

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020007-EI

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In the Matter of

ENVIRONMENTAL COST
RECOVERY FACTORS.

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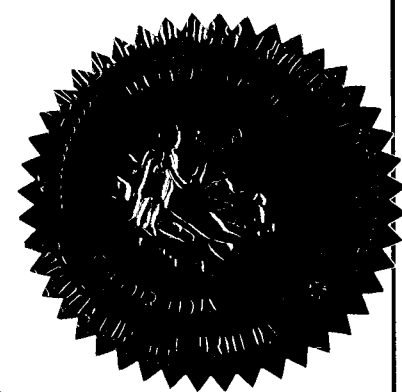
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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER MICHAEL A. PALECKI
 Prehearing Officer

DATE: Monday, November 4, 2002

TIME: Commenced at 1:30 p.m.
 Concluded at 4:11 p.m.



PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR
 Official FPSC Reporter
 (850) 413-6734

DOCUMENT NUMBER - DATE

12376 NOV 12 02

FPSC-COMMISSION CLERK

1 APPEARANCES:

2 JEFFREY A. STONE, RUSSELL A. BADDERS and R. ANDREW
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4 Post Office Box 12950, Pensacola, Florida 32576-2950, appearing
5 on behalf of Gulf Power Company (GULF).

6 JAMES D. BEASLEY, Ausley & McMullen, Post Office Box
7 391, Tallahassee, Florida 32302, appearing on behalf of Tampa
8 Electric Company (TECO).

9 JOHN McWHIRTER, JR., McWhirter, Reeves, McGlothlin,
10 Davidson, Decker, Kaufman, Arnold & Steen, P.A., 117 South
11 Gadsden Street, Tallahassee, Florida 32301, appearing on behalf
12 of Florida Industrial Power Users Group (FIPUG).

13 JOHN T. BUTLER, Steel, Hector & Davis, LLP, 200 South
14 Biscayne Boulevard, Suite 4000, Miami, Florida 33131-2939,
15 appearing on behalf of Florida Power & Light Company (FPL).

16 ROBERT D. VANDIVER, Associate Public Counsel, Office
17 of the Public Counsel, c/o The Florida Legislature, 111 West
18 Madison Street, Room 812, Tallahassee, Florida 32399-1400,
19 appearing on behalf of the Citizens of the State of Florida
20 (OPC).

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1 APPEARANCES CONTINUED:

2 RICHARD D. MELSON and GARY V. PERKO, Hopping, Green &
3 Sams, P.A., Post Office Box 6526, Tallahassee, Florida 32314,
4 appearing on behalf of Florida Power Corporation.

5 MARLENE STERN, Florida Public Service Commission,
6 General Counsel's Office, 2540 Shumard Oak Boulevard,
7 Tallahassee, Florida 32399-0870, appearing on behalf of the
8 Commission Staff.

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P R O C E E D I N G S

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2 COMMISSIONER PALECKI: Call the prehearing conference
3 to order at this time.

4 Would staff counsel please read the notice on all
5 dockets.

6 MS. ECHTERNACT: Pursuant to notice issued by the
7 Clerk of the Commission on October 7th, 2002, this time and
8 place have been set for a prehearing conference in Docket
9 Number 020001-EI, 020002-EG, 020003-GU, 020004-GU and Docket
10 Number 020007-EI.

11 COMMISSIONER PALECKI: At this time we'll take
12 appearances for all dockets. And rather than taking
13 appearances several times, we'll go ahead and ask each counsel
14 to please identify the docket numbers for which you are
15 appearing, and we'll start with Mr. Vandiver.

16 MR. VANDIVER: My name is Rob Vandiver. I'm
17 appearing on behalf of the Citizens of the State of Florida.
18 I'm appearing in the 01 docket, the 02 docket, the 03 docket
19 and the 07 docket.

20 MR. HORTON: Norman H. Horton, Jr., Messer, Caparello
21 & Self. I'm appearing in the 01, 02, 03, 04 dockets for
22 Florida Public Utilities, and in the 03 docket for Sebring,
23 Sebring Gas.

24 MR. BEASLEY: I'm James D. Beasley with the Law Firm
25 of Ausley & McMullen. I'm appearing on behalf of Tampa

1 Electric Company in the 01, 02 and 07 dockets.

2 MR. GUYTON: Charles A. Guyton with the law firm of
3 Steel, Hector & David appearing on behalf of Florida Power &
4 Light Company in the 02 docket.

5 MR. BADDERS: Russell Badders, and with me is Jeffrey
6 A. Stone and R. Andrew Kent appearing on behalf of Gulf Power
7 Company in the 01, 02 and 07 dockets.

8 MR. BUTLER: John Butler of Steel, Hector and Davis
9 appearing on behalf of Florida Power & Light Company in dockets
10 01 and 07.

11 MR. MELSON: Richard Melson and Gary Perko of the law
12 firm Hopping, Green & Sams appearing on behalf of City Gas
13 Company of Florida in the 03 and 04 dockets, and also appearing
14 on behalf of Florida Power Corporation in the 07 docket.

15 MR. MCGEE: Jim McGee appearing on behalf of Florida
16 Power Corporation in the 01 and 02 dockets.

17 MR. COSTA: Matt Costa appearing on behalf of Peoples
18 Gas in the 03 and 04 dockets.

19 MR. SCHIEFELBEIN: Wayne Schiefelbein with the firm
20 Rose, Sundstrom & Bentley appearing on behalf of the Florida
21 Division of Chesapeake Utilities Corporation in the 03 and
22 04 dockets.

23 MR. McWHIRTER: John McWhirter of the firm of
24 McWhirter and Reeves appearing on behalf of the Florida
25 Industrial Power Users Group with respect to 01, 02 and 07, and

1 on behalf of the Florida Industrial Gas Users Group with
2 respect to Docket Number 03.

