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COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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|---|---|
| In re: Environmental cost recovery clause. | DOCKET NO. 110007-EI |
| | DATED: October 3, 2011 |

COMMISSION STAFF'S PREHEARING STATEMENT

Pursuant to Order No. PSC-11-0150-PCO-EI, filed March 4, 2011, the Staff of the Florida Public Service Commission files its Prehearing Statement.

a. All Known Witnesses

None at this time.

b. All Known Exhibits

None at this time.

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

## GENERIC ISSUES

**ISSUE 1:** **What are the final environmental cost recovery true-up amounts for the period ending December 31, 2010?**

**POSITION:** No position at this time.

**ISSUE 2:** **What are the estimated environmental cost recovery true-up amounts for the period January 2011 through December 2011?**

**POSITION:** No position at this time.

**ISSUE 3:** **What are the projected environmental cost recovery amounts for the period January 2012 through December 2012?**

**POSITION:** No position at this time.

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**ISSUE 4:** **What are the environmental cost recovery amounts, including true-up amounts, for the period January 2012 through December 2012?**

**POSITION:** 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 2012 through December 2012?**

**POSITION:** The depreciation rates used to calculate the depreciation expense should be the rates that are in effect during the period the allowed capital investment is in service.

**ISSUE 6:** **What are the appropriate jurisdictional separation factors for the projected period January 2012 through December 2012?**

**POSITION:** No position at this time.

**ISSUE 7:** **What are the appropriate environmental cost recovery factors for the period January 2012 through December 2012 for each rate group?**

**POSITION:** The factors are a mathematical calculation based on the resolution of company-specific issues. Staff asks for administrative authority to review the calculations reflecting the Commission's vote and include the resulting factors in the Order.

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

**POSITION:** The factors should be effective beginning with the specified environmental cost recovery cycle and thereafter for the period January 2012 through December 2012. Billing cycles may start before January 1, 2012 and the last cycle may be read after December 31, 2012, so that each customer is billed for twelve months regardless of when the adjustment factor became effective.

## COMPANY-SPECIFIC ISSUES

### Florida Power & Light (FPL)

**ISSUE 9A:** **Should FPL be allowed to recover the costs associated with its proposed St. Lucie Cooling Water Monitoring Project?**

**POSITION:** Yes. This project is required to comply with Florida Department of Environmental Protection (FDEP) Administrative Order AO022TL (AO) and conditions in Industrial Wastewater (IWW) Permit No. FL0002208, which became effective on December 23, 2010 and relate to operation and limitations

for the St. Lucie Plant Cooling Water System (CWS). The extended power uprate at St. Lucie Units 1 and 2 will result in an increased heat output which, in turn, will cause an increase in the discharge temperature of the plant's cooling water. FPL submitted to the FDEP a request to modify the IWW Permit in this regard. The FDEP has approved an increase in the current permitted discharge temperature limit, subject to FPL's complying with new study and monitoring requirements (and corrective action requirements if necessary) that are contained in the AO and IWW Permit. The proposed project meets the criteria for cost recovery established by the Commission in Order No. PSC-94-0044-FOF-EI. In addition, FPL's compliance with the IWW permit is legally mandated under a governmentally imposed environmental regulation.

The estimated total expenditures associated with the Project are approximately $3 million, of which approximately $1.2 million has been included in the calculation of the 2012 ECRC factor. At this time, the Project consists of preparing and implementing plans for (1) monitoring the ambient and CWS discharge water temperature, and (2) biological monitoring to demonstrate that conditions allow for the existence of a balanced, indigenous community of fish, shellfish and wildlife near the CWS discharge of the St. Lucie Plant. If any corrective actions are required as a result of the monitoring activities, FPL should petition the Commission to amend the Project at that time for further ECRC cost recovery.

**ISSUE 9B: How should the costs associated with FPL's proposed St. Lucie Cooling Water Monitoring Project be allocated to the rate classes?**

**POSITION:** Capital and O&M costs for FPL's proposed St. Lucie Plant Cooling Water Discharge Monitoring Project should be allocated to the rate classes on an average 12 CP demand basis.

