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January 6, 2004

-VIA HAND DELIVERY -

Blanca S. Bayó
Director, Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 040001-EI/030001-EI

Dear Ms. Bayó:

I am enclosing for filing the original and seven (7) copies of Florida Power & Light Company's Motion for Clarification or, in the Alternative, Reconsideration of Order No. 03-1461-FOF-EI Concerning Adjustment of Incremental Power Plant Security Cost Baseline for Growth in kWh Sales (Issue No. 30), together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows XP, and the word processing software in which the documents appear is Word 2000. I have referenced last year's fuel adjustment docket number as well as the newly established one, because the order that is the subject of FPL's motion was issued under last year's docket number.

If there are any questions regarding this transmittal, please contact me at 305-577-2939.

Sincerely,

John T. Butler

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Enclosure
cc: Counsel for Parties of Record (w/encl.)

MIA2001 257427v1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSON

IN RE: Fuel and Purchased Power Cost Recovery Clause and Generating Performance Incentive Factor	DOCKET NO. 030001-EI FILED: JANUARY 6, 2004

FLORIDA POWER & LIGHT COMPANY'S MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, RECONSIDERATION OF ORDER NO. PSC-03-1461-FOF-EI CONCERNING ADJUSTMENT OF INCREMENTAL POWER PLANT SECURITY COST BASELINE FOR GROWTH IN kWh SALES (ISSUE NO. 30)

Florida Power & Light Company ("FPL") hereby moves the Commission to clarify that its approval in Order No. PSC-03-1461-FOF-EI, dated December 22, 2003 ("Order 03-1461") of an adjustment of the baseline used to determine incremental recoverable costs to reflect growth in kWh sales (the "Gross-up Adjustment") applies only to the recovery of incremental power plant security costs in the capacity cost recovery clause ("CCRC") and does not, directly or by implication, affect the determination of any other incremental costs that are recoverable through adjustment clauses. In the alternative, if the Commission intends that the Gross-up Adjustment will apply to the determination of such other incremental recoverable costs, then FPL moves the Commission to reconsider and reverse Order 03-1461's approval of the Gross-up Adjustment. The grounds for FPL's motion are as follows:

INTRODUCTION

When the Commission allows utilities to recover incremental costs through adjustment clauses, the Commission has a well-established practice for determining the incremental portion of those costs that is clause-recoverable. The Commission has avoided double recovery by netting the dollar amount reflected in the base-rate test year (the "Baseline Amount") against the total amount of the costs in order to determine the incremental recoverable amount. This

approach has been consistently followed in determining incremental costs of environmental projects recoverable through the environmental cost recovery clause ("ECRC"); incremental purchased power costs recoverable through the CCRC; and, until Order 03-1461, incremental power plant security costs recoverable through (initially) the fuel cost recovery clause ("FCRC") and (currently) the CCRC. In none of those instances has the Commission applied a Gross-up Adjustment to the determination of incremental recoverable costs. In fact, the Commission previously considered and expressly rejected the application of a Gross-up Adjustment to Baseline Amounts used in determining incremental recoverable purchased power costs through the CCRC.

Now, however, Order 03-1461 has deviated from this well-established policy and practice without giving a rationale for the change or even acknowledging the existence of that policy and practice. And, while FPL clarified on cross-examination that the Staff witness who proposed the Gross-up Adjustment intended that it be applied only to incremental power plant security costs recoverable through the CCRC, Order 03-1461 does not explicitly state this limitation.

FPL is not presently affected by the application of a Gross-up Adjustment to the determination of incremental recoverable power plant security costs, because no portion of the power plant security costs that FPL seeks to recover are reflected in base rates.[1] Accordingly, FPL is not seeking to have the Commission reconsider and reverse Order 03-1461's approval of the Gross-up Adjustment if the Commission clarifies that this approval does not, directly or by implication, affect the determination of other incremental costs that are recoverable through adjustment clauses. However, if the Commission indeed intends that the Gross-up Adjustment

[1] It is possible, of course, that this may change in the future.

will apply to the determination of other incremental recoverable costs, then FPL moves the Commission to reconsider and reverse Order 03-1461's approval of the Gross-up Adjustment. As with any agency in Florida, the Commission is obliged to explain any action it takes that is inconsistent with officially stated agency policy or prior agency practice. *See* §120.68(7)(e)(3), Fla. Stat. (2003). Here, the Commission would deviate from a long-standing policy and practice concerning the determination of incremental recoverable costs with no explanation for doing so and, in fact, without discussing or acknowledging the existence of that policy and practice. For that reason, Order 03-1461 would warrant reconsideration.

BACKGROUND

1. The 1992 SJRPP Capacity Cost Recovery Decision

In May 1991, the Commission initiated Docket No. 910794-EQ as a generic investigation into the proper recovery of purchased power capacity costs by investor-owned electric utilities. That investigation culminated in Order No. 25733, dated February 24, 1992 ("Order 25733"), in which the Commission established the CCRC and approved recovery through the CCRC of "capacity related purchased power costs not currently being recovered through the fuel or oil backout charges ...." Order 25733 at 8 (a copy of Order 25733 is attached hereto as Exhibit 1). The Commission's rationale for allowing recovery of those incremental capacity costs through the CCRC was that the absence of a special recovery mechanism had "proved to be a disincentive to utilities exploring options to building capacity, if they do not anticipate a rate case in the near future." *Id.* at 7-8.

In August 1992, FPL petitioned for recovery through the CCRC of capacity costs associated with its St. Johns River Power Park ("SJRPP") contract. The Commission considered FPL's request in Docket No. 920887-EI. While there were no SJRPP capacity costs in the MFRs

used for its last full rate case, FPL had included such costs in the MFRs upon which its 1989 and 1990 tax savings refunds had been calculated. The Commission determined that FPL should be permitted to recover SJRPP capacity costs through the CCRC, but only to the extent that they were incremental to the amount included in the tax savings refund MFRs. Order No. PSC-92-1334-FOF-EI, dated November 18, 1992, at 1, 4 ("Order 92-1334," a copy of which is attached hereto as Exhibit 2). Although several years had elapsed since the test year reflected in those MFRs, the Commission applied no Gross-up Adjustment to the SJRPP capacity-cost amount that appeared in the MFRs; rather, it approved a straightforward netting of the "amount ... included as part of [FPL's] operating expenses used in the calculation of the rate reduction we ordered in [FPL's] tax savings case ..." against the SJRPP capacity costs that FPL actually incurred in the CCRC recovery period in question. *Id.* at 1. The Commission declared itself "confident that the [resulting] incremental amount is not currently included in base rates in any manner ...." *Id.* at 4.

The deliberations that led to Order 92-1334 are instructive as to the Commission's rationale for not making a Gross-up Adjustment to the incremental recoverable SJRPP capacity costs. On behalf of FIPUG, Joseph McGlothlin argued against allowing FPL to recover incremental SJRPP capacity costs, because doing so would

> [go] against the grain in terms of ratemaking practices. Once an item is determined to be in base rates, it's not your practice to have some recovery clause designed to fluctuate up and down to track that particular item until the next base rate proceeding. And there may be examples of other items that would go one way or the other. *Certainly other costs have come and gone, revenues have grown , and so I don't think it is consistent with good ratemaking practices for you to single out this one item for that extraordinary treatment.*"

Transcript of October 9, 1992 agenda conference for Docket No. 920887-EI, pages 213-14 ("1992 Tr. at __"; a copy of the cited portions of the 1992 Transcript is attached hereto as Exhibit 3) (emphasis added).

The Staff had a split recommendation. Mr. Devlin recommended that FPL be allowed to recover incremental SJRPP capacity costs, but noted that "it's a matter of defining what that increment is. *And we may be missing at least one piece of information, and that is the growth [in] sales from 1988 to 1992.*" *Id.* at 218 (emphasis added). Mr. Jenkins, on the other hand, agreed with Mr. McGlothlin that the Commission should "not consider the increment, ... *because considering the increment is trying to unscramble eggs. I don't think you can -- it's too difficult to pull the pieces out and feel absolutely comfortable that you have pulled the right pieces.*" *Id.* at 218-19 (emphasis added). Thus, Mr. Jenkins implicitly criticized Mr. Devlin's suggestion that one could get the increment right by adjusting for growth in kWh sales, because he was not confident that doing so "pulled out the right pieces."

Commissioner Deason ultimately made the motion that resulted in Order 92-1334. *Id.* at 224-25. His discussion with Mr. Jenkins is illustrative. First, as to Mr. Jenkins' position that the SJRPP capacity costs should not be singled out for special, single-item recovery because one cannot "unscramble the eggs" of base-rate recovery, Commissioner Deason said that "Joe, I agree with you, that's the best way to do it. But there is an order outstanding from this Commission that says that we are going to consider those costs which are presently not being recovered in base rates." *Id.* at 219. Thus, while Commissioner Deason may have agreed in principle with the concerns expressed by Messrs. Jenkins and McGlothlin about singling out items for recovery, he did not view their approach as viable given the Commission's prior decision to allow CCRC recovery of incremental purchased power costs.

Mr. Jenkins then reminded Commissioner Deason that, if the Commission were going to allow recovery of the incremental SJRPP capacity costs, Staff "need[s] to have some direction about what we should do, if anything, with the growth in sales since that number [*i.e.,* the amount of SJRPP capacity costs reflected in the tax savings refund MFRs] was last computed." *Id.* at 225. Commissioner Deason's response was clear and direct:

> *We would do nothing with growth [in] sales.* I agree with you, that is something that should be considered, that goes back to my basic argument that growth [in] sales, changes in everything which affects the Company's bottom line should be considered before we undertake such an important and significant change in the regulatory philosophy which we have here, and that is going to this capacity cost recovery clause. I understand that I was in the minority on that on my four-to-one decision. I'm not rearguing that. *Given the decision that we have made before us today, I think that the only fair thing to do, is to recognize that increment, and ignore other changes, other cost changes up or down, changes in sales, changes in number of customers, or whatever it may be.*

Id. at 225-26 (emphasis added). Commissioner Easley seconded Commissioner Deason's motion, and it passed 2-1. *Id.* at 226, 233.

The Commission thus drew a dichotomy with respect to the recovery of an incremental cost. If the Commission wants to take into consideration other factors besides the incremental cost that may have changed over time, it should take *all* such factors into account. The Commission does not do this in clause proceedings that, by design and purpose, are limited in scope. If, on the other hand, the Commission does not want to conduct a comprehensive review that looks at changes in all factors over time, then all it should do to determine the increment is to subtract out the level of the cost in question that was included in the relevant MFRs. Making any other adjustment -- *including any Gross-up Adjustment* – is inappropriate and, at best, would simply be false precision. Until Order 03-1461, the Commission has not deviated from this policy or practice.

2. Prior Commission Practice Concerning Determination of Incremental Security Costs

The Commission first approved adjustment-clause recovery of incremental security costs in 2001, at which time FPL was authorized to recover its projected 2002 power plant security costs through the fuel cost recovery clause ("FCRC"). Order No. PSC-01-2516-FOF-EI, dated December 26, 2001, Docket No. 010001-EI at 4 ("Order 01-2516"; a copy of the cited portion of said order is attached as Exhibit 4). The Commission stated that allowing recovery of incremental power plant security costs via the FCRC "sends an appropriate message to Florida's investor-owned utilities that we encourage them to protect their generation assets in extraordinary, emergency conditions as currently exist."[2]

The following year, the Commission authorized FPL to continue recovering its incremental power plant security costs and extended its authorization to Progress Energy Florida, Inc. ("Progress") and Tampa Electric Company ("TECO"). All the utilities were directed, however, to recover their costs through the CCRC rather than the FCRC because CCRC recovery would better track the manner in which power plant security costs are allocated and recovered in base rates. Order No. PSC-02-1761-FOF-EI, dated December 13, 2002, Docket No. 020001-EI at 5-7, 9-11 and 14-15 ("Order 02-1761"; a copy of the cited portions of said order is attached as Exhibit 5). No mention was made in either the 2001 or 2002 orders of applying a Gross-up

[2] *Id.* The Commission's policy initiative is consistent with policy statements issued by both NARUC and FERC addressing cost recovery to safeguard the reliability and security of our energy supply infrastructure. NARUC's resolution on "Supporting Recovery in State Regulated Rates of Extraordinary Expenditures Necessary to Safeguard National Energy Suppliers" was issued in November 2001. FERC's Statement of Policy was issued on September 14, 2001. In part, the FERC Statement provides that "[FERC] is aware that there may be uncertainty about companies' ability to recover the expenses necessary to further safeguard our energy infrastructure, especially if they are operating under frozen or indexed rates. In order to alleviate this uncertainty, [FERC] wants to assure the companies we regulate that we will approve applications to recover prudently incurred costs necessary to further safeguard the reliability and security of our energy supply infrastructure in response to the heightened state of alert."

