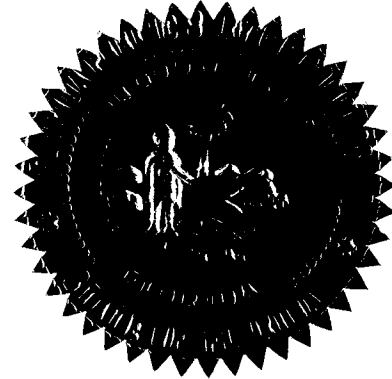


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060007-EI

In the Matter of  
ENVIRONMENTAL COST RECOVERY  
CLAUSE.



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PROCEEDINGS: PREHEARING

BEFORE: MATTHEW M. CARTER, II  
Prehearing Officer

DATE: Monday, October 23, 2006

TIME: Commenced at 9:30 a.m.  
Concluded at 12:40 p.m.

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

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

## 1 APPEARANCES:

2 JOHN BUTLER, ESQUIRE, and R. WADE LITCHFIELD,  
3 ESQUIRE, Florida Power & Light Company, 700 Universe Boulevard,  
4 Juno Beach, Florida 33408-0420, appearing on behalf of Florida  
5 Power & Light Company.

6 LEE L. WILLIS, ESQUIRE, and JAMES D. BEASLEY,  
7 ESQUIRE, Beggs & Lane Law Firm, Post Office Box 391,  
8 Tallahassee, 32302, appearing on behalf of Tampa Electric  
9 Company.

10 JEFFREY STONE, ESQUIRE; RUSSELL BADDERS, ESQUIRE; and  
11 STEVEN R. GRIFFIN, ESQUIRE, Beggs & Lane Law Firm, Post Office  
12 Box 12950, Pensacola, Florida 32591-2950, appearing on behalf  
13 of Gulf Power Company.

14 JOHN W. MCWHIRTER, JR., ESQUIRE, c/o McWhirter,  
15 Reeves Law Firm, 400 North Tampa Street, Suite 2450, Tampa,  
16 Florida 33602, appearing on behalf of Florida Industrial Power  
17 Users Group.

18 GARY V. PERKO, ESQUIRE, Hopping, Green & Sams, P.A.,  
19 Post Office Box 6526, Tallahassee, Florida 32314-6526,  
20 appearing on behalf of Progress Energy Florida, Inc.

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1 APPEARANCES CONTINUED:

2 CHARLES J. BECK, ESQUIRE; JOSEPH A. MCGLOTHLIN,  
3 ESQUIRE; and PATRICIA CHRISTENSEN, ESQUIRE, Office of Public  
4 Counsel, c/o The Florida Legislature, 111 W. Madison Street,  
5 Room 812, Tallahassee, Florida 32399-1400, appearing on behalf  
6 of the Citizens of the State of Florida.

7 ROBERT SCHEFFEL WRIGHT, ESQUIRE, and JOHN T. LAVIA,  
8 III, ESQUIRE, Young van Assenderp Law Firm, 225 South Adams  
9 Street, Suite 200, Tallahassee, Florida 32301, appearing on  
10 behalf of Florida Retail Federation.

11 MARTHA CARTER BROWN, ESQUIRE, FPSC General Counsel's  
12 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida  
13 32399-0850, appearing on behalf of the Commission Staff.

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

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COMMISSIONER CARTER: Let's continue our hearing. We now will proceed with Docket Number 060007. Ms. Brown, are there any, are there any preliminary matters?

MS. BROWN: Not to my knowledge, Commissioner. You might want to ask the parties if they have anything. I'm not aware of anything.

COMMISSIONER CARTER: The parties here, are there any preliminary matters on Docket Number 060007? Okay.

MR. BUTLER: My understanding is we'll be going through the order section by section. Is that correct, Ms. Brown?

COMMISSIONER CARTER: Absolutely.

MR. BUTLER: Okay. So I can raise whatever I need to at that point. That'll be fine.

COMMISSIONER CARTER: Excellent. All righty.

We have a draft prehearing order which we'll go through section by section as we did before. And I'll just go by the section, and if there are any objections or issues, we'll deal with them section by section. Is that understood and appreciated by everyone?

MS. BROWN: Yes, Commissioner.

COMMISSIONER CARTER: All righty. Section I, any corrections?

MS. BROWN: It doesn't look like there are any

1 changes, Commissioner.

2 COMMISSIONER CARTER: Section II.

3 MS. BROWN: No changes.

4 COMMISSIONER CARTER: Section III.

5 MS. BROWN: No changes.

6 COMMISSIONER CARTER: Section IV.

7 MS. BROWN: No changes.

8 COMMISSIONER CARTER: Section V.

9 MS. BROWN: I'm not aware of any changes, excuse me,  
10 Commissioner. I would point out that this is a partially  
11 stipulated case and some witnesses may be excused. I will  
12 identify those witnesses with an asterisk in the final  
13 prehearing order if the Commissioners don't have any questions  
14 for them, and I will notify the parties by November 1st.

15 COMMISSIONER CARTER: Excellent. So we're on Section  
16 VI.

17 MR. STONE: Commissioner, I have -- Jeff Stone on  
18 behalf of Gulf Power Company. I have one minor change on  
19 Section VI, and that is by the witness R. J. Martin. We need  
20 to add an issue, and that would be Issue 12C. I believe it's a  
21 stipulated issue, but she would be the witness on that issue.

22 MS. BROWN: It's so noted.

23 COMMISSIONER CARTER: Okay. Any other on Section VI,  
24 any other by any other parties? Okay.

25 Section VII.

1 MS. BROWN: I note that some parties have not taken  
2 basic positions, but I understand that to be all right in these  
3 dockets. But if anyone wants to take a basic position, they  
4 probably should let us know.

5 COMMISSIONER CARTER: Okay.

6 MS. BROWN: For instance, PEF has none, Power & Light  
7 has none, OPC, FRF and FIPUG have none.

8 MR. BUTLER: It has been Florida Power & Light's  
9 practice not to take a basic position; simply allow the  
10 positions on the individual issues to speak for our position  
11 overall. And if that is acceptable to the prehearing officer,  
12 we would prefer to continue that practice.

