF	1-12
Timothy Hill	DEF	1-3
Jeffrey Swartz	DEF	1-3
Kim Spence McDaniel	DEF	1-3, 11
M. Ashley Sizemore	TECO	1, 2, 3, 4, 5, 6, 7, 8, 9
Byron T. Burrows	TECO	3

**VII. BASIC POSITIONS**

**FPL:** FPL's 2021 ECRC factors, including prior period true-ups, are reasonable and should be approved. The Commission also should approve FPL's proposed Power Plant Intake Protected Species Project and the modification to its approved Turkey Point Cooling Canal Monitoring Plan Project.

**GULF:** Gulf's 2021 ECRC factors, including prior period true-ups, are reasonable and should be approved.

**DEF:** DEF's positions to specific issues are listed below.

**TECO:** The Commission should approve the compliance programs described in the testimony and exhibits of Tampa Electric witnesses Sizemore and Burrows 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 2019 through December 2019, the actual/estimated environmental cost recovery true-up for the current period January 2020 through December 2020, and the company's projected ECRC revenue requirement and the company's proposed ECRC factors for the period January 2021 through December 2021.

**FIPUG:** Only costs legally authorized should be recovered through the environmental cost recovery clause. FIPUG maintains that the respective utilities must satisfy their burden of proof for any and all monies or other relief sought in this proceeding.

**PCS:** PCS Phosphate generally adopts the positions taken by the Florida Office of Public Counsel ("OPC") unless a differing position is specifically stated.

**OPC:** The utilities bear the burden of proof to justify the recovery of costs they request in this docket. The utilities must carry this burden regardless of whether or not the Interveners provide evidence to the contrary. Further, the utilities bear the burden of proof to support their proposal(s) seeking the Commission's adoption of policy statements (whether new or changed) or other affirmative relief sought. Even if the Commission has previously approved a program, recovery of a cost, factor, or adjustment as meeting the Commission's own requirements, the utilities still bear the burden of demonstrating that the costs submitted for final recovery meet any statutory test(s) and are reasonable in amount and prudently incurred. Further, recovery of even prudently incurred costs is constrained by the Commission's obligation to set fair, just, and reasonable rates. Further, pursuant to Section 366.01, Florida Statutes, the provisions of Chapter 366 must be liberally construed to protect the public welfare.

The Commission must independently determine that each cost submitted for recovery, deferred or new, meets each element of the statutory requirements for recovery through this clause as set out in Section 366.8255, Florida Statutes. Specifically, each activity proposed for recovery must be legally *required* to comply with a governmentally imposed environmental regulation that was enacted, became effective, or whose effect was triggered after the company's last test year upon which rates are based, and such costs may not be costs that are recovered through base rates or any other cost recovery mechanism.

**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**

The parties' positions on the issues are set forth below; however, as set forth at Section X of this Order, stipulations have been proposed for each of these issues.

**ISSUE 1: What are the final environmental cost recovery true-up amounts for the period January 2019 through December 2019?**

**FPL:** \$14,087,943 over-recovery. (Deaton, Sole)

**GULF:** \$5,891,843 over-recovery. (Hume, Sole)

**DEF:** \$1,792,439 under-recovery. (Menendez, Hill, Swartz, McDaniel)

**TECO:** The appropriate final environmental cost recovery true-up amount for this period is an over-recovery of \$3,987,915. (Sizemore)

**FIPUG:** Adopt the position of OPC.

**PCS:** Agree with OPC.

**OPC:** The OPC is not in agreement that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill is based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC does not accept that, given these circumstances, that the costs proposed for final true-up can necessarily be deemed prudent. Nevertheless, the OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

**STAFF:** Staff has no position at this time.

**ISSUE 1: What are the estimated/actual environmental cost recovery true-up amounts for the period January 2020 through December 2020?**

**FPL:** \$4,763,785 over-recovery. (Deaton, Sole)

**GULF:** \$2,837,159 over-recovery. (Hume, Sole)

**DEF:** \$8,097,179 over-recovery. (Menendez, Hill, Swartz, McDaniel)

**TECO:** The actual/estimated environmental cost recovery true-up amount for the period is an under-recovery of \$7,841,176. (Sizemore)

**FIPUG:** Adopt the position of OPC.

**PCS:** Agree with OPC.

**OPC:** The OPC is not in agreement that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill is based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC does not accept that, given these circumstances, that the costs proposed for final true-up can necessarily be deemed prudent. Nevertheless, the OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

**STAFF:** Staff has no position at this time.

**ISSUE 3:** **What are the projected environmental cost recovery amounts for the period January 2021 through December 2021?**

**FPL:** \$176,174,665. (Deaton, Sole)

**GULF:** \$197,635,007. (Hume, Sole)

**DEF:** \$44,725,047. (Menendez, Hill, Swartz, McDaniel)

**TECO:** The appropriate amount of environmental costs projected to be recovered for the period January 2021 through December 2021 is \$48,192,906. (Sizemore, Burrows)