Adjustment or otherwise deviating from the methodology for determining incremental recoverable costs that had been established in 1992 for FPL's incremental SJRPP capacity costs.[3]

3. Prior Commission Practice Concerning Determination of Incremental Environmental Project Costs

The statute authorizing the ECRC explicitly permits utilities to recover the costs of environmental projects that are partly reflected in base rates. Section 366.8255(5) of the Florida Statutes provides that, in this event, "any costs recovered in base rates may not also be recovered in the environmental cost-recovery clause." In other words, only the increment of environmental projects beyond the amounts reflected in base rates may properly be recovered through the ECRC. In 1997, the Commission discussed the determination of incremental recoverable costs associated with FPL's Substation Pollutant Discharge Prevention and Removal Project, as follows:

> Florida Power & Light Company requested recovery of costs of the Substation Pollutant Discharge Prevention and Removal Project through the Environmental Cost Recovery Clause. The amounts projected for this project should be adjusted downward by the level of ongoing O&M expense which FPL has historically experienced for substation transformer gasket replacement, substation soil contamination remediation, and the painting of substation transformers. The level of historical expenses for these ongoing O&M activities is assumed to be in base rates. Therefore, an adjustment of $700,295, for the 15-month period from July, 1997, to September 1998, is required to avoid double recovery.

Order No. PSC-97-1047-FOF-EI, Docket No. 970007-EI, dated September 5, 1997 at 6 ("Order 97-1047; a copy of the cited portion of said order is attached as Exhibit 6). Order 97-1047 makes no mention of applying a Gross-up Adjustment in determining recoverable, incremental costs. Nor has any other ECRC order done so, before or since.

[3] Staff filed testimony in Docket 020001-EI that suggested the adoption of a Gross-up Adjustment, but did not pursue the matter at hearing.

4. Consideration of the Gross-up Adjustment in this Docket

Issue No. 30 in the prehearing order for this docket posed the following policy question:

> What is the appropriate methodology for determining the incremental costs of security measures implemented as a result of terrorist attacks committed on or since September 11, 2001?

Order No. PSC-03-1264-PHO-EI, dated November 7, 2003 at 42 ("Order 03-1264"). While Staff had identified this issue for consideration as early as mid-summer, it took no position until the October 23, 2003 prehearing conference. *See, e.g.,* Staff's Prehearing Statement, dated October 15, 2003, at 22 ("no position at this time" on Issue 30).

Staff finally took a position on Issue 30 in a draft prehearing order distributed shortly before the prehearing conference. Its position included the following final paragraph:

> Once the base year costs are determined, the costs would be grossed up (or down) for the growth (or decline) in KWH sold from the base year to the recovery year.

Draft Prehearing Order, circulated October 21, 2003 at 59 (a copy of the cited portion of said draft order is attached hereto as Exhibit 7). FPL and other utilities objected that allowing Staff to raise this new, substantive position so late, after all normal opportunities to file testimony had passed, was unfair. Transcript of October 23, 2003 Prehearing Conference at 70-73. The prehearing officer agreed that an opportunity needed to be given to file testimony addressing Staff's Gross-up Adjustment proposal, but in the interest of time he set the same filing deadline for all parties, including Staff. *Id.* at 74-76.

FPL, Progress and TECO each filed testimony opposing the Gross-up Adjustment. Transcript of November 12-14, 2003 Hearing at 334-37 (Dubin), 499-503 (Portuondo) and 734-39 (Jordan). These witnesses testified that a Gross-up Adjustment would be inappropriate for several reasons, including the following:

- A Gross-up Adjustment would interject the base-rate issue of revenue growth *without looking at both sides of the revenue-expense relationship.* *Id.* at 336 (Dubin) (emphasis added).

- A Gross-up Adjustment would fail to recognize one of the basic tenets of ratemaking: that one must look at both expenses and revenues if one is to adjust for changes since the test year. But doing this is a "*slippery slope that can easily transform the fuel adjustment proceeding into a rate case exercise, which would completely defeat the purpose of having two fundamentally different rate-setting mechanisms.*" *Id.* at 501-02 (Portuondo) (emphasis added).

- A Gross-up Adjustment assumes that there is a correlation between the growth rate in energy sales and the level of expenses included in base rates. This assumption is simply invalid with respect to the security costs that are to be recovered via the CCRC. "You would not assume that you were going to hire an additional security guard because you sold more kilowatt hours that particular year." *Id.* at 738, 742 (Jordan).

Thus, while their testimony did not specifically reference the Commission's 1992 SJRPP decision, the utility witnesses all expressed concerns substantively identical to those raised by Commissioner Deason when he declined Staff's invitation to include a Gross-up Adjustment in the determination of incremental recoverable SJRPP capacity costs. None of the utility witnesses was asked a single question at the hearing about those concerns.

Staff filed testimony of Matthew Brinkley in support of the Gross-up Adjustment. Mr. Brinkley's testimony does not even mention the Commission's 1992 decision on how to determine incremental SJRPP capacity costs, much less provide any justification for deviating from the Commission's specific rejection of a Gross-up Adjustment at that time. *Id.* at 987-94. Mr. Brinkley's testimony did not address the concerns -- raised by Commissioner Deason in 1992 and again in the utility witnesses' testimony in this proceeding -- about the dangers of looking at only one element of the revenue-expense relationship and then adjusting that element only for one among many changed conditions. In fact, in the summary of his testimony, Mr.

Brinkley acknowledged that the justification for his proposed Gross-up Adjustment did not look at details and that it described only a general tendency in the revenue-expense relationship. *Id.* at 995.

In short, the whole of Mr. Brinkley's justification for the Gross-up Adjustment was to observe that ratemaking assumes a general, approximate proportionality between the growth rates of revenues and expenses over time. Moreover, although the Commission had emphasized in both 1992 (as to recovery of SJRPP capacity costs) and 2001 (as to recovery of power plant security costs) that the purpose of allowing recovery of incremental costs via the CCRC was to provide an incentive to utilities to make appropriate expenditures on the activities in question, Mr. Brinkley failed even to mention the adverse impact that a Gross-up Adjustment would have on that incentive.

As originally pre-filed, Mr. Brinkley's testimony discussed the application of a Gross-up Adjustment to incremental hedging costs as well as to incremental power plant security costs. The testimony also referred to the application of a Gross-up Adjustment in determining recoverable amounts for the FCRC as well as the CCRC. However, in response to cross-examination by FPL's counsel, Mr. Brinkley agreed to change his testimony to clarify that Staff's Gross-up Adjustment proposal applies only to incremental power plant security costs and only to the CCRC. *Id.* at 996-97. Based on this clarification, FPL's counsel examined Mr. Brinkley only about the application of the Gross-up Adjustment in that limited context.

The Commission conducted its deliberations on the day following the close of evidence. Deliberation on Issue 30 was short and addressed only a single subject: modification of the Gross-up Adjustment to account for refunds under revenue-sharing arrangements.[4] No mention

[4] In addition to the concerns summarized above, Mr. Portuondo and Ms. Dubin also expressed concern that a Gross-

was made of the 1992 SJRPP decision, or of the rationale in that decision for rejecting the Gross-up Adjustment. No further elucidation is provided in Order 03-1461; its entire discussion of the basis for approving the Gross-up Adjustment consists of the following:

> We agree with staff witness Brinkley that base amounts used for calculating incremental security costs for recovery through the capacity cost recovery clauses should be adjusted for growth or decline in energy sales in kilowatt-hours from the base year to the current year. By adjusting the base year amounts for growth in energy sales, we believe utilities will collect through the capacity clause only those expenses that are truly incremental to the level of costs being recovered through base rates. For those utilities currently operating under a revenue sharing plan approved by this Commission, current year revenues shall be reduced by the amount of revenues refunded through the utility's sharing plan prior to application of this growth adjustment.

Order 03-1461 at 30. While the quoted discussion appears in the CCRC portion of Order 03-1461 and refers to incremental power plant security costs, there is no explicit statement in the order that the Gross-up Adjustment will only be applied in CCRC proceedings or only to incremental power plant security costs.

ARGUMENT

1. The Commission Should Clarify That Order 03-1461 Applies the Gross-up Adjustment Only to Determining Incremental Power Plant Security Costs in the CCRC.

FPL is not presently affected by the application of the Gross-up Adjustment to the determination of incremental recoverable power plant security costs. Therefore, based on Staff's assurances (culminating in the changes to Mr. Brinkley's testimony discussed above) that the Gross-up Adjustment was being proposed at this time only with respect to such costs, FPL limited the extent of its participation on Issue 30 at hearing. While FPL does not support the application of a Gross-up Adjustment even in the context of incremental power plant security

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up Adjustment would be inconsistent with the revenue-sharing mechanisms contained in their 2002 base rate stipulations.

costs and would have no objection to the Commission's reversing Order 03-1461 in that respect, FPL is not asking for reconsideration if Order 03-1461's approval of the Gross-up Adjustment is expressly limited to incremental power plant security costs. Unfortunately, Order 03-1461 does not explicitly reflect Staff's clarification as to the limited application of the Gross-up Adjustment. FPL asks that the Commission clarify Order 03-1461 to state expressly that the Gross-up Adjustment applies only in the CCRC and only to incremental power plant security costs, and that the order does not, directly or by implication, affect the determination of other incremental costs that are recoverable through adjustment clauses.

2. If Order 03-1461's Approval of the Gross-up Adjustment Does Not Apply Only to Incremental Power Plant Security Costs, Then the Commission Should Reconsider and Reject That Portion of the Order.

a. The Standard for Reconsideration.

The Commission has recited the following standard for review on reconsideration:

> The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So.2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So.2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light. Docket No. 000824-EI; Order No. PSC-01-2313-PCO-EI, November 26, 2001.

FPL respectfully suggests that, as shown above, the Commission did not consider its long-standing policy or practice regarding the application of a Gross-up Adjustment to the determination of incremental costs in CCRC proceedings. Neither the Staff nor the Commission made any mention of the 1992 SJRPP decision during the hearing or deliberations in this docket. There is likewise no mention in Order 03-1461. And while each of the three utility witnesses who testified against the Staff's Gross-up Adjustment proposal expressed concerns about the proposal that were nearly identical to those that the Commission found persuasive in 1992, neither Staff nor the Commission asked a single question about those concerns or gave any reason for now disregarding them. The record in this docket strongly suggests that the Staff and Commission erroneously believed they were writing on a blank slate with respect to the Gross-up Adjustment, rather than directly contradicting a prior Commission decision. This error warrants reconsideration.

b. The Commission Did Not Fulfill Its Duty to Explain Deviations from Prior Policy and Practice

Section 120.68(7) of the Florida Statutes sets forth the substantive standard for judicial review of agency action. It provides that a reviewing court "*shall* remand a case to the agency for further proceedings, ... when it finds that" the agency has, among other things, exercised its discretion in a manner that is "inconsistent with officially stated agency policy or a prior agency practice, if deviation therefrom is not explained by the agency." §120.68(7)(e)(3), Fla. Stat. (2003) (emphasis added).

