

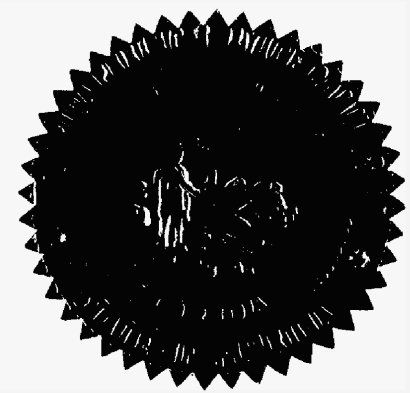
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

PETITION FOR APPROVAL OF RECOVERY THROUGH ENVIRONMENTAL COST RECOVERY CLAUSE OF COSTS ASSOCIATED WITH CLEAN WATER ACT SECTION 316(b) PHASE II RULE PROJECT, BY FLORIDA POWER & LIGHT COMPANY. DOCKET NO. 040582-EI

PETITION FOR APPROVAL OF COST RECOVERY FOR NEW ENVIRONMENTAL PROGRAM NECESSITATED BY U.S. ENVIRONMENTAL PROTECTION AGENCY'S ADOPTION OF RULES ESTABLISHING NEW REQUIREMENTS FOR COOLING WATER INTAKE STRUCTURES AT EXISTING ELECTRIC POWER GENERATING FACILITIES UNDER SECTION 316(b) OF CLEAN WATER ACT, BY PROGRESS ENERGY FLORIDA, INC. DOCKET NO. 040472-EI



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PROCEEDINGS: AGENDA CONFERENCE  
ITEMS 18 and 19

BEFORE: CHAIRMAN BRAULIO L. BAEZ  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER LILA A. JABER  
COMMISSIONER RUDOLPH "RUDY" BRADLEY  
COMMISSIONER CHARLES M. DAVIDSON

DATE: October 5, 2004

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

TRANSCRIBED FROM JANE FAUROT, RPR  
TAPE BY: Official Commission Reporter

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FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 GARY PERKO, ESQUIRE, Hopping Green & Sams, P.A.,  
3 representing Progress Energy.

4 JOHN T. BUTLER, P.A, representing Florida Power &  
5 Light Company.

6 MARLENE STERN, ESQUIRE, and JIM BREMAN, representing  
7 the Florida Public Service Commission Staff.

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## P R O C E E D I N G S

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2 CHAIRMAN BAEZ: Commissioners, we have three items  
3 left by my count, it is 18, 19, and 20. If it is all right  
4 with you, I would like to take Item 19 first.

5 COMMISSIONER JABER: Are there questions?

6 CHAIRMAN BAEZ: I want to say that there were  
7 statements on the part of the company. But if that is not the  
8 case, Mr. Butler, I don't --

9 COMMISSIONER JABER: Let me ask that officially, Mr.  
10 Chairman.

Are there questions on 18, 19, and 20?

11 CHAIRMAN BAEZ: Here is the -- mechanically, the  
12 reason I wanted to take it out of order is because I got some  
13 indication that item -- some of the discussion on Item 18 may  
14 mirror the discussion on Item 19, although Item 18 doesn't know  
15 that yet. Is that --

16 COMMISSIONER JABER: (Inaudible. Microphone not on.)

17 CHAIRMAN BAEZ: But, again, we will take up FPL first  
18 and see what comes up.

19 MR. PERKO: Mr. Chairman, members of the Commission.  
20 My name is Gary Perko of the Hopping, Green & Sams law firm.  
21 I'm here on behalf of Progress Energy on Item 18, which is  
22 Progress Energy's petition for approval of its Section 316  
23 environmental cost-recovery program.  
24

25 We do not take issue with the staff's recommendation.

1 I think you will hear from Mr. Butler that FPL takes issue with  
2 something in there relating to offsetting. We acknowledged the  
3 offsetting policy in our original filing and chose not to  
4 contest it. We don't disagree with some of the arguments that  
5 I understand that Mr. Butler will make, we just chose not to  
6 make them.

