

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010007-EI

In the Matter of  
ENVIRONMENTAL COST  
RECOVERY FACTORS.

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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER LILA A. JABER  
Prehearing Officer

DATE: Thursday, November 8, 2001

TIME: Commenced at 9:30 a.m.  
Concluded 1:35 p.m.

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

REPORTED BY: JANE FAUROT, RPR  
Chief, Office of Hearing Reporter Services  
FPSC Division of Commission Clerk and  
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## 1 APPEARANCES:

2           JEFFREY A. STONE and RUSSELL A. BADDERS,  
3 Beggs & Lane, 700 Blount Building, 3 West Garden  
4 Street, Post Office Box 12950, Pensacola, Florida  
5 32576-2950, appearing on behalf of Gulf Power  
6 Company (GULF).

7           LEE L. WILLIS and JAMES D. BEASLEY, Ausley  
8 & McMullen, Post Office Box 391, Tallahassee,  
9 Florida 32302, appearing on behalf of Tampa  
10 Electric Company (TECO).

11           JOHN McWHIRTER, JR., and VICKI GORDON  
12 KAUFMAN, McWhirter, Reeves, McGlothlin, Davidson,  
13 Decker, Kaufman, Arnold & Steen, P.A., 117 South  
14 Gadsden Street, Tallahassee, Florida 32301,  
15 appearing on behalf of Florida Industrial Power  
16 Users Group (FIPUG).

17           MATTHEW M. CHILDS, Steel, Hector & Davis,  
18 LLP, 215 South Monroe Street, Suite 601,  
19 Tallahassee, Florida 32301, appearing on behalf of  
20 Florida Power & Light Company (FPL).

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1 APPEARANCES CONTINUED:

2           ROBERT D. VANDIVER, Deputy Public Counsel,  
3 Office of Public Counsel, 111 West Madison Street,  
4 Room 812, Tallahassee, Florida 32399-1400, appearing  
5 on behalf of the Citizens of the State of Florida.

6           MARLENE K. STERN, Florida Public Service  
7 Commission, Division of Legal Services, 2540 Shumard  
8 Oak Boulevard, Tallahassee, Florida 32399-0870,  
9 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 JABER: The next docket.

MS. STERN: 07.

COMMISSIONER JABER: This is Docket 07. Let's take appearances in the order that they are reflected in the draft prehearing order.

MS. KAUFMAN: John McWhirter and Vicki Gordon Kaufman of the McWhirter Reeves law firm on behalf of the Florida Industrial Power Users Group. And you may show our Tallahassee address.

MR. CHILDS: Matt Childs of Steel, Hector and Davis on behalf of Florida Power and Light Company.

COMMISSIONER JABER: Mr. Stone.

MR. STONE: Jeffrey A. Stone of the law firm Beggs and Lane on behalf of Gulf Power Company.

MR. BEASLEY: James D. Beasley and Lee L. Willis of the Ausley and McMullen law firm representing Tampa Electric Company.

MR. VANDIVER: Robert Vandiver appearing on behalf of the citizens of the State of Florida.

MS. STERN: Marlene Stern on behalf of the Commission staff.

COMMISSIONER JABER: Okay. Staff, consistent with the procedures we followed in the other dockets, rather than go issue-by-issue, why don't you point out to us the changes in

1 the preliminary matters.

2 MS. STERN: Okay. Issue 1, staff adopts the  
3 language -- for Staff's position on FPL, with respect to FPL we  
4 will adopt FPL's language. So Issue 1 is entirely stipulated  
5 between staff and the utilities, and we are not sure if FIPUG  
6 and OPC have any change in position.

7 MR. VANDIVER: No.

8 MS. STERN: You have no position?

9 MR. VANDIVER: No position.

10 MS. KAUFMAN: The same for FIPUG.

11 MS. STERN: Okay.

12 COMMISSIONER JABER: You have a stipulation, Staff.  
13 Next.

14 MS. STERN: Staff is in agreement on Issue 2 with the  
15 three utilities, and we don't know if OPC and FIPUG have a  
16 position at this time.

17 MS. KAUFMAN: We have no position.

18 MR. VANDIVER: No position.

19 MS. STERN: Issue 3 is also -- Staff is also in  
20 agreement with all the utilities, and do FIPUG and OPC plan to  
21 take a position or are they going to have no position?