Since 1992 the Commission has had a clearly stated policy -- and has consistently followed that policy in practice -- of not applying a Gross-up Adjustment in determining recoverable incremental costs. One could not plausibly argue that this policy and practice of

refusing to include a Gross-up Adjustment in the computation of incremental purchased power costs is inapplicable to the determination of incremental power plant security costs, as the policy and practice were instituted in connection with the very same recovery mechanism at issue here: the CCRC. The issues and concerns in each instance are identical. Further, neither Order 01-2516 nor Order 02-1761 instituted or even hinted at the need for a Gross-up Adjustment for incremental recoverable power plant security costs; instead, in both instances the Commission continued its practice of employing a straight forward computation that focuses solely on the item approved for incremental recovery. Order 03-1461 would reverse that policy and practice without any explanation -- in fact, without even recognizing that the policy and practice exist. This violates section 120.68(7)(e)(3).

c. The Commission Has No Record Basis for Adopting the Gross-up Adjustment.

The Commission may adopt a non-rule policy such as Staff's Gross-up Adjustment proposal only if there is adequate record support for that policy. *Florida Cities Water Co. v. Florida Public Service Commission,* 384 So.2d 1280, 1281 (Fla. 1980). The record in this docket simply does not support Staff's proposal. As discussed above, there is testimony of three utility witnesses expressing the very same concerns about the Gross-up Adjustment proposal that the Commission previously found persuasive. Staff's testimony does not rebut or even acknowledge those concerns, and Staff did not cross-examine any of the utility witnesses about them. In short, the utility witnesses' testimony on these critical points is unrebutted and unchallenged. Moreover, Staff has failed even to mention the adverse impact that its proposal would have on the incentive for utilities to make incremental power plant security expenditures, which was the express purpose for the Commission's approving recovery of those expenditures

in the first place. On the record before it, the Commission simply has no basis to adopt Staff's Gross-up Adjustment proposal.

CONCLUSION

WHEREFORE, FPL respectfully moves the Commission to clarify that the approval in Order 03-1461 of the Gross-up Adjustment applies only to incremental power plant security costs and does not, directly or by implication, affect the determination of other incremental costs that are recoverable through adjustment clauses. In the alternative, if the Commission intends that the Gross-up Adjustment will apply to the determination of such other incremental costs, then FPL respectfully moves the Commission to reconsider and reverse Order 03-1461's approval of the Gross-up Adjustment.

Respectfully submitted,

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By: _____
John T. Butler, Esq.
Fla. Bar No. 283479

CERTIFICATE OF SERVICE
Docket No. 030001-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery (*) or United States Mail on the 6th day of January, 2004, to the following:

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By: _____
John T. Butler

LEXSEE 1992 FLA. PUC LEXIS 359

In Re: Generic Investigation of the proper recovery of purchased power capacity cost by investor-owned electric utilities

DOCKET NO. 910794-EQ; ORDER NO. 25773

Florida Public Service Commission

1992 Fla. PUC LEXIS 359

92 FPSC 2:520

February 24, 1992

PANEL: [*1]

The following Commissioners participated in the disposition of this matter: THOMAS M. BEARD, Chairman; SUSAN F. CLARK; J. TERRY DEASON; BETTY EASLEY; LUIS J. LAUREDO

OPINION: NOTICE OF PROPOSED AGENCY ACTION

ORDER CONCLUDING GENERIC INVESTIGATION AND DETERMINING THE PROPER RECOVERY OF PURCHASED POWER CAPACITY COSTS BY INVESTOR-OWNED ELECTRIC UTILITIES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Case Background

On May 7, 1991, the Florida Industrial Power Users Group (FIPUG) filed a petition to change the way in which Florida Power & Light allocates the capacity related portion of purchased power costs to rate classes. (Docket No. 910580-EQ). Currently all fuel related costs are allocated on an energy (KWH) basis. FIPUG's petition requested that the capacity costs currently recovered through the fuel factor and Oil Backout factor be identified and allocated on a demand basis and recovered through a new [*2] factor known as a capacity cost recovery factor. The new factor would be changed every six months with other fuel related charges.

Our staff supported the theory proposed by FIPUG but recommended that a thorough investigation of the ramifications of such a change should be conducted. We allowed FP&L to begin the implementation of such a charge with the October 1991 fuel filings on an experimental basis, but also agreed that a generic investigation should be initiated to more completely examine the concept proposed by FIPUG, and its impact on other investor-owned utilities.

A workshop was held on October 25, 1991 for all investor-owned utilities and other interested parties to discuss the feasibility and desirability of requiring all investor-owned electric utilities to implement such a charge. A synopsis of the results of the workshop was prepared by our staff and circulated to all parties of record for comments. Comments were received from all workshop participants. At our agenda conference on February 4, 1992, we reviewed the results of the generic investigation and made the following determinations:

Capacity Cost Factor

We find that a purchased power capacity cost [*3] factor is a theoretically sound concept for the recovery of capacity related purchased power costs. Demand related costs should be treated the same whether the costs result from construction or purchase.

Pursuant to legislative directive, this Commission has actively encouraged Florida's electric utilities to purchase power from reliable generating sources in order to minimize the construction of new utility generating facilities.

As more cogeneration and independent power projects come on line, the cost of purchased power will become an increasing proportion of utility fuel and purchased power costs.

Currently, purchased power costs are allocated to customer classes on their relative KWH (energy) consumption in the fuel proceedings. If a utility were to build capacity instead of buy it, the capacity costs would be allocated to customer classes based on their contribution to demand, as reflected in the utility's approved cost of service study. We agree that there is a conflict between the treatment of capacity built and capacity purchased in terms of who pays how much of the cost.

Commission Rules 25-17.0825(6) and 25-17.0832(8), Florida Administrative Code currently require [*4] all costs of cogenerated power purchases to be passed through fuel. Therefore, the primary costs we are concerned with here are purchases from other utilities or Independent Power Producers (IPPS). There appeared to be general agreement at the workshop that there are no legal restrictions in the design of the fuel clause itself that would preclude recovery of purchased capacity demand cost, including those currently recovered through base rates.

Workshop participants generally agreed that appropriate capacity contract sales revenues should be netted against purchased capacity costs in determining how much is recovered through any capacity recovery factor. In the past, the capacity portion of purchased power contracts has been recoverable through base rates, while the energy portion was passed through fuel. Most companies still have at least some of these costs in base rates.

TECO has capacity sales contracts but no purchased power contracts. Gulf's purchases are limited to their Intercompany Interexchange Contract with Southern Company. Both Gulf and TECO agreed in principle to a capacity recovery factor but were reluctant to implement such a factor outside of a rate case, [*5] since all relevant costs and revenues are currently included in their base rates. Florida Power Corporation (FPC) has already removed certain specific contract costs from base rates. In FPC's last rate case (Docket No. 870220-EI), the cost of its purchased power contract with Southern Company and its power sales to Seminole Electric Cooperative were removed from base rates and placed in fuel costs as part of the stipulation in that case. At the present time, however, FPC allocates these costs on an energy basis, as with all other fuel related costs.

Like fuel, the capacity factor calculation will be based on projected usage. Therefore, any methodology for computing a capacity recovery factor should include a true-up mechanism based on actual usage. The subsequent factor will be adjusted up or down, just as is done in fuel. FPL proposed a true-up procedure in Docket No. 910580-EQ which we believe adequately addresses the issue. FPL's proposed true-up procedure is discussed in detail below in the section of this order entitled "true-up mechanism".

Capacity Payment Charge

We will require investor-owned utilities to implement a capacity payment charge to recover demand related [*6] capacity costs currently recovered through the Fuel or Oil Backout adjustment factors, as approved for FPL in Order 2480, effective for the October 1992 Fuel Adjustment period.

We agreed in Docket No 910580-EQ that an inequity exists in the recovery of capacity related costs between purchased capacity and constructed capacity. The results of the October 25 workshop support that position. All parties agreed that the demand portion of capacity costs should be treated the same, no matter how those costs were incurred. The cost of capacity constructed by the utility would be allocated to each customer class based on the class's contribution to peak demand or KW, and purchased power capacity costs should be similarly allocated. To allocate purchased power capacity costs on energy (KWH) penalizes high load factor customers to the benefit of lower load factor customers who may be just as responsible for the peak KW demand. The cost is incurred to provide capacity based on maximum KW required and should be recovered accordingly on a demand basis.

In order to match costs and revenues, we also find revenues related to demand capacity sales to be netted against demand related capacity [*7] costs to determine the amount recoverable through a capacity recovery factor. If similar costs and revenues are not considered together, the factor will be too high. As with costs, only those revenues considered in fuel or oil backout calculations should be included. Revenues currently accounted for in base rates will be treated the same as costs in base rates.

Capacity Related Purchased Power Costs

The approach approved for FPL for October 1991 fuel filings simply reallocated dollars currently recovered

through the fuel and oil backout factors on an energy basis. It did not address costs currently recovered through other rates, or costs that are not being recovered at all. The workshop explored additional costs which could be considered capacity related but which are not currently recovered through a fuel related charge.

Currently, only the energy portion of long term contracts are handled in fuel. The capacity portion of the contracts has been recovered through base rates. No matter when the contract is implemented, the capacity portion of those costs are not recoverable until the utility has a full requirements rate case. This has proved to be a disincentive [*8] to utilities exploring options to building capacity, if they do not anticipate a rate case in the near future. FPL currently has such a situation in its long term contract with Jacksonville Electric Authority (JEA). The utility is recovering the fuel related costs of the contract but not the demand related portion, because the contract was initiated since their late rate case.

We will permit utilities to include capacity related purchased power costs not currently being recovered through the fuel or oil backout charges in the calculation of a capacity recover factor for contracts entered into since the utility's last rate case. Purchased power demand costs currently being recovered in base rates are to remain in base rates until the utility's next general rate case. A limited proceeding to extract such costs from base rates would likely be difficult and possibly result in other inequities.

FPC and FIPUG suggested other costs which may be appropriate for inclusion in a capacity factor. FPC stated that any other fixed non-fuel costs associated with the purchase of capacity (such as non-fuel O&M) should also be considered as well as any related transmission wheeling charges. [*9] FIPUG also suggested that conservation programs are related to demand side management and peak shaving. Therefore, we find any incentive payments under such programs to be capacity costs and are to be included in the recovery factor. While there may be merit in these suggestions, we do not have sufficient information at this point to determine definitively what additional items may be appropriate. The suggestions would require consideration in a rate case or other generic proceeding to determine the exact nature and magnitude of such new charges. For the purposes of this docket, we find the recovery factor to be limited to approval of demand related capacity costs specifically identified in purchased power contracts. Other issues may be taken up in appropriate forums for possible inclusion on a utility by utility basis.

Demand Allocator

Investor-owned utilities are required to conduct extensive load research under Rule 25-6.0437. The demand allocator will be developed using the cost methodology approved in their last rate case, and the load research methodology approved under Rule 25-6.0437. Load factors are to be updated every two years in conjunction with the load [*10] research studies.

We specifically limit discussion in the fuel proceeding to the adjustments to the load factors and dollars to be allocated. The cost of service methodology approved in the utility's last rate case is accepted as a base condition. Cost of Service debates often require several days of testimony and several witnesses in a rate case. Discussion of cost allocation methodologies in a fuel proceeding would require companies to incur considerable expense in preparing for the possibility of such a challenge, and would require significantly more Commission and Staff time. We do not believe any differences which might be uncovered in such a debate would have a significant impact on the customers, considering the total dollar amount expected to be collected by the capacity factor. In addition, having a different allocation methodology for fuel than for base rates could create more inequities than the minor adjustments would cure. The Commission's fuel adjustment hearings are designed to administer the recovery of fuel and fuel related costs on an ongoing, timely basis. They are not structured to address major policy issues which affect base rates. Such matters are more [*11] appropriately considered in other utility specific proceedings.

True-up Mechanism

We order that the true-up mechanism for all subject utilities be designed to adjust for over or under recovery of capacity costs as we previously approved for FPL in Docket No. 910570-EQ. At the end of the period, the amount paid for capacity is compared to the amount collected through the factor to arrive at a system over or under recovery amount for the period, as is done in fuel. The amount of over or under recovery is then added to the next period's projected expenses which will be allocated to classes using the projected demand allocation factors for the next period.