7 That being said, if the Commission were to accept  
8 Florida Power and Light's arguments, then we would request  
9 equal treatment, if you will. But I think that could be done  
10 through the generic ECRC proceeding.

11 COMMISSIONER JABER: So Item 19.

12 CHAIRMAN BAEZ: And that is why we have aprons,  
13 ladies and gentlemen, and that is why we are on 19. So, Mr.  
14 Butler, go ahead and --

15 COMMISSIONER JABER: Let me just see if I understand  
16 this. You are okay with the staff recommendation as it  
17 currently exists on Item 18.

18 MR. PERKO: That's correct.

19 COMMISSIONER JABER: But if they get something more  
20 in Item 19, you want it, too.

21 MR. PERKO: Well, we just feel --

22 COMMISSIONER JABER: I just wanted to understand.

23 MR. BUTLER: He's not heavy, he's my brother.

24 MR. PERKO: The policy needs to be consistent.

25 COMMISSIONER JABER: Yes, absolutely.

1 CHAIRMAN BAEZ: Honestly, all this came down to was a  
2 numbering problem, that is really what it is.

3 But go ahead, Mr. Butler.

4 MR. BUTLER: So we are on 19?

5 CHAIRMAN BAEZ: Officially we are on 19, sir.

6 MR. BUTLER: Okay. Thank you. And my name is John  
7 Butler with Steel, Hector & Davis on behalf of Florida Power  
8 and Light Company. We support staff's recommendation to  
9 approve FPL's 316(b) program, but there is an element of it  
10 that we do have a concern with. The recommendation would ask  
11 you to apply a concept that I refer to as netting to the  
12 recovery of environmental study costs, and let me just tell  
13 what you that means, and then I will just call it netting costs  
14 and not have to use a bunch of words each time.

15 This arose with an order for a Gulf program, a GCOS  
16 program. And, basically, the way it works is that there may be  
17 in MFRs that were used as of a last rate case a certain amount  
18 of environmental study costs that are in that MFR. If the  
19 utility is in the current year spending less than the amount  
20 that was budgeted in the MFRs for study costs, then the  
21 increment by which it is less would be netted against the  
22 utility's recoverable costs in the new ECRC program that would  
23 be approved. So if you had 200,000 MFRs, you end up only  
24 spending 175, then \$25,000 would be netted against what you  
25 would otherwise be able to recover through the ECRC mechanism

1 for that program. And it is the extension of that concept, the  
2 netting concept, to our program that we are concerned about.

3 Our understanding of this is that it is a concept  
4 that was premised on an assumption that when the utility makes  
5 its MFR projections that it would include a common pool of  
6 environmental study costs that could be used for ECRC or  
7 non-ECRC purposes. And that was a pretty good assumption, a  
8 reasonable assumption when you were looking at the Gulf GCOS  
9 program. Because at that time, you know, it was 1999, and  
10 Gulf's MFRs that one would go back to look at what was in base  
11 rates had been based on a 1990 test year.

12 1990 was before the ECRC statute was passed in 1993,  
13 so naturally the costs that would be projected for  
14 environmental studies didn't differentiate between ECRC and  
15 non-ECRC purposes. There wasn't any distinction to be made of  
16 that sort. And the Commission decided that in what it  
17 characterized as a transition from the sort of pre-ECRC to  
18 post-ECRC regime that this sort of netting adjustment would be  
19 appropriate.

20 But we don't think that applies to FPL. You know,  
21 the base rates that FPL currently has are premised on 2002  
22 MFRs. When those MFRs were developed, FPL did project  
23 environmental study costs, but it projected them specifically  
24 for non-ECRC purposes. Because if there were ECRC things that  
25 the company had in mind, it would hold them out and expect to

1 include them for recovery through the ECRC mechanism.

2           Therefore, using netting for us, what it is going to  
3 be doing is saying if FPL spends a different amount than was  
4 projected for non-ECRC purposes, we are going to take that into  
5 account and use it as an adjustment for the recoverable ECRC  
6 study costs. We don't think that is appropriate. We think  
7 that it is an unfairly one-sided adjustment because it  
8 certainly doesn't work the other way. If we end up spending  
9 more on non-ECR study costs than we had projected in the MFRs,  
10 we are not entitled to recover more than the actual ECRC costs  
11 through the clause mechanism, and we just don't think it fits.