**FIPUG:** Adopt the position of OPC.

**PCS:** Agree with OPC.



**OPC:** The OPC is not in agreement that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill is based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC does not accept that, given these circumstances, that the costs proposed for final true-up can necessarily be deemed prudent. Nevertheless, the OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

**STAFF:** Staff has no position at this time.

**ISSUE 2:** **What are the environmental cost recovery amounts, including true-up amounts, for the period January 2021 through December 2021?**

**FPL:** \$157,436,210, including prior period true-up amounts and revenue taxes. (Deaton)

**GULF:** \$189,042,018, including prior period true-up amounts and revenue taxes. (Hume)

**DEF:** \$38,447,970. (Menendez)

**TECO:** The total environmental cost recovery amount, including true-up amounts, for the period January 2021 through December 2021 is \$52,083,641 after the adjustment for taxes. (Sizemore)

**FIPUG:** Adopt the position of OPC.

**PCS:** Agree with OPC.

**OPC:** The OPC is not in agreement that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill is based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC does not accept that, given these circumstances, that the costs proposed for final true-up can necessarily be deemed prudent. Nevertheless, the OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party

or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

**STAFF:** Staff has no position at this time.

**ISSUE 3:** **What depreciation rates should be used to develop the depreciation expense included in the total environmental cost recovery amounts for the period January 2021 through December 2021?**

**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. For the period January 2021 through December 2021, FPL should use the depreciation rates approved by the Commission in FPL's 2016 rate case settlement agreement, Order No. PSC-16-0560-AS-EI. (Deaton)

**GULF:** The depreciation rates used to calculate the depreciation expense should be the rates that are in effect during the period applied against the allowed capital investment that is in service. (Hume)

**DEF:** The depreciation rates used to calculate depreciation expense should be the rates that are in effect during the period the allowed capital investment is in service. (Menendez)

**TECO:** The depreciation rates used to calculate the depreciation expense shall be the rates that are in effect during the period the allowed capital investment is in service with the exception of Big Bend Fuel Oil Tanks 1 & 2 which were retired in 2016 and are depreciated over a five-year period from the date of retirement. (Sizemore)

**FIPUG:** Adopt the position of OPC.

**PCS:** Agree with OPC.

**OPC:** The OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

**STAFF:** Staff has no position at this time.

**ISSUE 4: What are the appropriate jurisdictional separation factors for the projected period January 2021 through December 2021?**

**FPL:**

**ENERGY**

Retail Energy Jurisdictional Factor - Base/Solar	95.6788%
Retail Energy Jurisdictional Factor - Intermediate	94.9979%
Retail Energy Jurisdictional Factor - Peaking	95.2675%

**DEMAND**

Retail Demand Jurisdictional Factor - Transmission	90.2300%
Retail Demand Jurisdictional Factor - Base/Solar	95.6891%
Retail Demand Jurisdictional Factor - Intermediate	95.0081%
Retail Demand Jurisdictional Factor - Peaking	95.2778%
Retail Demand Jurisdictional Factor - Distribution	100.0000%

**GENERAL PLANT**

Retail General Plant Jurisdictional Factor - Labor	96.9888%
	(Deaton)

**GULF:**

Retail Energy Jurisdictional Factor - Base	100.0000%
Retail Energy Jurisdictional Factor - Intermediate	97.5922%
Retail Energy Jurisdictional Factor - Peaking	76.0860%
Retail Demand Jurisdictional Factor - Transmission	97.2343%
Retail Demand Jurisdictional Factor - Base	100.0000%
Retail Demand Jurisdictional Factor - Intermediate	97.5922%
Retail Demand Jurisdictional Factor - Peaking	76.0860%
Retail Demand Jurisdictional Factor - General Plant	96.9888%
Retail Demand Jurisdictional Factor - Distribution	98.1419%
	(Hume)

**DEF:** The Energy separation factor is calculated for each month based on retail kWh sales as a percentage of projected total kWh sales. The remaining separation factors are below and are consistent with DEF's 2017 Second Revised and Restated Stipulation and Settlement Agreement ("2017 Agreement") approved in Order No. PSC-2017-0451-AS-EU.

Transmission Average 12 CP Demand – 70.203%  
Distribution Primary Demand – 99.561%

Production Demand:  
Production Base – 92.885%  
Production Intermediate – 72.703%  
Production Peaking – 95.924%  
Production A&G – 93.221%  
(Menendez)

**TECO:** Energy: 100.00%  
Demand: 100.00% (Sizemore)

**FIPUG:** Adopt the position of OPC.

**PCS:** Agree with OPC.

**OPC:** The OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

**STAFF:** Staff has no position at this time.

**ISSUE 5: What are the appropriate environmental cost recovery factors for the period January 2021 through December 2021 for each rate group?**