If there are significant shifts among classes during the six month period, using a system true-up based on projected allocation factors may misallocate the true-up amount. If class composition changes, load factor could change. Using

a system method, the amount of true up would be allocated based on the class composition as it is expected to be for the next period, not what actually existed during the prior period.

True-up on a class basis would require recalculating last period's cost responsibility by recomputing allocation [*12] factors for each class using actual KWH by class. The actual revenues collected by class are then compared to actual class cost responsibility based on the recomputed factors. The true-up amount calculated for each class would be added to the class's cost responsibility for the next period to determine the factor for the next period, after calculating new allocation factors and cost responsibility by class based on projected data for the next period. While class true-up is possible, the procedure is very cumbersome and expensive. We do not believe the additional degree of accuracy a class true-up would yield is cost-justified.

At the workshop, participants considered how the factor will be incorporated into the customer's bill. While our staff originally favored a separate line item on customers' bills for the new charge, on further analysis they became convinced, and we agree, that a separate line for what was previously bundled in the KWH charge would likely cause more confusion than enlightenment for customers. Therefore, we find that while the Capacity Recovery Factor will be separately computed (as are Oil Backout costs (OBO) and Energy Conservation Cost Recovery (ECCR), [*13] it will remain a part of a single KWH charge on the bill.

We recognize that our present decision to implement a change in the manner in which electric utilities recover the demand related portions of purchased capacity costs is only a first step to the full development of a capacity recovery factor. It is a relatively straightforward process to change allocation factors for costs already recovered through some type of fuel charge, or to include costs not recovered elsewhere. Determining the base rate costs which may be appropriate for recovery through such a charge, however, is more complicated. Each utility, by virtue of its operations and procedures, may have additional costs which could reasonably be removed from rate base and placed in a capacity recovery factor, but these costs should be considered on an individual basis, in the context of a specific rate case.

We believe we have reached a general consensus on the conceptual design and implementation of a capacity recovery factor. We will therefore require investor-owned electric utilities to implement a capacity recovery charge for any demand related capacity costs currently being recovered through fuel or OBO, as well [*14] as any demand related capacity costs not currently included in base rates. The new factor will be effective beginning with the October 1992 fuel adjustment period.

It is therefore

ORDERED by the Florida Public Service Commission that a purchased power capacity cost factor is a theoretically sound concept for the recovery of capacity related purchased power costs, and demand related costs should be treated the same whether the costs result from construction or from purchase. It is further

ORDERED that investor-owned utilities implement a capacity payment charge to recover demand related capacity costs currently recovered through the Fuel or Oil Backout adjustment factors, as approved for FPL in Order 2480, and effective for the October 1992 Fuel Adjustment period. It is further

ORDERED that capacity related purchased power costs not currently being recovered in any manner may be included in the capacity recovery factor. Those costs currently being recovered in base rates will remain in base rates until the utility's next general rate case. It is further

ORDERED that the demand allocator be developed using the utility's last approved cost of service methodology, updated annually [*15] using current load factor information. It is further

ORDERED that the true-up mechanism for all subject utilities be designed to adjust for over or under recovery of capacity cost as we previously approved for FPL in Docket No. 910570-EQ. It is further

ORDERED that this Order shall become final and the docket closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission, this 24th day of FEBRUARY, 1992.

Commissioner Deason dissented from that portion of the decision that allowed recovery of costs not presently recovered through the fuel clause.

K. Dubin

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Recovery of Capacity Costs Associated with Florida Power and Light Company's St. Johns River Power Park Contract	)	DOCKET NO. 920887-EI ORDER NO. PSC-92-1334-FOF-EI ISSUED: 11/18/92

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY

ORDER DENYING IN PART AND GRANTING IN PART FLORIDA POWER AND LIGHT COMPANY'S REQUEST TO RECOVER CAPACITY COSTS ASSOCIATED WITH THE ST. JOHNS RIVER POWER PARK CONTRACT

In our August, 1992 fuel proceeding, Florida Power and Light Company requested recovery of the capacity costs associated with its St. Johns River Power Park contract with JEA. We deferred consideration of the request at that time and established a separate docket and hearing date to decide the issue. The hearing was held on October 9, 1992. This final order memorializes the decision we made at the close of that hearing.

The issue presented for our determination was whether the capacity payments associated with St. Johns River Power Park (SJRPP) are appropriate for recovery through the Capacity Cost Recovery Clause, as provided in Order No. 25773 and clarified in Order No. PSC-92-0414-FOF-EQ.

We hold that $63,975,761 of capacity costs associated with the SJRPP contract are not appropriate for recovery through the capacity cost recovery clause, because that amount was included as part of the company's operating expenses used in the calculation of the rate reduction we ordered in the company's tax savings case, Docket No. 890319. The base rates determined in the tax savings case reflect recovery of those SJRPP costs. We also hold, however, that the incremental amount of the SJRPP costs that the company has incurred above the $63,975,761 are recoverable through the capacity cost recovery factor, because those amounts are not reflected in base rates and are not being recovered in any manner.

In reaching our decision, we have directed our inquiry to the meaning and intent of Order No. 25773 as it applies to the SJRPP contract and the inclusion of SJRPP capacity costs in the determination of FPL's tax savings refund and permanent rate reduction in 1989 and 1990.

Our Order No. 25773 concluded our investigation in Docket No. 910794-EQ, In Re: Generic investigation of the proper recovery of purchased power capacity costs by investor-owned electric

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utilities. There we directed investor-owned utilities to implement a capacity cost recovery clause beginning in October, 1992. In the order we described the capacity costs that are appropriate for inclusion in the clause. The capacity costs that are appropriate for recovery fall into two categories. The first category is comprised of those purchased power capacity costs that are already being recovered through the fuel or oil backout factors. By shifting those costs to the capacity cost recovery factor, the costs are allocated to customer classes using a demand allocator, rather than an energy allocator. This reallocation is appropriate because capacity costs are a demand-related cost, and should be assigned on a demand basis, not on an energy basis.

The second category of capacity costs we identified for inclusion in the new clause were costs related to contracts entered into since the utility's last rate case that were not reflected in either fuel or oil backout charges. Those capacity costs were addressed on page five of Order No. 25773 as follows:

> We will permit utilities to recover capacity related purchased power costs not currently being recovered through the fuel or oil backout charges in the calculation of a capacity recovery factor for contracts entered into since the utility's last rate case. Purchased power demand costs currently being recovered in base rates are to remain in base rates until the utility's next general rate case.

In the third ordering paragraph of Order No. 25773 we said:

> . . . [C]apacity related purchased power costs not currently being recovered in any manner may be included in the capacity recovery factor. Those costs currently being recovered in bases rates will remain in base rates until the utility's next general rate case.

Florida Power and Light Company took the position in this case that all SJRPP capacity costs were appropriate for recovery through the capacity cost recovery clause, because the costs were reasonable and prudent, and the SJRPP capacity contract was initiated in 1987, well after FPL's last rate case. FPL contended that the costs had never been "authorized" by the Commission for recovery in base rates. Therefore, FPL argued, the SJRPP capacity costs met the criteria established in Order Nos. 25773 and PSC-92-0414-FOF-EQ. FPL stated that the rate reduction to reflect tax savings in Docket No. 890319-EI simply considered FPL's estimated overall earned rate of return and assumed that, with the rate reduction to reflect tax savings, FPL's overall earned rate of

return would be adequate. FPL argued that that conclusion did not mean that the SJRPP capacity costs were authorized for recovery in base rates. According to FPL's witness, the treatment of the SJRPP costs in the tax savings docket was not made on a "going forward basis" as would have been done in a full rate case, but rather was simply designed to make a specific change in rates to reflect a past event (the 1986 change in the corporate income tax rate). FPL also contended that it relied on Order No. 25773 in making its request to recover the capacity payments for SJRPP through the Capacity Cost Recovery Clause.

FIPUG contended that FPL should not be permitted to include the St. Johns River Power Park (SJRPP) capacity payments in the capacity cost recovery clause because those costs had already been included in FPL's base rates in the 1988 tax savings refund docket. FIPUG's witness testified that FPL's base rates had thus already been adjusted to account for those capacity costs. FIPUG demonstrated that FPL included the SJRPP capacity costs in its operating expenses, and thus the refund FPL gave to customers was lower than it would have been had those costs been excluded. FIPUG also pointed out that the costs were factored into the Commission's consideration of FPL's MFR filing in Docket No. 900038-EI.

Our staff also took the position in the case that it would not be appropriate to include Florida Power and Light Company's SJRPP capacity charges in the capacity cost recovery clause. The staff contended that if FPL were allowed to include the SJRPP capacity costs in the clause, FPL would be recovering those costs twice. Staff's witness also testified that SJRPP capacity costs were included in the tax savings calculation in FPL's tax savings docket. The 1988 tax savings base rate reduction would have increased from $38,221,633 to $103,430,238 if the SJRPP capacity costs were excluded from the calculation.

We find no material factual dispute in the evidence in this case. Our staff and FIPUG demonstrated, and Florida Power and Light admitted, that capacity costs of the SJRPP purchased power contract with JEA, in the jurisdictional amount of $63,975,761, were included in the Commission's determination of the amount of the tax savings refund and the permanent rate reduction established for FPL in the tax savings docket. FPL did not contest the fact that the tax savings refund and the permanent rate reduction in 1988 would have been greater, but for the inclusion of SJRPP capacity costs in the calculation. We are persuaded by the argument that because the SJRPP costs were considered in the tax savings docket we would be permitting double recovery of those costs if we permitted recovery through the capacity cost recovery clause.

As indicated above, Order 25773 states that capacity related purchased power costs not being recovered in any manner may be included in the capacity recovery factor. We believe, however, that the evidence shows that a portion of the St. Johns capacity costs are being recovered in FPL's base rates as a result of the base rate changes we made in the tax savings docket. The St. Johns capacity costs that FPL paid in 1988 directly affected the level of the base rate changes because revenue requirements were considered in the tax docket. In Order 25773 we did state our opinion at that time that the demand related portion of SJRPP contract costs were not being recovered because the contract was initiated since FPL's last rate case. The evidence in this case demonstrates, however, that those costs are reflected, and are being recovered, in FPL's base rates.

To the extent that FPL's SJRPP capacity purchases above the amount considered in the tax savings docket are not in base rates, we believe that incremental amount of capacity costs should be recovered through the capacity cost recovery clause. The SJRPP contract with JEA is a straightforward purchased power contract, and we are readily able to determine that SJRPP capacity costs have increased by $12,264,918 on a semi-annual basis, subject to true-up in our fuel adjustment proceedings. We are confident that the incremental amount is not currently included in base rates in any manner, and we will permit FPL to recover that amount through the capacity clause.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that, in the manner, and for the reasons, set forth in the body of this order, Florida Power and Light Company's request to recover the capacity costs associated with the St. Johns River Power Park contract is denied in part and granted in part. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 18th day of November, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
MCB:bmi

Commissioner Clark dissents from this order as follows:

I respectfully dissent from the majority's decision in this case. Specifically, I disagree with the decision to allow FPL to recover an increment of the capacity costs associated with St. Johns River Power Park in the capacity cost factor. I believe this allowance is inconsistent with the rationale of Order No. 25773.

Order No. 25773 was the culmination of a generic investigation of the appropriateness of the recovery of capacity costs through the fuel adjustment factor. The end result of that investigation was a conclusion that fuel capacity costs should no longer be recovered through the fuel recovery factor, but rather through a separately identified capacity cost recovery factor, and that in the future all long-term contract capacity costs should be recovered through the factor. At that time, the Commission declined to break out capacity costs that were then being recovered in base rates. The Commission reasoned that a limited proceeding to extract such costs from base rates would likely be difficult and possibly result in other inequities.