22 MS. KAUFMAN: No position.

23 MR. VANDIVER: No position.

24 MS. STERN: Okay. Issue 4, staff is in agreement  
25 with TECO and Gulf, and there appears to be some disagreement

1 with FPL, so we don't have a stipulation for that issue.

2 COMMISSIONER JABER: What is FPL's position, Mr.  
3 Guyton? Guyton, no, Childs.

4 MR. CHILDS: On Issue 4?

5 COMMISSIONER JABER: Yes.

6 MR. CHILDS: What we are doing is presenting the  
7 costs for the period, the year. The appropriate projected  
8 environmental cost. And, incidentally, I thought we did have  
9 an agreement with the staff on that.

10 MS. STERN: Okay.

11 MR. CHILDS: Except that my understanding was the  
12 last staff considered the last sentence of FPL's statement of  
13 position to be subsumed elsewhere.

14 COMMISSIONER JABER: Yes. Staff, the reason I asked,  
15 I'm reading FPL's position and I'm looking at your number, of  
16 course, which is zero, and isn't that what FPL is saying?

17 MS. STERN: The numbers are the same. We had some  
18 disagreement over language, sort of a semantics issue.

19 COMMISSIONER JABER: Well, is it a semantics issue?  
20 The issue says, "What are the appropriate projected  
21 environmental cost-recovery amounts?"

22 So, FPL, why don't you just have an amount in your  
23 position; why do we need language?

24 MR. CHILDS: This is because of the application of  
25 the stipulation and settlements. So what we're doing is

1 presenting the number so that the number is there for the  
2 record, and our testimony addresses that, but then go on to say  
3 that it will be zero. The factor to recover the costs is set  
4 at zero. We are simply trying to be faithful to the  
5 stipulation and the settlement.

6 MS. STERN: Could I ask, would you mind reading the  
7 language -- would you mind reading the language specifically  
8 that you are proposing for Issue 4?

9 MR. CHILDS: I'm looking at Page 9 of the draft.

10 MS. STERN: Yes. And I believe that that no longer  
11 reflects the current position. I just want to get a  
12 clarification of what the current --

13 MR. CHILDS: My understanding is that through Line 5  
14 where it reads zero period, that the staff was in agreement  
15 with that.

16 COMMISSIONER JABER: Mr. Childs, you and I may be  
17 working off of different drafts, so just for purposes of the  
18 record --

19 MR. CHILDS: I will read it.

20 COMMISSIONER JABER: Please, yes.

21 MR. CHILDS: Projected environmental costs for the  
22 period January 2000 through December 2002 are \$11,073,337.  
23 However, pursuant to Commission Order Number PSC-99-0519-AS-EI,  
24 FPL is not requesting recovery of these costs during 2002, and  
25 FPL is setting the environmental factor for 2002 at zero.

1 COMMISSIONER JABER: Staff, do you have a position?

2 MS. STERN: Staff agrees with that position, so we do  
3 have a stipulation with all the utilities and just need to --  
4 and FIPUG and OPC have no position at this time.

5 COMMISSIONER JABER: Thank you.

6 Thank you, Mr. Childs.

7 MR. CHILDS: All right.

8 MS. KAUFMAN: I'm sorry, so are we -- my draft has  
9 got additional language in it. We are deleting that, is that  
10 correct?

11 MS. STERN: That is correct, you are deleting the  
12 last sentence.

13 MS. KAUFMAN: Thank you.

14 MS. STERN: I mean, the last two sentences, I'm  
15 sorry.

16 MR. VANDIVER: I think this recurs later in Issue 9,  
17 does it not, some of this stipulation language?

18 MS. STERN: Yes.

19 MR. CHILDS: I don't think we are there yet.

20 MR. VANDIVER: Okay.

21 MS. STERN: I'm sorry, I just want to make one  
22 correction. Just delete the last sentence under FPL's position  
23 in the drafts that were handed out this morning.