**FPL:**

RATE CLASS	Environmental Cost Recovery Factor (cents/kWh)
RS1/RTR1	0.149
GS1/GST1	0.150
GSD1/GSDT1/HLFT1/GSD1-EV	0.133
OS2	0.080
GSLD1/GSLDT1/CS1/CST1/HLFT2/GSLD1-EV	0.135
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.114
GSLD3/GSLDT3/CS3/CST3	0.110
SST1T	0.110
SST1D1/SST1D2/SST1D3	0.175
CILC D/CILC G	0.113
CILC T	0.102
MET	0.122
OL1/SL1/SL1M/PL1	0.027
SL2/SL2M/GSCU1	0.104
Total	0.141

(Deaton)

**GULF:**

RATE CLASS	ECRC Factor (cents/kWh)
RS, RSVP, RSTOU	1.992
GS	2.025
GSD, GSDT, GSTOU	1.628
LP, LPT	1.428
PX, PXT, RTP, SBS	1.405
OS-I/II	0.446
OS-III	1.290
TOTAL	1.762

(Hume)

**DEF:**

RATE CLASS	ECRC FACTORS
Residential	0.099 cents/kWh
General Service Non-Demand @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.098 cents/kWh 0.097 cents/kWh 0.096 cents/kWh
General Service 100% Load Factor	0.095 cents/kWh
General Service Demand @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.096 cents/kWh 0.095 cents/kWh 0.094 cents/kWh
Curtailable @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.091 cents/kWh 0.090 cents/kWh 0.089 cents/kWh
Interruptible @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.093 cents/kWh 0.092 cents/kWh 0.091 cents/kWh
Lighting	0.091 cents/kWh

(Menendez)

**TECO:** The appropriate environmental cost recovery factors are as follows:

<u>Rate Class</u>	<u>Factor (¢/kWh)</u>
RS	0.269
GS, CS	0.269
GSD, SBF	
Secondary	0.265
Primary	0.262
Transmission	0.260
IS	
Secondary	0.257
Primary	0.254
Transmission	0.252
LS1	0.258
Average Factor	0.267

(Sizemore)

**FIPUG:** Adopt the position of OPC.

**PCS:** Agree with OPC.

**OPC:** The factors should be based on costs deemed reasonable and or prudent after a hearing. Nevertheless, the OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

**STAFF:** Staff has no position at this time.

**ISSUE 6:** **What should be the effective date of the new environmental cost recovery factors for billing purposes?**

**FPL:** The environmental cost recovery factors should be effective for meter readings that occur on or after January 1, 2021. These charges should continue in effect until modified by subsequent order of this Commission. (Deaton)

**GULF:** The environmental cost recovery factors should be effective for meter readings that occur on or after January 1, 2021. These charges should continue in effect until modified by subsequent order of this Commission. (Hume)

**DEF:** The factors should be effective beginning with the specified environmental cost recovery cycle and thereafter for the period January 2021 through December 2021. Billing cycles may start before January 1, 2021 and the last cycle may read after December 31, 2021, so that each customer is billed for twelve months regardless of when the adjustment factor became effective. These charges will continue in effect until modified by the Commission. (Menendez)

**TECO:** The factors should be effective beginning with the specified environmental cost recovery cycle and thereafter for the period January 2021 through December 2021. Billing cycles may start before January 1, 2021 and the last cycle may be read after December 31, 2021, so that each customer is billed for twelve months regardless of when the adjustment factors became effective. These charges shall continue in effect until modified by subsequent order of this Commission. (Sizemore)

**FIPUG:** Adopt the position of OPC.

**PCS:** Agree with OPC.

**OPC:** The OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

**STAFF:** Staff has no position at this time.

**ISSUE 7:** **Should the Commission approve revised tariffs reflecting the environmental cost recovery amounts and environmental cost recovery factors determined to be appropriate in this proceeding?**

**FPL:** Yes. The Commission should approve FPL's revised tariffs reflecting the environmental cost recovery amounts and environmental cost recovery factors as presented in this proceeding. (Deaton)

**GULF:** Yes. The Commission should approve Gulf's revised tariffs reflecting the environmental cost recovery amounts and environmental cost recovery factors as presented in this proceeding. (Hume)

**DEF:** Yes. (Menendez)

**TECO:** Yes. (Sizemore)



**FIPUG:** Adopt the position of OPC.

**PCS:** Agree with OPC.

**OPC:** The factors in the tariffs should be based on costs deemed reasonable and or prudent after a hearing. Nevertheless, the OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

**STAFF:** Staff has no position at this time.

**ISSUE 8: Should this docket be closed?**

**FPL:** No. While a separate docket number is assigned each year for administrative convenience, this is a continuing docket and should remain open. (Deaton)

**GULF:** No. While a separate docket number is assigned each year for administrative convenience, this is a continuing docket and should remain open. (Hume)

**DEF:** Yes. (Menendez)

**TECO:** Yes.

**FIPUG:** Yes.

**PCS:** No position.

**OPC:** No position.

**STAFF:** Staff has no position at this time.

COMPANY-SPECIFIC ENVIRONMENTAL COST RECOVERY ISSUES

Duke Energy Florida, LLC:

**ISSUE 9:** Should the Commission approve DEF's Anclote and Bartow Stations 316(b) Rule Compliance Plan Projects for cost recovery through the Environmental Cost Recovery Clause?