Since the issuance of Order No. 25733, two utilities, Gulf Power Company and Florida Power and Light Company, have requested inclusion of costs in the capacity cost recovery factor which, in my opinion, are not eligible for inclusion at this time. They should be handled as part of the utility's next rate case. The unrefuted evidence in this case is that in Docket No. 890319-EI, the proceeding in which FPL's base rates were adjusted to reflect the decrease in the federal income tax rate as a result of the Tax Reform Act of 1986, FPL's operating expenses included capacity charges from the St. Johns River Power Park in the amount of $63,975,761. The evidence in this proceeding indicates that the rate adjustment necessary in the tax savings docket would have been greater had the St. Johns River Power Park capacity costs not been included in operating expenses. Therefore, the base rates determined in that proceeding reflect recovery of capacity costs associated with the St. Johns River Power Park.

The capacity costs associated with the St. Johns River Power Park have increased since the time that rates were reset in Docket No. 890319-EI, and the majority voted that it would be appropriate to allow recovery through the capacity factor of the incremental amount above the $63,975,761 included in Docket No. 890319-EI. I believe that it is inappropriate to allow this recovery, as it is contrary to Order No. 25773. Pursuant to that order, where capacity costs were previously included in base rates, any change to a recovery of those costs through a capacity cost recovery factor would be accomplished at the time of the utility's next rate

case. The appropriate time to consider the incremental amount associated with the SJRPP capacity costs, as well as the total capacity cost, would be in FPL's next rate case.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: RECOVERY OF CAPACITY COSTS ASSOCIATED WITH FLORIDA POWER AND LIGHT COMPANY'S ST. JOHNS RIVER POWER PARK CONTRACT	DOCKET NO. 920887-EI

DUPLICATE

VOLUME II
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COPY

PROCEEDINGS:	Hearing
BEFORE:	COMMISSIONER BETTY EASLEY COMMISSIONER J. TERRY DEASON COMMISSIONER SUSAN F. CLARK
DATE:	Friday, October 9, 1992
TIME:	Commenced at 9:30 a.m. Concluded at 4:10 p.m.
PLACE:	101 East Gaines Street Tallahassee, Florida
REPORTED BY:	JANE FAUROT Notary Public in and for the State of Florida at Large

ACCURATE STENOTYPE REPORTERS, INC.
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(904) 878-2221

Commissioner feels uncomfortable at this point, we shouldn't.

COMMISSIONER EASLEY: Well, I may feel less uncomfortable if we have -- are you prepared to do any kind of closing arguments, if we are prepared to do a bench decision?

MR. McGLOTHLIN: Commissioner, I came in thinking we would have a briefing period, and I did not prepare a closing argument. I could do a brief, and it would be refreshingly short from most of the briefs you see in this case, but I would require some modest time requirement for that.

COMMISSIONER CLARK: Madam Chairman, my only concern is the work that would be involved in that, when at this point my inclination is to deny the recovery. You know, it would seem to me at this point it would be FPL that would want to argue it, want the brief, given my opinion of what I have heard here today. And to that extent, I hate to put the Staff, and the intervenors, and the Utility to extra expense when based on what I have heard today, I don't think it is appropriate to include this cost.

COMMISSIONER DEASON: Well, let me say that I think my position on this matter was established back when this issue first came up in the cost recovery

docket to begin with. And that I voted in the minority, I cast a dissenting vote. I thought it was inappropriate to allow the recovery of these type costs in a recovery clause outside the scope of a rate proceeding. And I'm not asking for reconsideration of that, don't get me wrong. I understand the Commission voted on that, and so I think what is before us today is whether these costs are being recovered already in base rates or are they not. And having heard the testimony today, I would agree with Commissioner Clark, that these costs are already being recovered in base rates, or at least the vast majority of those costs.

Now, if we were going to defer this to get some input from the parties and Staff, my only interest would be to try to ascertain whether there have been increases in this amount, in the capacity cost subsequent to the tax savings reduction and subsequent to the MFR review, that perhaps that increment could be included for a cost recovery in the clause consistent with the Commission's vote concerning the cost recovery clause. That's where I would be interested in getting some input.

But as for the general question as to whether these costs were contemplated in the tax savings reduction, I think it is very clear that yes, they

were, and so to that extent at least 65.1 million of the capacity costs are already considered in the rates of this company. Now, there is an added question as to whether when this Commission considered the MFR filing, that the increase capacity costs since the tax savings reduction in the MFR filing, if somehow those costs are now included. I'm less comfortable making that assumption, because as a result of the MFR filing rates were not changed. And I believe it is the testimony of Mr. Slemkewicz that he felt that it would only be a case of where when rates were changed you could make the assumption that those costs are in the rates. So I guess that's where I am at this point. So all parties are put on notice. Staff, if we are going to defer it, that's where I would like some additional information, it's on the actual dollar amounts since the tax savings rate reduction.

COMMISSIONER EASLEY: Well, I will tell you that I'm not as clear cut as either one of you are. However, I draw some comfort from the fact that you alluded to a potential difference, at least in the numbers. This is one of the things that I was unclear about listening to some of the testimony, and was about to ask for a copy of the transcript. I wanted to go back and read that one section and try and understand

how the TECO cost recovery amount relates to the SJRPP, or RRP, or whatever it is. Let me ask this. It was my understanding that the Company was hoping for a bench decision in order to expedite this matter, is that the case, Mr. Childs?

MR. CHILDS: I believe it was.

COMMISSIONER DEASON: He may have changed his mind now.

COMMISSIONER EASLEY: I understand.

MR. McGLOTHLIN: I may have changed mine.

COMMISSIONER EASLEY: I beg your pardon?

MR. McGLOTHLIN: I may have changed mine, as well.

COMMISSIONER DEASON: I'm not trying to prejudge the issue. I think the evidence is in, and I think it is fair to let the parties understand what the general feeling is at this point. But if parties want to go to the trouble of filing briefs, I will certainly review those with an open mind, and perhaps look at the evidence, but --

COMMISSIONER EASLEY: Let me ask, from the standpoint of knowing an expedited decision was desired, having heard from the Commissioners as to the reaction so far, does that potentially mean that an expedited briefing schedule, and, therefore, an expedited decision schedule could be followed? What

does the current CASR fall for, for instance?

MS. BROWN: The current CASR reflects the Commission's intent when this hearing was going to be set to do a bench decision, so the only thing on the CASR, it says that the standard order would be issued the 29th of this month.

COMMISSIONER EASLEY: Say that again.

MS. BROWN: The final order would be issued in 20 days. There are several agendas available before the end of the year. There is time to file briefs and a recommendation.

COMMISSIONER CLARK: Well, it seems to me, I think the issue in my mind, in any rate, is fairly straightforward. And I certainly understand FPL's position about the tax refund, and the order, Proposed Agency Action calling for a reduction in rates doesn't amount to a full revenue requirements review, and what impact that then has on our order allowing capacity costs to be recovered in between rate cases. I just feel that as the evidence is produced that was taken into account at some level of review, and it is not appropriate to allow the recovery separately. Unless Mr. Childs is very eloquent, he has an uphill battle.

COMMISSIONER DEASON: Well, I agree with you as it relates to the 65.1 million. My question, I guess,

would be to the extent that the capacity costs have increased since that time, are those increased costs considered still to be recovered in base rates, because the general question of the SJRPP capacity costs were addressed in, or were allowed to be included in the determination of the tax rate reduction or not? That is the main question that I have at this point. I agree with you that I think that the 65.1 million, since that dollar amount was included in the calculation, that without question that that right now is being recovered in base rates. My only question is increment since that, and it is a rather substantial amount, the difference between 65.1 million and almost $90 million is my recollection; 89-point-something million dollars, I believe.

COMMISSIONER CLARK: And it would be your position that that is the portion not otherwise being recovered according to this order?

COMMISSIONER DEASON: Yes, I believe that that incremental amount is in question. The 65.1 million is being recovered. I think the testimony is complete on that. I have no question about that at this point. My question is toward the incremental amount.

COMMISSIONER EASLEY: I'm going to make a suggestion and see how you all feel about this, because

I'm not going to ask the parties to vote on this as to how the procedure is going to go. I don't know what your time frame is, Commissioners, I'm about ready to propose we take a 30 minute break, and that we allow the parties, having heard this discussion, to kind of collect their thoughts a little bit and come back in here and make some kind of statement, and we will vote.

MS. BROWN: Commissioner, would you like a Staff recommendation at this time?

COMMISSIONER EASLEY: I'm including you as a party.

MS. BROWN: You are?

COMMISSIONER EASLEY: At this point. All right, that's what we are going to do.

(Recess taken.)

COMMISSIONER EASLEY: All right. We will go back on the record. Mr. Childs, I guess you go first.

MR. CHILDS: Commissioners, I will attempt to be extremely brief.

COMMISSIONER EASLEY: Hold on just a minute. We are on the record.

MR. CHILDS: I said I will attempt to be extremely brief. I think two Commissioners have expressed in a helpful way, and I do appreciate it, the way they view the evidence that has been presented to you. It

doesn't, I think, help to belabor the point at length with you to argue about that, that it's your decision to make. Our basic position on that issue, however, was that the tax savings rate reduction that you ordered was based upon the methodology and the form for the tax savings rule. And we simply, particularly relying upon what we thought was your Order 25773 language, did not believe that the Commission, in fact, authorized the inclusion of costs or the recovery of costs through base rates by implication. And that's our position.

The comment has been made by Commissioner Deason about the difference between the costs for SJRPP that were included in the computation of the tax savings rate reduction and those current costs. We think that the recovery of that incremental amount or that difference is clearly supportable and is consistent with your order. It is a contract that was, I think, maybe with an exception, but I believe it is accepted that was entered into after the last full revenue requirements case. And if you are inclined to find that the other amount was included as a result of the specific adjustment for taxes, then I think it is appropriate to recover that incremental amount. I think I had in terms of some quantification, the amount

that was included on a six-month basis for Florida Power and Light currently, which is Attachment 1, I believe, to Mr. Birkett's testimony, was $44,252. That's in his testimony. It is 44,252,798. That's the jurisdictional amount.

COMMISSIONER EASLEY: Be specific, Mr. Childs, that is jurisdictional amount for what, now?

MR. CHILDS: That is the jurisdictional amount of the current SJRPP capacity costs for the six-month period September of 1992 through March of 1993.

COMMISSIONER EASLEY: Okay.

MR. CHILDS: The SJRPP amount that was included in the tax savings computation is shown on an Interrogatory Number 2 to Staff. On an annual basis it was 63,975,761. On a six-month basis, since we are comparing it to the six-month current cost, on a six-month basis that historic amount was 31,987,880, for a difference on a six-month basis of $12,262,918. And I repeat, again, I think that the cost of this incremental amount was for a contract which was entered after the last, as the order used, general rate case for Florida Power and Light Company, and that its recovery this way is appropriate.

COMMISSIONER EASLEY: Thank you, sir.

MR. McGLOTHLIN: Commissioners, I also will be

brief. I don't think there is any dispute about the pertinent numbers. Mr. Slemkewicz testified that the maximum potential tax savings refund in Docket Number 890319 was some $134,695,000. The actual refund in that case was $38.2 million, because the calculation took into account the capacity cost that is the subject of this hearing. Had they not been included in the calculation of that portion of the tax savings refund, which would leave FPL with a 13.6 rate of return, the refund would have been $103.4 million. Similarly, Mr. Slemkewicz testified that had the capacity cost been excluded from the calculations, the base rate refund would have been likely larger by some $65 million.

Now, Florida Power and Light contends that these same costs qualify for recovery through the capacity cost factor. They rely on the distinction between authorized for recovery on the one hand, and included as an expense for determining the rate of return on the other. I contend they are instead trying to have it both ways. It cannot be used on the one hand to reduce refunds and reduce base rate reductions and then be regarded as not being recovered in base rates. They also rely on the distinction between looking backward and going forward. But as Commissioner Deason pointed out, the base rate reduction was the subject of a PAA

order, and when the Commission tells the utility to reduce revenues by a certain amount and tells it how to devise rates that would accomplish that on a prospective basis, that is a going-forward reduction.