3 MS. STERN: Marlene Stern on behalf of the Commission
4 in the 07 docket.

5 MS. ECHTERNACT: Katherine Echternact on behalf of
6 the Commission on the 03 docket.

7 MS. HOLLEY: Lorena Holley on behalf of the
8 Commission in Dockets 02 and 04.

9 MR. KEATING: Cochran Keating on behalf of the
10 Commission in Docket 01.

11 COMMISSIONER PALECKI: Okay. Before we decide on the
12 order in which we take up the dockets, I have a matter I need
13 to put on the record, and that is that I have excused St. Joe
14 Natural Gas from the prehearing conference in the 03 and
15 04 dockets, and also have excused them from the hearing in
16 those two dockets. And I've excused Indiantown from the
17 prehearing as well as the hearing in the 03 docket.

18 Now I've been advised by staff that it would prefer
19 to take up the dockets in the following order: 03, 04, 02, 07
20 and 01. Do any parties have an objection or a different
21 preference?

22 Hearing none, let's proceed at this time to the
23 0003 docket.

24 * * * * *

25 COMMISSIONER PALECKI: And we will move to the

1 prehearing conference in Docket 020007, Environmental Cost
2 Recovery Clause.

3 And first let's discuss preliminary matters. And I
4 believe that there are also some preliminary matters we need to
5 discuss in the 0007 docket; is that correct?

6 MS. STERN: I think the only preliminary matter that
7 we had was FP&L's new testimony, and I haven't, I haven't seen
8 it yet and I've only had a chance to briefly discuss it with
9 the attorneys in the 02 and the 01 docket. And the changes in
10 the 07 docket are very small and we don't anticipate that in
11 reviewing the testimony we'll necessarily have a problem.

12 The question that arose in my mind is why is revised
13 testimony being filed the day of the prehearing conference for
14 such small changes that may relate to what happens in 01? I
15 don't know.

16 COMMISSIONER PALECKI: Well, before we discuss what
17 the reasons for the late filing were, let's find out if anyone
18 has any objection to the late filing. Because if nobody
19 objects, I really don't care what the reason was.

20 Is there any objection at all to the late filing that
21 has been made or is being made by Florida Power & Light
22 Company? All right. I've heard no objection, so apparently
23 none of the parties object to their late filing.

24 Ms. Stern, what I wanted to find out from staff is
25 whether the process we've discussed in the earlier docket with

1 regard to FP&L's changed testimony and the discussions between
2 the parties, including the staff, are adequate and appropriate
3 for this docket as well.

4 MS. STERN: Yes, I think they're fine.

5 COMMISSIONER PALECKI: And Florida Power & Light, you
6 will be able to sit down with the parties immediately after
7 this prehearing conference and go over these issues with them?

8 MR. BUTLER: That would be fine.

9 COMMISSIONER PALECKI: Good. All right. Are there
10 any other preliminary matters in this docket?

11 Hearing none, we'll proceed to the prehearing order.
12 Sections I through V, are there any corrections?

13 MR. BUTLER: Commissioner Palecki?

14 COMMISSIONER PALECKI: Yes.

15 MR. BUTLER: It's not a correction, but a suggestion
16 that I had discussed with Mr. Keating in the preliminary
17 meeting we had on the 01 docket, and I raise it here because it
18 would have the same application everywhere, is that on Section
19 IV your posthearing procedures contemplates parties filing
20 posthearing statements of issues basically, the normal model of
21 resolving proceedings by having posthearing statements and then
22 a recommendation and subsequently a vote. And my understanding
23 is you ordinarily make the decisions at the end of the hearing.

24 We have a little concern that this procedure seems to
25 say that parties lose status if they don't file a posthearing

1 statement where obviously in the normal course of things it
2 wouldn't be necessary, and I would like to suggest and could
3 certainly provide to staff a brief proviso that would go at the
4 end of the last sentence in that first paragraph after saying
5 that, you know, if any party fails to file it, they have waived
6 the issues. And it would go on to say, "Provided, however,
7 that the parties do not need to file posthearing statements as
8 to any issue that is resolved by the Commission at the end of
9 hearing." Just provide a little bit of clarification on a
10 point that FPL has found --

11 COMMISSIONER PALECKI: So when you say at the end of
12 the hearing, you're talking about if the Commission decides
13 these issues, by way of a bench vote, which is quite customary
14 in these proceedings?

15 MR. BUTLER: That's right.

16 COMMISSIONER PALECKI: And that would mean that if
17 the Commission decides by a bench vote, in which case nobody
18 would normally file any posthearing statement, it would not
19 cause them to waive all issues or be dismissed from the
20 proceedings for purposes of a request for reconsideration or an
21 appeal from the Commission's decision?

22 MR. BUTLER: That would be the effect of it, yes.

23 COMMISSIONER PALECKI: Staff, that sounds quite
24 reasonable to me. Does that seem to create any problems for
25 you?

1 MS. STERN: Yes, that seems fine.

2 COMMISSIONER PALECKI: And it's something that --
3 it's the first time this has been brought to my attention at
4 all, but it's something that sounds as if it might be
5 appropriate for all prehearing orders, and that way we could,
6 the Commission could always go ahead and vote at the bench and
7 there wouldn't be any issue of parties losing their status as a
8 party. I won't decide that here at this time, but it's
9 something that you may want to take up with the Chairman and
10 just make that as a regular modification in all of the draft
11 prehearing orders.

12 Thank you, Mr. Butler. And with that modification,
13 we'll go ahead and move on to Section VI, the order of
14 witnesses.

15 MR. STONE: Commissioner Palecki, if I may, for
16 Witness Ritenour we need to add a reference to Issue 10B.

17 COMMISSIONER PALECKI: And does Gulf Power have any
18 other changes?

19 MR. STONE: Not to that section.

20 COMMISSIONER PALECKI: All right. Any other parties
21 have any other changes in the order of the witnesses or the
22 issues that they will testify to?

23 Hearing none, we'll move on to Sections VII and VIII,
24 positions of the parties.

25 And, once again, I don't intend to go through this

1 issue by issue. I'll just ask the parties if they have any
2 changes in any of the issues?

3 MR. BUTLER: I'm sorry. We're following the same
4 procedure as in the prior docket for FPL? You don't -- we're
5 not going to read out, in the interest of time, the changes
6 that are reflected in the revised testimony that we'll be
7 filing; correct?