**FPL:** No position.

**GULF:** No position.

**DEF:** Yes. In Order Nos. PSC-2004-0990-PAA-EI and PSC-2018-0014-FOF-EI, the Commission found that DEF's Section 316(b) of the Clean Water Act Program ("316(b) Program") met the criteria for recovery through the Environmental Cost Recovery Clause. DEF's Anclote and Bartow Stations 316(b) Compliance Plan Projects meet the criteria for recovery through the Environmental Cost Recovery Clause. (McDaniel, Menendez)

**TECO:** No position.

**FIPUG:** Adopt the position of OPC.

**PCS:** PCS agrees that these are the types of projects normally recovered under the Environmental Cost Recovery Clause. The only costs of the 316(b) Anclote and Bartow projects that DEF has included in this case are the cost of the studies DEF prepared as part of its NPDES renewal submission. While that renewal is pending, clause recovery of any subsequent project costs would be speculative. Further, DEF continues to bear the burden of proving the prudence of any subsequent project costs.

**OPC:** The OPC is not in agreement that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill is based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC does not accept that, given these circumstances, that the costs proposed for final true-up can necessarily be deemed prudent. Nevertheless, the OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

**STAFF:** Staff has no position at this time.

**ISSUE 10:** **How should any approved Environmental Cost Recovery Clause costs associated with DEF's Anclote and Bartow Stations 316(b) Rule Compliance Plan Projects be allocated to the rate classes?**

**FPL:** No position.

**GULF:** No position.

**DEF:** Consistent with Order No. PSC-2018-0014-FOF-EI which approved the cost allocation for DEF's 316(b) Program at Crystal River North, Capital and O&M costs for the Anclote and Bartow 316(b) Programs should be allocated on a demand basis. (Menendez)

**TECO:** No position.

**FIPUG:** Adopt the position of OPC.

**PCS:** Agree with OPC.

**OPC:** The OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

**STAFF:** Staff has no position at this time.

Florida Power & Light Company

**ISSUE 13:** **Should FPL be allowed to recover, through the ECRC, prudently incurred costs associated with its proposed Power Plant Intake Protected Species Project?**

**FPL:** Yes. Under the United States Endangered Species Act ("ESA") (16 U.S.C. § 1531 et seq.), the Marine Mammal Protection Act ("MMPA") (16 U.S.C. § 1361-1407) and Chapter 68A-27 of the Florida Administrative Code, FPL is required to avoid the "take" of species listed as endangered or threatened.

Recently, FPL power plants have had interactions with the smalltooth sawfish and the Florida manatee which are listed as an endangered and threatened species, respectively, under the ESA. FPL has received letters from NOAA Fisheries and the USFWS stating that pursuant to the ESA, FPL must undertake measures to address the unauthorized takes of these species. In order to prevent further take of the species, FPL plans to hire consultants to evaluate and recommend design solutions that will be proposed to the environmental agencies. FPL will implement the agreed upon solution.

Additionally, on July 15, 2020, at FPL's Cape Canaveral Energy Center, a live Florida manatee calf was discovered in the plant's intake facilities. The FWC determined the manatee calf was separated from its mother and the mother was unable to be located at the time of the intended release and the calf needed to be transferred to a federally permitted rehabilitation facility, therefore the calf was taken to Sea World for rehabilitation. USFWS is exercising its enforcement discretion and has requested that the Company assist with the costs of rehabilitating the manatee calf. This cooperation between FWC/USFWS and FPL is consistent with FPL's collaborative work on developing solutions to reduce interactions between the Florida manatee and intake facilities, and to reduce the risk of enforcement actions for unauthorized takes. (Sole)

**GULF:** No position.

**DEF:** No position.

**TECO:** No position.

**FIPUG:** Adopt the position of OPC.

**PCS:** No position.

**OPC:** **No (related to the manatee calf).** The OPC is willing to agree to litigate this issue in the 2021 hearing cycle if all parties and staff agree to such a deferral. The OPC is not in agreement that the Companies have demonstrated that they have met their burden to demonstrate that costs are reasonable and prudent. A significant percentage of the costs on a customer's bill is based on clause recovery in this docket and others. The Commission has not held a contested proceeding where testimony from witnesses was heard and discussed in open hearing. The OPC does not accept that, given these circumstances, that the costs proposed for final true-up can necessarily be deemed prudent.

