

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 080007-EI

DATED: OCTOBER 3, 2008

RECEIVED-FPSC  
OCT-3 PM 3:35  
COMMISSION  
CLERK

STAFF'S PREHEARING STATEMENT

Pursuant to Order No. PSC-08-0149-PCO-EI, issued March 11, 2008, establishing the prehearing procedure in this docket, the Staff of the Florida Public Service Commission hereby files its Prehearing Statement.

a. All Known Witnesses

Staff is not sponsoring any witnesses.

b. All Known Exhibits

Staff has no direct exhibits.

c. Staff's Statement of Basic Position

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

d. Staff's Position on the Issues

**ISSUE 1:** What are the final environmental cost recovery true-up amounts for the period ending December 31, 2007?

**POSITION:** Staff has no position at this time.

**ISSUE 2:** What are the estimated environmental cost recovery true-up amounts for the period January 2008 through December 2008?

**POSITION:** Staff has no position at this time.

**ISSUE 3:** What are the projected environmental cost recovery amounts for the period January 2009 through December 2009?

**POSITION:** Staff has no position at this time.

DOCUMENT NUMBER-DATE

09373 OCT-3 8

FPSC-COMMISSION CLERK

**ISSUE 4:** What are the environmental cost recovery amounts, including true-up amounts, for the period January 2009 through December 2009?

**POSITION:** Staff has no position at this time.

**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 2009 through December 2009?

**POSITION:** Staff has no position at this time.

**ISSUE 6:** What are the appropriate jurisdictional separation factors for the projected period January 2009 through December 2009?

**POSITION:** Staff has no position at this time.

**ISSUE 7:** What are the appropriate environmental cost recovery factors for the period January 2009 through December 2009 for each rate group?

**POSITION:** Staff has no position at this time.

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

**POSITION:** Staff has no position at this time.

#### **COMPANY-SPECIFIC ISSUES**

##### **Florida Power & Light (FPL)**

**ISSUE 9A:** Should the Commission grant FPL's petition to modify the scope of its CWA 316(b) Phase II Rule Project?

**POSITION:** Yes. On March 31, 2008, FPL petitioned the Commission for approval to modify the scope of its Clean Water Act (CWA) 316(b) Phase II Rule project to

encompass additional activities undertaken to minimize the compliance cost impact of the Second Circuit Court of Appeals' remand of certain portions of the rule in July of 2007.

Among the provisions of the Phase II Rule that the Court remanded were EPA's determinations that utilities could use restoration and apply a cost-benefit test to the evaluation of appropriate mitigation technologies. FPL believes that if these provisions are removed from EPA's revised Phase II Rule, the potential that FPL would have to install cumbersome and very expensive compliance technologies on the cooling water intake at eight FPL power plants would dramatically increase. Initial estimates indicate that compliance costs for FPL to retrofit its eight facilities with cooling towers would exceed \$1.5 billion.

On April 11, 2008, the U.S. Supreme Court granted certiorari to the Utility Water Act Group (UWAG), of which FPL is a member, to review the Second Circuit's ruling. FPL believes that in order to help limit the compliance cost impact of potential revisions to the Phase II Rule on FPL and its customers, it is prudent to encourage various state and federal government agencies to support the rulemaking process so that a balanced and equitable rule is achieved to minimize compliance costs. FPL stated that in order to implement these actions, it would need to educate these agencies on the issues and their potential impact on FPL and its customers. FPL has retained law firms and consultants to communicate with relevant authorities, assist in writing comments or any proposed rules, consider proposing necessary legislation and assist in writing comments and briefs in any court actions.

The Operation & Maintenance cost estimate for funding these activities is \$525,000. FPL has asserted that this amount of litigation and consulting costs will not be covered in FPL's base rates for 2008. FPL states that the EPA is proposing to issue a draft rule by December 2008, with a final rule published by late 2009.