13 COMMISSIONER CARTER: Staff?

14 MS. BROWN: That's fine with staff.

15 MR. PERKO: That has also been the practice for  
16 Progress Energy Florida.

17 COMMISSIONER CARTER: Is that consistent with all the  
18 parties?

19 MS. CHRISTENSEN: That would be consistent with the  
20 Office of Public Counsel as well.

21 MR. TWOMEY: Yes, sir.

22 COMMISSIONER CARTER: Okay. Excellent. Good deal.  
23 I bet we're going to have some comments on Section VIII; right?

24 MR. BUTLER: Yes, sir.

25 COMMISSIONER CARTER: Section VIII.

1 MS. BROWN: Yes. Yes, we are.

2 COMMISSIONER CARTER: Loosen up, guys.

3 Section VIII, Issue 1.

4 MS. BROWN: Commissioner, I believe this is a  
5 stipulated -- could be a stipulated issue if I get a position  
6 from OPC.

7 MS. CHRISTENSEN: We would take no position.

8 MS. BROWN: All right. And, Commissioner, I'll  
9 reflect that in the prehearing order that OPC has taken no  
10 position.

11 COMMISSIONER CARTER: Okay.

12 MS. BROWN: And with that, I think that issue is  
13 stipulated.

14 COMMISSIONER CARTER: Very good.

15 MR. McWHIRTER: We take no position.

16 COMMISSIONER CARTER: Okay. And we'll proceed with  
17 Issue 2.

18 MS. BROWN: The same thing applies to Issue 2. With  
19 a position from OPC, I think we can call this stipulated.

20 MS. CHRISTENSEN: Again, OPC would take no position  
21 then on this issue.

22 MR. McWHIRTER: Likewise.

23 MR. WRIGHT: Likewise.

24 COMMISSIONER CARTER: Okay.

25 MS. BROWN: Commissioner, let me ask a question here.

1 COMMISSIONER CARTER: On Issue 2?

2 MS. BROWN: Yes, of Mr. Twomey, if I might.

3 AARP is not a party in the 07 docket; is that  
4 correct?

5 MR. TWOMEY: That's correct.

6 MS. BROWN: Okay. I just wanted to --

7 MR. TWOMEY: I didn't mean to concur on anything.  
8 Strike that. I was just trying to be agreeable.

9 COMMISSIONER CARTER: It's Monday. He's in a good  
10 mood. So Issue 2 with no correction.

11 Let's proceed to Issue 3.

12 MS. BROWN: Commissioner, staff's position in this is  
13 that we can't stipulate this issue at this time because there  
14 are some outstanding company-specific issues. But I think  
15 Mr. Beasley wanted to make a comment.

16 MR. BEASLEY: Yes. I think there are no outstanding  
17 company-specific issues remaining for Tampa Electric, so I  
18 would ask that Issue 3 be stipulated for Tampa Electric.

19 MS. BROWN: We can show in the final prehearing order  
20 that the section for TECO, the number for TECO is stipulated.

21 MR. PERKO: Commissioner, if may. Mr. Perko on  
22 behalf of Progress Energy Florida.

23 COMMISSIONER CARTER: Yes, sir.

24 MR. PERKO: I believe the same is true for Progress  
25 Energy Florida, that all our company-specific issues are going



1 to be stipulated. In that case, I'd also like to request that  
2 the Issues 3 and 4 be stipulated.

3 MS. BROWN: And we'll go back and cross-check that  
4 and show that for Progress Energy as well.

5 COMMISSIONER CARTER: Okay. Any other parties?

6 Okay. We're now on Issue 4.

7 MR. BEASLEY: And I think the same would apply for  
8 Tampa Electric on Issue 4. There are no remaining  
9 company-specific issues for Tampa Electric.

10 MR. PERKO: And the same for Progress Energy Florida,  
11 I believe.

12 MS. BROWN: We'll show that in the final prehearing  
13 order.

14 COMMISSIONER CARTER: Any other parties?

15 MS. CHRISTENSEN: Yes. Commissioner, OPC, Patty  
16 Christensen for OPC. On Issues 3 and 4, to the extent that  
17 there are no company-specific issues remaining for TECO or  
18 Progress, we would just take no position as to those companies  
19 on those issues; otherwise, we would like to remain as no  
20 position at this time on the remaining companies.

21 COMMISSIONER CARTER: So be it.

22 Okay. Any other on Issue 4?

23 MR. BEASLEY: I take it the same would apply, what  
24 Ms. Christensen said, for FIPUG on Issues 3 and 4? That would  
25 be no position as opposed to no position at this time.

1 MR. McWHIRTER: That's correct.

2 MR. WRIGHT: And also for the Retail Federation,  
3 Commissioner.

4 COMMISSIONER CARTER: Okay. Thank you. Issue 5.

5 MS. BROWN: Commissioner, my understanding is that  
6 this a stipulated issue, if we get a position from OPC.

7 MS. CHRISTENSEN: We can take no position on that  
8 issue.

9 MS. BROWN: I'll show it in the prehearing order.

10 COMMISSIONER CARTER: Okay. Issue 6.

11 MS. BROWN: The same thing is true here,  
12 Commissioner. If OPC takes no position, then this is also  
13 stipulated.

14 MS. CHRISTENSEN: Yes. We can take no position on  
15 this issue.

16 COMMISSIONER CARTER: Okay. Issue 7.

17 MS. BROWN: Commissioner, the position that staff has  
18 taken on this issue is that this is a fallout issue and the  
19 factors will be mathematically determined on the basis of the  
20 decisions made and company-specific issues. So we're asking  
21 the Commission to authorize the staff to review this after the  
22 hearing and plug in the right numbers. And I don't know if --  
23 what the other parties' positions are on that.

24 COMMISSIONER CARTER: Okay. Parties?

25 MS. CHRISTENSEN: OPC can take no position. We

1 believe that's a mathematical calculation as well and a fallout  
2 issue, so that's fine.