12           We think that the transition that the Commission was  
13 intending to achieve for Gulf doesn't really have a counterpart  
14 for a utility in FPL's position where its MFRs were developed  
15 after the ECRC mechanism was in place. And so we would ask you  
16 to amend staff's recommendation not to include the netting  
17 policy for us.

18           I will say, and I probably should have said it in the  
19 first place, that it doesn't make right now a practical  
20 difference for FPL. We actually will in 2004 spend more on  
21 non-ECRC study costs than we projected in the 2002 MFRs, so  
22 there is not going to be anything to net anyway. But as a  
23 policy, we don't think it is the right place to go for a  
24 utility that is in FPL's circumstances. Thank you.

25           COMMISSIONER JABER: A couple of questions. Non-ECRC

1 costs are not mutually exclusive from what you would include in  
2 MFRs, therefore, rate base, are they? I'm trying to understand  
3 the distinction you are making between non-ECRC costs versus  
4 ECRC costs.

5 MR. BUTLER: What I'm trying to get at there is at  
6 the point that FPL was projecting environmental study costs for  
7 its 2002 MFRs, it was actually doing it with kind of -- I don't  
8 know if you want to call it blinders on, or with a divider in  
9 its thinking. And if something was there it might have to be  
10 undertaking anticipating that there was going to be a new  
11 regulatory requirement down the road, and that it would do  
12 studies with that, they wouldn't go in that pot, because that  
13 would be an ECRC program. You would wait until the time came  
14 and file a petition and seek to recover those through the ECRC  
15 mechanism.

16 What it was looking at was explicitly projecting what  
17 sort of studies are we going to have to do for activities that  
18 need to take place that support FPL's environmental  
19 requirements, but aren't going to fit into the pigeonhole of  
20 being an ECRC recoverable program expense.

21 COMMISSIONER JABER: I better understand. And I'm  
22 interested in hearing staff's reaction to what has been said,  
23 but also to the degree we need to be consistent, how does that  
24 statement affect TECO and the next item?

25 MS. STERN: It doesn't effect TECO in the next item.



1 Item 20, although it is an ECRC petition, is for an entirely  
2 different project. There was no netting in that project. It's  
3 not relevant to Number 20.

4 COMMISSIONER JABER: Okay.

5 MS. STERN: Well, with respect to what is in MFRs and  
6 what wasn't in MFRs, in the order that Mr. Butler talked about  
7 when he first started talking, the GCOS order from Gulf where  
8 the Commission first approved the netting, MFRs, you know,  
9 weren't an issue at all. There was no -- I'm not sure I fully  
10 see how it is necessarily relevant. It certainly wasn't a  
relevant issue in the order.

The order was based on the statutory interpretation  
13 that the environmental cost-recovery clause requires that an  
14 adjustment for the level of costs currently being recovered  
15 through base rates or other rate adjustment clauses has to be  
16 included in any petition for recovery through the clause. The  
17 Commission said in the order, in the GCOS order, that it was,  
18 you know, that the netting treatment fairly balanced the  
19 interests of ratepayers and the companies. If, before -- well,  
20 okay, so that is one point I want to make that the order is  
21 based on, you know, the requirement in the statute, largely,  
22 for looking -- you have to look at base rates and make sure  
23 there is no double recovery, and you have to make an adjustment  
24 if there is. So the two aren't separate, ECRC and base rates.

25 The second point I want to make is that the ECRC

1 became effective in 1993. In 1994, the Commission issued a  
2 rather exhaustive order in response to a petition from Gulf on  
3 how to apply -- it included how we are going to start applying  
4 the ECRC, and it evaluated many of Gulf's existing programs.  
5 And it said, well, this should stay in base rates, this should  
6 go to ECRC, and set up the criteria for doing how you decide  
7 what goes where.