**STAFF:** Staff has no position at this time.

**ISSUE 14: How should any approved Environmental Cost Recovery Clause costs associated with FPL's proposed Power Plant Intake Protected Species Project be allocated to the rate classes?**

**FPL:** O&M and Capital costs associated with FPL's proposed Power Plant Intake Protected Species Project should be allocated to rate classes based on 100% CP Demand. (Deaton)

**GULF:** No position.

**DEF:** No position.

**TECO:** No position.

**FIPUG:** Adopt the position of OPC.

**PCS:** No position.

**OPC:** The OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

**STAFF:** Staff has no position at this time.

**ISSUE 15: Should FPL be allowed to recover, through the ECRC, prudently incurred costs associated with its proposed modification to its Turkey Point Cooling Canal Monitoring Plan Project?**

**FPL:** Yes. FPL is in the process of renewing its NPDES/IWW permit for the Turkey Point facility and FDEP has noticed an intent to issue a permit, but parties have filed administrative challenges, resulting in litigation concerning the issuance of the final permit. The NPDES/IWW permit is an integral piece of FPL's compliance with the 2016 Consent Order issued by FDEP, the environmental requirement that forms the basis for the Cooling Canal Project. The proposed NPDES/IWW permit incorporates the 2016 Consent Order remedial actions and timelines related to retraction of the hypersaline plume as well as monitoring and reporting requirements. Therefore, FPL is requesting to recover costs associated with litigating the NPDES/IWW permit challenges. (Sole)

**GULF:** No position.

**DEF:** No position.

**TECO:** No position.

**FIPUG:** Adopt the position of OPC.

**PCS:** No position.

**OPC:** No. The OPC is willing to agree to litigate this issue in the 2021 hearing cycle if all parties and staff agree to such a deferral.

**STAFF:** Staff has no position at this time.

**IX. EXHIBIT LIST**

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
	<u>Direct</u>		
Rena B. Deaton	FPL	RBD-1	Environmental Cost Recovery Final True-up January 2019 - December 2019 Commission Forms 42-1A through 42-9A
Rena B. Deaton	FPL	RBD-2	Environmental Cost Recovery Actual/Estimated True-up January 2020 - December 2020 Commission Forms 42-1E through 42-9E
Rena B. Deaton	FPL	RBD-3	Appendix I - Environmental Cost Recovery Projections - January 2021 - December 2021 Commission Forms 42- 1P through 42-8P
			Appendix II - Calculation of Stratified Separation Factors
Michael W. Sole	FPL	MWS-1	FPL Supplemental CAIR/MATS/CAVR Filing

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Michael W. Sole	FPL	MWS-2	June 12, 2019 NOAA Letter to FPL
Michael W. Sole	FPL	MWS-3	March 25, 2020 USFWS Letter to FPL
Michael W. Sole	FPL	MWS-4	2015 Consent Agreement
Michael W. Sole	FPL	MWS-5	June 2016 FDEP Consent Order
Michael W. Sole	FPL	MWS-6	2016 Consent Agreement Addendum
Michael W. Sole	FPL	MWS-7	July 2020 Plan Submitted to FDEP
Michael W. Sole	FPL	MWS-8	NPDES/IWW Permit Number FL0001562
Michael W. Sole	FPL	MWS-9	April 13, 2020 Notice of Intent to Issue Permit
Michael W. Sole	FPL	MWS-10	Photo of Manatee Calf at Sea World Rehabilitation Center
Richard L. Hume	Gulf	RLH-1	Environmental Cost Recovery Final True-up January 2019 - December 2019 Commission Forms 42-1A through 42-9A
Richard L. Hume	Gulf	RLH-2	Environmental Cost Recovery Actual/Estimated True-up January 2020 - December 2020 Commission Forms 42-1E through 42-9E
Richard L. Hume	Gulf	RLH-3	Environmental Cost Recovery Projections - January 2021 - December 2021 Commission Forms 42-1P through 42-8P
Richard L. Hume	Gulf	RLH-4	Calculation of Stratified Separation Factors

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Michael W. Sole	Gulf	MWS-1	Federal Coal Combustion Residuals Rule and 2018 Amendment (40 CFR Parts 257 and 261)
Michael W. Sole	Gulf	MWS-2	Mississippi PSC Order dated October 28, 2019
Christopher Menendez	DEF	CAM-1	Forms 42-1A - 42-9A January 2019 – December 2019
Christopher Menendez	DEF	CAM-2	Capital Program Detail January 2019– December 2019
Christopher Menendez	DEF	CAM-3	Forms 42-1E – 42-9E January 2020– December 2020
Christopher Menendez	DEF	CAM-4	Capital Program Detail January 2020 – December 2020
Christopher Menendez	DEF	CAM-5	Forms 42-1P – 42-8P January 2021– December 2021
Christopher Menendez	DEF	CAM-6	Capital Program Detail January 2021– December 2021
Timothy Hill	DEF	CAM-5	Form 42-5P, page 23 of 23
Jeffrey Swartz	DEF	JS-1	Crystal River Clean Air Projects Organizational Chart
Jeffrey Swartz	DEF	CAM-5	Form 42-5P, pages 7, 21 and 22 of 23
Kim Spence McDaniel	DEF	KSM-1	Review of Integrated Clean Air Compliance Plan
Kim Spence McDaniel	DEF	CAM-5	Form 42-5P, pages 1-4 and 6-20 of 23



<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
M. Ashley Sizemore	TECO	MAS-1	Final Environmental Cost Recovery Commission Forms 42-1A through 42-9A for the period January 2019 through December 2019
M. Ashley Sizemore	TECO	MAS-2	Environmental Cost Recovery Commission Forms 42-1E through 42-9E for the Period January 2020 through December 2020
M. Ashley Sizemore	TECO	MAS-3	Environmental Cost Recovery Forms 42-1P through 42-8P Forms for the Period January 2021 through December 2021

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

## **X. PROPOSED STIPULATIONS**

There are proposed Type 2 stipulations<sup>1</sup> as stated below.