FPL has engaged in similar actions, i.e. participating in the EPA rulemaking process and educating government agencies, associated with the Clean Air Interstate Rule (CAIR). Recovery of FPL's costs associated with the technical analysis and legal challenges to CAIR was approved in Order No. PSC-05-1251-FOF-EI, issued December 22, 2005, in Docket No. 050007-EI, In re: Environmental Cost Recovery Clause; and the related costs are currently being recovered through the ECRC. Utilities are expected to take steps to control the level of costs that must be incurred for environmental compliance. An effective way to control the costs of complying with a particular environmental law or

regulation can be participation in the regulatory and legal processes involved in defining compliance.

The definition of environmental compliance costs in Section 366.8255, Florida Statutes, includes the estimated prudently incurred litigation costs associated with FPL's complying with Section 316(b) of Clean Water Act. The costs of compliance with a rule and the cost of litigating the legitimacy of a rule are closely linked. To comply with a rule, the utility must understand the rule, and whether the rule is consistent with the statute under which it was adopted. If there is a legitimate argument that the rule is not consistent with the statute being implemented, then the utility may recover the costs of challenging the rule, as well as the costs of participating in the new rulemaking process, through the ECRC. FPL's petition to modify the scope of its CWA 316(b) Phase II Rule project should be granted. FPL should be allowed to recover the reasonable litigation and consulting costs associated with compliance with Section 316(b) of the Clean Water Act.

**ISSUE 9B:** What are the environmental cost recovery amounts of FPL's three Next Generation Solar Energy Centers for the period January 2008 through December 31, 2008?

**POSITION:** The Commission granted FPL's petition for approval of the eligibility of three Next Generation Solar Energy Centers for recovery through the ECRC, in Order No. PSC-08-0491-PAA-EI, issued August 4, 2008, in Docket 080281-EI, In re: Petition for approval of Solar Energy Projects for Recovery through Environmental Cost Recovery Clause, by Florida Power & Light Company. The environmental cost recovery amount of \$115,688 in capital costs associated with FPL's three Next Generation Solar Energy Centers is reasonable for the period January 2008 through December 31, 2008.

**ISSUE 9C:** What are the environmental cost recovery amounts of FPL's three Next Generation Solar Energy Centers for the period January 2009 through December, 2009?

**POSITION:** The Commission granted FPL's petition for approval of the eligibility of three Next Generation Solar Energy Centers for recovery through the ECRC, in Order No. PSC-08-0491-PAA-EI, issued August 4, 2008, in Docket 080281-EI, In re: Petition for approval of Solar Energy Projects for Recovery through Environmental Cost Recovery Clause, by Florida Power & Light Company. The environmental cost recovery amounts of \$24,521,316 for capital costs, and \$487,475 for operations and maintenance costs associated with FPL's three Next

Generation Solar Energy Centers are reasonable for the period January 2009 through December, 2009.

**ISSUE 9D:** How should the costs associated with the three Next Generation Solar Energy Centers be allocated to the rate classes?

**POSITION:** Capital costs for the three Next Generation Solar Energy Centers should be allocated to the rate classes on an average 12 CP demand and 1/13<sup>th</sup> energy basis. Operations and maintenance costs should be allocated to the rate classes on a 100% CP demand basis.

**ISSUE 9E:** Should FPL be allowed to recover the costs associated with its proposed Greenhouse Gas Reduction Program?

**POSITION:** Yes. The Florida Department of Environmental Protection (FDEP) proposed Rule 62-285.300 (07-1262), Florida Administrative Code, to implement Executive Order 07-127 requiring reductions in emission of Greenhouse Gases (GHG) from Electric Utilities. In addition, the Florida Climate Protection Act, section 403.44, Florida Statutes, requires major GHG emitters to register and report GHG emissions. It also requires FDEP to implement a GHG Cap and Trade program to address required reductions. The Act also includes provisions allowing recovery of the costs and expenses prudently incurred to comply with the Act and FDEP's rule through the ECRC clause.

FPL should be allowed to recover costs, beginning in 2009, associated with participation in the Climate Registry, including the development of a GHG reporting and tracking system.

**ISSUE 9F:** How should the costs associated with the Greenhouse Gas Reduction Program be allocated to the rate classes?