**ISSUE 9C: Should FPL be allowed to recover the costs associated with its proposed Industrial Boiler MACT Project?**

**POSITION:** Yes. This project is required by the Unites States Environmental Protection Agency (EPA), which regulates Hazardous Air Pollutants (HAPs) under Section 112 of the Clean Air Act (CAA) and promulgates emission standards for HAPs under 40 CFR Part 63 for stationary source categories. On February 21, 2011, the final Industrial/Commercial/Institutional Boiler Maximum Achievable Control Technology (IB MACT) rules were signed by the EPA Administrator. EPA's two rules address boilers and process heaters under Subpart DDDDD (40 CFR 63.7480) for affected units at major sources, and under Subpart JJJJJJ (40 CFR 63.11193) for affected units at area sources. The IB MACT rules impose new emission limitations, work practice standards, and operating limits on the affected source categories to reduce the emissions of HAPs. FPL's plans to comply with the requirements of these rules include developing site-specific monitoring plans, conducting emissions stack testing, performing fuel oil sampling and analyses,

conducting biennial tune-up practices, performing one-time energy assessment, and installing emission controls or replacing existing units. Subpart JJJJJJ became effective on March 21, 2011. EPA has stayed the effectiveness of Subpart DDDDD.

FPL estimated that the costs associated with complying with Subpart JJJJJJ are $41,453, and the costs associated with the complying with Subpart DDDDD are $356,187. FPL should be allowed to recover through the ECRC the Subpart JJJJJJ-related compliance costs. This portion of the proposed project meets the criteria for cost recovery established by the Commission in Order No. PSC-94-0044-FOF-EI. In addition, FPL's compliance with the Subpart JJJJJJ is legally mandated under a governmentally imposed environmental regulation. The Subpart DDDDD-related compliance costs should not be allowed ECRC recovery at this time. When the stay of Subpart DDDDD rule is lifted, FPL will then be allowed to seek recovery of the associated compliance costs through the ECRC.

**ISSUE 9D: How should the costs associated with FPL's proposed Industrial Boiler MACT Project be allocated to the rate classes?**

**POSITION:** Capital and O&M costs for FPL's proposed Industrial Boiler MACT Project should be allocated to the rate classes on an average 12 CP demand basis.

**ISSUE 9E: Should FPL be allowed to recover the costs associated with its proposed NPDES Permit Renewal Requirement Project?**

**POSITION**: Yes. This project is for compliance with the Federal Clean Water Act, which requires all point source discharges to navigable waters from industrial facilities to obtain permits under the National Pollutant Discharge Elimination System (NPDES) program. (33 U.S.C. Section 1342) NPDES permits must be renewed every five years. The FDEP has been delegated authority by the EPA to implement the NPDES program in Florida. The FDEP has amended Rule 62-620.620 (3), F.A.C., to require that all new or renewed wastewater discharge permits for major facilities, including power plants, contain whole effluent toxicity (WET) limits. Additionally, the FDEP has required that facilities prepare a Storm Water Pollution Prevention Plan (SWPPP) that conforms to Rule 62-620.100 (m), F.A.C., and 40 CFR Part 122.44(k) when their NDPES permits are renewed. The proposed project is associated with these new requirements for WET monitoring and reporting, as well as for preparing Storm Water Pollution Prevention Plans that are or will be contained in the latest renewals for FPL's NPDES permits. The WET testing requirements of the project will be on-going. The estimated 2011 and 2012 O&M cost for compliance with the new WET testing requirement is approximately $77,000. The SWPPP activities of the proposed project are expected to be completed by 2014 and the current estimates of the total expenditures are $100,000 in O&M costs. FPL proposed project meets the criteria for cost recovery established by the Commission in Order No.

PSC-94-0044-FOF-EI. In addition, FPL's compliance with the NPDES permit is legally mandated under a governmentally imposed environmental regulation.

**ISSUE 9F: How should the costs associated with FPL's proposed NPDES Permit Renewal Requirement Project be allocated to the rate classes?**

**POSITION:** Capital and O&M costs for FPL's proposed NPDES Permit Renewal Requirements Project should be allocated to the rate classes on an average 12 CP demand basis.