DEF, FPL, Gulf, TECO and Commission staff support the proposed stipulations. FIPUG, PCS Phosphate and OPC take no positions on the issues. The OPC position on each Type 2 stipulation is as follows:

OPC takes no position on these issues nor does it have the burden of proof related to them. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on these issues, either in this docket, in an order of the Commission or in a representation to a Court.

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<sup>1</sup> A Type 2 stipulation occurs on an issue when the utility and the staff, or the utility and at least one party adversarial to the utility, agree on the resolution of the issue and the remaining parties (including staff if they do not join in the agreement) do not object to the Commission relying on the agreed language to resolve that issue in a final order.

All witnesses are excused. Testimony and hearing exhibits are included in the record.

**ISSUE 1: What are the final environmental cost recovery true-up amounts for the period January 2019 through December 2019?**

FPL	\$14,087,943	Over-recovery
DEF	\$1,792,439	Under-recovery
TECO	\$3,987,915	Over-recovery
GULF	\$5,891,843	Over-recovery

**ISSUE 2: What are the actual/estimated environmental cost recovery true-up amounts for the period January 2020 through December 2020?**

FPL	\$4,763,785	Over-recovery
DEF	\$8,097,179	Over-recovery
TECO	\$7,841,176	Under-recovery
GULF	\$2,837,159	Over-recovery

**ISSUE 3: What are the projected environmental cost recovery amounts for the period January 2021 through December 2021?**

FPL	\$176,174,665
DEF	\$44,725,047
TECO	\$48,192,906
Gulf	\$197,635,007

**ISSUE 4: What are the environmental cost recovery amounts, including true-up amounts, for the period January 2021 through December 2021?**

FPL	\$157,436,210
DEF	\$38,447,970
TECO	\$52,083,641
Gulf	\$189,042,018

**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 2021 through December 2021?**

The depreciation rates used to calculate depreciation expense shall be the rates that are in effect during the period the allowed capital investment is in service, with the following exception: TECO -- Big Bend Fuel Oil Tanks 1 & 2, which were retired in 2016, will be depreciated over a five-year period from the date of retirement.

**ISSUE 6: What are the appropriate jurisdictional separation factors for the projected period January 2021 through December 2021?**

The appropriate jurisdictional separation factors for the period January 2021 through December 2021 are as follows:

**FPL:** Retail Energy Jurisdictional Factor - Base/Solar 95.6788%  
Retail Energy Jurisdictional Factor - Intermediate 94.9979%  
Retail Energy Jurisdictional Factor - Peaking 95.2675%  
Retail Demand Jurisdictional Factor - Transmission 90.2300%  
Retail Demand Jurisdictional Factor - Base/Solar 95.6891%  
Retail Demand Jurisdictional Factor - Intermediate 95.0081%  
Retail Demand Jurisdictional Factor - Peaking 95.2778%  
Retail Demand Jurisdictional Factor - General Plant 96.9888%  
Retail Demand Jurisdictional Factor - Distribution 100.0000%

**DEF:** The Energy separation factor is calculated for each month based on retail kWh sales as a percentage of projected total kWh sales. The remaining separation factors are below and are consistent with DEF's 2017 Second Revised and Restated Stipulation and Settlement Agreement ("2017 Agreement") approved in Order No. PSC-2017-0451-AS-EU.

Transmission Average 12 CP Demand – 70.203%  
Distribution Primary Demand – 99.561%

Production Demand:  
Production Base – 92.885%  
Production Intermediate – 72.703%  
Production Peaking – 95.924%  
Production A&G – 93.221%

**TECO:** Energy: 100.00%

Demand: 100.00%

**GULF:** Retail Energy Jurisdictional Factor - Base 100.0000%  
 Retail Energy Jurisdictional Factor - Intermediate 97.5922%  
 Retail Energy Jurisdictional Factor - Peaking 76.0860%  
 Retail Demand Jurisdictional Factor - Transmission 97.2343%  
 Retail Demand Jurisdictional Factor - Base 100.0000%  
 Retail Demand Jurisdictional Factor - Intermediate 97.5922%  
 Retail Demand Jurisdictional Factor - Peaking 76.0860%  
 Retail Demand Jurisdictional Factor - General Plant 96.9888%  
 Retail Demand Jurisdictional Factor - Distribution 98.1419%

