

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Environmental Cost) DOCKET NO. 960007-EI
Recovery Clause.) ORDER NO. PSC-96-1097-PHO-EI
_____) ISSUED: August 27, 1996

Pursuant to Notice, a Prehearing Conference was held on Tuesday, August 20, 1996, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

Matthew Childs, Esquire, Steel Hector & Davis, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301
On behalf of Florida Power & Light Company.

Jeffrey A. Stone, Esquire, and Russell A. Badders, Esquire, Beggs & Lane, Post Office Box 12950, Pensacola, Florida 32576-2950
On behalf of Gulf Power Company.

James D. Beasley, Esquire, and Lee L. Willis, Esquire, Ausley & McMullen, Post Office Box 391, Tallahassee, Florida 32301
On behalf of Tampa Electric Company.

Joseph A. McGlothlin, Esquire, and Vicki Gordon Kaufman, Esquire, McWhirter Reeves McGlothlin Davidson Rief and Bakas, 117 South Gadsden Street, Tallahassee, Florida 32301
On behalf of Florida Industrial Power Users Group.

Harold McLean, Esquire, and John Roger Howe, Esquire, Office of Public Counsel, c/o the Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida.

Vicki D. Johnson, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

As part of the Commission's continuing fuel and environmental cost recovery proceedings, a hearing is set for August 29 - 30, 1996, in this docket and in Docket No. 960001-EI. The hearing will address the issues set out in the body of this prehearing order.

DOCUMENT NUMBER-DATE

09109 AUG 27 '96

FPSC-RECORDS/REPORTING

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. 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.

- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) 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 Division of Records and Reporting's confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to 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 the 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. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

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 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case 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 appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes

the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and staff have had the opportunity to object and cross-examine, 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.

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.

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.

IV. ORDER OF WITNESSES

Witnesses whose names are preceded by an asterisk (*) have been excused. The parties have stipulated that the testimony of those witnesses will be inserted into the record as though read, and cross-examination will be waived. The parties have also stipulated that all exhibits submitted with the witnesses' testimony shall be identified as shown in Section VII of this Prehearing Order and admitted into the record.

<u>Witness</u>	<u>Appearing For</u>	<u>Issue #</u>
<u>Direct</u>		
* R. Morley	FPL	1 - 9
* W. M. Reichel	FPL	10a - 10c
* J. O. Vick	Gulf	11a, 11d
* S. D. Cranmer	Gulf	1 - 9, 11b, 11c

V. BASIC POSITIONS

FPL: None necessary.

GULF: It is the basic position of Gulf Power Company that the proposed environmental cost recovery factors present the best estimate of Gulf's cost for its environmental compliance activities for the period October 1996 through

September 1997, including the true-up calculations and other adjustments allowed by the Commission.

FIPUG: None at this time.

OPC: None necessary.

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.

VI. ISSUES AND POSITIONS

GENERIC ENVIRONMENTAL COST RECOVERY ISSUES

STIPULATED

ISSUE 1: What are the appropriate final environmental cost recovery true-up amounts for the period ending March 31, 1996?

POSITION: FPL: \$58,047 underrecovery.
GPC: \$686,617 overrecovery.

STIPULATED

ISSUE 2: What are the estimated environmental cost recovery true-up amounts for the period April 1996 through September 1996?

POSITION: FPL: \$8,298 underrecovery.
GPC: \$399,066 overrecovery.

STIPULATED

ISSUE 3: What are the total environmental cost recovery true-up amounts to be collected during the period October 1996 through September 1997?

POSITION: FPL: \$66,345 underrecovery.
GPC: \$1,085,683 overrecovery.

STIPULATED

ISSUE 4: What are the appropriate projected environmental cost recovery amounts for the period October 1996 through September 1997?

POSITION: FPL: \$12,631,502
GPC: \$9,974,077

STIPULATED

ISSUE 5: What should be the effective date of the new environmental cost recovery factors for billing purposes?

