

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Environmental cost recovery clause.

DOCKET NO. 130007-EI

DATED: October 07, 2013

**PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL**

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure in this docket, Order No. PSC-13-0070-PCO-EI, issued February 4, 2013, Order No. PSC-13-0115-PCO-PU, issued March 7, 2013 and Order No. PSC-13-0165-PCO-EI, issued April 22, 2013, submit this Prehearing Statement.

**APPEARANCES:**

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Deputy Public Counsel  
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Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, Florida 32399-1400  
On behalf of the Citizens of the State of Florida.

1. **WITNESSES:**

None

2. **EXHIBITS:**

None

3. STATEMENT OF BASIC POSITION

OPC:

Florida Power and Light Company portion

FPL seeks to receive ECRC recovery of \$822 million in generation plant and related investment that the company not required for compliance with an existing, defined governmentally imposed environmental regulation. This is the first time generation plants have been proposed for recovery through the ECRC. The Commission should reject the effort to transform the ECRC into a de facto generation clause merely because a company decides that building a new power plant – be it peaking unit or baseload unit – is a convenient way to avoid the possible strictures of potential future environmental regulations. Putting aside the policy reasons for rejecting the request, FPL’s request should also be rejected because FPL has not met its burden of showing that that there is an environmental regulation that it must comply with at the three generating locations and because the type of generation (and related transmission) investment that the company proposes to make is not required as an environmental compliance measure. Along these lines, FPL has not met its burden of demonstrating that the proposed scope of the so-called compliance project is the least required, even if there is a discreet, demonstrable regulation with which FPL must comply with at the three generation sites. Additionally FPL has not demonstrated that any proposed measure to comply with an existing environmental regulation is designed using the lowest cost solution, including, for example, purchase of existing facilities.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

GENERIC CONSERVATION COST RECOVERY ISSUES

**ISSUE 1. What are the final environmental cost recovery true-up amounts for the period January 2012 through December 2012?**

OPC: The cost recovery amounts should reflect the position taken by OPC in the company specific issues.

**ISSUE 2.** What are the estimated/actual environmental cost recovery true-up amounts for the period January 2013 through December 2013?

OPC: The cost recovery amounts should reflect the position taken by OPC in the company specific issues.

**ISSUE 3.** What are the projected environmental cost recovery amounts for the period January 2014 through December 2014?

OPC: The cost recovery amounts should reflect the position taken by OPC in the company specific issues.

**ISSUE 4.** What are the environmental cost recovery amounts, including true-up amounts, for the period January 2014 through December 2014?

OPC: The cost recovery amounts should reflect the position taken by OPC in the company specific issues.

**ISSUE 5.** What depreciation rates should be used to develop the depreciation expense included in the total environmental cost recovery amounts for the period January 2014 through December 2014?

OPC: No position at this time.

**ISSUE 6.** What are the appropriate jurisdictional separation factors for the projected period January 2014 through December 2014?

OPC: The cost recovery amounts should reflect the position taken by OPC in the company specific issues.

**ISSUE 7. What are the appropriate environmental cost recovery factors for the period January 2014 through December 2014 for each rate group?**

OPC: The cost recovery amounts should reflect the position taken by OPC in the company specific issues.

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

OPC: No position at this time.

**COMPANY- SPECIFIC CONSERVATION COST RECOVERY ISSUES**

**Florida Power & Light Company**

**ISSUE 9. Should the Commission approve FPL’s Supplemental Clean Air Interstate Rule (CAIR), Clean Air Mercury Rule (CAMR) and Clean Air Visibility Rule (CAVR)/ Best Available Retrofit Technology (BART) filing as reasonable?**

OPC: No position at this time.

**ISSUE 10. Should the Commission approve FPL’s Petition for approval of the proposed NO2 compliance project involving the retirement and installation of peaking generating units for cost recovery through the ECRC?**

OPC: No. The proposal from FPL does not meet the test established in Order No. PSC-94-0044-FOF-EI, inasmuch as the proposed CTs are not legally required to comply with a governmentally imposed environmental regulation. FPL has not identified a discrete regulation with which it is or will be out of compliance. Furthermore, FPL has not met its burden of demonstrating that the proposed CT installation project is required to meet a governmentally imposed environmental regulation that, *arguendo*, applies to the existing locations and existing GT facilities. FPL has further not demonstrated that even assuming the efficacy and applicability of the regulation(s) to which it has cited and the requirement that it take the actions it has proposed, that it has adopted a lest-cost, prudent and reasonable approach to implementing its proposed compliance measure.