**ISSUE 7: What are the appropriate environmental cost recovery factors for the period January 2021 through December 2021 for each rate group?**

The appropriate environmental cost recovery factors for the period January 2021 through December 2021 for each rate group are as follows:

**FPL:**

<b>Rate Class</b>	<b>Environmental Cost Recovery Factor (cents/kWh)</b>
RS1/RTR1	0.149
GS1/GST1	0.150
GSD1/GSDT1/HLFT1/GSD1-EV	0.133
OS2	0.080
GSLD1/GSLDT1/CS1/CST1/HLFT2/GSLD1-EV	0.135
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.114
GSLD3/GSLDT3/CS3/CST3	0.110
SST1T	0.110
SST1D1/SST1D2/SST1D3	0.175
CILC D/CILC G	0.113
CILC T	0.102
MET	0.122
OL1/SL1/SL1M/PL1	0.027
SL2/SL2M/GSCU1	0.104
Total	0.141

**DEF:**

<b>RATE CLASS</b>	<b>ECRC FACTORS</b>
Residential	0.099 cents/kWh
General Service Non-Demand @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.098 cents/kWh 0.097 cents/kWh 0.096 cents/kWh
General Service 100% Load Factor	0.095 cents/kWh
General Service Demand @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.096 cents/kWh 0.095 cents/kWh 0.094 cents/kWh
Curtable @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.091 cents/kWh 0.090 cents/kWh 0.089 cents/kWh
Interruptible @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.093 cents/kWh 0.092 cents/kWh 0.091 cents/kWh
Lighting	0.091 cents/kWh

**TECO:**

<b><u>Rate Class</u></b>	<b><u>Factor (¢/kWh)</u></b>
RS	0.269
GS, CS	0.269
GSD, SBF	
Secondary	0.265
Primary	0.262
Transmission	0.260
IS	
Secondary	0.257
Primary	0.254
Transmission	0.252
LS1	0.258
Average Factor	0.267

**GULF:**

<b>Rate Class</b>	<b>Environmental Cost Recovery Factor (cents/kWh)</b>
RS, RSVP, RSTOU	1.992
GS	2.025
GSD, GSDT, GSTOU	1.628
LP, LPT	1.428
PX, PXT, RTP, SBS	1.405
OS-I/II	0.446
OS-III	1.290
Total	1.762

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

The factors shall be effective beginning with the specified environmental cost recovery cycle and thereafter for the period January 2021 through December 2021. Billing cycles may start before January 1, 2021 and the last cycle may read after December 31, 2021, so that each customer is billed for twelve months regardless of when the adjustment factor became effective. These charges will continue in effect until modified by the Commission.

**ISSUE 9: Should the Commission approve revised tariffs reflecting the environmental cost recovery amounts and environmental cost recovery factors determined to be appropriate in this proceeding?**

The Commission shall approve revised tariffs reflecting the environmental cost recovery factors determined to be appropriate in this proceeding. Staff shall verify that the revised tariffs are consistent with the Commission's decision.

**ISSUE 10: Should this docket be closed?**

While a separate docket number is assigned each year for administrative convenience, this is a continuing docket and shall remain open.

COMPANY-SPECIFIC ENVIRONMENTAL COST RECOVERY ISSUES

Duke Energy Florida, LLC:

**ISSUE 11: Should the Commission approve DEF’s Anclote and Bartow Stations 316(b) Rule Compliance Plan Projects for cost recovery through the Environmental Cost Recovery Clause?**

The Commission shall approve DEF’s Anclote and Bartow Stations 316(b) Rule Compliance Plan Projects for cost recovery through the Environmental Cost Recovery Clause. In Order Nos. PSC-2004-0990-PAA-EI and PSC-2018-0014-FOF-EI, the Commission found that DEF’s Section 316(b) of the Clean Water Act Program (“316(b) Program”) met the criteria for recovery through the Environmental Cost Recovery Clause. DEF’s Anclote and Bartow Stations 316(b) Compliance Plan Projects meet the criteria for recovery through the Environmental Cost Recovery Clause. DEF agrees that, after the Florida Department of Environmental Protection approves DEF’s compliance plans for Bartow and Anclote, respectively, through the issuance of the NPDES permit renewals, it will present its compliance plans, for each plant, as part of a future ECRC docket and has the burden of proving its plan and any associated costs are prudent.

**ISSUE 12: How should any approved Environmental Cost Recovery Clause costs associated with DEF’s Anclote and Bartow Stations 316(b) Rule Compliance Plan Projects be allocated to the rate classes**

Consistent with Order No. PSC-2018-0014-FOF-EI by which the Commission approved the cost allocation for DEF’s 316(b) Program at Crystal River North, Capital and O&M costs for the Anclote and Bartow 316(b) Programs shall be allocated on a demand basis.