3 COMMISSIONER CARTER: Thank you.

4 MR. WRIGHT: We agree with Public Counsel on that  
5 one.

6 MR. McWHIRTER: FIPUG also.

7 COMMISSIONER CARTER: Any other parties?

8 MS. BROWN: Commissioner, if I might just clarify  
9 something from FIPUG for a minute. I have in the draft  
10 prehearing order a different position. Are you changing this  
11 to no position?

12 MR. McWHIRTER: Strike that. I do take a position  
13 and it's the same as stated in the order. I was just trying to  
14 be agreeable. Shouldn't have been.

15 MS. BROWN: Well, I didn't mean to interfere with  
16 that. Commissioner, we'll continue to try to negotiate these  
17 matters out. We have two weeks until the hearing and perhaps  
18 we can reach some other agreement.

19 COMMISSIONER CARTER: So the only outstanding would  
20 be getting with Mr. McWhirter and --

21 MS. BROWN: On this one, yes, it appears that way.

22 COMMISSIONER CARTER: Okay. No other parties; right?

23 MR. PERKO: Commissioner, Gary Perko on behalf of  
24 Progress Energy Florida. I believe that, assuming that the  
25 Progress Energy Florida company-specific issues are stipulated,

1 that we could also stipulate this issue. I just want to  
2 confirm that with Ms. Brown.

3 MS. BROWN: Yes.

4 MR. PERKO: Thank you.

5 COMMISSIONER CARTER: Okay. Any others?

6 MR. BEASLEY: And the same with Tampa Electric, I  
7 believe.

8 COMMISSIONER CARTER: Did I overlook anyone? We're  
9 getting ready to go to Issue 8.

10 MR. BEASLEY: Will be stipulated for Tampa Electric?

11 MS. BROWN: I believe that's right, Commissioner,  
12 based on our previous -- your previous decisions that these can  
13 be shown stipulated because the company-specific issues are  
14 stipulated. We can show that in here as well.

15 COMMISSIONER CARTER: Okay. That's correct.  
16 Issue 8.

17 MS. BROWN: Commissioner, I believe this is a  
18 stipulated issue for everyone. It's standard every year.

19 MS. CHRISTENSEN: That's correct. OPC agrees with  
20 that position.

21 COMMISSIONER CARTER: Okay. Issue 9A.

22 MS. BROWN: Commissioner, we're getting into the  
23 company-specific issues now. I guess we should ask the parties  
24 if they have any other changes to their positions.

25 It's staff's position in this issue that the

1 Commission has repeatedly approved requests for compliance cost  
2 recovery projects through the ECRC unless there is some  
3 specific circumstance that would mandate a spinoff docket, and  
4 staff's position is reflected here. I'm not certain what the  
5 other positions are.

6 MR. BUTLER: Commissioner Carter?

7 COMMISSIONER CARTER: Yes, sir.

8 MR. BUTLER: Let me speak to this on behalf of FPL,  
9 please. The position that's stated is correct for FPL. We  
10 don't need to change the statement of the position. But we are  
11 concerned with OPC's position and kind of procedurally what  
12 will happen from here forward.

13 Basically their position is that making a decision  
14 here is premature. They think it ought to be spun off, this  
15 project ought to be spun off to a separate docket. We  
16 definitely disagree with that. I mean, we brought this to the  
17 Commission and Public Counsel's attention informally, this  
18 being the CAMR project, back in June. We filed our request for  
19 approval of the project with the August 4 estimated/actual  
20 testimony. So it's been out there a while. There's certainly  
21 been an opportunity for people to reserve or to review the  
22 project and ask discovery about it and formulate their  
23 positions. And it is certainly consistent, as Ms. Brown  
24 indicated, with past practice to bring new projects to the  
25 Commission's attention in the course of either the

1 estimated/actual or the projection filings when the timing of  
2 that is appropriate.

3 FPL will be incurring costs later here in 2006. It  
4 certainly will be incurring costs in 2007 for this program.  
5 We'd like to get a decision on it.

6 Now having said that, it's sort of our position, and  
7 obviously OPC is free to disagree with that, but what I'm  
8 concerned about here is that basically their position isn't a  
9 substantive objection to the program. It's a procedural issue:  
10 When should it be decided? And we would ask you as prehearing  
11 officer to resolve this before hearing because we think one  
12 thing that would be very wasteful of resources and quite  
13 possibly sort of procedurally defective would be to go forward  
14 to a hearing, have testimony, have witnesses, have  
15 cross-examination, and then at the end of that decide that it's  
16 going to be deferred to some other proceeding. There should be  
17 one hearing. And if this is going to be the hearing, which we  
18 think it should be, we think that ought to be resolved and we  
19 know that it's going to be the hearing.

20 If this isn't going to be the hearing for it, then we  
21 think that all of the parties would benefit from knowing that  
22 in advance rather than having it be something that would be  
23 decided at or after the hearing in two weeks.

24 MS. CHRISTENSEN: Commissioner, Patty Christensen  
25 with the Office of Public Counsel.

1 I think the concern that the Office of Public Counsel  
2 has is, as Mr. Butler just pointed out, the first real  
3 substantive information that we have on which exact projects  
4 are going to be put in place by the company and the associated  
5 dollar amounts with that was filed in August, which is not a  
6 lot of time for an in-depth, thorough review of the CAMR/CAIR  
7 projects. We are talking about billion dollar projects. These  
8 are significant projects. And we're, as the consumers'  
9 representatives, here to take a thorough look at this to make  
10 sure that this is the appropriate projects to be put in place.  
11 It's not just a matter of is there a new environmental  
12 regulation and does some equipment need to be put in place?  
13 There's another question that needs to be asked, and it is is  
14 the appropriate project being put in place?

15 And our concern is given the nature of the fuel  
16 proceedings -- this is a very truncated type of proceeding and  
17 there isn't a very significant amount of time to look at these  
18 very complicated issues in a very short amount of time. Not  
19 even really time sufficient to get a consultant in to take a  
20 preliminary look at it and to give us a preliminary review to  
21 tell us whether or not there are significant issues with the  
22 way the company is planning on meeting its obligations under  
23 the CAMR/CAIR.