**POSITION:** The proposed \$50,000 operations and maintenance costs associated with the Greenhouse Gas Reduction Program for the period January 2009 through December, 2009 should be allocated to the rate classes on a 100% energy basis.

**ISSUE 9G:** Should FPL continue to recover Capital and O&M costs associated with its CAVR, CAIR and CAMR compliance projects in light of the vacatur of CAMR and potential vacatur of CAIR?

**POSITION:** Yes. It is prudent and necessary for FPL to continue these projects. On July 11, 2008 the D.C. Circuit Court of Appeals vacated CAIR in its entirety and remanding it to EPA for further action consistent with the court's opinion. CAIR will, however, remain in effect until the court issues its mandate. On February 2, 2008 the D.C. Circuit Court of Appeals vacated EPA's CAMR. The vacatur became effective with the issuance of the court's mandate on March 14, 2008. FPL's CAIR, CAMR and CAVR compliance plans were approved in Order No. PSC-07-0922-FOF-EI, issued on November 16, 2007, in Docket 070007-EI, In re: Environmental Cost Recovery Clause. Per that order, FPL updated its compliance projects on April 2, 2008, in light of the vacated CAMR. In its August 4, 2008, Estimated True-up filing and August 29 2008, Projection filing, FPL further updated the compliance projects in light of the potential vacatur of CAIR. FPL also has obligations to comply with environmental requirements other than CAIR and CAMR that include: (1) the Clean Air Visibility Rule (CAVR); (2) the 8-hours Ozone National Ambient Air Quality Standards (NAAQs); and (3) the Georgia Multi-Pollutant Rule that applies to FPL Co-owned Plant Scherer. FPL's updated plans appear reasonable at this time.

FPL shall file, as part of its annual ECRC final true-up testimony or as a separate filing if necessary, a review of the efficiency of its CAIR and CAMR and CAVR plans, and the cost-effectiveness of its retrofit options for each generating unit in relation to expected changes in environmental regulations and ongoing state and federal CAIR legal challenges now being pursued by FPL. The reasonableness and prudence of individual expenditures, and the prudence of future decisions on the compliance plans made in light of subsequent developments, shall continue to be subject to the Commission's review in future proceedings on these matters.

**Progress Energy Florida (PEF)**

**ISSUE 10A:** Should PEF be allowed to recover the costs associated with its proposed Crystal River Thermal Discharge Compliance Project?

**POSITION:** Yes. The Commission approved recovery of costs associated with installation and operation of leased Modular Cooling Towers to maintain compliance with thermal discharge limit in the FDEP industrial wastewater discharge permit for Crystal River Unit 1, 2 and 3 (CR1,2&3) in Order No. PSC-07-0722-FOF-EI, issued September 5, 2007, in Docket No. 060162, In re: Petition by progress Energy Florida, Inc. for approval to recover modular cooling tower costs through the Environmental Cost Recovery Clause. PEF has continued to evaluate the long term nature and extent of the issue associated with increased inlet water temperatures that triggered the need for additional cooling capacity to maintain

compliance with its FDEP permit while minimizing derates of CR1,2&3. The Project's study phase recommendation is to install a 12 cell circular cooling tower and expand the number of Helper Cooling Tower cells because such permanent solution makes more sense from both a technical and financial perspective, compared to the current leasing solution. PEF should be permitted to recover the capital and operating costs it will incur in implementing the permanent solution for the thermal discharge compliance issue previously addressed in Docket No. 060162-EI. The costs for this project meet the requirements of Section 366.8255 for recovery through the ECRC, and they are not recovered in base rates or through any other cost recovery mechanism.

**ISSUE 10B:** How should the newly proposed environmental costs for the Crystal River Thermal Discharge Compliance Project be allocated to the rate classes?

**POSITION:** Operating and maintenance costs should be allocated on an energy basis and capital costs should be allocated on a demand basis.

**ISSUE 10C:** Should PEF be allowed to recover costs associated with its proposed Greenhouse Gas Inventory and Reporting Project?