24 MR. CHILDS: That is correct.

25 COMMISSIONER JABER: Now that we have cluttered up

1 the record on Issue 4, let me read what the final position is  
2 for FPL in Issue 4, to which staff is in agreement. "Projected  
3 environmental costs for the period January 2002 through  
4 December 2002 are \$11,073,337. However, pursuant to Commission  
5 Order Number PSC-99-0519-AS-EI, FPL is not requesting recovery  
6 of these costs during 2002, and FPL is setting the  
7 environmental factor for 2002 at zero."

8 Mr. Vandiver, do you have that?

9 MR. VANDIVER: Yes.

10 COMMISSIONER JABER: All right. Next issue.

11 MS. STERN: Issue 5. All the utilities and staff are  
12 in agreement conceptually with respect to when the billing  
13 should start. We would like to propose a stipulation using  
14 staff's language.

15 COMMISSIONER JABER: Companies? FIPUG, OPC, staff is  
16 offering up staff's position as a possible stipulation to Issue  
17 5.

18 MS. KAUFMAN: That's fine with FIPUG.

19 MR. VANDIVER: No problem.

20 MR. BEASLEY: That's fine with Tampa Electric.

21 MR. STONE: Gulf concurs.

22 MR. CHILDS: I don't think that's a problem, but --

23 COMMISSIONER JABER: Do you need some time, Mr.

24 Childs?

25 MR. CHILDS: No. I have been told we are in

1 agreement. She's fast.

2 COMMISSIONER JABER: Thank you both.

3 MS. STERN: With respect to Issue 6, we are in the  
4 same situation. The parties agree conceptually and staff would  
5 like to propose a stipulation using staff's language.

6 COMMISSIONER JABER: Staff is offering a stipulation  
7 using their language under Issue 6. FIPUG, OPC?

8 MS. KAUFMAN: FIPUG would take no position on that  
9 issue.

10 MR. VANDIVER: No position.

11 COMMISSIONER JABER: Parties?

12 MR. CHILDS: We agree.

13 MR. BEASLEY: Tampa Electric agrees.

14 MR. STONE: Gulf agrees.

15 COMMISSIONER JABER: Staff, congratulations, you have  
16 a possible stipulation on Issue 6. Can I ask a question just  
17 out of curiosity? I'm learning here as I go along on procedure  
18 in these dockets. Do you have an opportunity to sit down with  
19 the parties before this prehearing conference and sort of work  
20 this out informally? Is it a time constraint?

21 MS. STERN: Yes. There is a time constraint between  
22 the time we get the prehearing statements and the time of the  
23 prehearing conference, there is a relatively short amount of  
24 time to work out various issues with the parties. And what we  
25 focus on are the issues where there is actual disagreement. So

1 when we see that we have an issue where everybody really agrees  
2 but the language is different, that kind of gets -- that's not  
3 a priority. So, yes, I believe there are time constraints.

4 COMMISSIONER JABER: I'm constantly looking at better  
5 ways of handling something, efficiencies, so that, you know,  
6 time is money, obviously, and I encourage the parties to sort  
7 of bring that to my attention. I am looking for more efficient  
8 ways of handling it. Because of the nature of these dockets  
9 there may not be time, but perhaps there is a way to do  
10 conference calls, video teleconferencing, something to sort of  
11 get everyone in a room prior to this date, you know, and maybe  
12 it's a conference call. Issue 7.

13 MS. STERN: Issue 7, all the parties agree  
14 conceptually, and staff would like to propose a stipulation  
15 using staff's language. FIPUG and OPC have no position at this  
16 time.

17 COMMISSIONER JABER: Public Counsel, it's really no  
18 position, right?

19 MR. VANDIVER: Right.

20 COMMISSIONER JABER: The same is true for FIPUG,  
21 right?

22 MS. KAUFMAN: Right.

23 COMMISSIONER JABER: Okay. Parties are in agreement,  
24 you have a possible stipulation on Issue 7 using staff's  
25 language.

1 MR. BEASLEY: Yes.

2 MR. STONE: Gulf agrees.

3 COMMISSIONER JABER: Issue 8.

4 MS. STERN: Staff is in agreement with FPL's factors  
5 and TECO's factors. There is disagreement with Gulf's factors,  
6 so I don't think that issue can be stipulated.