24 One compromise might be to allow them to go forward  
25 with this or to get monies subject to refund until the

1 Commission approves the individual projects. But my concern is  
2 that what we end up having is a kind of de facto blessing of  
3 projects coming through the ECRC clause without sufficient  
4 review.

5           Some of the projects the companies have filed  
6 separate petitions on, and in those cases we do have additional  
7 time to take a thorough look at those projects and to make sure  
8 that the projects are appropriate. So that's really where this  
9 is coming from in this position. And I don't think that it's  
10 an unreasonable position, given the large dollar amounts.

11           And I think it's unfair to say that, you know, if the  
12 Commission were to say, okay, you know, we understand there are  
13 some certain time constraints and you need to get some money to  
14 start these projects, that it would not be possible for the  
15 Commission then to say, well, we want you to file a petition to  
16 give us the opportunity to take a thorough look at these  
17 individual projects. I think that that can be done and that's  
18 not problematic. I don't think it would end up duplicating  
19 efforts. Because I think the testimony that's been filed in  
20 this docket regarding these projects is pretty high level and  
21 pretty cursory and not the kind of in-depth look at the  
22 projects that I think these projects deserve.

23           So we would not change our position at this time.  
24 And, similarly, those arguments would go for our position  
25 related to Gulf as well.



1 MR. BUTLER: Commissioner Carter, may I respond?

2 COMMISSIONER CARTER: One moment, please.

3 MR. BUTLER: Okay.

4 COMMISSIONER CARTER: Any other parties want to speak  
5 on this issue?

6 MR. McWHIRTER: I'd like to add something to what she  
7 said, if you don't mind, sir.

8 COMMISSIONER CARTER: Go right ahead.

9 MR. McWHIRTER: In the cost recovery proceeding this  
10 year the utilities are asking you to charge the customers  
11 \$11.4 billion. The testimony is filed in September and we have  
12 to analyze not only the fuel cost, the conservation cost, the  
13 environmental cost, the capacity recovery cost, and it's a very  
14 short time frame.

15 One of the problems with environmental issues is that  
16 base rates cover some environmental costs, and so the first  
17 initial question you have is should these environmental costs  
18 be recovered through the base rates that customers are already  
19 paying or should they go on to the environmental clause.

20 And then what historically I've observed happens is  
21 that a utility will come in with a project that they want and  
22 it doesn't have dollars affixed to it. But once the project is  
23 approved, then the dollars begin to flow, and the dollars can  
24 be quite substantial. So I think perhaps the best way to  
25 handle it is similar to what the OPC has requested. And if a

1 utility is going to undertake an environmental cost project  
2 that has a price tag of, say, \$100 million, that ought to be  
3 filed independently and early and let people examine, first of  
4 all, whether it should be in base rates or whether it's a  
5 legitimate environmental endeavor because it's something that's  
6 happened after the Clean Air Act. Or should we -- and then one  
7 of the major problems we have is if you resist what a utility  
8 wants to do, you've got to locate a witness and those witnesses  
9 need to analyze it. And before you can analyze it, you've got  
10 to do discovery. So in a 90-day time frame with unknown  
11 factors it's a sheer impossibility for consumers to come  
12 forward and put on a meaningful case that would make any  
13 logical sense to the Commission.

14           So I wholly endorse what Ms. Christensen has said,  
15 and I would suggest to you that maybe what we need to do is set  
16 up a procedure based on the cost of the environmental endeavor  
17 so that it has to be announced upfront and everybody knows what  
18 it is, and that would arouse sufficient interest. And that if  
19 they're going to do something in the fall hearings, along with  
20 the other \$11 billion worth of recovery, that it be done at  
21 least six months in advance before the hearing. Goodness  
22 sakes, if you're in a lawsuit, it would take you three years to  
23 have a hearing on something like that to give it ample  
24 discovery.

25           So I strongly endorse what Ms. Christensen has said

1 and hope that the Commission will take that into consideration.

2 COMMISSIONER CARTER: Okay. Before I go back to  
3 Mr. Butler, anyone else?

4 Mr. Butler.

5 MR. BUTLER: Thank you, Commissioner Carter.

6 I think it's important -- several things to keep in  
7 mind here. First of all, whatever the Commission might decide  
8 to do prospectively about this issue, we are following exactly  
9 the procedure that has been followed in all of the time that  
10 I've been involved with the environmental cost recovery docket.

11 The basic rule in the docket is that you have to file  
12 a petition for approval before you start spending money on the  
13 program if you want that money to be subject to potential  
14 recovery. That's what we did here.

15 Now the parties have had three months of discovery,  
16 time for discovery to explore this however they see fit, and I  
17 think that gives an awful lot of opportunity to explore the  
18 issues. More opportunity than, in fact, has been availed by  
19 either Public Counsel or FIPUG in their discovery in this  
20 proceeding regarding this CAMR project.

21 But probably most importantly, you know, what we are  
22 seeking here, and we did pretty much the same thing with the  
23 CAIR project last year when it was approved, is we're seeking  
24 approval essentially conceptually for the idea of, you know,  
25 costs that FPL incurs to comply with this Clean Air Mercury

1 Rule to be a, you know, an environmental cost recovery project,  
2 that it meets the criteria for that, and that we would have the  
3 opportunity to present those costs and seek their recovery.

4           You know, the parties are going to get at least a  
5 couple of additional bites at this apple with respect to any  
6 particular projects. There will be next year estimated/actual  
7 true-up with respect to the costs that FPL is anticipating to  
8 incur in 2007 and final true-up for anything that was incurred  
9 in 2006. So in the November 2007 hearings, parties will have  
10 more information and every opportunity to say that, you know,  
11 if they feel it's the case that FPL didn't do the right thing  
12 to implement the requirements of CAMR, it could have done it  
13 cheaper or better, some other way, they'll have that  
14 opportunity. And then with respect to the 2007 costs, they'll  
15 have the opportunity one more time because we'll do the final  
16 true-up on those numbers in the spring of 2008, and then in the  
17 fall of 2008 there will be a hearing on it. And, again, full  
18 opportunity to debate whether FPL implemented CAMR in an  
19 appropriate way for our system.