**POSITION:** Yes. The Florida Department of Environmental Protection (FDEP) proposed Rule 62-285.300 (07-1262), Florida Administrative Code, to implement Executive Order 07-127 requiring reductions in emission of Greenhouse Gases (GHG) from Electric Utilities. In addition, the Florida Climate Protection Act, section 403.44, Florida Statutes, requires major GHG emitters to register and report GHG emissions. It also requires FDEP to implement a GHG Cap and Trade program to address required reductions. The Act also includes provisions allowing recovery of the costs and expenses prudently incurred to comply with the Act and FDEP's rule through the ECRC clause.

PEF should be allowed to recover \$7,440 operations and maintenance costs incurred in 2008 associated with the GHG inventory and reporting project, including training and inventory development. PEF should also be allowed to recover the operations and maintenance costs associated with the GHG inventory and reporting project, including continued inventory development, third party verification and reporting to FDEP projected for the period January 2009 through December, 2009.

**ISSUE 10D:** How should the costs associated with the Greenhouse Gas Inventory and Reporting Project be allocated to the rate classes?

**POSITION:** The costs associated with the Greenhouse Gas Inventory and Reporting Project should be allocated to the rate classes on a 100% energy basis.

**ISSUE 10E:** Should PEF continue to recover Capital and O&M costs associated with its CAVR, CAIR and CAMR compliance projects in light of the vacatur of CAMR and potential vacatur of CAIR?

**POSITION:** Yes. It is prudent and necessary for PEF to continue these projects. On July 11, 2008 the D.C. Circuit Court of Appeals vacated CAIR in its entirety and remanding it to EPA for further action consistent with the court's opinion. CAIR will, however, remain in effect until the court issues its mandate. On February 2, 2008 the D.C. Circuit Court of Appeals vacated EPA's CAMR. The vacatur became effective with the issuance of the court's mandate on March 14, 2008. PEF's CAIR, CAMR and CAVR compliance plans were approved in Order No. PSC-07-0922-FOF-EI, issued on November 16, 2007, in Docket 070007-EI, In re: Environmental Cost Recovery.

PEF has obligations to comply with environmental requirements other than CAIR and CAMR that include: (1) the Clean Air Visibility Rule (CAVR); and (2) the 8-hours Ozone National Ambient Air Quality Stands (NAAQs).

On April 2, 2008, PEF filed its Review of Integrated Clean Air Compliance Plan in light of the vacatur of CAMR. PEF's updated Integrated Clean Air Compliance Plan represents the most cost-effective alternative for achieving and maintaining compliance with CAIR and CAVR, Yes. It is prudent and necessary for PEF to continue these projects. It is reasonable for PEF to continue to recover prudently incurred costs to implement its plan. PEF shall file as part of its true-up testimony in the Environmental Cost Recovery Clause a yearly review of the efficiency of its plan and the cost-effectiveness of PEF's retrofit options for each generating unit in relation to expected changes in environmental regulations.

**Gulf Power Company (Gulf)**

**ISSUE 11A:** Should Gulf be allowed to recover the costs associated with its proposed Plant Smith SPCC Compliance Project?

**POSITION:** Yes. The Plant Smith SPCC project is required as a result of the revisions to Title 40 Code of Federal Regulation (CFR) Part 112.8(c), which is commonly referred to as the Spill Prevention Control Countermeasures (SPCC) regulation. Facilities that were in operation on or before August 16, 2002, are required to amend and



implement their SPCC plans in accordance with the new regulations no later than July 1, 2009. As a result, Plant Smith will modify the drum storage containment areas and install secondary containment for a small fuel tank. Gulf should be allowed to recover prudently incurred costs associated with this proposed SPCC Compliance Project.

**ISSUE 11B:** How should the costs associated with the Plant Smith SPCC Compliance Project be allocated to the rate classes?

**POSITION:** Capital costs for the Plan Smith SPCC Compliance Project should be allocated to the rate classes on an average 12 CP demand and 1/13<sup>th</sup> energy basis. Operating and maintenance costs should be allocated to the rate classes on a 71% average 12 CP demand and 29% energy basis.

**ISSUE 11C:** Should Gulf be allowed to recover the costs associated with its proposed Plant Crist Water Conservation Project?