So I think for those reasons it cannot be said that these are not being recovered in any manner within the meaning of that language and the order. With respect to the reference to the St. Johns contract situation in Order Number 25773, I think it is clear that the reference was intended not as some kind of determination for recovery, but instead as an attempted illustration of the kind of situation that the order was attempting to address, and now based on this additional information it is simply a mistaken illustration. So I think the amount should not be allowed for recovery through the clause.

With respect to the suggestion that the balance of the amount above the $65.1 million should be considered, it seems to me that goes against the grain in terms of the ratemaking practices. Once an item is determined to be in base rates, it's not your practice to have some recovery clause designed to fluctuate up and down to track that particular item until the next base rate proceeding. And there may be examples of other items that would go one way or the other.

Certainly other costs have come and gone, revenues have grown, and so I don't think it is consistent with good ratemaking practices for you to single out this one item for that extraordinary treatment. Thank you. That's all I have.

COMMISSIONER DEASON: Let me ask you a question. I understand your argument that it's not preferable in your opinion to take one item in isolation when other items could be going up or down. But hasn't that decision already been made by a previous decision of the Commission concerning the fact that costs that were not already included in base rates would be eligible for inclusion in this clause? Didn't that decision already make -- didn't that already decide to take something in isolation and treat it that way?

MR. McGLOTHLIN: If you are referring to costs that are not already being covered in base rates, my point would be that our position is that they are being recovered in base rates. The amount at the time of the determination or the inclusion may differ from the current amount, but the item itself is in base rates. And I think, although I'm not the person in my office who was involved in the Gulf Power matter, I have spoken briefly to your Staff Counsel, and I think the result there supports my position, which is that in

that example, also, it was clear that an item was in base rates. The Company sought to have additional costs poured through the clause, and I think the result there was a denial. And I think consistency would be appropriate here.

COMMISSIONER DEASON: Thank you.

COMMISSIONER EASLEY: Staff.

MS. BROWN: Commissioners, the issue for your decision this afternoon is are the capacity payments associated with St. Johns River Power Park appropriate for recovery through the capacity cost recovery clause, as provided in Order Number 25773, and clarified in Order Number PSC-92-0414-FOF-EQ.

Staff's recommendation to you is that those costs are not appropriate for recovery through the capacity cost recovery clause. I think the Commission itself has demonstrated our position in their earlier comments on the matter. We believe that those costs are already being recovered in Florida Power and Light's base rates. We believe that the Order 25773 required two criteria for recovery; one was that the capacity cost contracts have been entered into since the last rate case, and the costs must not have been recovered in any manner. We don't believe that the SJRPP capacity costs meet both criteria. We believe they are being

recovered.

As to the incremental amount, we are faced, as Mr. McGlothlin mentioned briefly, with two sides of the same coin. In the Gulf case that you decided in the fuel order that was issued in September, and I don't have the number, you decided that Gulf's capacity costs associated with the IIC contract did not meet both criteria of Order 25773, but it was the opposite criteria. Gulf argued that even though their IIC contract had been recognized in their base rate proceeding in 1990, the costs that they had incurred since that time were not being recovered in any manner. You decided that the order required both criteria, and you denied recovery. Our position is that if you allow recovery of the incremental amount here you will be doing just the opposite of what you did in Gulf.

Now, Staff would like to discuss this a little bit further, because they have slightly different reasons

and different opinions, if you could take the time to hear them out, on the incremental aspect.

MR. DEVLIN: Commissioners, my first wish, we would have the opportunity to reduce this to writing, because I think it is a fairly complicated matter, and not subject to an easy decision. But notwithstanding that, and not being involved in the Gulf Power

decision, I was persuaded by the double recovery argument myself. And if you believe in that, that the double recovery is the main issue here, I would think that Florida Power and Light should have the opportunity to recover the incremental part, as Commissioner Easley suggested earlier through the capacity clause. In my mind it really didn't matter what kind of case we were talking about, whether it was a tax proceeding or a rate case. The point being that base rates were affected by the St. John capacity cost in 1990.

Now we get to a couple of dilemmas, and one is to reconcile, if you decide that it is appropriate to reconcile that decision with Gulf Power, we contend there may be some major differences with Gulf Power. But, again, Gulf Power is a much more complicated situation with their interexchange contract. There may be justification for different treatment, but, again, I think it would take some time to sort that out.

The other factor I would like to bring out, and, again, we just had 30 minutes to discuss this, that the incremental amount, which is approximately $23 million, we may be comparing apples and oranges, because the 65 million is based on 1988, and the current numbers are, of course, 1992. Since then there has been growth in

sales, et cetera, so the impact on the customer may be different than $23 million. Probably less than 23 million.

COMMISSIONER EASLEY: Are you using an annual figure when you say 23, compared to Mr. Childs' six-month figure?

MR. DEVLIN: Yes, ma'am.

COMMISSIONER CLARK: So do I understand that you are not recommending that we make an adjustment for the incremental cost?

MR. DEVLIN: My recommendation -- and, again, my first recommendation is that I have time to write a written recommendation. But to be put on the spot, I was convinced that if double recovery is the main issue then Florida Power and Light should have the opportunity to recover the increment, yes. And then it's a matter of defining what that increment is. And we may be missing at least one piece of information, and that is the growth and sales from 1988 to 1992. I'm not sure. That's something that we need to inquire into. But as far as the theory, I'm convinced for one that they would be entitled to that increment.

COMMISSIONER EASLEY: Mr. Jenkins, we have an alternate recommendation, I gather.

MR. JENKINS: Yes. My recommendation is not

consider the increment, but to stay with what my understanding of the intent of the order is, because considering the increment is trying to unscramble eggs. I don't think you can -- it's too difficult to pull pieces out and feel absolutely comfortable that you have pulled the right pieces.

COMMISSIONER CLARK: And, in fact, that's why we said the incremental costs -- that's why we allowed it to be separated through a cost recovery factor rather than trying to go back. We said we would handle it in the next rate case as opposed to trying to go back into base rates and separate it out.

MR. JENKINS: That's correct. That's why in the next rate case we would do as we are planning to do in TECO, or at least recommend, that it be zeroed out, and that all, you know, purchased power costs be separated out and run through the clause.

COMMISSIONER DEASON: Joe, I agree with you, that's the best way to do it. But there is an order outstanding from this Commission that says that we are going to consider those costs which are not presently being recovered in base rates.

MR. JENKINS: The question I have, is it cost or item? The costs for the item are included in base rates.

COMMISSIONER EASLEY: Wait a minute. This is coming close to the same discussion that we had in the Gulf case, but it isn't the same issue as it was in the Gulf case. And that's one of the problems I have been having all day. If I understand correctly, the TECO contract, and that's one reason I asked Mr. Slemkewicz about the last couple of sentences in his testimony, and the significance of the two numbers shown for the St. Johns capacity costs that are included in the current base rates in lieu of the TECO capacity costs. That isn't the same as the Gulf having a single contract for which the price changed. It may be the same item, but if you are going to go to the specific language of the order, and we have all through both of these dockets, we have examined the definition of recovery, and covered, and every other word except for the word family, I think, has gotten into this discussion. If you are going to look that hard at the language, then it would seem to me you've got to look at contract, not at item. And if that is the case, then there is, in my opinion, at least, some kind of recognition in the fact that we have said we are going to handle this separately, that there is a different contract that came into place after the tax savings case, and that there is an incremental difference you

would have to say you can't recover TECO again, so you can't go all the way back to the extent that as St. Johns replaced TECO --

MR. JENKINS: I'm not suggesting that.

COMMISSIONER EASLEY: No, but I'm trying to get to the incremental argument that I buy the fact that you don't go any further than incremental. That that without question would be double recovery.

MR. JENKINS: The question is what is incremental.

COMMISSIONER EASLEY: I understand that problem.

MR. JENKINS: That's the problem.

MS. BROWN: Commissioner, Staff has just pointed out to me that the St. Johns Power Park contract was entered into before the tax savings docket, if that helps you any.

COMMISSIONER EASLEY: Well, my understanding was that it was not -- if I understood this testimony, it was not considered, that TECO was considered at the time of the tax savings, the TECO contract.

MS. BROWN: No, the St. Johns.

COMMISSIONER EASLEY: Then what is the significance of the language that says it is in lieu of the TECO capacity cost?

COMMISSIONER CLARK: I think that was part of the rationale Mr. Slemkewicz advanced for arguing it is in

base rates. It doesn't happen to be one of the bases on which I draw the conclusion that it is already in base rates. I mean, it's not material to me.

COMMISSIONER EASLEY: Okay.

MS. BROWN: Commissioner, I would just like to add one more little thing about the capacity cost order. It's my opinion that that order contemplated the difficulty of balancing things that were in base rates and weren't, and came up with the conclusion that when in doubt, don't. Wait until the next rate case. Staff recommends that you find that it is not appropriate for Florida Power and Light to recover the costs of the St. Johns River Power Park contract, with the caveat that we have some disagreement on that.

COMMISSIONER CLARK: Martha, let me ask you a question. Do you agree that to allow that incremental cost would be inconsistent with what we concluded in the Gulf Power case?

MS. BROWN: Yes, I do.

COMMISSIONER EASLEY: All right. Commissioners, you have heard the arguments, you have a choice. Either make a motion for the resolution of this case or make a motion to comply with Mr. Devlin's request for time to do a written recommendation.

COMMISSIONER DEASON: I'm prepared to make a

motion and see if it gets a second. And if it doesn't, then perhaps we will go a different route. Commissioners, I'm sometimes troubled by the fact, and perhaps this is just something that is inherent in the regulatory process, but I'm sometimes troubled by the fact that it seems like we unnecessarily corral ourselves, in that sometimes we are not able to do what appears to be a just and fair thing to do, and perhaps what is in the best interest of all parties, including the companies and customers.

I'm troubled by the exact language that is contained in Order 25773, and what was intended and what was not intended. The language in the tax savings reduction and what was contemplated and what was not contemplated. As I said earlier, I do agree that there were St. Johns River Power Park capacity costs included in the determination of the tax savings refund and the tax savings rate reduction. And that rate reduction was done on a going-forward basis, it was issued as a PAA order. The assumption in that was that making that one adjustment that rates would be reasonable on a going-forward basis, and that since the capacity costs were contemplated in that, that rates as they exist today are providing a recovery of those costs. I'm somewhat troubled by the fact, though, that there was a

lesser amount of cost dollar-wise that was included in that calculation than what exists today. I think for us at this point to not recognize that increment is perhaps going to be an injustice to the Company. Now, I say that realizing that I am in disagreement with the overall philosophy of what we are doing here today, and that is even being here at all in this hearing considering this question. Because I think that these are matters which should be taken up in a rate case. When we have a rate case we can at that point define what the capacity costs are and take them out of that rate case, and then there is no question on a going-forward basis. But that decision has already been made. Now, I realize that in the Gulf Power decision that I also dissented from the majority on that decision, and that if what I'm going to propose here today is inconsistent with that, I would think that Gulf Power would file a petition for reconsideration, and I would entertain that.

MS. BROWN: Commissioner, if I might interrupt you, that is already on reconsideration, just for your information.

COMMISSIONER DEASON: My motion is this. I have taken a roundabout way, but my motion is to find that the capacity costs were contemplated in the tax savings

refund in rate reduction. That those rates were set on a going-forward basis, so part of those costs are presently being recovered. But there is an increment which presently has not been considered. Now, the concept has been considered, but the dollars have not been considered. I would take that difference, which I think Mr. Childs has stated on a six-month basis would be $12,264,918. Assuming that that number is correct, and that can be verified by our Staff, I would move that we recognize that amount of additional capacity cost, allow that to be recovered in the clause, and that in future periods that that amount would obviously fluctuate, but that it would, whatever the capacity costs are in future periods, it would be compared against the amount of tax savings which were contemplated and recognized in the tax savings rate reduction.

MR. JENKINS: Commissioner Deason, before we go further, I need to have some direction about what we should do, if anything, with the growth in sales since that number was last computed.