20           So this isn't the end of the inquiry. You know, we  
21 do this routinely. We've given the best information we have at  
22 this point. We've explained how the project is consistent with  
23 and required by federal and state environmental air regulatory  
24 rules, and we think that it's completely ripe and appropriate  
25 for it to be decided at this time.

1           COMMISSIONER CARTER: Anything from staff, anything  
2 further from staff?

3           MS. BROWN: We, Commissioner, we agree with  
4 Mr. Butler's characterization of the procedure in the ECRC  
5 clause. We also would recommend to you that you don't have to  
6 make a decision on this today. You can take it under  
7 advisement and issue a written ruling on it when the prehearing  
8 order is issued.

9           COMMISSIONER CARTER: Okay. I'm inclined to, you  
10 know, issue an order later on this Issue 9A.

11           Issue 9B.

12           MS. BROWN: Commissioner, we need a position from OPC  
13 on this issue.

14           MS. CHRISTENSEN: As far as the allocation of the  
15 environmental cost to the rate classes, I think we can take no  
16 position on that issue.

17           MS. BROWN: Commissioner, we don't appear to have a  
18 stipulated issue on this. FIPUG has taken a different position  
19 from the other parties. We'll continue to negotiate. FP&L  
20 looks like it wants to make a comment.

21           MR. BUTLER: Excuse me. Commissioner Carter, just,  
22 we would like to supplement our statement of issue here  
23 briefly, and I'd like to make a comment about that.

24           On FPL's position after the first sentence, the one  
25 that ends "on an average 12CP demand basis," we'd like to

1 insert the following sentence. "This is consistent with FPL's  
2 current cost of service methodology, as contemplated by the  
3 stipulation approved by Order Number PSC-050902S-EI in Docket  
4 Number 050045-EI." And the comment is -- that's the end of the  
5 insert.

6 The comment is that we would respectfully request  
7 FIPUG to reconsider trying to raise this issue here. It's an  
8 issue actually that was addressed and resolved last year. What  
9 we are doing is consistent with the cost of service methodology  
10 that we use for all other purposes. There was a -- the  
11 stipulation that I just referred to calls for us to do that.  
12 The stipulation says in paragraph 13, "New capital costs for  
13 environmental expenditures recovered through the environmental  
14 cost recovery clause will be allocated for the purpose of cost  
15 recovery consistent with FPL's current cost of service  
16 methodology." And this stipulation was signed by, among other  
17 parties, FIPUG. In fact, Mr. McWhirter signed it. So we  
18 really question whether this is appropriately an issue here,  
19 but obviously that's beyond us to decide. And in any event,  
20 we'd like to revise our position as stated.

21 MR. McWHIRTER: Commissioner Carter, we're dealing  
22 with lawyer talk here. Essentially what happened in the case  
23 of the base rate case for Florida Power & Light last year was  
24 that it filed a cost of service study that resulted in a  
25 substantial increase to the CILCT customers and the case was

1 settled. In the settlement the rates that went into effect in  
2 1993 or thereabouts were once again confirmed, and those -- and  
3 we all agreed that those would be the appropriate rates. And a  
4 different cost of service methodology was used back at that  
5 time.

6           So what has happened is FP&L in this case has  
7 attempted to, I don't know whether arrogate is the proper word,  
8 but they've attempted to use a cost of service study that was  
9 filed in the rate case that wasn't applied when the rates were  
10 set. And they say because they filed that, and although there  
11 was conflicting testimony on that issue and that conflicting  
12 testimony never went to hearing, they say we're bound by it.  
13 And I frankly don't have the precise phraseology of the  
14 stipulation to read at this point in time, but the question is  
15 are we bound by the rates that were set that everybody agreed  
16 on or are we bound by a contested cost of service study that  
17 was not utilized when the rates were set?

18           In this case I put this position in the environmental  
19 case because the Federal Executive Agencies have raised a  
20 legitimate issue in the fuel clause with respect to the CILCT  
21 rate and they have a witness on it, and he's going to present  
22 testimony as to how the CILCT rate should be set in the fuel  
23 clause. And if you set it in accordance with Mr. Goins'  
24 testimony, that theory should flow through to the other, not  
25 only the environmental case but the conservation case. So in

1 spite of Mr. Butler's request that we reconsider, FIPUG wants  
2 to stay firm on its position as it stands now and we'll let  
3 them present the proof at the hearing.

4 COMMISSIONER CARTER: OPC?

5 MS. CHRISTENSEN: At this point we generally take no  
6 position on rate structure or the allocation between the  
7 classes, so we would just take no position on this issue,  
8 although it will be interesting to hear how this comes out.

9 COMMISSIONER CARTER: Thank you. Anything further  
10 from staff?

11 MS. BROWN: The final prehearing order will reflect  
12 the changes to FPL's position, but we can't stipulate this  
13 issue at this time. But we'll continue to negotiate.

14 COMMISSIONER CARTER: Okay. Okay. Now let's move to  
15 Issue 9C.

16 MS. BROWN: Commissioner, I think that this is not a  
17 stipulated issue. FP&L has brought up an additional word for  
18 the issue itself, which staff doesn't have any problem with. I  
19 don't know whether the other parties do. It would be, "Are  
20 FPL's legal expenses for challenging implementation of the CAIR  
21 rule included in base rates?" That's fine with staff. I don't  
22 know if any of the other parties have any changes to their  
23 position.

24 COMMISSIONER CARTER: We're on Issue 9C.

25 MS. CHRISTENSEN: OPC has no changes to our position.



1 COMMISSIONER CARTER: Recommendation?

2 MS. BROWN: I guess that issue will remain open for  
3 the time being.

4 COMMISSIONER CARTER: Yeah. Okay. We'll keep it  
5 open. But also to -- I hope that all parties involved will  
6 continue to negotiate in good faith in the most expeditious  
7 manner possible. Expeditious doesn't mean -- I remember my  
8 ninth grade teacher Ms. Locklear (phonetic) said, "Speed and  
9 accuracy equals efficiency." So that's what I mean when I say  
10 in the most efficient way possible. Okay?