POSITION: With respect to FPL and Gulf, the factor should be effective beginning with the specified environmental cost recovery cycle and thereafter for the period October 1996 through September 1997. Billing cycles may start before October 1, 1996, and the last cycle may be read after September 30, 1997, so that each customer is billed for twelve months regardless of when the adjustment factor became effective.

STIPULATED

ISSUE 6: What depreciation rates should be used to develop the depreciation expense included in the total environmental cost recovery true-up amounts to be collected during the period October 1996 through September 1997?

POSITION: The depreciation rates used to calculate the depreciation expense should be the rates that are in effect during the period the allowed capital investment is in service.

STIPULATED

ISSUE 7: How should the newly proposed environmental costs be allocated to the rate classes?

POSITION: FPL: The costs of the Noncontainerized Liquid Waste should be allocated on a demand basis using the 12 CP and 1/13 AD method.
GPC: The costs of the Crist 6 CEM Flow Monitors should be allocated on an energy basis.

STIPULATED

ISSUE 8: What are the appropriate Environmental Cost Recovery Factors for the period October 1996 through September 1997 for each rate group?

POSITION:

FPL:

<u>Rate Class</u>	<u>Environmental Recovery Factor</u> <u>(\$/KWH)</u>
RS1	0.00017
GS1	0.00016
GSD1	0.00015
OS2	0.00014
GSLD1/CS1	0.00015
GSLD2/CS2	0.00015
GSLD3/CS3	0.00015
ISST1D	0.00012
SST1T	0.00018
SST1D	0.00013
CILC D/CILC G	0.00014
CILC T	0.00014
MET	0.00016
OL1/SL1	0.00011
SL2	0.00014

Gulf:

RATE CLASS	ENVIRONMENTAL COST RECOVERY FACTORS ¢/KWH	
	Traditional Six-Month (Oct-Mar)	Proposed Twelve- Month (Oct-Sept)
RS, RST	0.128	0.124
GS, GST	0.126	0.122
GSD, GSDT	0.112	0.109
LP, LPT	0.106	0.103
PX, PXT, RTP	0.098	0.095
OSI, OSII	0.083	0.081
OSIII	0.103	0.100
OSIV	0.141	0.136
SBS	0.106	0.103

STIPULATED

ISSUE 9: Should the Environmental Cost Recovery Clause be changed from a six-month cost recovery period to an annual cost recovery period?

POSITION: Yes. In Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, the Commission found that six-month periods should be established initially since neither the Commission or the company (Gulf Power Company) had much experience in administering the clause. However, the Commission continued to say that this does not preclude us from establishing annual periods after some experience is gained. The Commission as well as Gulf Power Company and Florida Power & Light Company presently have over two years of experience with the Environmental Cost Recovery Clause.

Staff believes that annual cost recovery periods will levelize customers' rates since rates will not reflect seasonal fluctuations. It will also reduce the administrative costs to the companies associated with filing twice a year as opposed to filing once a year.

Likewise, the Commission will benefit from an annual cost recovery period as the costs associated with administering the clause should decrease, and it will save the Commission time which could be spent on other matters.

COMPANY - SPECIFIC ENVIRONMENTAL COST RECOVERY ISSUES

Florida Power & Light Company

STIPULATED

ISSUE 10a:

Should the Commission approve Florida Power & Light's request to recover the cost of the St. Lucie Plant Sea Turtle Barrier through the Environmental Cost Recovery Clause?

POSITION: No. This issue was deferred from the February 21, 1996 hearing. Prior to the February hearing, Florida Power & Light (FPL) provided documentation which showed that installation of the five inch mesh barrier net at St. Lucie likely would be required in the near future; however, the documents did not show that this project currently is required by an environmental law or regulation as defined in Section 366.8255, Florida Statutes. Staff was provided a "draft" copy of the Nuclear Regulatory Commission's Biological Opinion which calls for the new five inch mesh barrier net. This document resulted from an Endangered Species Act Section 7 Consultation which was conducted by the National Marine Fisheries Service. FPL anticipated that this report would be issued before the August hearing. However, this report still has not been issued. For this reason, staff believes it is reasonable for the Commission to disallow further cost recovery of this project until all of the criteria for recovery have been met.