**ISSUE 9G: Should FPL be allowed to include the costs associated with its 800 MW ESP Project in its 2012 ECRC factor?**

**POSITION**: No. The EPA issued the proposed Air Toxics Rule on March 16, 2011, which was published in the Federal Register on June 21, 2011. FPL believes that the installation of ESPs at the Martin and Manatee plants is the most effective method to comply with the requirements of the proposed rule. FPL anticipates that the EPA will finalize the Air Toxics Rule by the November 16, 2011 deadline, in compliance with the D.C Circuit Court of Appeal's order.

In Order No. PSC-11-0083-FOF-EI, in Docket No. 100007-EI, issued January 31, 2011, Re: Environmental Cost Recovery Clause, the Commission approved a stipulation regarding whether FPL should be allowed to recover the costs associated with its proposed 800 MW ESP Project for complying with the proposed MACT rule. Consistent with this order, FPL is authorized to include all the prudently incurred costs associated with the project in the ECRC factor only after the EPA publishes the final MACT rule. FPL will be allowed to recover reasonable and prudent ESP project costs via the ECRC true-up mechanism in the 2012 ECRC proceeding in the event that the final Mact rule requires ESPs and is adopted before or during 2012.

**ISSUE 9H: Should FPL be allowed to recover the costs associated with the additional activities required for the Manatee Temporary Heating System Project at Cap Canaveral Plant?**

**POSITION:** Yes. In Order No. PSC-09-0759-FOF-EI, in Docket No. 090007-EI, issued November 18, 2009, Re: Environmental Cost Recovery Clause, the Commission approved the MTHS-Cape Canaveral Plant project for cost recovery through the ECRC. FPL notified the Commission on January 4, 2011, that the heating system installed did not have enough thermal capacity to maintain the manatee embayment area at the necessary temperature to comply with the requirements of the FDEP's Industrial Wastewater Facility Permit FL0001473 for the Cape Canaveral Plant during periods of extreme cold. FPL determined that a light oil-fired water heating system (Supplemental Heating System) was the best solution to provide the incremental heating capacity needed in the event that the thermal

capacity of the existing electric heating system is exceeded. Due to the approximately two-week anticipated delivery time of the Supplemental Heating System, FPL also entered into a short-term lease for a smaller light oil-fired heater to be used at the Cape Canaveral Plant site during the extreme cold snap that Florida experienced in early December 2010. Once the reliability and effectiveness of the Supplemental Heating System was proven, FPL terminated the lease and returned the smaller heater. Other associated activities are the modification of discharge pipes in the primary heating system and the installation of booms to direct and control the flow of warm water in the embayment area.

**ISSUE 9I: Should the Commission approve FPL's updated Clean Air Interstate Rule CAIR), Clean Air Mercury Rule (CAMR) and Clean Air Visibility Rule (CAVR)/Best Available Retrofit Technology (BART) Projects that are reflected in FPL's April 1, 2011, supplemental filing as reasonable and prudent?**

**POSITION:** Yes. Completion of the compliance activities discussed in FPL's Supplemental CAIR/CAMR/CAVR Filing of April 1, 2011, is required by existing federal and state environmental rules and regulatory requirements at that time for air quality control and monitoring; and the associated project costs appear reasonable and prudent. On February 21, 2011, the EPA published final IB MACT rules, of which Subpart JJJJJJ became effective on March 21, 2011, and Subpart DDDDD was stayed. On March 16, 2011, the EPA issued the proposed Air Toxics Rule, and FPL anticipates that the EPA will finalize this Rule by the November 16, 2011 deadline, in compliance with the D.C Circuit Court of Appeal's order. On July 16, 2011, the EPA issued the Cross State Air Pollution Rule (CSAPR) which serves as the replacement for the CAIR rule. FPL shall continue to file, as part of its annual ECRC final true-up testimony, a review of the efficacy of its CAIR/CAMR/CAVR compliance plans. In its review, FPL shall update the Commission on the developments of the aforementioned new and/or proposed rules, as well as the cost-effectiveness of the company's retrofit options for each generating unit in relation to expected changes in environmental regulations. The reasonableness and prudence of individual expenditures, and FPL's decisions on the future compliance plans made in light of subsequent developments, will continue to be subject to the Commission's review in future ECRC proceedings on these matters.