11 All right. Let's move now to -- that was issue, that  
12 was Issue 9C; correct?

13 MS. BROWN: Yes, Commissioner.

14 COMMISSIONER CARTER: Let us move now to Issue 10A.

15 MS. BROWN: Commissioner, this is a stipulated issue,  
16 as is 10B, for Progress.

17 COMMISSIONER CARTER: Okay. So let's take Issue 10A  
18 and 10B together. Any position, any disagreement, any  
19 comments?

20 Okay. Let's move on to Issue 11.

21 MS. BROWN: This is also a stipulated issue for Tampa  
22 Electric.

23 COMMISSIONER CARTER: Any comment, disagreements?

24 Okay. Issue 12A.

25 MR. STONE: Commissioner Carter?

1 COMMISSIONER CARTER: Yes, sir.

2 MR. STONE: Jeff Stone again on behalf of Gulf Power  
3 Company. Our -- this position or this, this issue is very  
4 similar to Issue 9A that was argued before you a few moments  
5 ago by Mr. Butler and Ms. Christensen. Ms. Christensen,  
6 indeed, alluded to the fact that their position would be the  
7 same with regard to Gulf on this issue.

8 I would simply reiterate the arguments Mr. Butler has  
9 made and that staff has made with regard to the policy of the  
10 Commission. I note that Public Counsel has not specifically  
11 taken issue with the dollars that are projected for 2007 cost  
12 recovery, but rather she's -- or the Office of Public Counsel  
13 has taken a position on a procedural matter. And I would point  
14 out that there's been 13 years worth of precedent established  
15 in this docket with regard to the environmental cost recovery  
16 proceedings and the types of petitions that are filed and the  
17 timing of the petitions that are filed. And like Florida  
18 Power & Light, Gulf Power Company takes the position that we  
19 have followed that precedent and that procedure that has been  
20 outlined by the Commission and we are in compliance with that.  
21 And with that, we would also ask that you consider that when  
22 you make your ruling on 9A.

23 MS. CHRISTENSEN: And as I said before, my position  
24 is similar on this issue. I would point out also if you look  
25 at the issue above 11A, there was a project that TECO is

1 seeking to have cost recovery on through an environmental  
2 clause that was filed in a separate docket, and we had the  
3 opportunity to look at it, and that is a contested issue that's  
4 going on. So when the petition is filed, we do have the  
5 opportunity to take a closer look at it, and that really is the  
6 issue here with these CAMR/CAIR type projects which are more  
7 costly, I mean, and more involved. And that's really the issue  
8 that we're taking. And the reason that we're taking it, and we  
9 believe that specifically for these projects, due to the  
10 expense and the complicated, and the complicated nature of  
11 these types of projects, that these need to be looked at  
12 individually. Although, as I said before, you know, it may be  
13 appropriate to allow certain of the costs to be, being  
14 collected subject to refund while a petition is pending so that  
15 the consumers can have the opportunity to take a thorough look  
16 at those projects. Because it's a lot different to look at  
17 something conceptually -- conceptually doesn't help us  
18 understand whether or not it's an appropriate or prudent  
19 project -- than to have a petition with a project outlined with  
20 specific deadlines and what those projects will entail.

21 COMMISSIONER CARTER: Okay. We will put --

22 MR. BUTLER: Commissioner Carter?

23 COMMISSIONER CARTER: Yes, sir.

24 MR. BUTLER: I'm sorry. I really need to respond  
25 briefly to what Ms. Christensen had just said just to clarify

1 something about the way that these programs end up being  
2 brought to the Commission for decision. As I mentioned  
3 earlier, we have to bring the project, file something asking  
4 for approval for the project before we can start spending money  
5 on the project. FPL has always tried, as we did here, to use  
6 the normal filing of either estimated/actual or projection  
7 testimony as the occasion for doing that when it fits. But  
8 sometimes it doesn't, and when it doesn't we too have had to in  
9 the past file separate petitions. But what drives that is the  
10 fact that we need to start spending the money before, you know,  
11 the cycle will come up for, the time and the cycle will come up  
12 for filing the true-up or the projection testimony.

13 I spoke -- while Ms. Christensen was speaking, I  
14 spoke to Mr. Beasley and confirmed that that is, in fact, the  
15 case we have here with what TECO has done. You know, they  
16 needed to start or anticipated starting to spend money on this  
17 project before one would get to the point in the cycle to do  
18 the estimated/actual true-up or the projection filing and so  
19 did a separate petition; the same sort of thing we've done  
20 before. But that's really been what's distinguished the basis  
21 for the filing, not the dollars involved or the complexity of  
22 the project, et cetera. Thank you.

23 MR. STONE: Commissioner Carter, I would reiterate  
24 that same position on behalf of Gulf. I'd also like to point  
25 out that with regard to Gulf's CAIR and CAMR compliance

1 program, we initially filed testimony on those regulatory  
2 requirements a year ago, and a stipulation to defer the issue  
3 pending the final adoption of the rule by the Florida  
4 Department of Environmental Protection was approved in this  
5 docket one year ago. We have supplemented that testimony with  
6 additional testimony this year. The rule has been made, has  
7 been issued by the Florida Department of Environmental  
8 Protection, and we are moving ahead with the projects. And so  
9 when we filed our petition and testimony a year ago, it was  
10 because we anticipated spending dollars in 2006 and have, in  
11 fact, begun the spending of dollars. Some of those dollars are  
12 for -- well, the overall projects are projects that are,  
13 qualify for AFUDC treatment and, therefore, they did not hit  
14 the clause for recovery purposes in 2006. However, some of  
15 those projects will be closing to plant-in-service during 2007  
16 and, therefore, they will actually be affecting the factors in  
17 2007 and, in fact, are part of our projection.

18           So we believe that we have filed a petition in a  
19 timely manner, we have filed the appropriate information at the  
20 appropriate time, and that it is a matter that is appropriate  
21 for decision in the course of this hearing.