8 COMMISSIONER PALECKI: No. I believe in the last
9 docket that there were no changes in the positions of Florida
10 Power & Light, which in the last docket they were quite
11 general.

12 I think in this docket, and correct me if I'm wrong,
13 in the last docket Florida Power & Light had changes that they
14 wanted to make in the factors that were under one of the
15 stipulation issues.

16 MR. BUTLER: Okay.

17 COMMISSIONER PALECKI: Does Florida Power & Light
18 intend to change its position on these issues as well as on the
19 stipulated issues?

20 MR. BUTLER: Yes. There are some of the issues that
21 are not listed in here as stipulated issues that would be --
22 our position on it would change in the sense that a dollar
23 amount would change from what's shown on the draft prehearing
24 order.

25 COMMISSIONER PALECKI: If you have those numbers now,

1 I think I'd prefer that they be read into the record at this
2 time.

3 MR. BUTLER: That would be fine.

4 COMMISSIONER PALECKI: Okay. If we can do that.
5 Staff, I believe that would be preferable to get that on the
6 record since we're actually changing their positions.

7 MS. STERN: I, I believe the new positions are in
8 there. You e-mailed me, Mr. Butler, a copy --

9 MR. BUTLER: Okay.

10 MS. STERN: -- of the revised positions and I cut and
11 pasted them in. When I e-mailed a copy to all the parties
12 Friday afternoon, it had those new positions.

13 MR. BUTLER: Okay.

14 MS. STERN: But as we go through, if you want to
15 double check, that's fine.

16 COMMISSIONER PALECKI: Mr. Butler, would you like an
17 opportunity to go through the numbers to make sure that
18 staff's, the positions that staff has put in for Florida Power
19 & Light comport with your modifications and your testimony?

20 MR. BUTLER: I'll double check. But I think they do.
21 I was actually under the misimpression that we were working off
22 of an, you know, earlier, unrevised version of the prehearing
23 order. So I'll double check and let Ms. Stern know if there's
24 any change, but I don't think there will be.

25 COMMISSIONER PALECKI: Thank you.

1 MR. BUTLER: Thank you.

2 COMMISSIONER PALECKI: Do any of the other parties
3 have any changes to their positions?

4 MR. STONE: Yes, Commissioner Palecki. On Issue 6,
5 Gulf would like to change its position to agree with staff.

6 COMMISSIONER PALECKI: Thank you.

7 MR. STONE: And then on Issue 10A, we would like to
8 discuss possibly rewording that issue.

9 At this time the only costs that Gulf has proposed
10 related to that agreement be recovered are -- there's only a
11 very narrow portion of the costs, and we may see that in the
12 future there may be a different allocation on the other costs
13 when they become ripe. And so what we would like to do is
14 propose that the issue be reworded to, "How should the costs
15 projected for 2003 associated with the implementation of the
16 Ozone Agreement between Gulf and the Department of
17 Environmental Protection be allocated to the rate classes?"
18 And that would reserve for the future other costs outside of
19 what is projected in 2003.

20 The reason why that's of import, the only costs that
21 are being proposed for 2003 are the incremental depreciation
22 costs associated with the early retirement of Crist Unit 1 and
23 maybe -- I don't believe there's any impact for the retirement
24 of Crist 2 and 3 in 2003.

25 Those costs, of course, are -- depreciation costs may

1 have a different allocation than other types of costs that
2 would be incurred; for example, the construction of the
3 precipitator or the eventual construction of the selective
4 catalytic reduction system.

5 Those costs are not ripe, they're not ready for
6 discussion in this proceeding, and we would propose that with
7 this proposed rewording that we have suggested and have handed
8 out to the parties that we could save for another day the
9 allocation of those costs.

10 COMMISSIONER PALECKI: Well, first, let me ask the
11 parties whether any party has any objection to the proposed
12 rewording, which would appear to make this a slightly narrower
13 issue and would limit the time for which the Commission would
14 be deciding for costs projected for the year 2003?

15 MR. McWHIRTER: I would have a question as to whether
16 or not the allocation determination made in this proceeding
17 would set precedent for the future proceedings. And, if so, I
18 think we ought to -- this deals with how you allocate the costs
19 of this depreciation. So I think just because it's a, the
20 trunk of the elephant is under the tent, doesn't mean that
21 decisions we make today won't be binding tomorrow.

22 COMMISSIONER PALECKI: Mr. Stone, would you like to
23 respond?

24 MR. STONE: I think -- we think by narrowing the
25 issue, then it would only -- since the only costs are a very

1 discrete category of costs, it would reserve the right to
2 determine in the future the allocation. Whether it has any
3 precedential value would depend on the type of costs recovered
4 in the future and whether or not they correlate to the same
5 type of costs that are dealt with in 2003.

6 It is my belief that the arguments, from
7 Mr. McWhirter's standpoint, he would be preserving his right to
8 make his arguments without any problem. I don't, I don't
9 believe Mr. McWhirter would be harmed if we narrow the scope of
10 the issue in the manner which we've suggested. In fact, I
11 believe his position would be enhanced.

12 COMMISSIONER PALECKI: I tend to agree,
13 Mr. McWhirter. I would think that while every decision made by
14 this Commission does have some precedential effect, by limiting
15 the cost in this docket to those projected for 2003, the
16 Commission would not be making a far reaching decision that
17 would encompass many years. And, you know, another Commission
18 in the future can always recede from precedent what might be
19 the result of a Commission vote this year.

20 MR. McWHIRTER: If the cost is de minimus, then it
21 doesn't rise to the level of dealing with cost allocation. And
22 I would suggest that if it's a de minimus item in 2003, then
23 there should be no determination of cost allocation. Or we
24 don't really object to it flowing through the clause without --
25 if you'd give it an express statement, perhaps we can stipulate

1 that cost allocation for the de minimus costs this year will
2 not be indicative of decisions that will be made in future
3 years.