8           So to me the presence of that order makes the  
9 relevance of whether something -- when your last case was even  
10 less significant, because, as I said, the order, the big order  
11 where we decided what goes where for Gulf was in 1994, the GCOS  
12 order was issued in 2000. So when we issued that GCOS order  
13 that talked about netting, decisions had already -- you know,  
14 Gulf's MFRs and clause distribution had already been looked at  
15 and evaluated.

16           MR. BUTLER: I would like to respond just on the  
17 timing briefly. Looking at the transcript of the agenda  
18 conference from February 15th, 2000, and there is explicit  
19 discussion in it that what people were -- you know, what you,  
20 the Commission, was looking to, what Mr. Stone was discussing  
21 with you about the study costs were the study costs that were  
22 included in a 1990 test year. You know, it was an issue in  
23 that proceeding. Looking to 1990 test year expenses, clearly  
24 the decision was made well after 1993, but there hadn't been  
25 rate cases for some period of time, and so one was still going

1 back and looking to the expenses that were in a test year from  
2 before the time that the ECRC mechanism was put into place.

3 And, again, there are references on several occasions  
4 throughout the transcript of that agenda conference to making a  
5 transition from the, sort of, base rate to ECRC mechanism. I  
6 really think there is a difference for a utility such as FPL  
7 that has -- you know, at least at this point has 2002 MFRs  
8 where there was this explicit distinction made between what  
9 would go in and not go in the study costs that would be  
10 included in the MFRs.

11 COMMISSIONER JABER: Mr. Chairman, my last question  
12 was is this the first time staff has had an opportunity to  
13 think about the arguments we are hearing now?

14 MR. BREMAN: No, this is not the first time the ECRC,  
15 as a character of its very nature --

16 COMMISSIONER JABER: No, I mean, from FPL related to  
17 this item.

18 MR. BREMAN: Oh, from FPL. No, we asked for  
19 discovery on this. And when we asked for discovery, FPL raised  
20 this issue and this concern of theirs. The specter of not  
21 recovering everything is always a concern with the utilities.

22 If I may, I would like to comment about what  
23 non--

24 COMMISSIONER JABER: Maybe you responded to my  
25 question. It is late in the afternoon. But I apologize,

1 because I'm sure you answered my question and I just didn't get  
2 it. The concern related to this is a bit different for FPL,  
3 because there are 2002 MFRs, and it sort of takes them, in  
4 their opinion, beyond the decision that was made earlier in  
5 Gulf. Have you been able to think about that as a concern?

6 MR. BREMAN: Sure. We had three utilities come in  
7 for rate cases in 2002 that constructed MFRs. Gulf Power was  
8 one of them. The 2000 order that is currently being discussed  
9 as not being valid or applicable to FPL was not changed for  
10 Gulf. This order still stands, and that order is still being  
11 implemented. So even after Gulf Power filed a new rate case,  
12 that order did not get changed applicable to Gulf Power. So  
13 the netting process still is in force for Gulf Power.

14 COMMISSIONER JABER: And why would the netting  
15 process, in your opinion, be applicable to FPL?

16 MR. BREMAN: Because non-ECRC means all projects not  
17 currently approved by this Commission to be recovered through  
18 the ECRC clause itself. When a utility makes a projection of  
19 costs, it may elect to call some projects environmental  
20 projects that it is going to seek recovery through the clause  
21 at some future date, and it may determine that there is not  
22 going to be recovery through the clause. So it is very  
23 difficult -- one of your earlier comments, it is very difficult  
24 to say today that everything that FPL or any company projected  
25 in an MFR is recoverable or isn't recoverable through the

1 clause unless the Commission has already issued an order on  
2 that subject stating specifically this is recoverable, or these  
3 types of things are not recoverable through the clause.

4 CHAIRMAN BAEZ: I'm trying to understand, does that  
5 speak of some control as to how much headroom FPL can create in  
6 spending less than what was budgeted on an MFR?

