

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Energy conservation cost recovery clause. | DOCKET NO. 040002-EG
| ORDER NO. PSC-04-1092-PHO-EG
| ISSUED: November 4, 2004

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on October 25, 2004, in Tallahassee, Florida, before Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer.

APPEARANCES:

JEFFREY A. STONE, ESQUIRE AND RUSSELL A. BADDERS, ESQUIRE,
Beggs & Lane, Post Office Box 12950, Pensacola, Florida 32591-2950
On behalf of Gulf Power Company.

JAMES D. BEASLEY, ESQUIRE, Ausley & McMullen, Post Office Box 391,
Tallahassee, Florida 32302
On behalf of Tampa Electric Company.

R. WADE LITCHFIELD, ESQUIRE AND NATALIE F. SMITH, ESQUIRE,
700 Universe Boulevard, Juno Beach, FL 33408-0420
On behalf of Florida Power & Light Company.

JAMES A. MCGEE, ESQUIRE, Post Office Box 14042, St. Petersburg, Florida
33733-4042
On behalf of Progress Energy Florida, Inc.

NORMAN H. HORTON, JR., ESQUIRE, Post Office Box 1876, Tallahassee,
Florida 32302-1876
On behalf of Florida Public Utilities Company.

JOHN MCWHIRTER, JR., ESQUIRE, McWhirter Reeves McGlothlin Davidson
Kaufman & Arnold, P.A., 400 North Tampa Street, Suite 2450, Tampa, Florida
33601-3350 and VICKI GORDON KAUFMAN, ESQUIRE & TIMOTHY J.
PERRY, ESQUIRE, McWhirter Reeves McGlothlin Davidson Kaufman &
Arnold, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301
On behalf of Florida Industrial Power Users Group.

PATRICIA A. CHRISTENSEN, ESQUIRE, Office of the 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.

DOCUMENT NUMBER-DATE

11913 NOV-4 04

FPSC-COMMISSION CLERK

MARTHA BROWN, ESQUIRE, Florida Public Service Commission, 2540
Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

As part of the Commission's ongoing fuel cost recovery, energy conservation cost recovery, gas conservation cost recovery, purchased gas adjustment, and environmental cost recovery proceedings, a hearing is set for November 8-10, 2004, in this docket and in docket nos. 040001-EI, 040003-GU, 040004-GU and 040007-EI. The Commission has the option to render a bench decision in this matter.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes. This hearing will be governed by said Chapter and Chapters 25-17, 25-22, and 28-106, Florida Administrative Code.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation

pursuant to section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any parties intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence that is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Commission Clerk and Administrative Service's confidential files.

V. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

VI. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VII. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
*Angela T. Carter	Gulf	1,2,3

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
*Howard T. Bryant	TECO.	1,2,3,4
*Ken Getchell	FPL	1,2,3
*John A. Masiello	PEF	1,2,3
*Robert L. Smith	FPU	1
*Geoffrey Hartman	FPU	2 -3

As a result of discussions at the prehearing conference, each witness whose name is preceded by an asterisk (*) has been excused from this hearing if no Commissioner assigned to this case seeks to cross-examine the particular witness. Parties shall be notified by Wednesday, November 3, 2004, whether any of those witnesses shall be required to be present at the hearing. The testimony of excused witnesses will be inserted into the record as though read, and all exhibits submitted with those witnesses' testimony shall be identified as shown in Section X of this Prehearing Order and be admitted into the record.

VIII. BASIC POSITIONS

The parties and staff support the proposed stipulations on the issues set out below. FIPUG and OPC take no position on those issues.

IX. ISSUES AND POSITIONS

STIPULATED

ISSUE 1: What is the final end-of-the-period true-up amount (Actual VS. Estimated) for the period January 2003 through December 2003?

POSITION

PEFI:	\$ 554,003 Over Recovery
FPL:	\$4,698,364 Over Recovery
GPC:	\$ 355,105 Under Recovery
TECO:	\$ 41,515 Over Recovery
FPUC: (Cons.)	\$ 14,717 Over Recovery

STIPULATED

ISSUE 2: What are the appropriate conservation cost recovery factors by customer class for the period January 2005 through December 2005?