22           COMMISSIONER CARTER: Okay. Staff, on this, as we're  
23 dealing with company-specific issues, I want to be consistent.  
24 Why don't I look at this in the same context as I did with the  
25 FPL. And other issues as we're going through that are similar

1 to that that I want to look at again in greater detail,  
2 withholding judgment, reserving judgment at this time, and  
3 maybe I can look at those in one broad category. I want to be  
4 consistent, first of all, consistent with the procedures of the  
5 PSC in the informal rulings in the hearing, but I also want to  
6 be consistent in I don't want to give one thing to one company  
7 that we don't give to another. We want to be consistent so I  
8 think the Office of Public Counsel, the parties in interest and  
9 everybody concerned will see some symmetry in the process. And  
10 I think that's the best way to be is to be fair with everybody  
11 and then put it out there so we can all see it at one time.

12 Okay?

13 MS. BROWN: Yes, Commissioner, that sounds great.  
14 You can issue a written ruling in the prehearing order to that  
15 effect.

16 COMMISSIONER CARTER: I think if I do it in writing,  
17 you guys will all have something to, you know, nit-pick or say  
18 good job or whatever. But at least it will give everybody some  
19 transparency, you know. Okay. Is that all right with y'all  
20 that we do that?

21 MS. CHRISTENSEN: That's fine, Commissioner. That  
22 would be acceptable to the Office of Public Counsel. I think  
23 that would work well.

24 COMMISSIONER CARTER: Okay. Anybody else have  
25 heartburn for that?

1 MR. BUTLER: No.

2 COMMISSIONER CARTER: Thank you. All right then. We  
3 are on 12B.

4 MS. BROWN: Yes, Commissioner. And with a position  
5 from OPC, there's -- perhaps we can stipulate this issue.

6 MS. CHRISTENSEN: At this time we can take no  
7 position, although we think an inner tube would work just as  
8 well. I'm just kidding. No position at this -- we'll just  
9 take no position.

10 COMMISSIONER CARTER: Okay.

11 MS. BROWN: Then consistent with the positions of the  
12 other parties we have a stipulated issue.

13 COMMISSIONER CARTER: Okay. Issue 12C.

14 MR. STONE: Commissioner Carter, as I noted earlier,  
15 the witness for Gulf's position on this issue would be  
16 Witness Martin and that should be noted for the position.

17 COMMISSIONER CARTER: Staff?

18 MS. BROWN: We'll note it.

19 COMMISSIONER CARTER: Okay.

20 MS. BROWN: And then with a position from OPC again  
21 perhaps we can stipulate this issue.

22 MS. CHRISTENSEN: No position.

23 MS. BROWN: All right. That one is stipulated then.

24 COMMISSIONER CARTER: It seems like we're making  
25 progress. Are we?

1           Okay. Ms. Brown, where are we now?

2           MS. BROWN: We're on Section IX, the exhibit list.

3           And I would just like to point out to the Commissioner that we  
4           will prepare a comprehensive exhibit list for the hearing that  
5           we'll pass out to everyone that will include all stipulated  
6           exhibits that we have, and we will have several for witnesses  
7           to stipulated issues.

8           COMMISSIONER CARTER: Including that that was  
9           mentioned today; right?

10          MS. BROWN: Yes.

11          COMMISSIONER CARTER: Is that okay with all the  
12          parties?

13          Okay. So now we're on Section X.

14          MS. BROWN: Commissioner, in this section the final  
15          prehearing order will identify the stipulated issues.

16          COMMISSIONER CARTER: Any comments?

17          MR. WRIGHT: Commissioner Carter?

18          COMMISSIONER CARTER: Oh, Mr. Wright.

19          MR. WRIGHT: Just briefly. Just to be clear, we  
20          don't object to any of the stipulations, but we want to be  
21          shown as not objecting to the stipulations. So I think that's  
22          a Category 2 stipulation as opposed to joining in the  
23          stipulation.

24          MS. BROWN: If I might clarify, does FRF want to be  
25          shown as not taking a position on these stipulated issues?



1 MR. WRIGHT: Correct. Thank you.

2 MS. BROWN: All right.

3 COMMISSIONER CARTER: Okay. Any other?

4 MR. STONE: Commissioner Carter?

5 COMMISSIONER CARTER: Yes, sir.

6 MR. STONE: I apologize. I should have made note of  
7 this earlier. Witness Martin will be adopting the prefiled  
8 direct testimony of Terry Davis that was filed back in March  
9 for the true-up filing. And when we're -- when we take the  
10 stand, that, that testimony will be adopted by Ms. Martin and  
11 will be presented at that time.

12 COMMISSIONER CARTER: Staff, would you make the  
13 appropriate changes to put that in the section where it  
14 applies?

15 MS. BROWN: Yes. Yes. I certainly will.

16 COMMISSIONER CARTER: Thank you.

17 MS. BROWN: And if I miss something, I'm sure  
18 Mr. Stone will let me know.

19 COMMISSIONER CARTER: Okay. Okay. Any other  
20 corrections on Section X? Any more?

21 Okay. Section XI.

22 MS. BROWN: Commissioner, this is the pending motion  
23 section. There are several pending motions at this time. I  
24 expect that a written order will be issued before the hearing.  
25 I would mention PEF's motion for leave to file supplemental

1 testimony. There have been no objections to that and you could  
2 make an oral ruling today to grant that motion, if you would  
3 like.

4 COMMISSIONER CARTER: Any objections?

5 MR. McWHIRTER: The time for discovery will have  
6 expired, I guess, by the time that testimony is filed. Is  
7 there some way we can deal with that?

8 MS. BROWN: It's already been filed. You should have  
9 received it. Isn't that correct, Mr. Perko?

10 MR. PERKO: That's correct.

11 MR. McWHIRTER: Well, I must not have read it yet.  
12 But the question still remains. I don't know what it says  
13 obviously, so --

14 MR. PERKO: Well, we can speak after, after the  
15 hearing.

16 MR. McWHIRTER: Okay.

17 MR. PERKO: But, Commissioner, this relates to  
18 Issue 10A, which is a stipulated issue which basically  
19 recognizes that the costs for the modular cooling towers  
20 project will be included in the factor, subject to refund  
21 depending upon the results of a separate docket. So I'm not  
22 sure that there'd be any controversy regarding this testimony.