7 MR. BREMAN: I think the tension is -- the netting is  
8 there, it is part of the statute, and it is intended to make  
9 sure that customers aren't paying twice for something. And we  
10 know that environmental studies occur continually. One year a  
11 utility is studying one thing and another year a utility is  
12 studying another thing. So those things are very dynamic and  
13 it changes, so the allowance in base rates is appropriate.

14 So to the extent the utility is not fully utilizing  
15 that allowance, they need to --

16 CHAIRMAN BAEZ: Use it first?

17 MR. BREMAN: -- use it first, so to speak. To the  
18 extent that it has that allowance, the utility is actually  
19 being encouraged to fully utilize it and also be able to  
20 recover environmental studies through the environmental clause.  
21 So you are actually encouraging the utility to move forward  
22 with environmental studies as opposed to discouraging them from  
23 spending the money.

24 CHAIRMAN BAEZ: Mr. Butler, I know that you went to  
25 great lengths to explain why that doesn't make sense, or that

1 shouldn't make sense, but can you try it again for me, please?

2 MR. BUTLER: Sure. I'll try.

3 CHAIRMAN BAEZ: What is wrong with if the Commission  
4 said, you know what, you can spend X amount of dollars through  
5 base -- you can recover X amount of dollars through base rates  
6 for environmental studies, in this case, and to the extent that  
7 you are not, in a given year, why shouldn't you be required to  
8 spend that difference, or that underexpenditure first before  
9 you go out and recover it through a clause?

10 MR. BUTLER: The best way I can put it, Chairman  
11 Baez, is that it really comes back to this assumption of there  
12 being a common pool of environmental study costs. That at the  
13 point they are projected in the test year, the utility can't  
14 really tell whether they are going to be used for a purpose  
15 that would be recoverable through the ECRC mechanism or not.  
16 And so it is just there. You use it for one purpose, if you  
17 don't use it for that, you use it for the other.

18 And what I was saying is that I don't think that is  
19 factually correct for FPL with respect to the 2002 MFRs. That,  
20 you know, obviously you are having to project out not just for  
21 the test year, but then the test year keeps going, so it  
22 becomes kind of a continuing projection what you are going to  
23 be doing for any activity that is included as an expense.

24 But the idea, what FPL, you know, sought to achieve,  
25 recognizing the split, ECRC or not, was to project in the MFRs

1 the sort of study costs that are for existing ongoing  
2 activities that don't qualify now and won't qualify next year  
3 or the year after that for ECRC recovery because they are  
4 supporting existing environmental activities.

5 And, you know, there was something that they are  
6 thinking, hey, there may be legislation on the horizon, if it  
7 is enacted or if rules are adopted that would require certain  
8 studies, but those studies are of a sort that would relate to a  
9 new environmental requirement, that is what ECRC is for. That  
10 is not in the projection that is included in the MFRs.

11 So there is this division. There is the opportunity  
12 to make it, which Gulf didn't have, because in 1990 there was  
13 no distinction to be made. But there was an opportunity to  
14 make a distinction, and FPL made a distinction, so the pool  
15 that is there isn't common. It is a pool for the sort of  
16 existing activity non-ECRC purposes. And you either, you know,  
17 have as many studies, or more studies, or less studies than you  
18 projected for these non-ECRC purposes in a subsequent year.  
19 But, in our mind, it is just sort of taking the sort of actual  
20 results for a particular type of activity in the non-ECRC  
21 environmental department budget and using it as kind of a  
22 true-up, or truing it up, the other way around to look at it,  
23 with what happens in the recoverable program costs. We just  
24 don't think the two ought to be connected.

25 CHAIRMAN BAEZ: Can the company -- is the company's

1 opportunity to recover on a program through the clause limited  
2 by period? Could you have had an expenditure in a prior period  
3 that later became recoverable?

4 MR. BUTLER: I mean, I suppose that at an extreme you  
5 could have a situation where you had to study X, and I'm not  
6 going to even try to say what X is, but you have to study X for  
7 some purpose that currently has no new environmental  
8 requirement associated with it. And then the requirement to  
9 study X goes away for its old purposes and reemerges as a  
10 purpose that serves some new environmental program that is  
11 required pursuant to, you know, a new regulation and,  
12 therefore, would be ECRC eligible.