POSITION

PEF:	Rate Class	ECCR Factor
	Residential	0.169 cents/Kwh
	General Svc. Non-Demand	0.157 cents/Kwh
	@ Primary Voltage	0.155 cents/Kwh
	@ Transmission Voltage	0.154 cents/Kwh
	General Svc. 100% Load Factor	0.116 cents/Kwh
	General Svc. Demand	0.143 cents/Kwh
	@ Primary Voltage	0.142 cents/Kwh
	@ Transmission Voltage	0.140 cents/Kwh
	Curtaillable	0.133 cents/Kwh
	@ Primary Voltage	0.132 cents/Kwh
	@ Transmission Voltage	0.130 cents/Kwh
	Interruptible	0.119 cents/Kwh
	@ Primary Voltage	0.118 cents/Kwh
	@ Transmission Voltage	0.117 cents/Kwh
	Lighting	0.064 cents/Kwh
FPL:	Rate Class	ECCR Factor
	RS1/RST1	0.148 cents/Kwh
	GS1/GST1	0.138 cents/Kwh
	GSD1/GSDT1	0.130 cents/Kwh
	OS2	0.113 cents/Kwh
	GSLD1/GSLDT1/CS1/CST1	0.124 cents/Kwh
	GSLD2/GSLDT2/CS2/CST2	0.168 cents/Kwh
	GSLD3/GSLDT3/CS3/CST3	0.115 cents/Kwh
	ISST1D	0.113 cents/Kwh
	ISST1T	0.115 cents/Kwh
	SST1T	0.115 cents/Kwh
	SST1D1/SST1D2/SST1D3	0.113 cents/Kwh
	CILCD/CILCG	0.116 cents/Kwh
	CILCT	0.110 cents/Kwh
	MET	0.134 cents/Kwh
	OL1/SL1/PL1	0.062 cents/Kwh
	SL2	0.112 cents/Kwh

GPC: Rate Class	ECCR Factor
RS, RSVP	0.088 cents/Kwh
GS	0.087 cents/Kwh
GSD, GSDT, GSTOU	0.084 cents/Kwh
LP, LPT	0.079 cents/Kwh
PX, PXT, RTP, CSA, SBS	0.074 cents/Kwh
OSI, OSII	0.069 cents/Kwh
OSIII	0.077 cents/Kwh
TECO: Rate Class	ECCR Factor
Interruptible	0.031 cents/Kwh
Residential	0.098 cents/Kwh
General Svc., TS	0.090 cents/Kwh
General Svc. Demand	0.078 cents/Kwh
@ Primary Voltage	0.077 cents/Kwh
General Svc. LD, SBF	0.073 cents/Kwh
@ Primary Voltage	0.073 cents/Kwh
@ Subtransmission Voltage	0.072 cents/Kwh
SL, OL	0.031 cents/Kwh
FPUC: Rate Class	ECCR Factor
(Residential Consolidated)	0.054 cents/Kwh

STIPULATED

ISSUE 3: What should be the effective date of the energy conservation cost recovery factors for billing purposes?

POSITION

The factors should be effective beginning with the specified conservation cost recovery cycle and thereafter for the period January, 2005, through December, 2005. Billing cycles may start before January 1, 2005, and the last cycle may be read after December 31, 2005, so that each customer is billed for twelve months regardless of when the adjustment factor became effective.

COMPANY-SPECIFIC CONSERVATION COST RECOVERY ISSUES

Tampa Electric Company

STIPULATED

ISSUE 4: What is the Contracted Credit Value for the GSLM-2 and GSLM-3 rate riders for Tampa Electric for the period January 2005 through December 2005?

POSITION

In accordance with Order No. PSC-99-1778-FOF-EI, issued September 10, 1999 in Docket No.990037-EI, for the period, January 2005 through December 2005, the Contracted Credit Value for the GSLM-2 and GSLM-3 rate riders will be \$4.46 per KW

X. **EXHIBIT LIST**

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
			<u>Direct</u>
Angela T. Carter	Gulf	<u>ATC-1</u>	Schedules CT-1 through CT-6
		<u>ATC-2</u>	Schedules C-1 through C-5
Howard T. Bryant	TECO	<u>HTB-1</u>	Schedules supporting cost recovery factor, actual January 2003 – December 2003.
		<u>HTB-2</u>	Schedules supporting conservation costs projected for the period January 2005 – December 2005
Ken Getchell	FPL	<u>KG-1</u>	Schedules CT-1 through CT-6, Appendix A
		<u>KG-2</u>	Schedules C-1 through C-5

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
John A. Masiello	PEF	JAM-1T	ECCR Adjusted Net True-Up for January – December 2003, Schedules CT1 – CT5
		JAM-1P	ECCR Factors for Billings in January – December 2005, Schedules C1 – C5
Robert L. Smith	FPU	RLS-1	True-Up calculations and Schedules CT-1, CT-2, CT-3, CT-4, CT-5 and CT-6
Geoffrey Hartman	FPU	GLH-1	Schedules C-1, C-2, C-3, C-4 and C-5

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

XI. PROPOSED STIPULATIONS

The parties propose the stipulations for ISSUES 1, 2, 3 and 4 set out in Section IX above. FIPUG and OPC take no position on the issues.

XII. PENDING MOTIONS

There are no pending motions

XIII. PENDING CONFIDENTIALITY MATTERS

5 confidentiality requests are pending: Document No. 04581-04; Document No. 05062-04; Document No. 05063-04; Document No. 08395-04, and; Document No. 08396-04.

XIV. RULINGS

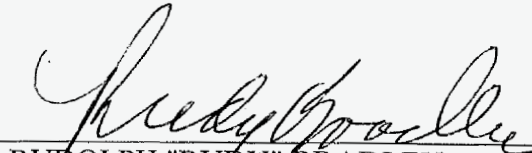
Opening statements, if any, shall not exceed ten minutes per party.

It is therefore,

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

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By ORDER of, Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this
4th day of November, 2004



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.