**Progress Energy Florida (PEF)**

**ISSUE 10A: Should the Commission grant PEF's Petition for approval of ECRC cost recovery for the National Pollutant Discharge Elimination System (NPDES) Permit Renewal Requirement Project?**

**POSITION:** Yes. This project is necessary to comply with renewed NPDES permits issued or to be issued in 2011 for PEF's facilities by the FDEP pursuant to the EPA approved NPDES permitting program in Florida and applicable FDEP regulations. The new compliance requirements included in the Bartow, Anclote, Crystal River, and Suwannee permits are composed of Thermal Studies, Aquatic Organism Return Studies & Implementation, and Whole Effluent Toxicity Testing (WET). For the Bartow Plant, there are additional regulatory requirements and activities, including a Dissolved Oxygen Study and freeboard Limitation and Related Studies. The proposed project meets the criteria for cost recovery established by the Commission in Order No. PSC-94-0044-FOF-EI. In addition, PEF's compliance with the NPDES permit is legally mandated under a governmentally-imposed environmental regulation. The Company estimated that the total costs for complying with the new NPDES permit requirements are approximately $1.5 million for the period of 2011 through 2012. PEF indicated that costs for the chronic WET testing would recur annually. It also indicated that costs for implementing the various studies cannot be estimated at this time, but would be submitted for Commission review and approval at the appropriate time in future ECRC filings.

**ISSUE 10B: How should the costs associated with PEF's proposed NPDES Permit Renewal Requirement Project be allocated to the rate classes?**

**POSITION:** Capital costs for the NPDES project should be allocated to rate classes on a demand basis. O&M costs for the project should be allocated to the rate classes on an energy basis.

**ISSUE 10C: Should the Commission grant PEF's Petition for approval of ECRC cost recovery for the Maximum Achievable Control Technology (MACT) Project?**

**POSITION:** Yes. On March 16, 2011, the EPA issued a proposed Electric Generating Unit (EGU) MACT Rule. In accordance with a D.C Circuit Court of Appeal's order, the EPA Administrator will sign a final rule by November 16, 2011. Adoption of the new EGU MACT rule will require PEF to modify its Integrated Clean Air Compliance Plan, which was approved by the Commission in the previous year's ECRC hearings, with new emission standards. The proposed new activities for 2011 include diagnostic stack testing, and emissions testing at Crystal River Units 4 and 5 to assess emissions of mercury, HCl and condensable particulate matter while testing hydrated lime injection and various operation conditions. Upon issuance of the final EGU MACT rule, PEF will conduct detailed engineering and other analyses necessary to develop compliance strategies for inclusion in an updated Integrated Clean Air Compliance Plan. The proposed project meets the criteria for cost recovery established by the Commission in Order No. PSC-94-0044-FOF-EI, and is consistent with the Commission's decision set in Order No. PSC-08-0775-FOF-EI. In addition, PEF's proposed activities are necessary for

the Company to assess the proposed rule, prepare comments to the EPA, and develop compliance strategies within aggressive regulatory timeframes. The estimates of the O&M costs associated with this Project are approximately $85,000 in 2011 and $300,000 for 2012.