13 In that situation you could have something matching  
14 up where, you know, the study for X went away for this old  
15 purpose and reemerges for the new purpose. And I don't think  
16 we would have any objection to making that sort of netting.  
17 But what is in the staff recommendation, as we understand it,  
18 is a whole lot broader than that. I mean, you could have  
19 studies that don't have anything to do with the sort of  
20 tracking or tracing that I just described end up being, or have  
21 the consequence of netting. I don't know if that answers your  
22 question, but that is the best I can do.

23 CHAIRMAN BAEZ: I think I'm understanding it a little  
24 better. But I did have a question, I think I had asked Mr.  
25 Breman about it. Do you have -- I guess, am I understanding it



1 correctly that there is a determination point in which you say  
2 this kind of program cost is something that we are going to  
3 seek recovery for through ECRC, that there is a basis, or that  
4 I'm going to create a basis, or at least make a case for  
5 recovery and this is something that I'm not, and, therefore, it  
6 is going to count against budget.

7 MR. BUTLER: That's right. And it is driven, of  
8 course, by what the regulatory requirement is that, you know,  
9 is motivating the study costs or whatever the other costs are.  
10 There are a lot of environmental requirements around that have  
11 been on the books for years or decades, and that FPL and  
12 everybody else still has to spend money to comply with, but  
13 they don't qualify for ECRC, because they are not a new  
14 environmental requirement. They don't fit the model that the  
15 statute set up for when you can recover the ECRC money.

16 And there is a lot of the FPL environmental  
17 department budget that fits into that category. The ECRC is  
18 this kind of increment of stuff that is being done for programs  
19 that specifically address new regulatory requirements, and that  
20 is kind of the split. I think you can see studies can  
21 certainly fall on one side or the other of that divide. You  
22 can have studies you are doing that you did in 1980 and you  
23 still do them because it is required by some continuing statute  
24 versus studies for completely new purposes.

25 CHAIRMAN BAEZ: But the situation that I can't get

1 around is if, fine, there is sort of a bright line, there are  
2 new environmental program costs that are -- I guess you make it  
3 seem easily identifiable, and that may be the case. But there  
4 is also money out there in base rates that went to address  
5 something that may not exist. I guess my point is there can be  
6 space created in base rates, there may be space created in base  
7 rates that would otherwise have been going towards  
8 environmental, some environmental costs. And while I  
9 understand your distinction, why is it not in the public  
10 interest to say, you know what, John, we gave you \$1,000 in  
11 base rates to do these costs and you are only spending 700, and  
12 here are all of these new environmental requirements that you  
13 want to create that you want to recover through the clause, but  
14 why is it wrong to say, you know, I gave you 1,000, spend 1,000  
15 and then we will talk about the difference through the clause?

16 MR. BUTLER: I think that it is analytically  
17 distinguishable, and I think the biggest problem is really that  
18 it is a slippery slope that you end up on. You can say the  
19 same thing about a whole lot more than just environmental study  
20 costs.

21 CHAIRMAN BAEZ: And I appreciate that.

22 MR. BUTLER: I don't want to get into that point,  
23 generally, but that is underlying this, certainly some of the  
24 concern.

25 CHAIRMAN BAEZ: And I appreciate your point. I mean,

1 I think it would be a stretch of logic to start calling trees  
2 something else in order to address whatever headroom there  
3 would have been. But in this case, I mean, is it your position  
4 that the relationship, at least, is not enough to merit that?

5 MR. BUTLER: You know, frankly, I have to say this  
6 case is, in spite of just, you know, making the slippery slope  
7 analogy, this one actually is perhaps one you would have to go  
8 up over the hump a little before you get onto the slippery  
9 slope. I think this is a particularly good case for not  
10 applying the netting concept, because you actually do end up  
11 having, in most instances, an ability to go back to MFRs and  
12 looking at what people had in mind they were going to be  
13 spending money to study.