7 COMMISSIONER JABER: Any changes to Issue 8?

8 MS. STERN: No.

9 COMMISSIONER JABER: Mr. Childs wants to stipulate.

10 MR. CHILDS: We can stipulate as to FPL, can't we?

11 MS. STERN: I'm sorry. Yes, I'm sorry.

12 COMMISSIONER JABER: So there is a partial  
13 stipulation as it relates to the FPL position.

14 MS. STERN: And TECO.

15 COMMISSIONER JABER: And TECO, okay.

16 MR. STONE: Commissioner Jaber, in our review of the  
17 staff's position and Gulf's position the factors are the same,  
18 but I am --

19 COMMISSIONER JABER: What about Gulf?

20 UNIDENTIFIED SPEAKER: (Microphone not on.) --  
21 potential for the Commission to make a decision on (inaudible),  
22 will have an affect on the fallout issue.

23 MR. STONE: Okay. So it's the fallout issue. I  
24 understand.

25 COMMISSIONER JABER: Well, is there agreement in that

1 regard, though, that the factors will be what the factors will  
2 fall out to be? I mean, can you sort of stipulate to Gulf --  
3 can Gulf stipulate to staff's position with the understanding  
4 that there will be a fallout effect?

5 MR. STONE: We will get with staff and make sure that  
6 we agree on the recalculation if they prevail on their issue.

7 COMMISSIONER JABER: Thank you, Mr. Stone. Anything  
8 else on that issue?

9 MS. STERN: No.

10 COMMISSIONER JABER: 10A.

11 MR. VANDIVER: OPC needs to change their position on  
12 10A to agree with staff.

13 MS. KAUFMAN: Did we skip Issue 9?

14 COMMISSIONER JABER: Did I skip one? I'm sorry.  
15 Issue 9.

16 MS. STERN: FPL has proposed language on Issue 9.

17 MR. CHILDS: I have extra copies of that.

18 MS. STERN: And staff agrees to what they have  
19 proposed. After copies are passed out, we will read it into  
20 the record.

21 COMMISSIONER JABER: Make sure the court reporter  
22 gets one. Thank you.

23 Mr. Childs, do you want to go ahead and read it into  
24 the record?

25 MR. CHILDS: Yes. This is the position on Issue 9

1 for Florida Power and Light. It reads, "Florida Power and  
2 Light Company should be required to follow the provisions of  
3 the stipulation in Order Number PSC-99-0519-AS-EI, which  
4 states, 'For 2002, FPL will not be allowed to recover any costs  
5 through the environmental cost-recovery docket. FPL may,  
6 however, petition to recover in 2003 prudent environmental  
7 costs incurred after the expiration of the three-year term of  
8 this stipulation and settlement in 2002.'" Thus, under the  
9 terms of the stipulation and settlement, FPL is authorized to  
10 recover these prudently incurred environmental costs in 2003.  
11 Interest, however, will not accrue on these expenses."

12 COMMISSIONER JABER: Staff, you are in agreement with  
13 the revised position?

14 MS. STERN: Yes.

15 COMMISSIONER JABER: Do you have a stipulation now?

16 MS. STERN: Yes, with FPL. OPC --

17 MR. VANDIVER: We are prepared to stipulate this  
18 issue.

19 MS. KAUFMAN: Yes. That's fine, Commissioner.

20 COMMISSIONER JABER: Thank you. Next issue, Staff.

21 MS. STERN: Issue 10A there is a disagreement on. We  
22 don't have a stipulation.

23 MS. KAUFMAN: FIPUG would like to change its position  
24 to agree with staff.

25 COMMISSIONER JABER: OPC.

1 MR. VANDIVER: We would like to change our position  
2 to agree with staff.

3 COMMISSIONER JABER: We just need to take the other  
4 companies out, don't we, Marlene? This is a Gulf Power issue.

5 MS. STERN: Yes.

6 COMMISSIONER JABER: All right, next issue.

7 MS. STERN: 10B, the parties -- we agree with Gulf.  
8 Gulf cites a consummating order in their position and we cite  
9 the PAA order for the order that granted approval to the water  
10 shield project.