**ISSUE 10D: How should the costs associated with PEF's proposed MACT Project be allocated to the rate classes?**

**POSITION:** O&M costs for the MACT Project should be allocated to the rate classes on an energy basis.

**ISSUE 10E: Should the Commission approve PEF's proposed treatment of its CAIR-related annual NOx allowances?**

**POSITION:** On July 16, 2011, the EPA issued the Cross State Air Pollution Rule (CSAPR) to replace the Clean Air Interstate Rule (CAIR) starting January 1, 2012. One of the known impacts to PEF is that the new rule significantly alters the SO2 and NOx allowance programs. Under the CAIR, Florida was required to comply with the requirements related to annual emissions of SO2 and NOx, as well as separate requirements regulating NOx emissions during the ozone season. Under the CSAPR, Florida is no longer included in the group of states required to comply with annual emissions requirements; it is only subject to the ozone season portions of the rule. The effective compliance start day for Florida is May 1, 2012, when the ozone season begins. The Company's witness D. West stated, in her testimony filed on August 1, 2011, that emission allowances previously issued to utility companies under CAIR and/or the Acid Rain Program cannot be used to comply with CSAPR requirements. "As of January 1, 2012, the emissions allowances under CAIR will have no value." Since any NOx allowances not used by the end of 2011 are not expected to be useful for compliance with the new CSAPR rule, PEF proposes to treat its approximately $22.5 million of annual NOx allowances in inventory as a regulatory asset as of January 1, 2012, and amortize it over the course of 2012 until fully recovered at year end, with a return on the unamortized balance of the emission allowances during 2012. PEF has affirmed, in its response to Staff's Sixth Set of Interrogatories No. 13d. that "[a]ll of the $22.5 million referenced above was purchased by PEF from the allowance market. PEF does not book any value in inventory for allowances the EPA gives to PEF at no charge. The Company does not impute a value for allowances based on market conditions. For this reason, all of the $22.5 million was incurred purchasing NOx allowances and represents investments PEF has made in this inventory. When allowances are expensed, PEF values its pool of NOx inventory allowances at average cost consistent with inventory accounting principles. Consistent with this inventory method, this cost is spread over all inventory and expensed at an average cost as the allowances are used. In no case would PEF expense more than PEF has incurred purchasing allowances."

CAIR established new seasonal and annual emission compliance requirements for NOx. Beginning in 2009, CAIR required affected sources to complete a seasonal NOx emission allowance submittal for the May 1 through September 30 time period and annual NOx emission allowance compliance submittal for the January 1 through December 31 time period each year. When PEF first requested the Commission approve its Integrated Clean Air Compliance Plan in March 2006, the Company provided detailed economic analyses of five potential compliance scenarios, including one ("Plan A") that would call for installation of NOx emission controls on all of PEF's coal-fired units at the Crystal River (CR) Plant to comply with CAIR without having to purchase allowances. However, the economic analysis demonstrated that "Plan D," which relied on strategic purchases of annual and seasonal NOx allowance rather than installing NOx controls on CR Units 1 and 2, was the most cost-effective option for compliance with CAIR and related regulatory requirements. In the 2007 ECRC docket, PEF submitted updated economic analyses confirming that Plan D, which included its reliance on NOx allowance purchases, was the most cost-effective option. The Commission agreed that "PEF's Integrated Clean Air Compliance Plan represents the most cost-effective alternative for achieving compliance with CAIR, CAMR CAVR" in order No. PSC-07-0922-FOF-EI, issued November 16, 2007, Re: Environmental Cost Recovery, in Docket 070007-EI. In the subsequent years, 2008 through 2010, PEF updated the Commission annually on its Integrated Clean Air Compliance Plan, each of which included strategic NOx allowance purchases and were granted approval. Therefore, PEF's purchases of the annual NOx allowance were pre-approved by the Commission.

Based on a review of discovery in this docket, staff believes that PEF exercised a prudent NOx emissions allowance strategy. During the relevant time period, in order to determine if PEF would need to purchase seasonal and annual NOx emission allowances, the Company compared its total seasonal and annual NOx emissions projections from fuel and generation forecasts to the number of the allowances held by PEF, which includes allowance allocations from the EPA, purchases made over time, and allowances carry-overs. As part of the fuel and generation forecasting process, emission burn projections are generated on a periodic basis for future periods with consideration of generation availability, planned outage schedules, purchased power contracts, fuel price forecasts, planned environmental equipment installations and load projections. In the aggregate, if the number of allowances that PEF would need to comply with CAIR based on forecasted emissions was greater than the number of allowances PEF held, the Company purchased additional allowances in the market. By reviewing the historical data of PEF's allowance purchases, inventories and expenses submitted by the Company, staff believes that PEF acted prudently in implementing its procurement strategy of purchasing NOx allowances over time, to gradually increase inventory levels based on emission forecasts developed using the best information available at the time.

Based on the above, the $22.5 million investments associated with PEF's annual NOx allowances under the CAIR were prudently incurred under a Commission approved environmental compliance plan. Staff believes that it is appropriate for PEF to treat these $22.5 million now-unusable annual NOx allowances as a regulatory asset and recover them through the ECRC. However, staff believes that the amortization period should be more gradual than the PEF proposed one-year time period. Staff proposes a three-year amortization period so as to reduce the volatility in customer bills while balancing the level of carrying costs associated with the $22.5 million investment. Recognizing that historically many of the EPA's final rules were subsequently challenged in court after their publication, the CSAPR rule too may be litigated and ultimately revised in the future. If there are changes to the CSAPR that result in the $22.5 million annual NOx allowances regaining value, PEF should refund the amount it recovered associated with these annual NOx allowances through the ECRC.