**ISSUE 10. A. Is FPL required by current environmental regulations to reduce NO2 emissions at the Lauderdale, Port Everglades and Ft. Myers sites and if so, when must the emissions be reduced?**

OPC: FPL has not carried its burden of demonstrating that currently effective environmental regulations apply to the named locations and that the company's facilities will be out-of-compliance with such regulations, nor has FPL met its burden of demonstrating that there is a deadline for any environmental regulation compliance that may nonetheless be required.

**ISSUE 10. B. Is FPL's proposed installation of combustion turbines at the Lauderdale and Ft. Myers plants required by current environmental regulations?**

OPC: No. FPL has not met its burden of demonstrating that it will be out-of-compliance with any environmental regulation at the sites where the GT/peakers are utilized or that the proposed installation of all or any of the proposed CTs is nonetheless required to comply with an environmental regulation.

**ISSUE 10. C. Do more cost effective alternatives exist as compared to FPL's proposed installation of combustion turbines at the Lauderdale and Ft. Myers plants?**

OPC: Assuming, *arguendo*, that there is a requirement to discontinue using the existing GT/peakers at the identified FPL plant sites, FPL has not demonstrated that it has fully considered all effective lower cost options such as the purchase of existing facilities like the 310 MW DeSoto generating facility.

**ISSUE 11. How should the costs associated with the NO2 compliance project be allocated to the rate classes?**

OPC: No position at this time.

**Tampa Electric Company**

None at this time

**Duke Energy Florida**

**ISSUE 12.**    **Should the Commission approve DEF's Review of Integrated Clean Air Compliance Plan as reasonable?**

OPC:            No position at this time.

**ISSUE 13.**    **Should the Commission approve modification of DEF's previously approved Integrated Clean Air Compliance Program to encompass alternative coal trials associated with the Crystal River Units 1 and 2 MATS compliance project, such that the costs associated with such activities may be recovered through the ECRC?**

OPC:            No position at this time.

**ISSUE 14.**    **Should the Commission approve DEF's petition for approval of the Revised Effluent Limitations Guidelines and Standards Project and recovery of the associated cost through the ECRC?**

OPC:            No position at this time.

**ISSUE 15.**    **How should the costs associated with DEF's proposed Revised Effluent Limitations Guidelines and Standards Project be allocated to the rate classes?**

OPC:            No position at this time.

**Gulf Power Company**

**ISSUE 16. Should the Commission approve Gulf's Environmental Compliance Program Update as reasonable?**

OPC: No position at this time.

**ISSUE 17. Should Gulf's proposal to allocate costs associated with the Clean Air Act Amendments of 1990 (CAAA) and other air quality capital costs to the rate classes on a 12 Coincident Peak (CP) and 1/13 energy basis be approved?**

OPC: No position at this time.

5. **STIPULATED ISSUES:**

None at this time.

6. **PENDING MOTIONS:**

DeSoto County Generating Company, LLC and the OPC have filed a joint motion for leave to file surrebuttal testimony.

FIPUG has filed a motion to spin-off the FPL NO2 Compliance matter, with which the OPC has indicated its support.

7. **STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:**

OPC has no pending request or claims for confidentiality.

8. **OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:**

OPC has no objection to qualifications of witnesses.

9. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

There are no requirements in the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 7<sup>th</sup> day of October, 2013  
Respectfully submitted,

J.R. Kelly  
Public Counsel



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Attorney for the Citizens  
of the State of Florida



**CERTIFICATE OF SERVICE**  
**130007-EI**

I HEREBY CERTIFY that a true and foregoing Prehearing Statement has been furnished by electronic mail on this 7<sup>th</sup> day of October, 2013, to the following:

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