4 COMMISSIONER PALECKI: Well, I'm not sure we've heard
5 that it's de minimus. Is it?

6 MR. STONE: I don't mean to imply that the costs are
7 de minimus. What I'm meaning to say is they're a very discrete
8 category of costs that we're proposing this year. They are not
9 the type of costs that are associated -- literally the only
10 costs that we're talking about for 2003 are the incremental
11 depreciation costs associated with the early retirement of
12 Crist Unit 1. It is not the installation of new pollution
13 control equipment. That will come in later years.

14 And what I suggest is that the argument that applies
15 to the depreciation costs may or may not be the same argument
16 that will apply to the other types of costs. But I don't think
17 we need to make those decisions as to the allocation of the
18 precipitator or the SCR or other costs when they are not before
19 the Commission.

20 COMMISSIONER PALECKI: And it appears with your
21 revised issue we would be limiting the scope of the decision
22 that the Commission would make in narrowing it.

23 MR. STONE: That is what we propose. Yes,
24 Commissioner.

25 COMMISSIONER PALECKI: Staff, do you have any opinion

1 on the revision that's been suggested by Gulf Power?

2 MS. STERN: Actually, we prefer Gulf Power's
3 revision.

4 COMMISSIONER PALECKI: So you would prefer that the
5 Commission only make a narrow decision at this time, leaving
6 decisions on other environmental expenditures outside of the
7 year 2003 for future hearings in this docket?

8 MS. STERN: Yes. Uh-huh.

9 MR. McWHIRTER: And Gulf has taken a position --

10 MS. STERN: I mean Gulf Power's statement of the
11 issue, not the position. I'm sorry.

12 COMMISSIONER PALECKI: Their statement of the issue.

13 MS. STERN: Right.

14 COMMISSIONER PALECKI: No one is discussing the
15 position, only their statement of the issue.

16 MS. STERN: Right.

17 MR. McWHIRTER: And staff concurs with Gulf's
18 position on this?

19 MS. STERN: With their position?

20 MR. McWHIRTER: Yes. For this -- for cost allocation
21 with respect to depreciation expense.

22 MS. STERN: We don't concur with their position, but
23 we think the statement of the issue is fine.

24 MR. McWHIRTER: Okay. Well, could we narrow the
25 issue and FIPUG will take a position on it?

1 COMMISSIONER PALECKI: Certainly. I think all
2 parties will have an opportunity to modify their position on
3 this issue, if you, if the party has taken any position on, on
4 this issue as a result of the modification of the issue.

5 So at this time I'll go ahead and rule that Issue 10A
6 will be as proposed by Gulf Power.

7 Gulf, have you provided the court reporter with a
8 copy of this issue?

9 (Gulf Power's Proposed Revision to Issue 10A attached
10 as part of the record.)

11 MR. STONE: Yes, we have. And, Commissioner Palecki,
12 I may have misstated earlier when I said that only Crist, the
13 retirement of Crist Unit 1 is reflected in our numbers for
14 2003. I believe there may also be some impact from Crist,
15 retirement of Crist 2 and 3 as well, and I did not want to
16 leave that mistake on my part on the record without being
17 corrected.

18 COMMISSIONER PALECKI: Thank you. And I'll read
19 Issue 10A as it will appear in the prehearing order. And that
20 is, "How should the costs projected for 2003 associated with
21 the implementation of the Ozone Agreement between Gulf and the
22 Department of Environmental Protection (DEP) be allocated to
23 the rate classes?"

24 Are there any other changes to the issues and/or
25 positions?

1 MR. STONE: And in the same handout where we handed
2 out our revised, my proposed revision to the issue, we also
3 provided Gulf's revised position on the issue, and I just
4 wanted to make sure everyone was aware that they're on the same
5 sheet of paper. I don't think it's necessary to read it into
6 the record, unless you prefer to.

7 COMMISSIONER PALECKI: I don't think it's necessary
8 either.

9 MR. McWHIRTER: FIPUG states its position to agree
10 with Gulf's position.

11 COMMISSIONER PALECKI: All right. Are there any
12 other changes to the issues and positions?

13 MR. STONE: I have -- also on Issue 10B we have a
14 revised position we would like to hand out. And it is quite
15 lengthy, so I feel reasonably certain that you don't want to,
16 wish to read it into the record.

17 COMMISSIONER PALECKI: No. And I appreciate you
18 having this in writing for us and for the court reporter.

19 (Gulf Power's Proposed Revision to Issue 10B attached
20 as part of the record.)

21 MR. STONE: I should not have said it was a revised
22 position. There was no position for us previously and this is
23 our position.

24 COMMISSIONER PALECKI: Thank you. And had you
25 previously provided this position to staff or is this the first

1 time we're all seeing this right now?

2 MR. STONE: It's the first time. We were -- I think
3 the issue was identified late last week. We worked over the
4 position and brought it with us today.

5 COMMISSIONER PALECKI: All right. Does it appear
6 that this is an issue that we will be going to hearing on?

7 MR. STONE: Regrettably.

8 COMMISSIONER PALECKI: All right. The position on
9 Issue 10B will be as reflected on the position sheet that has
10 just been distributed by Gulf Power, and it will be
11 incorporated into the prehearing order.

12 Any other changes to issues and positions?

13 MR. BUTLER: Commissioner Palecki?

14 COMMISSIONER PALECKI: Yes, sir.

15 MR. BUTLER: On Issue 9A, it seems to FPL that this
16 one may be amenable to stipulation. It's really about how the,
17 excuse me, FPL's stipulation in the '99 rate settlement affects
18 the environmental cost recovery. Both FPL and staff, which are
19 the only two parties really to state a position here, have
20 essentially quoted the operative language with respect to that
21 issue, and it doesn't seem that there's anything here in
22 dispute. And if that's true, we'd like to see it stipulated.

23 MS. STERN: The statements of position differ in that
24 FP&L's last sentence says, "All of the costs FP&L is seeking to
25 recover in this docket are consistent with these provisions."

1 And based on discussions we had this morning, we can agree with
2 that. We can stipulate using FPL's language.

3 COMMISSIONER PALECKI: Thank you. Do any other
4 parties have any objection to, to that position, and is there
5 any problem with a stipulation being entered? Hearing no
6 objection, we'll go ahead and reflect Issue 9A as a stipulated
7 issue.