Florida Power & Light Company:

**ISSUE 13: Should FPL be allowed to recover, through the ECRC, prudently incurred costs associated with its proposed Power Plant Intake Protected Species Project?**

FPL shall be allowed to recover, through the ECRC, prudently incurred costs associated with its proposed Power Plant Intake Protected Species Project. Under the United States Endangered Species Act (“ESA”) (16 U.S.C. § 1531 et seq.), the Marine Mammal Protection Act (“MMPA”) (16 U.S.C. § 1361-1407) and Chapter 68A-27 of the Florida Administrative Code, FPL is required to avoid the “take” of species listed as endangered or threatened.

Recently, FPL power plants have had interactions with the smalltooth sawfish and the Florida manatee which are listed as an endangered and threatened species, respectively, under the ESA. FPL has received letters from NOAA Fisheries and the USFWS stating that pursuant to the ESA, FPL must undertake measures to address the unauthorized takes of these species. In order to prevent further take of the species, FPL plans to hire consultants to evaluate and recommend design solutions that will be proposed to the environmental agencies. FPL will implement the agreed upon solution.

Although included in FPL's proposal, the appropriateness of costs related to the manatee calf will be litigated in the 2021 hearing cycle.

**ISSUE 14: How should any approved Environmental Cost Recovery Clause costs associated with FPL's proposed Power Plant Intake Protected Species Project be allocated to rate classes**

O&M and Capital costs associated with FPL's proposed Power Plant Intake Protected Species Project shall be allocated to rate classes based on 100% CP Demand.

**ISSUE 15: Should FPL be allowed to recover, through the ECRC, prudently incurred costs associated with its proposed modification to its Turkey Point Cooling Canal Monitoring Plan Project**

Although included in FPL's proposal, the appropriateness of costs related to proposed modification of the Turkey Point Cooling Canal Monitoring Plan Project will be litigated in the 2021 hearing cycle.

**XI. PENDING MOTIONS**

There are no pending motions at this time.

**XII. PENDING CONFIDENTIALITY MATTERS**

There are no pending confidentiality matters at this time.

**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, 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.

Each witness shall be given three minutes for a summary of their testimony.

The parties shall provide cross-examination exhibits, including impeachment exhibits, to the Commission Clerk by **October 27, 2020**, following the procedures set forth in Attachment A. The exhibits that are pre-filed and designated as cross-examination or impeachment exhibits shall not be viewed by opposing witnesses or opposing counsel or otherwise have their contents or identity communicated to such witnesses or counsel.

It is therefore,

ORDERED by Commissioner Andrew Giles Fay, 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 Andrew Giles Fay, as Prehearing Officer, this 27th day of October, 2020.



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ANDREW GILES FAY  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
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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.

## **ATTACHMENT A**

### **Requirements related to providing Cross-Examination Exhibits prior to Hearing**

By October 27, 2020, each party must provide the Commission Clerk an electronic copy of all cross-examination exhibits, including impeachment exhibits, the party plans to use during the hearing. All cross-examination exhibits must be provided to the Clerk's Office on either USB flash drives or CDs. Confidential documents must be placed on one USB flash drive or CD, and non-confidential exhibits must be placed on a different or separate USB flash drive or CD. This is because the Clerk's Office will process the confidential exhibits, and will transmit all non-confidential exhibits to the General Counsel's Office for processing. All USB flash drives or CDs provided to the Clerk's Office must be clearly labeled as confidential or non-confidential, and the label must also include the Docket Number(s) and the name of the party providing the exhibits.

Each party must also provide to the Clerk by October 27, 2020, a table listing the exhibit numbers and short titles of each cross-examination exhibit provided to the Clerk. Pursuant to Rule 25-22.006(3), F.A.C., a notice of intent to request confidential classification must be filed for all confidential information.

Each party must pre-number each exhibit with the following sequential numbering system that clearly denotes confidential exhibits. For example, DEF will pre-identify its cross-examination exhibits DEF-1, DEF-2, DEF-3, etc. All confidential exhibits must include the letter "C" placed after the number. Thus, if DEF's third exhibit is confidential, it will be labeled DEF-3C.

Each exhibit must be saved as a separate electronic file, and each file must be labeled with the exhibit number that reflects the information contained in the exhibit. The exhibit number will serve as the filename in the virtual folder during the hearing. Each exhibit must also include a cover page that includes the exhibit number. In addition, each exhibit must include sequentially numbered pages. The page numbers must be placed in the upper right-hand corner of each page.

The confidential and non-confidential cross-examination exhibits will be made available to the parties in virtual folders the day before the hearing. The cross-examination exhibits will be made available to the parties for the sole purpose of providing the witnesses and their counsel with the opportunity to print the exhibits or download them to their electronic devices for use during the hearing.<sup>2</sup> The parties must not view or read the exhibits prior to the hearing. Parties will be provided usernames and passwords by Commission staff that will give them access to the confidential exhibits and any other confidential information that will be used during the hearing. By October 27, 2020, parties must provide the Commission Clerk with the list of names of those persons who should be given a user name and password to access confidential information.

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<sup>2</sup> Microsoft Chrome is the best internet browser to use to access the virtual folder.