11 COMMISSIONER JABER: What's the right thing to do?

12 MS. STERN: I believe it is citing to the PAA order.

13 COMMISSIONER JABER: Because that is the substantive  
14 order.

15 MS. STERN: Yes.

16 COMMISSIONER JABER: Okay. Gulf, you have no problem  
17 with that?

18 MS. STERN: We have some other minor differences in  
19 language and staff proposes a stipulation using staff's  
20 language.

21 MR. STONE: We have no objection.

22 COMMISSIONER JABER: Great. FIPUG.

23 MS. KAUFMAN: We have no position.

24 MR. VANDIVER: No position.

25 COMMISSIONER JABER: Okay. Staff, you have a

1 stipulation on Issue 10B.

2 MS. STERN: 10C, Gulf and staff agree and we would  
3 like to propose a stipulation using staff's language.

4 COMMISSIONER JABER: FIPUG, OPC?

5 MS. KAUFMAN: I'm sorry, Commissioner.

6 COMMISSIONER JABER: Issue 10C, staff is proposing a  
7 stipulation.

8 MS. KAUFMAN: We have no position on that issue.

9 MR. VANDIVER: No position.

10 COMMISSIONER JABER: And, Gulf, you don't have any  
11 objection to using staff's language as a stipulation?

12 MR. STONE: No objection.

13 COMMISSIONER JABER: Ms. Stern, the next issue.

14 MS. STERN: We would like to propose a stipulation  
15 with TECO using staff's language.

16 COMMISSIONER JABER: Mr. Beasley.

17 MR. BEASLEY: That looks reasonable.

18 COMMISSIONER JABER: TECO agrees. OPC, FIPUG?

19 MS. KAUFMAN: Are we on 11A now, Commissioner?

20 COMMISSIONER JABER: Yes, uh-huh.

21 MS. KAUFMAN: Never mind. I'm being told that we  
22 have no position.

23 MR. VANDIVER: No position.

24 COMMISSIONER JABER: Staff, you can make those  
25 changes and reflect that Issue 11A is a possible stipulation.

1 11B. I note that, FIPUG, you don't have a position  
2 on 11B?

3 MS. KAUFMAN: Our position is that the costs should  
4 be recovered on a demand basis.

5 COMMISSIONER JABER: The costs should be recovered on  
6 a demand basis.

7 MS. KAUFMAN: Yes, ma'am.

8 COMMISSIONER JABER: Public Counsel.

9 MR. VANDIVER: No position.

10 COMMISSIONER JABER: Staff, TECO?

11 MR. BEASLEY: I think we are in agreement.

12 MS. STERN: We would like to propose using staff's  
13 language in this stipulation.

14 MR. BEASLEY: That's fine.

15 COMMISSIONER JABER: Ms. Kaufman, what does that --

16 MS. KAUFMAN: That's fine.

17 COMMISSIONER JABER: You have a stipulation on 11B.

18 Staff, have we missed any changes on the issues?

19 MS. STERN: No.

20 COMMISSIONER JABER: Now, we didn't talk about the  
21 witness list, but I'm assuming you will handle that in the same  
22 fashion we handled the other dockets. Just indicate which  
23 testimony can be stipulated into the record, check with the  
24 Commissioners.

25 MS. STERN: We do actually have one more change, I'm

1 sorry, on the witness list. Well, TECO -- I'm sorry, FPL, Ms.  
2 Dubin, is she the witness on Issue 9?

3 MR. CHILDS: Yes.

4 MS. STERN: Okay. I just needed clarification of  
5 that. And we will handle the witness list as in the other  
6 dockets.

7 COMMISSIONER JABER: Okay. If there are no pending  
8 motions, no confidentiality matters, it looks like we are done  
9 with this docket. Parties? Great. Where does that leave us?  
10 That leaves us with the 01 docket, right?

11 We are going to break until 11:05. Thank you all.

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13 (Hearing concluded at 1:35 p.m.)

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1 STATE OF FLORIDA )  
2 :  
3 COUNTY OF LEON )

CERTIFICATE OF REPORTER

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5 I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter  
6 Services, FPSC Division of Commission Clerk and Administrative  
7 Services, do hereby certify that the foregoing proceeding was  
8 heard at the time and place herein stated.

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

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

19 DATED THIS 13TH DAY OF NOVEMBER, 2001.

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