8 Any other changes on the issues and positions?

9 MR. McWHIRTER: With respect to Issue 9C, FIPUG's
10 position is, "No. This is an item that should be included in
11 base rates rather than the environmental recovery clause."

12 COMMISSIONER PALECKI: Could you please read that
13 slowly so I can take that down?

14 MR. McWHIRTER: Read it slower?

15 COMMISSIONER PALECKI: Yes, please.

16 MR. McWHIRTER: "No. This is a base rate item."

17 COMMISSIONER PALECKI: Thank you, Mr. McWhirter.

18 MR. McWHIRTER: And that's -- we take the same
19 position on 9E. We take no position on 9G.

20 COMMISSIONER PALECKI: Thank you, Mr. McWhirter.
21 Anything further?

22 MR. McWHIRTER: Are you -- is your question as to all
23 issues or are we going one by one?

24 COMMISSIONER PALECKI: Well, I was -- as to all
25 issues.

1 MR. McWHIRTER: All right.

2 COMMISSIONER PALECKI: Any changes in any of the
3 issues.

4 MR. McWHIRTER: On 11A FIPUG has no position.

5 On 12A FIPUG takes the position that this is a base
6 rate item. It would be, "No. Base rate item."

7 12B, FIPUG takes the position, "No. These expenses
8 are base rate items."

9 With respect to 12C, we would take the same position.
10 "No. This is a base rate item."

11 12D, "FIPUG opposes recovery through the
12 Environmental Cost Recovery Clause (ECRC)."

13 COMMISSIONER PALECKI: Let me make sure I have that
14 correctly. So for 12D, "FIPUG opposes recovery of these costs
15 through the Environmental Cost Recovery Clause"?

16 MR. McWHIRTER: No, sir. 12D you're looking at?

17 COMMISSIONER PALECKI: 12D.

18 MR. McWHIRTER: Is that dog or boy?

19 COMMISSIONER PALECKI: D, as in dog.

20 MR. McWHIRTER: "FIPUG opposes the collection of
21 these proposed environmental costs through the ECRC, which
22 moots the allocation issue."

23 COMMISSIONER PALECKI: Thank you. Anything further,
24 Mr. McWhirter?

25 MR. McWHIRTER: No, sir.

1 COMMISSIONER PALECKI: Do any of the other parties
2 have changes to the issues or their positions on any of the
3 issues?

4 MR. STONE: Commissioner Palecki, I do not have any
5 changes to our positions on the issues. However, I do note
6 that on a number of issues that are not reflected in the
7 proposed stipulation section, there appears to be agreement
8 between staff and the companies or at least some of the
9 companies on some of these other issues.

10 In particular, I would note that it appears that
11 Issues 2, 3, 5, 6 and 8 for Gulf, staff has agreed to Gulf's
12 position. And I don't believe there's opposition from either
13 of the other parties, any of the other parties with regard to
14 Gulf's position.

15 COMMISSIONER PALECKI: Staff?

16 MS. STERN: That's, that's correct. They're not
17 shown as stipulations or partial stipulations because -- well,
18 for example, Issues 2 and 3, we agree with Gulf's positions, we
19 agree with TECO's positions, but we don't have positions or
20 either disagree with FPC and FP&L. So we sort of agreed with
21 two utilities and didn't agree with two utilities, so we just
22 left it. Because there were still issues to be decided at
23 hearing, we decided it was better to leave those issues in the,
24 you know, show them as unstipulated, at least partially
25 stipulated, unpartially stipulated because there was more work

1 to be done on them.

2 What we thought about doing was possibly in the
3 stipulation section just putting in a statement, for example,
4 that TECO, Gulf and staff agree on issues, we agree on Issues
5 2, 3, 6 -- 2, 3 and 6 or -- well, yeah, we agree on Issues 2,
6 3 and 6, and we could just put that in the proposed stipulation
7 section as staff stipulates these issues with Gulf. I'm not
8 sure -- OPC takes no position. And FIPUG, I'm not sure where
9 they stand. I don't recall, given the changes, if they've
10 changed those issues or not. We would just put a sentence like
11 that in to show what issues have been stipulated with which
12 utilities and --

13 COMMISSIONER PALECKI: I would like to see that, if
14 you could do that, because certainly while the entire issue is
15 not stipulated to all of the parties, there is an agreement
16 with regard to particular issues for particular parties. And
17 if we have it set forth in the draft or in the prehearing
18 order, it will be, I think, a little bit cleaner. And if it,
19 if it is a situation where none of the Commissioners have any
20 questions for the issue, for those witnesses for those issues,
21 it would mean that we can go ahead and excuse those witnesses,
22 and we'll have it, the fact that there is an agreement in the
23 prehearing order. So if we could go ahead and make those
24 changes, I think that would be appropriate.

25 MS. STERN: Okay.

1 MR. BEASLEY: Commissioner Palecki, in the same vein,
2 Tampa Electric does not have any issues opposed by any party to
3 this proceeding. There are just a few issues that staff is
4 still looking at in connection with verifying the numbers and
5 that sort of thing, and I wondered if there was some way we
6 could by, say, a date certain know whether or not we need to
7 bring our witnesses up here for the hearing, because it may be
8 that they'll not have to make that trip.

9 COMMISSIONER PALECKI: Well, I'm not sure if there's
10 a date certain because each of the Commissioners will have to
11 determine whether or not they have any questions for the
12 witnesses.

13 MR. BEASLEY: Right.

14 COMMISSIONER PALECKI: And I don't want to tie the
15 Commissioners' hands on this. But we will give you our
16 commitment that we will make sure we get an answer to you as
17 quickly as possible so that your witnesses can cancel whatever
18 travel plans they've made.

19 MR. BEASLEY: Right.

20 COMMISSIONER PALECKI: But I would like you to get
21 with the staff, unless staff thinks it's necessary to put this
22 on the, on the record now, and let staff know what issues you
23 believe you are in agreement with staff and all of the parties.