**ISSUE 10F: Should the Commission approve PEF's updated Review of Integrated Clean Air Interstate Rule Compliance Plan that was submitted on April 1, 2011?**

**POSITION**: Yes. PEF's Updated Integrated Clean Air Compliance Plan appears reasonable and prudent which can result in the desired effect of achieving timely compliance with the applicable regulations in a cost-effective manner. All of the major components of the Crystal River Units 4 and 5 emissions control projects included in PEF's Integrated Clean Air Compliance Plan have been completed. PEF will continue evaluating future compliance options in light of the EPA's recently finalized CSAPR rule and proposed EGU MACT standards for coal and oil-fired generating units. Once the EGU MACT rule is finalized and the Company determines its most cost-effective compliance options, PEF should submit for the Commission's review revisions to PEF's Integrated Clean Air Compliance Plan. The revised Plan should discuss the impacts and estimated costs associated with PEF's integrated strategy for complying with CSAPR, MACT and related environmental regulatory programs. The reasonableness and prudence of individual expenditures, and PEF's decisions on the future compliance plans made in light of subsequent environmental rule and regulation developments, will continue to be subject to the Commission's review in future ECRC proceedings on these matters.

**Gulf Power Company (Gulf)**

**ISSUE 11A: Should Gulf be allowed to recover the costs associated with its proposed Impoundment Integrity Inspection Project?**

**POSITION:** Yes. The proposed project addresses costs associated with Gulf's compliance with a new condition in the Plant Crist National Pollutant Discharge Elimination System (NPDES) permit renewal issued during January of 2011. This new condition requires inspection of all ash impoundments at Plant Crist annually.

These inspections must include observations of dike and toe areas for erosion, cracks, or bulges, seepage, wet or soft soil, changes in geometry, the depth and elevation of the impounded water, sediment or slurry, freeboard, changes in vegetation and any other change which may indicate a potential compromise to impoundment integrity. The permit condition requires that summarized findings of all monitoring activities, inspections, and corrective actions pertaining to the impoundment integrity, and operation and maintenance of all impoundments must he documented and kept onsite and made available to FDEP inspectors. All findings and corrective actions related to impoundment integrity at Plant Crist must be complied with per the permit condition. The proposed project meets the criteria for cost recovery established by the Commission in Order No. PSC-94-0044-FOF-EI. In addition, Gulf's compliance with the NPDES permit is legally mandated under a governmentally imposed environmental regulation. The estimated costs associated with the project will total $156,000 during 2012.

**ISSUE 11B: How should the costs associated with Gulf's proposed Impoundment Integrity Inspection Project be allocated to the rate classes?**

**POSITION:** The expenses associated with this project shall be allocated to the rate classes on a demand basis.

**ISSUE 11C: Should Gulf be allowed to recover the costs associated with the Plant Crist Units 6 and 7 turbine upgrades?**

**POSITION:** No. As part of Gulf's Projection filing, witness J. O. Vick testified on page 4 of his testimony, that ". . . $229 million is projected to be cleared to plant-in-service for the CAIR/CAMR/CAVR Compliance Program. The projected expenditures are primarily related to the completion of the Plant Crist Unit 6 SCR that will be placed-in-service during the spring of 2012." However, witness Vick further testified that ". . . as part of the Crist Scrubber project, costs related to the Plant Crist Unit 6 and 7 turbine upgrades will be placed-in-service in 2012." These turbine upgrades were previously mentioned in witness Vick's projection testimony filed on August 29, 2008: "[t]he total budget for Plant Crist scrubber project is now approximately $576 million for the time period from 2007 to 2012. Most of the increase is due to the decision to install turbine upgrades to offset increased station losses due to the scrubber installation ($12 million for HI/IP turbine upgrades and $26 million for LP turbine upgrades) and ... ..." As indicated in Gulf's response to No. 9b of Staff's Fifth Set of Interrogatories in this docket, the 2012 component activities of the turbine upgrade project include upgraded inner and outer high pressure and intermediate pressure cylinder and rotor for Plant Crist Unit 6, as well as upgraded both low pressure turbine sets with inner low pressure cylinder and rotor for Plant Crist Unit 7. The total costs associated with these activities will be $48.6 million.