On August 22, 1996, the company refiled its schedules to remove the project costs for prior recovery periods and the projected period.

STIPULATED
ISSUE 10b:

Should the Commission approve Florida Power & Light's request to recover the cost of the Disposal of Noncontainerized Liquid Waste through the Environmental Cost Recovery Clause?

POSITION: Yes. This activity includes capital costs for a mobile ash dewatering system and the associated O&M costs for processing the ash sludge. This activity is a requirement of Rule 62-701.300, Florida Administrative Code, and all expenses requested for recovery were incurred after April 13, 1993. Based on FPL's cost analysis, staff believes this project is a cost-effective option for compliance. The purchase of the mobile ash dewatering system for \$270,000 is projected to result in an annual savings of approximately \$300,000 in O&M expenses as FPL will no longer be paying a vendor to dewater the ash for them. Finally, FPL maintains that the costs of this project are not presently recovered in base rates or any other cost recovery mechanism. Staff believes that the requirements for ash sludge disposal have changed since FPL's last rate case. Therefore, the costs for the scope change are appropriate for recovery and will be addressed in the audit for the true-up period.

STIPULATED
ISSUE 10c:

Should the Commission approve Florida Power & Light's request to reserve the right to submit expenditures for the St. Johns River Power Park NO_x project for recovery through the Environmental Cost Recovery Clause?

POSITION: No. Staff believes that the Commission's approval of a project before costs are projected is premature. According to Section 366.8255, Florida Statutes, a utility must file projected costs as well as a description of the proposed environmental compliance activities. When Florida Power & Light files projected costs for this project, then the Commission should determine whether the project is appropriate for recovery through the Environmental Cost Recovery Clause. Florida Power & Light Company may file projections for the St. Johns River Power Park NO_x project when it determines that this project will be implemented.

Gulf Power Company

STIPULATED

ISSUE 11a: Should the Commission approve Gulf Power Company's request for recovery of costs of Crist 6 CEMs Flow Monitors through the Environmental Cost Recovery Clause?

POSITION: Yes. Although this upgrade to the Crist 6 CEM system is not specifically required by an environmental law or regulation, the CEM system itself is a requirement of the Clean Air Act Amendments of 1990 (CAAA). Gulf's decision to upgrade the flow monitors is based on a cash flow analysis which compares the existing flow monitor to the proposed upgraded flow monitor. This analysis supports Mr. Vick's testimony that "The expected savings from upgrading the system outweigh the expected maintenance costs that would be incurred through maintenance of the existing system over the next four years." Based on review of this analysis, staff believes this project is a cost effective alternative for compliance with the CAAA. All expenses were incurred after April 13, 1993, are not being recovered in any other cost recovery mechanism, and were not considered at the time of Gulf Power Company's last rate case. Final disposition of the costs incurred in this activity will be subject to audit.

STIPULATED

ISSUE 11b: Should the company retire the installed costs of replaced units of property?

POSITION: Yes. According to Rule 25-6.0142 (4) (b), F.A.C., "... The retirement entry shall be recorded no later than one month following the transfer of expenditures from Construction Work in Progress (Account 107) to Electric Plant in Service (Account 101/106)..." Gulf was found to be in violation of this rule in the June 23, 1996 FPSC Audit Report. Gulf has since made the correcting entries, and these adjustments will have no effect on the recovery amount.

STIPULATED

ISSUE 11c: Should the company capitalize the replacement cost of minor items of depreciable property?