24 Staff, is it necessary to put that on the record at
25 this time?

1 MS. STERN: Well, it might not be a bad idea to go
2 through each utility quickly and identify the issues that we
3 understand, you know, we're in agreement with and the ones that
4 are still outstanding just to make sure we all agree on where
5 we stand at this point.

6 COMMISSIONER PALECKI: I think that might be a good
7 idea. And that also gives the other parties a chance to state
8 whether or not they do have a different position or object to a
9 stipulation. So why don't we -- should we go through the
10 parties in order or --

11 MS. STERN: Well --

12 COMMISSIONER PALECKI: Why don't we just ask which
13 parties do have issues that they believe no other party has
14 taken an opposing position and where they believe that, that
15 staff, the parties and themselves are in agreement. And we've
16 already heard from -- let's see.

17 MS. STERN: TECO.

18 COMMISSIONER PALECKI: TECO.

19 MS. STERN: And we agree with TECO. We -- in
20 addition to Issues 1, 5 and 8, which are stipulated with all
21 utilities except -- and FIPUG and OPC take no position -- with
22 TECO we're in agreement on positions 2, 3, 6 and 11A. We are
23 still reviewing information on Issues 4 and 7.

24 COMMISSIONER PALECKI: Staff, do you have that same
25 information on all of the other utilities?

1 MS. STERN: Yes.

2 COMMISSIONER PALECKI: Why don't I ask you then to,
3 to announce which issues you believe the parties are in
4 agreement on and let each, each of the parties respond as to
5 whether they believe that's accurate.

6 MS. STERN: Okay. The next one, Gulf, we're in
7 agreement on Issues 2, 3 and 6. We are -- the rest of the
8 issues, 4, 7, 10A and 10B, are, cannot be stipulated at this
9 time. Okay.

10 COMMISSIONER PALECKI: So we have TECO and Gulf.
11 Would you prefer that Florida Power & Light and Florida Power
12 Corporation --

13 MS. STERN: No. We can -- I'll just go ahead. For
14 Florida Power Corporation, the only -- we don't have any issues
15 stipulated right now. We may have Issue 6 stipulated before we
16 finalize the prehearing order.

17 COMMISSIONER PALECKI: All right. And with Florida
18 Power & Light?

19 MS. STERN: Florida Power & Light, I believe we're in
20 agreement on Issue 6, 9B, 9D and 9H.

21 Issues 2, 3 and 7 were changed by the revised
22 testimony filed today, and I believe that we are going to make
23 an effort to, to see where we stand before we finalize the
24 prehearing order. That was the procedure that was outlined in
25 the previous two dockets -- previous three dockets. We're

1 going to look at the testimony, see if we can agree with it,
2 and then, if we do, you know, change our positions before we
3 finalize the prehearing order.

4 COMMISSIONER PALECKI: Thank you, Ms. Stern.

5 MR. MELSON: Commissioner Palecki, on behalf of
6 Florida Power Corporation I'd just like to indicate we have
7 recently, end of last week, responded to some more discovery
8 from staff. And I think some of their positions were tentative
9 pending receipt of discovery. We intend to continue to try to
10 talk with staff and the other parties between now and the
11 hearing and are hopeful that we may be able to move some of the
12 current issues into the stipulated category.

13 COMMISSIONER PALECKI: Thank you.

14 MR. MELSON: With FIPUG's changes today that sounds
15 like for some of them it may be a little more difficult, but
16 we'll try.

17 COMMISSIONER PALECKI: Give it your best effort.
18 And, staff, I would, as you've already stated, where you have
19 issues that are agreed upon by all the parties, if you will
20 reflect that in the prehearing order.

21 I encourage all the parties to work together to try
22 to identify those issues so that where we do have issues that
23 are not in dispute, we can then inform the parties that they
24 don't need to have their witnesses for the hearing.

25 All right. With that, are there any other changes to

1 either issues or positions?

2 MR. STONE: Commissioner Palecki, I just wonder if it
3 might be possible to inquire of staff the nature of their
4 concern over Issue 4 with regard to Gulf? And the reason for
5 my inquiry is to determine whether or not there's a possibility
6 that one of the two witnesses may not be necessary to address
7 staff's concern.

8 COMMISSIONER PALECKI: Well, we could do that at this
9 time. But wouldn't it be more appropriate just to discuss that
10 with staff immediately following the prehearing, and, and staff
11 will go ahead and reflect that if there is no opposition to the
12 testimony of that particular witness, we'll make sure that he
13 can be excused?

14 MR. STONE: That procedure is fine. Thank you.

15 COMMISSIONER PALECKI: Thank you, Mr. Stone.

16 MR. BUTLER: Commissioner Palecki, excuse me, unless
17 I misheard in the list that Ms. Stern read, I don't think she
18 mentioned Issues 9A, that was the one we talked about a few
19 moments ago concerning the effect of the prior rate
20 stipulation, or 9F, as in Frank, which is listed in the draft
21 prehearing order as a proposed partial stipulation for FPL.
22 And unless staff disagrees, I think those ought to be also in
23 the list of stipulated issues for FPL.

24 MS. STERN: That's correct. I'm sorry.

25 COMMISSIONER PALECKI: All right. And, staff, you'll

1 make the changes necessary to so reflect.

2 MS. STERN: Uh-huh.

3 COMMISSIONER PALECKI: And I want all the parties to
4 understand that your witnesses are not excused at this time,
5 that the Commissioners have an opportunity to inform staff
6 whether or not they have questions for the witnesses. And
7 despite the fact that the parties may agree to a particular
8 issue, it may be that the Commission does not adopt that
9 agreement or stipulation. So there may well be instances where
10 we have an agreement where we will still require a party to
11 bring their witness for the hearing. I just want to make sure
12 that all of the parties understand that.

13 With that being said, are there any further changes
14 to Sections VII and VIII, positions, issues and positions of
15 the parties?

16 Hearing none, we move on to issue -- Section IX,
17 exhibits. Florida Power & Light, given that you have filed
18 some amended testimony, are there any changes to your exhibits?

19 MR. BUTLER: Let me double check. I will let staff
20 know if we have anything that needs to be added to the exhibit
21 list, if that's okay with you.