The purpose of these upgrades is to offset the parasitic load imposed by the plant's environmental control equipment. Gulf indicated in its response to Staff's Fifth Set of Interrogatories No. 9, that "[t]he Plant Crist Unit 6 and 7 turbine upgrades are needed to offset the increased station service due to the scrubber being placed in service. The station service being consumed by the scrubber reduces the amount of generation capacity available to serve our customer load. New turbine design features in the rotors, inner and outer cylinders, blade airfoils, steam paths, as well as advanced sealing and blade path thermodynamic optimization are utilized to improve the turbines' efficiencies." The turbine upgrades project appears to be cost-effective and staff believes that it will benefit Gulf and its ratepayers. However, the turbine upgrade project itself is not required to comply, or remain in compliance with, a governmentally imposed environmental rule or regulation. Hence, the costs associated with the upgrades project should not be recovered through the ECRC. This position is consistent with the Commission's decision set out in Order No. PSC-11-0080-PAA-EI, issued on January 31, 2011, in Docket No. 100404-EI, In re: Petition by Florida Power & Light Company to recover Scherer Unit 4 Turbine Upgrade costs through environmental cost recovery clause. Staff believes that it is appropriate for Gulf to recover the costs associated with the Crist Units 6 and 7 turbine upgrades through base rates.

**ISSUE 11D: Should the Commission approve Gulf's proposed treatment of its CAIR-related NOx allowances?**

**POSITION:** Yes. On July 16, 2011, the EPA issued the CSAPR rule to replace the CAIR rule starting January 1, 2012. It appears that the annual NOx emission allowances previously issued to Florida utility companies under CAIR and/or the Acid Rain Program cannot be used to comply with CSAPR requirements, and Florida is no longer included in the group of states required to comply with annual NOx emissions requirements. As reported in Gulf's Schedule 8E, filed on August 1, 2011, and Schedule 4P, filed on August 26, 2011, the Company will have approximately $1.3 million of annual NOx allowances as of December 31, 2011. Gulf indicated in its response to Staff's Fourth Set of Interrogatories, No. 6a, that "[a] decision as to whether or not the balance of annual NOx allowances on hand at the end of 2011 will have any value in the future is yet to be determined pending potential litigation related to the new Cross State Air Pollution Rule (CSAPR). Regardless of whether these allowances are ultimately deemed to have any value or not beyond 2011, the costs of these allowances were prudently incurred expenses that are recoverable through the Environmental Cost Recovery Clause."

Staff appreciates Gulf's concern and believes that it is reasonable for the Company to have a "waiting period" to obtain more information before making a decision on how to treat its CAIR-related annual NOx allowances on hand. Gulf should update the Commission, in a timely manner, on the Company's decision

on how it proposes to treat its remaining annual NOx allowances inventory in light of the future developments in the CSAPR. Staff also believes that it would be reasonable to limit this "waiting period" to a three-year time frame so that it would not result in a significant amount of carrying costs associated with this $1.3 million capital investment being incurred.

**ISSUE 11E: Should the Commission approve Gulf's Environmental Compliance Program Update that was submitted on April 1, 2011?**

**POSITION:** Yes. Gulf's updated Environmental Compliance Program reflects a comprehensive assessment of requirements Gulf and its customers face in meeting various existing environmental rules and the pending EGU MACT rule. In assessing the most cost-effective means of meeting these significant regulatory requirements, the Company considered four primary compliance options: fuel switching, purchase of allowances, retrofit installations, and retirement and replacement of existing units. Based upon comprehensive technical and economic evaluations of alternatives, Gulf assessed the best means of meeting plan-by-plan emission requirements through retrofit measures supplemented by allowance purchases and compared those options to retiring and replacing existing units. It appears that Gulf's Environmental Compliance Program is the most reasonable and cost effective option available to Gulf under the planning assumptions at that time.