**POSITION:** Yes. This project is the additional part of the water conservation measures at Plant Crist that the Commission approved for cost recovery in Order No. PSC-05-1251-FOF-EI, issued December 22, 2005, in Docket No. 050007, In re: Environmental Cost Recovery Clause. The Northwest Florida Water Management District Individual Water Use Permit No. 19850074 issued January 27, 2005 requires Plant Crist to implement measures to increase water conservation and efficiency at the facility. Gulf has entered into negotiations with Emerald coast Utilities Authority to utilize reclaimed water from their new wastewater treatment plant. This water use will increase groundwater and surface water conservation as require in the Consumptive Use Permit. The newly proposed capital project will include the necessary engineering and infrastructure for Gulf to connect to the local reclaimed water source. Gulf shall be allowed to recover prudently incurred costs associated with the Plan Crist Water Conservation Project.

**ISSUE 11D:** How should the costs associated with the Plant Crist Water Conservation Project be allocated to the rate classes?

**POSITION:** Capital costs for the Plan Crist Water Conservation Project should be allocated to the rate classes on an average 12 CP demand and 1/13<sup>th</sup> energy basis. Operating and maintenance costs should be allocated to the rate classes on a 71% average 12 CP demand and 29% energy basis.

**ISSUE 11E:** Should Gulf be allowed to recover the costs associated with its proposed Impaired Waters Rule (IWR) Project?

**POSITION:** Yes. The FDEP has proposed listing waters in watersheds surrounding Gulf's generating facilities for nutrients and mercury. The IWR project will enable Gulf to conduct necessary modeling and evaluations to determine if a permitted discharge will contribute to a water body listing and whether additional wastewater reductions are required to meet new total daily maximum load requirements. GULF should be allowed to recover prudently incurred costs associated with the IWR Project.

**ISSUE 11F:** How should the costs associated with the IWR Project be allocated to the rate classes?

**POSITION:** Capital costs for the IWR Project should be allocated to the rate classes on an average 12 CP demand and 1/13<sup>th</sup> energy basis. Operating and maintenance costs should be allocated to the rate classes on a 71% average 12 CP demand and 29% energy basis.

**ISSUE 11G:** Should Gulf be allowed to recover the costs associated with its proposed Annual Climate Registry Project?

**POSITION:** Yes. The Florida Department of Environmental Protection (FDEP) proposed Rule 62-285.300 (07-1262), Florida Administrative Code, Rule to implement Executive Order 07-127 requiring the reduction in emission of Greenhouse Gases (GHG) from Electric Utilities. In addition, Florida House Bill 7135 (HB 7135) created the Florida Climate Protection Act as section 403.44 of the Florida Statutes. It requires major GHG emitters to register and report GHG emissions. It also requires FDEP to implement a GHG Cap and Trade program to address required reductions. HB 7135 also includes provisions allowing recovery of the costs or expenses prudently incurred for the quantification, reporting and third party verification as required by the Climate Registry, and reporting to FDEP. Gulf should be allowed to recover prudently incurred costs associated with joining the Climate Registry during 2009, as well as future expenses for monitoring and reporting GHG emissions.

**ISSUE 11H:** How should the costs associated with the Annual Climate Registry Project be allocated to the rate classes?

**POSITION:** The costs associated with the Annual Climate Registry Project should be allocated to the rate classes on a 100% energy basis.

**ISSUE 11I:** Should Gulf continue to recover Capital and O&M costs associated with its CAVR, CAIR and CAMR compliance projects in light of the vacatur of CAMR and potential vacatur of CAIR?

**POSITION:** Yes. It is prudent and necessary for Gulf to continue these projects. On July 11, 2008 the D.C. Circuit Court of Appeals vacated CAIR in its entirety and remanding it to EPA for further action consistent with the court's opinion. CAIR will, however, remain in effect until the court issues its mandate. On February 2, 2008 the D.C. Circuit Court of Appeals vacated EPA's CAMR. The vacatur became effective with the issuance of the court's mandate on March 14, 2008.