22 COMMISSIONER PALECKI: Yes, that's fine.

23 MR. STONE: Commissioner Palecki, it appears as
24 though the exhibits for Gulf's witness Mr. Vick are not
25 included in the draft prehearing.

1 MS. STERN: Yes. I think that looks -- I'm sorry
2 about that. We'll add Mr. Vick's exhibits.

3 MR. STONE: That's because he doesn't have any
4 exhibits. My apology.

5 COMMISSIONER PALECKI: Excuse me? He had no
6 exhibits?

7 MR. STONE: He has no exhibits. That would explain
8 why there are none listed.

9 COMMISSIONER PALECKI: All right. Well, that being
10 said, I don't think any modification is necessary for Mr. Vick.

11 Any other parties have any changes to the exhibits
12 that have been set forth in the draft prehearing order?

13 Hearing none, let's move on to Section X, proposed
14 stipulations. We have many issues that are proposed as
15 stipulated; others are partially stipulated. I think all of
16 the parties have indicated a willingness to get together after
17 our prehearing conference today to see if further issues can be
18 stipulated.

19 Ms. Stern, are there any other issues that should be
20 reflected as stipulated issues at this time?

21 MS. STERN: Well, none that are entirely stipulated.
22 I guess we -- no, no issues that are proposed or partially
23 stipulated. But as we said, we will put the -- where we agree
24 with a specific utility, we will identify the issues in which
25 we're in agreement with each specific utility.

1 COMMISSIONER PALECKI: Good.

2 MS. STERN: Okay.

3 COMMISSIONER PALECKI: Do the parties have any
4 further stipulations that they believe are matters that are
5 stipulated? And, I mean, other than those that we've already
6 discussed with regard to the previous sections.

7 Hearing none, we'll move on to Section XI, pending
8 motions. The draft prehearing order shows a Florida Power
9 Corporation motion for temporary protective order that was
10 filed last week.

11 MR. MELSON: Commissioner Palecki, that relates to a
12 response by Florida Power Corporation to a document production
13 request from Public Counsel. And under your confidentiality
14 rules applicable to those types of requests, the procedure is
15 to request a temporary protective order to allow Public Counsel
16 to take possession of the document and inspect it and make a
17 determination whether they intend to use it. If so, that then
18 triggers a follow-on requirement on us to request confidential
19 classification. But if Public Counsel decides not to use it,
20 then the document is simply returned.

21 And so we have asked -- there is no -- you're not
22 required in order to grant this motion to make a finding of
23 confidentiality, but simply to grant the temporary protection
24 while Public Counsel and the parties try to work it out.

25 COMMISSIONER PALECKI: Would that be by ruling here

1 today or by a separate order outside --

2 MR. MELSON: I believe you could do it by a ruling
3 here today. It frequently is done by a separate order, but
4 we'd like to get the document into Public Counsel's hands as
5 quickly as possible. And if you were prepared to rule verbally
6 today, that would give us the protection we'd need to move
7 forward.

8 COMMISSIONER PALECKI: Public Counsel, would you have
9 any problem with that?

10 MR. VANDIVER: No, sir. That would be acceptable to
11 us.

12 COMMISSIONER PALECKI: And staff?

13 MS. STERN: I believe as long as they filed the
14 request, they can send it -- or the motion for temporary
15 protective order, they can send it to Public Counsel and it
16 will be protected, even though we haven't ruled on it yet --
17 you haven't ruled on it yet. I think that -- but at this time
18 staff isn't prepared to make a recommendation on it.

19 COMMISSIONER PALECKI: So staff would prefer that we
20 wait and rule on this on, in a separate order based upon a
21 recommendation made by staff?

22 MS. STERN: Yes. Yes.

23 COMMISSIONER PALECKI: First, Public Counsel,
24 Mr. Vandiver.

25 MR. VANDIVER: Commissioner Palecki, my reading of

1 the rule is the same as staff's. Obviously my interest is
2 getting the document as soon as possible. Mr. Melson's
3 concern, obviously, is confidentiality of the document. I'm
4 indifferent as long as I get the document. I want to see this,
5 this contract of Florida Power Corporation, and I'm indifferent
6 as to the process as long as I get the contract. And my
7 reading of the rule is that Mr. Melson is protected.
8 Mr. Melson, I believe, would prefer some sort of formal order
9 of this Commission, whether oral from the bench today from the
10 prehearing officer or a written order. That's kind of where we
11 are, and I don't have the document in my hands right now.

12 COMMISSIONER PALECKI: Mr. Melson?

13 MR. MELSON: The rule is clear: If we provide a
14 document to staff, that the filing of a notice of intent
15 protects it.

16 The rule in my judgment is not clear on discovery by
17 Public Counsel, and that the protection is triggered by the
18 filing of the motion for protective order. Out of an abundance
19 of caution, my concern would be resolved if you were able to
20 rule verbally today. We wouldn't feel like we needed to wait
21 for a written order, but to have your assurance that you have
22 granted the protective order, that would then give Public
23 Counsel the protection in the event someone asks him, asks
24 Public Counsel for a copy of the document, they've got a ruling
25 that they can refer to and we're not arguing about what a rule

1 does or doesn't provide.

2 COMMISSIONER PALECKI: If I was to rule on this
3 motion today, I would only be granting a temporary protective
4 order; is that correct?

5 MR. MELSON: That's correct. And if Public Counsel
6 then decides to use the document at hearing, we would have the
7 21 days after the document is used to, to file a formal request
8 for confidential classification, at which point you would in
9 essence consider the merits of the, of the confidentiality
10 claim.

11 COMMISSIONER PALECKI: Staff, since if I ruled on
12 this at this time it would only be a temporary ruling, is there
13 really any problem that you have with me making the temporary
14 ruling at this time? I just don't see what the downside would
15 be.

16 MS. STERN: No. I don't, I don't have a problem with
17 it. I mean, will you make the ruling and then, and then FPC
18 sends it immediately to OPC?