14 I think there are probably some other categories  
15 where it is not necessarily so easy to tell what the activity,  
16 specific activity was going to be that would be, you know,  
17 envisioned for the test year. And, again, in this  
18 circumstance, the way FPL did it, as I understand it, is to  
19 look at study costs, say are we doing this because of some  
20 existing environmental requirement. If so, it is not going to  
21 qualify for ECRC, it can't, because of the way the clause  
22 works. And then distinguish and not include as part of the  
23 projection if they had in mind -- you know, just take this as  
24 an example.

25 I don't know whether they did, but say that they

1 could anticipate that somewhere in the next five years, you  
2 know, EPA was going to get out of the courts and be able to  
3 move somewhere forward on the 316(b) marine organism  
4 entrainment rules. They might say we will probably have to do  
5 studies for that, but when we do those will be recoverable  
6 because it is going to be this new environmental requirement.  
7 It fits the pattern for ECRC, so that is not going to go in the  
8 bucket of what we are projecting for the MFRs. That is the  
9 distinction, that is why we think that it ought to be treated  
10 differently than how things are handled in Gulf.

11 CHAIRMAN BAEZ: Ms. Stern, you wanted to add  
12 something?

13 MS. STERN: Yes. I think that the nature of the  
14 argument that Mr. Butler is making was considered in the GCOS,  
15 the order where the Commission approved netting and was just  
16 decided against. And we know that there are certain studies in  
17 base rates and there are certain things that will go through  
18 the clause, but the bottom line was if you are not -- if you  
19 have gotten money in your base rates allocated for  
20 environmental studies and you are not spending that money, and  
21 here you come along and you want to do an environmental study,  
22 well, you know, you should -- the Commission said that is when  
23 netting should apply. Because the concern was that the  
24 legislature made it very clear in the text of the statute that  
25 there should be no double recovery. And this would be akin to

1 double recovery, if not actual double recovery.

2 I also want to make a point that we are only talking  
3 about like-for-like here. We are talking about environmental  
4 studies. I mean, I just don't want the point to be lost that  
5 if somebody wants to come along and do some other kind of  
6 expense or O&M activity that is not an environmental study,  
7 that wouldn't be netted against environmental studies that are  
8 already in base rates.

9 The final thing is if the allocation for studies in  
10 base rates, in the case of FPL, you know, they are spending all  
11 of their money for base rates. In the case of Progress, they  
12 are not spending any money in base rates. They have  
13 environmental studies allocated, costs for environmental  
14 studies allocated in their base rates, but they are not  
15 spending any of it. So Progress' costs will get offset by what  
16 is in base rates.

17 Now, if Progress spends more on studies in base  
18 rates, we will make an adjustment back to the environmental  
19 cost-recovery clause. It is not a permanent thing; it changes  
20 every year when we update the factors.

21 COMMISSIONER JABER: Mr. Chairman, if the  
22 Commissioners don't have other questions on Items 18 and 19, I  
23 can make a motion.

24 CHAIRMAN BAEZ: Commissioners, any other questions?  
25 Okay.

1           COMMISSIONER JABER: Ms. Stern, in preparation for my  
2 motion, can you confirm for me that the result of Items 18 and  
3 19 will be rolled into the environmental cost-recovery clause  
4 proceedings?

5           MS. STERN: Yes.

6           COMMISSIONER JABER: With that clarified, my motion  
7 would be to approve staff on both of those items, Mr. Chairman.

8           CHAIRMAN BAEZ: There's a motion. Is there a second?

9           UNIDENTIFIED SPEAKER: Second.

10          CHAIRMAN BAEZ: A motion and a second. All those in  
11 favor say aye.

12          COMMISSIONER JABER: Aye.

13          COMMISSIONER DAVIDSON: Aye.

14          CHAIRMAN BAEZ: Aye. All those nay.

15          COMMISSIONER DEASON: Nay.

16          CHAIRMAN BAEZ: Thank you, Commissioners.

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STATE OF FLORIDA )  
:  
COUNTY OF LEON )

CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, 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' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 18th day of October, 2004.



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JANE FAUROT, RPR  
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