COMMISSIONER DEASON: We would do nothing with growth and sales. I agree with you, that is something that should be considered, that goes back to my basic argument that growth and sales, changes in everything

which affects the Company's bottom line should be considered before we undertake such an important and significant change in the regulatory philosophy which we have here, and that is going to this capacity cost recovery clause. I understand I was in the minority on that on my four-to-one decision. I'm not rearguing that. Given the decision that we have before us today, I think it is the only fair thing to do, is to recognize that increment, and ignore other changes, other cost changes up or down, changes in sales, changes in number of customers, or whatever it may be.

COMMISSIONER CLARK: I'm not going to second it.

COMMISSIONER EASLEY: I will second the motion. I do not see this as contradicting the Gulf case. I don't believe it is exactly the same. The decision may not look like the Gulf case, but the Gulf case doesn't look like this, either. And I really do not see this as being contradictory. It raises some issues for the Gulf case that I think were not there, or at least were not addressed. And to that extent there might have been more similarity had they been addressed. Other than that, I think Commissioner Deason has said it reasonably well. I will second the motion.

COMMISSIONER DEASON: Let me ask a question, and if it is unfair just say it is an unfair question.

Commissioner Clark, I would like some input from you as to where you are coming from.

COMMISSIONER CLARK: It seems to me if you take the position that you should include an incremental cost, then in the Gulf case you should also allow the increase in capacity costs that have taken place since their last rate increase to be recovered. It is an incremental cost. I agree with Joe, that if the item was included in base rates, then it fluctuates in expense just as every other expense in base rates might fluctuate. The notion was if it was identified as an expense and it remains there, and it will be allowed to rise or fall as other expenses are, and you test the rate of return. I think if we go this route, then everyone else who has capacity costs in their base rates ought to be allowed to come in and recover the incremental costs that wasn't included in base rates to be consistent with the treatment given to FPL. I don't want to do that. And it seems to me, one of the purposes of the order was to, if you will, remove a disincentive in entering into these contracts, not to give the opportunity to recover an incremental cost in between rate cases.

COMMISSIONER DEASON: Well, let me ask --

COMMISSIONER CLARK: To me it is an all or nothing

proposition.

COMMISSIONER DEASON: I can understand that. Let me ask Staff a question. Once we get through this transitionary period that we are in now, which is causing all of this upheaval and discussion, at some point we are going to be able to know what is in base rates and what is in the clause because we are going to have rate cases, and we are going to take everything out of base rates and it is going to be in the clause.

MR. JENKINS: Assuming that is the Commission vote.

COMMISSIONER DEASON: Assuming the vote stays the same.

COMMISSIONER CLARK: Can I interrupt? Is it going to be the opposite? Everything will be put into base rates. Capacity costs will be put into base rates.

COMMISSIONER DEASON: No. The vote is to take everything out of base rates and put it into the clause, is my understanding.

MR. JENKINS: That's correct.

COMMISSIONER DEASON: Right now we are in a transition period trying to define what is in base rates and what is not, and if it is not, put it in the clause. And then when we have the next rate case we will take everything out of base rates and put it in

the clause.

MR. JENKINS: The next rate case all of this should be fixed.

COMMISSIONER DEASON: Now, once we get to this transitionary period and we find ourselves in that situation where all of the capacity costs are being recovered through the clause, when those capacity costs go up, isn't the recovery factor going to go up the next six-month period? And we are not going to consider changes in revenues or changes in any other costs. That is the policy that the Commission has adopted, is it not?

MR. JENKINS: That's correct.

COMMISSIONER EASLEY: I do not see this, even if we were not at that point. I really do not see this as an invitation to companies to come in just because of an incremental change. When I'm using the term incremental here, I'm talking about the difference between two contracts. And I come back to that very specific language in those orders that in some cases I wish we had never written, because that language has been explored, and will continue to be explored until we finish this transition period. But if we are going to use the black letter of the order, the contracts are different. And it's not like in Gulf where you had one

contract under which the price changed.

COMMISSIONER DEASON: Staff, do we know what caused the increase in capacity costs from the time frame of the tax savings docket until today? That is information we don't have?

MR. JENKINS: I don't believe we do. It may have been O&M, it may have been in the capital component of the contract itself, I do not know.

COMMISSIONER EASLEY: How can we best resolve the number in this motion to be sure that we have got the correct number? I don't want to have to come back in here again.

MR. JENKINS: I believe from what I'm being asked, we can request an audit, and then you probably can vote subject to the audit not finding anything different. I think Martha made a comment on that.

COMMISSIONER DEASON: You are saying we can vote in concept, and then Staff can undertake the review of the actual numbers, and that number can be brought to us for approval, I guess, at an agenda conference, or whatever is most convenient?

MR. JENKINS: Right.

COMMISSIONER DEASON: Is that a fair way to do it?

MS. BROWN: That sounds like it would work. Wait just a second. Could we have just a minute to answer

your question?

COMMISSIONER EASLEY: Sure.

COMMISSIONER CLARK: Commissioner Deason, do you agree that a logical result of what we are doing here would be for other utilities to come in and recover incremental costs that are not recovered in base rates?

COMMISSIONER DEASON: Commissioner, I think that was the result of the decision in Order 25773. I mean, it seems to me you can try to make a distinction between a contract being considered or not being considered, but when you've got material changes, it just seems to be unfair. And I think that that is contrary to the decision in the Gulf Power case and we may have to reconsider that.

COMMISSIONER CLARK: Staff, do you want to break for five minutes so you can verify the numbers?

MR. DEVLIN: Commissioner, the numbers that have been presented of 44 million, for instance, is a forecasted number from September '92 through March of '93. As I understand the fuel hearings that would be subject to review in true-up in the future.

MR. CHILDS: That's correct.

COMMISSIONER CLARK: So it's a non-issue?

COMMISSIONER DEASON: So, the real question is what is the base amount that we are finding is included

in base rates already. And that, I think, is a number which is in the record, and it should be on both a total company and a jurisdictional amount, I believe.

MR. MAILHOT: Yes.

COMMISSIONER DEASON: And so in fuel adjustment proceedings, if this motion is adopted in future fuel adjustment proceedings it will be whatever the forecasted capacity payments are, less what was in the base rate, and then that would be trued-up in the next period. And we just continue on and on until the next full-blown rate case when we take all of this out of base rates and put it all into the clause.

MR. MAILHOT: That's true.

MR. CHILDS: I think that the number you are talking about as to the prior cost, I don't think I believe the number I used is there. It is in Mr. Slemkewicz' document GJES-2, Page 1. So, I mean --

MR. McGLOTHLIN: What do think that number is, Matt? I thought we had an agreement on that.

MR. CHILDS: 63,975,761, jurisdictional.

COMMISSIONER DEASON: I think that number can be verified by our Staff, and if there is some problem it can be brought back at a later time. And this is fuel adjustment, and everything is going to be trued-up at some point.

COMMISSIONER EASLEY: Okay.

COMMISSIONER CLARK: There has been a motion and a second, all those in favor say aye.

COMMISSIONER EASLEY: Aye.

COMMISSIONER DEASON: Aye.

COMMISSIONER CLARK: All those opposed? No. The motion passes.

COMMISSIONER EASLEY: Thank you.

(The hearing was concluded at 4:10 p.m.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause and generating performance incentive factor.	DOCKET NO. 010001-EI ORDER NO. PSC-01-2516-FOF-EI ISSUED: December 26, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

APPEARANCES:

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JOHN W. MCWHIRTER, JR., ESQUIRE, and VICKI GORDON KAUFMAN, ESQUIRE, McWhirter Reeves McGlothlin Davidson Decker Kaufman Arnold & Steen, P. A., McWhirter Reeves

> cost levels used to determine current base rates and which, if expended, will result in fuel savings to customers. Recovery of such costs should be made on a case by case basis after Commission approval.

In addition, the parties stipulated that the appropriate rate of return on the unamortized balance of capital projects with an in-service date on or after January 1, 2002, is the utility's cost of capital based on the midpoint of its authorized return on equity. We approve these stipulations as reasonable.

C. Recovery of Incremental Power Plant Security Costs

In this proceeding, FPL requests approval to recover incremental power plant security costs, related to recent national security concerns, through the fuel and purchased power cost recovery clause ("fuel clause"). Based on the evidence in the record, we approve FPL's request. We find that recovery of this incremental cost through the fuel clause is appropriate in this instance because there is a nexus between protection of FPL's nuclear generation facilities and the fuel cost savings that result from the continued operation of those facilities. Further, we believe that this type of cost is a potentially volatile cost, making it appropriate for recovery through a cost recovery clause. We are comforted that the true-up mechanism inherent in the fuel clause will ensure that ratepayers pay no more than the actual costs incurred. In addition, we find that recovery of this cost through the fuel clause provides a good match between the timing of the incurrence and recovery of the cost.

We believe that approving recovery of this incremental power plant security cost through the fuel clause sends an appropriate message to Florida's investor-owned electric utilities that we encourage them to protect their generation assets in extraordinary, emergency conditions as currently exist. FPL is the only utility seeking recovery of this cost in this proceeding. By our decision, we do not intend to require other investor-owned electric utilities to seek similar recovery at this time, given the unique circumstances of each utility. In addition, recognizing that these costs are not now clearly defined, we do not foreclose our ability to consider an alternative recovery mechanism for these costs at a later time.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause and generating performance incentive factor.	DOCKET NO. 020001-EI ORDER NO. PSC-02-1761-FOF-EI ISSUED: December 13, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

APPEARANCES:

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On behalf of Florida Power & Light Company (FPL).

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On behalf of Gulf Power Company (GULF).

JAMES D. BEASLEY, ESQUIRE, Ausley & McMullen, P. O. Box 391, Tallahassee, Florida 32302
On behalf of Tampa Electric Company (TECO).

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On behalf of Florida Industrial Power Users Group (FIPUG).

ROBERT D. VANDIVER, ESQUIRE, Associate Public Counsel, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC).

WM. COCHRAN KEATING, IV, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff (Staff).

ORDER APPROVING PROJECTED EXPENDITURES AND TRUE-UP AMOUNTS FOR FUEL ADJUSTMENT FACTORS; GPIF TARGETS, RANGES, AND REWARDS; AND PROJECTED EXPENDITURES AND TRUE-UP AMOUNTS FOR CAPACITY COST RECOVERY FACTORS

BY THE COMMISSION:

As part of this Commission's continuing fuel and purchased power cost recovery and generating performance incentive factor proceedings, a hearing was held on November 20-21, 2002, in this docket. The hearing addressed the issues set out in Order No. PSC-02-1591-PHO-EI, issued November 18, 2002, in this docket (Prehearing Order). Several of the positions on these issues were stipulated by the parties and presented to us for approval, but some contested issues remained for our consideration. As set forth fully below, we approve each of the stipulated positions presented. Our rulings on the remaining contested issues are also discussed below.

We have jurisdiction over this subject matter pursuant to the provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

Regulatory Treatment of O&M Expense Associated with Inspection and Repair of Reactor Pressure Vessel Heads

As part of its projection filing made September 20, 2002, FPL requested recovery of $32.6 million through the fuel and purchased power cost recovery clause for operation and maintenance expenses associated with the inspection and repair of the reactor pressure vessel heads at FPL's four nuclear units. To dispose of FPL's request, the parties stipulated to the following:

> FPL would recover the total cost of inspection and repair of the reactor pressure vessel heads at its four nuclear units in base rates by amortizing the cost over a five year period. This regulatory treatment would result in no change to FPL's existing base rates during the period of FPL's current rate stipulation. This amortization would begin in 2002 based on the current estimate of the total inspection and repair costs of $67.3 million for 2002 through 2004. FPL would adjust this estimate based on actual and updated cost estimates, with the amortization changing beginning in the month of the updated estimate. FPL would not accumulate AFUDC on the unamortized portion of the inspection and repair costs.

We approve this stipulation, which is set forth in detail in Attachment A to this Order and incorporated herein by reference, as reasonable.