19 MR. MELSON: Correct.

20 MS. STERN: And then OPC decides if they're going to
21 use it at the hearing or not. So what's the duration -- the
22 duration of the protective order would be --

23 MR. MELSON: As I understand it, it would be either
24 until the document is returned to us or until it's entered at
25 the hearing, at which point our clock to request further

1 protection would begin to run.

2 MS. STERN: Okay.

3 MR. MELSON: If Public Counsel looks at the document
4 and decides they don't need it and returns it to us, then it
5 was protected under this ruling while it was in their hands.

6 MS. STERN: Okay.

7 MR. VANDIVER: That's an acceptable procedure for us.

8 COMMISSIONER PALECKI: Thank you. Well, I'm going to
9 go ahead and rule on the motion for temporary protective order.
10 I'm going to grant the motion. And I want the record to
11 reflect that the Office of Public Counsel has no objection to
12 the motion being granted.

13 MR. VANDIVER: Thank you, Commissioner.

14 COMMISSIONER PALECKI: Thank you. Any further
15 motions?

16 Let's move on to Section XII, pending confidentiality
17 matters.

18 MR. MELSON: And, Commissioner Palecki, at this point
19 we have filed simply a notice of intent. This relates to a
20 document produced to the staff as opposed to Public Counsel.
21 The document has been filed with the clerk's office with a
22 notice of intent, so no ruling is required at this time.
23 Again, we've got 21 days to follow-up with a detailed request.
24 So this, this would be premature, I believe.

25 COMMISSIONER PALECKI: Any further confidentiality

1 matters?

2 Hearing none, we'll move on to Section XIII of the
3 prehearing order, rulings. Apart from the ruling I've already
4 made on the motion for temporary protective order, there are
5 none.

6 Is there anything else from any of the parties?

7 Hearing none, the prehearing conference for Docket
8 Number 020007 is adjourned at this time. And we will move on
9 to Docket 020001, the fuel docket.

10 (Thereupon, the portion of the Prehearing Conference
11 pertaining to Docket Number 020007 was concluded.)

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STATE OF FLORIDA)

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CERTIFICATE OF REPORTER


COUNTY OF LEON)

I, LINDA BOLES, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 12TH DAY OF NOVEMBER, 2002.



LINDA BOLES, RPR
FPSC Official Commissioner Reporter
(850) 413-6734

Gulf Power's Position on Issue 10B
Docket No. 020007-EI

Issue 10B: How should Order No. PSC-02-1421-PAA-EI be implemented to allow Gulf to recover incremental depreciation expense for the revised depreciation schedule of Crist Units 1, 2 and 3 through the Environmental Cost Recovery Clause?

Gulf: The agreement between Gulf and the Department of Environmental Protection (DEP) that led to Order No. PSC-02-1421-PAA-EI requires the early retirement of Plant Crist Units 1, 2 and 3. The incremental increase in depreciation/amortization expense resulting from this early retirement over the depreciation/amortization expense associated with the otherwise-anticipated retirement date for these units should be recovered through the ECRC.

Once these units are fully depreciated (by the end of 2005), there should be no additional impact on the ECRC. It is not appropriate to continue to credit the ECRC for the amount of Crist 1-3 depreciation/amortization expense included in Gulf's current base rates after these units are fully depreciated. Gulf will be required to file a new depreciation study in 2006, to be effective 1/1/06. The change to Crist 1-3 depreciation expense will be only one of many increases and decreases to depreciation and amortization that will be effective in 2006 as a result of changed conditions reflected in the new depreciation study. None of these increases or decreases will be reflected in Gulf's base rates until Gulf's next base rate case. It would be inappropriate to treat the decrease in depreciation expense related to Crist 1-3 in 2006 in a manner different from the other increases or decreases in depreciation expense resulting from the new depreciation study in that year.

Although the early retirement of Crist 1-3 is required under the agreement between DEP and Gulf that led to Order No. PSC-02-1421-PAA-EI, the only reason there is an incremental depreciation/amortization expense to be addressed through the ECRC is due to the acceleration of the depreciation/amortization to coincide with the new retirement dates. The alternative treatment proposed by Gulf in Docket No. 020943-EI related to the Crist 1-3 retirement would result in no incremental increase in depreciation/amortization and consequently would have no impact on the ECRC. Under this alternative, the Commission would establish by order that the proper period over which to depreciate/amortize the remaining undepreciated balance for Crist 1-3 is through the otherwise anticipated retirement date for these units in 2011. This would result in no impact on the ECRC related to the Crist 1-3 retirement. The new depreciation study effective

Gulf Power's Position on Issue 10B
Docket No. 020007-EI

January 2006 would reflect a Crist 1-3 retirement date of 2011 for the purposes of cost recovery. The net effect of this alternative approach is equivalent to leaving the retirement date the same as was anticipated in the Company's most recent depreciation study on which rates were set earlier this year. As a result, this approach would also allow Gulf to avoid the incremental cost associated with submitting a new depreciation study for the entire Crist Plant within 90 days of the Consummating Order in Docket No. 020943-EI. Of course, after these units are fully depreciated, the resulting decrease in depreciation will also only be one of many increases and decreases to depreciation and amortization that will be effective as a result of the next depreciation study to follow 2011. Regardless of whether Crist Units 1-3 are fully depreciated in 2005 or 2011, it makes no sense to then credit the ECRC for the amount of depreciation related to these units that is reflected in base rates.



Gulf's Proposed Revision to Issue 10A in Docket No. 020007-EI

Issue 10A: How should the costs projected for 2003 associated with the implementation of the Ozone Agreement between Gulf and the Department of Environmental Protection (DEP) be allocated to the rate classes?

Gulf: Gulf is only requesting recovery of the expenses associated with the early retirement of Crist Units 1, 2, and 3 during the projected recovery period (2003). Those expenses should be allocated to the rate classes using the 12 Coincident Peak (12CP) and 1/13 Energy Method. This is consistent with the way the costs associated with Crist Unit 1-3 are allocated in the cost of service study approved in Gulf's recently completed base rate case. The allocation of other costs associated with the implementation of the Ozone Agreement between Gulf and DEP should be determined when those specific projects are requested for approval through the ECRC.