Gulf has obligations to comply with environmental requirements other than CAIR and CAMR that include: (1) the Clean Air Visibility Rule (CAVR); (2) the 8-hours Ozone National Ambient Air Quality Stands (NAAQs); and (3) the Mississippi Regional Haze State Implementation Plan (SIP) which applies to Plant Daniel.

On September 18, 2008, Gulf filed its Environmental Compliance Program Update in light of the vacatur of CAMR and the potential vacatur of CAIR. Gulf's Updated Program represents the most cost-effective alternative for achieving and maintaining compliance with CAVR, and with CAIR, which remains in effect at this time, and the NAAQs, Mississippi SIP and related regulatory requirements. It is reasonable for Gulf to continuing to recover prudently incurred costs to implement the program. Gulf shall file as part of its true-up testimony in the Environmental Cost Recovery Clause a yearly review of the efficiency of its program and the cost-effectiveness of Gulf's retrofit options for each generating unit in relation to expected changes in environmental regulations.

**Tampa Electric Company (TECO)**

**ISSUE 12A:** Should TECO continue to recover Capital and O&M costs associated with its CAVR, CAIR and CAMR compliance projects in light of the vacatur of CAMR and potential vacatur of CAIR?

**POSITION:** Yes. To honor its Clear Air Act Settlement and Consent Decree with the EPA, TECO must continue its emission control projects. It is reasonable for TECO to continue to recover prudently incurred costs associated with these environmental compliance projects.

e. Stipulated Issues

Staff is not aware of any stipulated issues at this time.

f. Pending Motions

Staff has no pending motions at this time.

g. Pending Confidentiality Claims or Requests

Staff has no pending confidentiality claims or requests at this time.

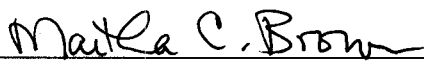
h. Objections to Witness Qualifications as an Expert

Staff has no objections to any witness' qualifications as an expert in this proceeding.

i. Compliance with Order No. PSC-08-0149-PCO-EI

Staff has complied with all requirements of the Order Establishing Procedure entered in this docket.

Respectfully submitted this 3rd day of October, 2008.

  
\_\_\_\_\_  
MARTHA C. BROWN  
Senior Attorney  
FLORIDA PUBLIC SERVICE COMMISSION  
Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0863  
Telephone: (850) 413-6187

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 080007-EI  
DATED: OCTOBER 3, 2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that one true and correct copy of STAFF'S PREHEARING STATEMENT has been served to the following by electronic and U. S. mail this 3rd day of October, 2008:

John T. Burnett/R.Alexander Glenn  
Progress Energy Service Company, LLC  
Post Office Box 14042  
St. Petersburg, FL 33733-4042

Paula K. Brown  
Tampa Electric Company  
P. O. Box 111  
Tampa, FL 33601-0111

Paul Lewis, Jr.  
Progress Energy Florida, Inc.  
106 East College Avenue, Suite 800  
Tallahassee, FL 32301-7740

Gary V. Perko  
Hopping Law Firm  
Post Office Box 6526  
Tallahassee, FL 32314

J.R. Kelly, Office of Public Counsel  
c/o The Florida Legislature  
111 W. Madison St., Room 812  
Tallahassee, FL 32399-1400


Wade Litchfield  
Florida Power & Light Company  
215 South Monroe Street, Suite 810  
Tallahassee, FL 32301-1859

John W. McWhirter, Jr.  
Florida Industrial Power Users Group  
400 North Tampa Street, Suite 2450  
Tampa, FL 33602

Susan D. Ritenour  
Gulf Power Company  
One Energy Place  
Pensacola, FL 32520-0780

Beggs & Lane Law Firm  
J. Stone/R. Badders/S.Griffin  
P.O. Box 12950  
Pensacola, FL 32591

Lee L. Willis/James D. Beasley  
Ausley Law Firm  
Post Office Box 391  
Tallahassee, FL 32302



---

MARTHA C. BROWN  
Senior Attorney  
FLORIDA PUBLIC SERVICE COMMISSION  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
(850) 413-6187