POSITION: No. According to 18 CFR 101, Electric Plant Instructions 10, C. (3), "When a minor item of depreciable property is replaced independently of the retirement unit of which it

is a part, the cost of replacement shall be charged to the maintenance account appropriate for that item, ..." Gulf was found to be in violation of this rule in the June 23, 1996 FPSC Audit Report; therefore, Gulf made the appropriate adjustments for Plant-In-Service and Accumulated Depreciation in the month of July.

STIPULATED
ISSUE 11d:

Should legal expenses incurred to challenge Department of Environmental Protection (DEP) proposals be recovered through the Environmental Cost Recovery Clause?

POSITION: It is staff's position that the answer to this question should be yes. Legal expenses directly associated with environmental compliance activities approved by the Commission that are incurred in order to benefit the company's ratepayers should be recovered through the ECRC. However, the Commission will continue to examine each such expenditure on a case-by-case basis in order to determine the prudence of its recovery through the clause.

Gulf Power agrees with staff.

It is FIPUG's position that such legal expenses should not go through the clause because they are normal operating expenses of the utility. FIPUG understands that it is Gulf's and staff's position that such expenses should go through the clause because the activities are directly associated with environmental compliance. However, because the flow-through of these expenses will not affect the factor, FIPUG agrees with Gulf and staff to inclusion of the expenses in the clause at this time. No other party took a position on this issue.

Tampa Electric Company

STIPULATED

ISSUE 12: What are the appropriate initial Environmental Cost Recovery Factors for the period October 1996 through March 1997 for each rate group?

POSITION: The appropriate Environmental Cost Recovery Factors for the period October 1996 through March 1997 for each rate group are as follows:

Rate Class	Factor (cents per kWh)
RS, RST	0.041
GS, GST, TS	0.041
GSD, GSDT	0.041
GSLD, GSLDT, SBF	0.040
IS1, IST1, SBI1, SBIT1, IS3, IST3, SBI3, SBIT3	0.039
SL, OL	0.041

At the August 13, 1996 Agenda Conference, the Commission approved these Environmental Cost Recovery Factors for the period October 1996 through March 1997 in Docket No. 960688-EI in which Tampa Electric Company petitioned for approval of certain environmental compliance activities for purposes of cost recovery. These factors will become final 14 days after the issuance of the Proposed Agency Action Order in Docket No. 960688-EI, unless a protest is timely filed by August 28, 1996.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
* R. Morley	FPL	<u>(RM - 1)</u>	Environmental Cost Recovery True-Up Period October 1995 - March 1996 Commission Forms 42-1A through 42-8A, as revised on August 22, 1996.
* R. Morley * W.M. Reichel	FPL	<u>(RM - 2)</u>	Appendix I/Environmental Cost Recovery Projections October 1996 - September 1997 Commission Forms 42-1P through 42-7P, as revised on August 22, 1996.
* R. Morley * W.M. Reichel	FPL	<u>(RM - 3)</u>	Appendix II Environmental Cost Recovery Estimated/Actual Period April 1996 - September 1996 Commission Forms 42-1E through 42-8E, as revised on August 22, 1996.
*Cranmer	Gulf	<u>(SDC - 1)</u>	Schedules 1A - 8A
*Cranmer	Gulf	<u>(SDC - 2)</u>	Schedules 42-1P through 42-7P; 42-1PA through 42-7PA; 42-1E through 42-8E

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

VIII. PROPOSED STIPULATIONS

The parties have stipulated to all issues in the Prehearing Order.

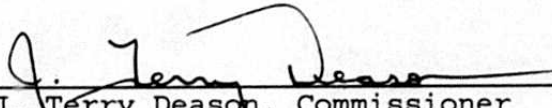
IX. PENDING MOTIONS

No pending motions at this time.

It is therefore,

ORDERED by Commissioner J. Terry Deason, 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 J. Terry Deason, as Prehearing Officer, this 27th day of August, 1996.



J. Terry Deason, Commissioner
and Prehearing Officer

(S E A L)

VDJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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, if issued by a Prehearing Officer; (2)

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reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.