On July 16, 2011, the EPA issued the Cross State Air Pollution Rule (CSAPR) which serves as the replacement for the CAIR rule. According to the Company's response to Staff's Fifth Set of Interrogatories No. 10c, filed September 26, 2011, Gulf's current strategy to comply with CSAPR relies on the ability to purchase allowances above the annual allowances provided to the company or to import power to supplement Gulf's territorial load; Gulf will continue to evaluate these options pursuant to the development of the seasonal emission allowance market and the availability of purchased power agreements. Gulf also indicated that it is currently evaluating the existing particulate emission controls (ESPs) at Plant Crist and Daniel to determine whether they will be able to ensure compliance with the EGU MACT rule. Once the rule is finalized, Gulf will be able to determine whether or not the existing controls will be adequate or if a baghouse(s) will have to be installed.

Gulf should continue to evaluate future compliance options in light of the EPA's recently finalized CSAPR rule and the EGU MACT standards. Once the EGU MACT rule is finalized and the Company determines its most cost-effective compliance options, Gulf should submit for the Commission's review revisions to Gulf's Environmental Compliance Program. The revised Program should discuss the impacts and estimated costs associated with Gulf's integrated strategy for complying with CSAPR, EGU MACT and related environmental regulatory programs. The reasonableness and prudence of individual expenditures, and

Gulf's decisions on the future compliance plans made in light of subsequent environmental rule and regulation developments, will continue to be subject to the Commission's review in future ECRC proceedings on these matters.

**Tampa Electric Company (TECO)**

None

e. Stipulated Issues

None at this time.

f. Pending Motions

None at this time.

g. Pending Confidentiality Claims or Requests

There are several pending confidentiality requests at this time.

h. Objections to Witness Qualifications as an Expert

No objections.

i. Compliance with Order No. PSC-11-0150-PCO-EI

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

Respectfully submitted this 3rd day of October, 2011.

MARTHA C. BROWN
STAFF COUNSEL
FLORIDA PUBLIC SERVICE COMMISSION
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Telephone: (850) 413-6187

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | |
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| | DATED: October 3, 2011 |

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of COMMISSION STAFF'S PREHEARING STATEMENT has been filed with Office of Commission Clerk and one copy has been furnished to the following by electronic and U.S. Mail, on this 3rd day of October, 2011:

Florida Power & Light Company
John T. Butler
700 Universe Boulevard
Juno Beach, FL 33408-0420

Florida Power & Light Company
Kenneth Hoffman
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1858

Ausley & McMullen
J. Jeffry Wahlen/James D. Beasley
Post Office Box 391
Tallahassee, Florida 32302

Beggs & Lane Law Firm
Jeffrey A. Stone/Russell A. Badders/
Steven R.Griffin
Post Office Box 12950
Pensacola, Florida 32591-2950

Florida Industrial Power Users Group
Vicki Gordon Kaufman/Jon C. Moyle, Jr.
c/o Keefe Law Firm, The Perkins House
118 North Gadsden Street
Tallahassee, Florida 32301-3828

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

Keefe Anchors Gordon & Moyle, P.A.
Vicki Gordon Kaufman/Jon C. Moyle, Jr.
118 North Gadsden Street
Tallahassee, Florida 32301

Office of Public Counsel
J. R. Kelly/Patricia Christensen/
Charles Rehwinkel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, Florida 32399-1400

Tampa Electric Company
Ms. Paula K. Brown, Regulatory Affairs
Post Office Box 111
Tampa, Florida 33601-0111

Progress Energy Service Company, LLC
John T. Burnett/Dianne M. Triplett
Post Office Box 14042
St. Petersburg, Florida 33733-4042

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

Hopping Green & Sams, P.A.
Gary V. Perko
Post Office Box 6526
Tallahassee, FL 32314

Federal Executive Agencies
Karen S. White, Staff Attorney
AFCESA/ULFSC
139 Barnes Drive, Suite 1
Tyndall AFB, FL 32403-5319

Martha C. Brown

MARTHA C. BROWN
STAFF COUNSEL
FLORIDA PUBLIC SERVICE COMMISSION
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Telephone: (850) 413-6187