23 MR. McWHIRTER: I'm okay with it because we'll have  
24 other opportunities. I apologize.

25 MS. CHRISTENSEN: Yes, we're fine with that.

1 COMMISSIONER CARTER: Okay. Make it so.

2 The -- and you'll add that to Section XIV, I believe.

3 MS. BROWN: Yes, Commissioner, that's correct.

4 COMMISSIONER CARTER: Section XII.

5 MS. BROWN: The same things applies to these pending  
6 confidentiality matters. I expect an order to be issued before  
7 the hearing on these.

8 COMMISSIONER CARTER: Okay. Section XIII.

9 MS. BROWN: Commissioner, staff anticipates a bench  
10 decision after the hearing in this case, in which case  
11 posthearing statements and briefs would not be necessary. But  
12 we should probably leave this section in the prehearing order  
13 just in case.

14 COMMISSIONER CARTER: Okay. Any objections? So be  
15 it.

16 Section XIV.

17 MS. BROWN: Commissioner, Section XIV is the ruling  
18 section, and it will include the decisions you make on the  
19 issues brought to your attention today, as well as it will  
20 reflect the granting of the motion to file for leave to file  
21 testimony. And it also includes a ruling that opening  
22 statements, if any, shall not exceed ten minutes.

23 COMMISSIONER CARTER: Okay. Any other matters?

24 MR. STONE: If I could return to Section VI,  
25 Commissioner, and ask that Witnesses Bryant and Nelson be

1 stipulated with an asterisk.

2 MS. BROWN: Yes. Actually if the parties would let  
3 me know which witnesses have filed testimony on stipulated  
4 issues so that I can reflect that in the prehearing order and  
5 then get to the Commissioners to see if they'll have any  
6 questions for them, I'd appreciate that.

7 COMMISSIONER CARTER: Okay. Let's do that so we can  
8 have an open and transparent process so that everybody will get  
9 a chance to read everything. Let's just, let's do that.

10 Okay. Any other -- anyone with any witnesses or  
11 experts that you have not presented that you want to present,  
12 get it to staff so we can get that so that all parties can  
13 review the information and review the context so that -- you  
14 know, we don't want to do anything -- no trial by ambush. We  
15 want to have an open and transparent process. I think it's  
16 better when people know that you've been given a fair shake.  
17 Then, you know, I mean, that's all we all can ask for.

18 MR. PERKO: Commissioner, Gary Perko on behalf of  
19 Progress Energy Florida. Just to go back to the prior issue  
20 regarding stipulation of witnesses and exhibits, I believe,  
21 because all our issues are stipulated, that we could stipulate  
22 to the admission of testimony exhibits for all of Progress  
23 Energy Florida's witnesses. I just wanted to let the parties  
24 know that so we can resolve that quickly. Thank you.

25 MR. STONE: Commissioner Carter?

1 COMMISSIONER CARTER: Yes, sir.

2 MR. STONE: It appears to me that Witness Martin,  
3 which would include the true-up testimony of Witness Davis,  
4 would be stipulated based on the issues. The only issues that  
5 she is identified for that are not stipulated are ones that the  
6 staff has identified as fallout or calculation issues.

7 COMMISSIONER CARTER: Okay. All right. Any further  
8 comments?

9 MR. STONE: Commissioner Carter, if I may venture  
10 into another area.

11 COMMISSIONER CARTER: Yes, sir.

12 MR. STONE: I know that you have taken under  
13 advisement the discussion about the, the procedural matter with  
14 regard to Issue 9A and 12A. My question is more directed at  
15 the Office of Public Counsel. Assuming for the sake of  
16 discussion and for the sake of this question that you rule that  
17 the issue is appropriate for this proceeding, my question is  
18 does the Office of Public Counsel intend to examine the witness  
19 Gulf has presented on Issue 12A or is that -- the reason why I  
20 ask that is there is only one remaining issue and it is that  
21 witness's testimony that would have to be sponsored for that.  
22 I'm just wondering if we need to bring that witness to the  
23 hearing.

24 MS. CHRISTENSEN: At this time I'm not able to answer  
25 that question definitively. I would expect that we may have

1 some questions, but we'll need to look at that more thoroughly.  
2 Depending on what the prehearing officer issues as his ruling,  
3 we'll have to determine what types of questions can be flushed  
4 out at the hearing at this point in time, if we have to.

5 COMMISSIONER CARTER: Okay.

6 MS. CHRISTENSEN: So I'm not able to respond.

7 COMMISSIONER CARTER: That's fair. That's fair.

8 That's fair.

9 MR. BUTLER: I would ask the same question with  
10 respect to FPL.

11 COMMISSIONER CARTER: Not a problem.

12 MR. BUTLER: I'm sorry?

13 COMMISSIONER CARTER: Not a problem.

14 MR. BUTLER: Okay.

15 COMMISSIONER CARTER: I mean, here I'm talking about  
16 transparency and all, so obviously I want you to have that.

17 MS. CHRISTENSEN: And I would have to give a similar  
18 answer. I think we would have to make that determination based  
19 on whatever the ruling is and determine whether or not there is  
20 a fruitful cross-examination that can be had based on the  
21 testimony that's been filed thus far.

22 COMMISSIONER CARTER: And I'll try to make my  
23 decision as soon as possible, as soon as practical. And I  
24 realize that we all have calendars and different things to do  
25 and all. Be as expeditious as possible on this matter -- on

1 these matters that are outstanding. Okay. I'll make that  
2 commitment to all parties, including staff.

3 Are there other matters?

4 MS. BROWN: Not that I'm aware of, Commissioner.

5 COMMISSIONER CARTER: Okay. No other matters. We'll  
6 adjourn Docket Number 060007.

7 MS. BROWN: Thank you, Commissioner.

8 (Prehearing Conference in Docket Number 060007-EI  
9 concluded.)

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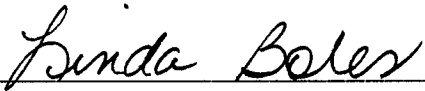
CERTIFICATE OF REPORTER

I, LINDA BOLES, CRR, 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 30TH DAY OF OCTOBER, 2006.

  
\_\_\_\_\_  
LINDA BOLES, CRR, RPR  
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