Recovery of Incremental 2002 and 2003 Security Costs

As part of its projection filing made September 20, 2002, as amended November 4, 2002, FPL requested recovery of $12.7 million through the fuel and purchased power cost recovery clause for incremental 2002 and 2003 security costs. FPL's witness Hartzog asserted that these costs were incurred to comply with directives set forth in Nuclear Regulatory Commission (NRC) Order No. EA-02-26, issued February 25, 2002. Both OPC and FIPUG opposed FPL's request, based largely on a specific provision in the Settlement and Stipulation approved by this Commission in Order No. PSC-02-0501-AS-EI, issued April 11, 2002, to resolve FPL's most recent base rate proceeding in Docket No. 001148. That provision states: "FPL will not use the various cost recovery clauses to recover new capital items which traditionally and historically would be

recoverable through base rates." Through cross-examination of FPL's witness Dubin, FIPUG questioned the propriety of FPL's request to the extent that the incremental costs for which FPL sought recovery included new capital items which had traditionally and historically been recoverable through base rates. The record indicates that approximately $1.3 million of these costs would be classified as capital items under normal circumstances.

By Order No. PSC-01-2516-FOF-EI, issued December 26, 2001, in Docket No. 010001-EI, we approved FPL's request to recover through the fuel clause incremental 2001 security costs stemming from the terrorist attacks of September 11, 2001. In that Order, we found that such recovery was appropriate because there is a nexus between protection of nuclear generation facilities and the fuel cost savings that result from the continued operation of those facilities. In addition, we noted that this type of cost was a potentially volatile cost, making it appropriate for recovery through a cost recovery clause. Further, we stated that approving recovery of these incremental power plant security costs through the fuel clause would send an appropriate message to Florida's investor-owned electric utilities to encourage them to protect their generation assets in the extraordinary, emergency conditions that existed at the time. Recognizing that the costs were not clearly defined, we stated that we did not foreclose our ability to consider an alternative recovery mechanism for these costs at a later time.

DOCUMENT NO. 13141-02
ORDER NO. PSC-02-1761-FOF-EI

We recognize that FPL's incremental 2002 and 2003 security costs, like its incremental 2001 security costs approved in Order No. PSC-01-2516-FOF-EI, arise out of the extraordinary circumstances of the terrorist attacks of September 11, 2001. The record indicates that FPL's incremental 2002 and 2003 security costs were incurred to comply with NRC Order No. EA-02-26, which established the type of protections that operators of nuclear generating facilities in the United States were required to implement at their plants. Prior to the events of September 11, 2001, and the issuance of our order approving fuel clause recovery for FPL's incremental 2001 security costs, security costs were traditionally and historically recoverable through base rates. However, because of the extraordinary nature of the costs in question and the unique circumstances under which they arose, we find that these costs do not clearly fall within the classification of "items which traditionally and historically would be recoverable

through base rates." We believe that our order approving fuel clause recovery for FPL's incremental 2001 security costs, which did not make a distinction between capital items and expensed items, put the parties to the Settlement and Stipulation on notice that the Commission viewed these costs as extraordinary. Accordingly, we approve recovery of FPL's incremental 2002 and 2003 security costs through a cost recovery clause. Because these costs are extraordinary, these costs shall be treated as current year expenses. Further, we require that these expenses be separately accounted to enhance our staff's ability to audit them.

Although FPL requested recovery of these costs through the fuel and purchased power cost recovery clause, witness Dubin agreed on cross-examination that recovery of these costs through the capacity cost recovery clause would cause these costs to be allocated among the rate classes on the same basis as those FPL security costs currently being recovered through base rates, i.e., allocated on a demand basis. To ensure a consistent allocation of all FPL security costs, witness Dubin stated that FPL would agree to recover its incremental 2002 and 2003 security costs through the capacity cost recovery clause. We believe this treatment is reasonable.

In conclusion, we approve recovery of FPL's incremental 2002 and 2003 security costs of approximately $12.7 million through the capacity cost recovery clause. Further, we find that these costs shall be treated as current year expenses. Finally, we find that the treatment of these costs shall be reassessed at the conclusion of the term of the Settlement and Stipulation approved in Order No. PSC-02-0501-AS-EI to determine whether these costs should continue to be recovered through a cost recovery clause or would more appropriately be recovered through base rates.

B. Florida Power Corporation

Methodology to Determine Equity Component of PFC's Capital Structure

The parties stipulated that FPC has confirmed the appropriateness of the "short-cut" methodology used to determine the equity component of Progress Fuels Corporation's (formerly, Electric Fuels Corporation) (PFC) capital structure for calendar year 2001. We approve this stipulation as reasonable.

Recovery of Depreciation and Return for Hines Unit 2

The parties stipulated that FPC's recovery of $4,955,620 for depreciation and return associated with its Hines Unit 2 is reasonable. Under the terms of the stipulation among FPC and several parties, the Commission, by Order No. PSC-02-0655-AS-EI, in Docket Nos. 000824-EI and 020001-EI, issued May 14, 2002, authorized FPC to recover an amount equal to the depreciation expense and a return of 8.37 percent on FPC's average investment for Hines Unit 2, up to the cumulative fuel savings for Hines Unit 2 during the recovery period. The parties stipulated that although fuel savings are expected to be less than the depreciation and return for Hines Unit 2 for 2003, fuel savings during the recovery period, as defined above, are expected to be greater than the depreciation and return on Hines Unit 2 during this period. We approve this stipulation as reasonable.

Incremental Hedging Program Expenses

The parties stipulated that FPC's estimated expenditures of $554,312 for incremental 2003 expenses associated with its hedging program are reasonable. Pursuant to Order No. PSC-02-1484-FOF-EI, issued October 30, 2002, in Docket No. 011605-EI, the Commission authorized each investor-owned electric utility to recover prudently-incurred incremental operation and maintenance expenses incurred for the purpose of initiating and/or maintaining a new or expanded non-speculative financial and/or physical hedging program designed to mitigate fuel and purchased power price volatility for its retail customers. The parties stipulated that FPC expects to incur incremental expenses of $554,312 during 2003 that meet these criteria. Accordingly, the parties stipulated that, subject to audit and true-up, this Commission should authorize FPC to recover this amount through the fuel and purchased power cost recovery clause. We approve this stipulation as reasonable.

Recovery of Incremental 2002 and 2003 Security Costs

As part of its projection filing made September 20, 2002, FPC requested recovery of $7,825,500 through the fuel and purchased power cost recovery clause for incremental 2002 and 2003 security costs. FPC's witness Portuondo asserted that these costs were incurred to comply with directives set forth in Nuclear Regulatory Commission (NRC) Order No. EA-02-26, issued February 25, 2002.

Both OPC and FIPUG opposed FPC's request, based largely on a specific provision in the Settlement and Stipulation approved by this Commission in Order No. PSC-02-0655-AS-EI, issued May 14, 2002, to resolve FPC's most recent base rate proceeding in Docket No. 000824. That provision states: "FPC will not use the various cost recovery clauses to recover new capital items which traditionally and historically would be recoverable through base rates . . .." Through cross-examination of witness Portuondo, OPC and FIPUG questioned the propriety of FPC's request to the extent that the incremental costs for which FPC sought recovery included new capital items which had traditionally and historically been recoverable through base rates. The record indicates that approximately $4.1 million of these costs would be classified as capital items under normal circumstances.

We recognize that FPC's incremental 2002 and 2003 security costs, like FPL's incremental 2001 security costs approved in Order No. PSC-01-2516-FOF-EI, arise out of the extraordinary circumstances of the terrorist attacks of September 11, 2001. The record indicates that FPC's incremental 2002 and 2003 security costs were incurred to comply with NRC Order No. EA-02-26, which established the type of protections that operators of nuclear generating facilities in the United States were required to implement at their plants. Prior to the events of September 11, 2001, and the issuance of our order approving fuel clause recovery for FPL's incremental 2001 security costs, security costs were traditionally and historically recoverable through base rates. However, because of the extraordinary nature of the costs in question and the unique circumstances under which they arose, we find that these costs do not clearly fall within the classification of "items which traditionally and historically would be recoverable through base rates." We believe that our order approving fuel clause recovery for FPL's incremental 2001 security costs, which did not make a distinction between capital items and expensed items, put the parties to the Settlement and Stipulation on notice that the Commission viewed these costs as extraordinary. Accordingly, we approve recovery of FPC's incremental 2002 and 2003 security costs through a cost recovery clause. Because these costs are extraordinary, these costs shall be treated as current year expenses. Further, we require that these expenses be separately accounted to enhance our staff's ability to audit them.

Although FPC requested recovery of these costs through the fuel and purchased power cost recovery clause, witness Portuondo agreed on cross-examination that recovery of these costs through the capacity cost recovery clause would cause these costs to be allocated among the rate classes on the same basis as those FPC security costs currently being recovered through base rates, i.e., allocated on a demand basis. To ensure a consistent allocation of all FPC security costs, witness Portuondo stated that FPC would agree to recover its incremental 2002 and 2003 security costs through the capacity cost recovery clause. We believe this treatment is reasonable.

In conclusion, we approve recovery of FPC's incremental 2002 and 2003 security costs of approximately $7,825,500 through the capacity cost recovery clause. Further, we find that these costs shall be treated as current year expenses. Finally, we find that the treatment of these costs shall be reassessed at the conclusion of the term of the Settlement and Stipulation approved in Order No. PSC-02-0655-AS-EI to determine whether these costs should continue to be recovered through a cost recovery clause or would more appropriately be recovered through base rates.

Review of Market Price Proxy for Waterborne Transportation from PFC to FPC

The parties stipulated that this Commission should not open a docket to evaluate whether the market price proxy for waterborne transportation service provided by PFC to FPC is still valid and reasonable. Instead, the parties stipulated that such a review should take place as part of our continuing fuel and purchased power cost recovery clause proceedings. We approve this stipulation as reasonable.

C. Gulf Power Company

Calculation of One-Time Adjustment per Revenue Sharing Plan

The parties stipulated that Gulf correctly calculated its one-time adjustment of $73,471 pursuant to Gulf's revenue sharing plan approved by Order No. PSC-99-2131-S-EI, issued October 28, 1999, in Docket No. 990250-EI. We approve this stipulation as reasonable.

We approve this stipulation as reasonable.

Incremental Hedging Program Expenses

The parties stipulated that estimated expenditures of $415,000 for incremental 2003 expenses associated with TECO's hedging program are reasonable. Pursuant to Order No. PSC-02-1484-FOF-EI, issued October 30, 2002, in Docket No. 011605-EI, the Commission authorized each investor-owned electric utility to recover prudently-incurred incremental operation and maintenance expenses incurred for the purpose of initiating and/or maintaining a new or expanded non-speculative financial and/or physical hedging program designed to mitigate fuel and purchased power price volatility for its retail customers. The parties stipulated that TECO expects to incur incremental expenses of $415,000 during 2003 that meet these criteria. Accordingly, the parties stipulated that, subject to audit and true-up, this Commission should authorize TECO to recover this amount through the fuel and purchased power cost recovery clause. We approve this stipulation as reasonable.

Recovery of Incremental 2001, 2002, and 2003 Security Costs

As part of its projection filing made September 20, 2002, TECO requested recovery of $1,204,598 through the fuel and purchased power cost recovery clause for incremental operation and maintenance (O&M) expenses associated with 2001, 2002, and 2003 security costs. TECO witness Jordan asserted that although these costs were not incurred to comply with any government mandate, they were incurred to implement measures consistent with guidelines developed by Presidential Homeland Security directive and the North American Electric Reliability Council (NERC) in response to the September 11, 2001, terrorist attacks. Through cross-examination of witness Jordan, OPC and FIPUG established that the security measures for which TECO requests cost recovery were not mandated by any government agency and that none of the TECO facilities being secured are nuclear facilities subject to NRC Order No. EA-02-26.

We recognize that TECO's incremental O&M expenses associated with 2001, 2002, and 2003 security costs, like FPL's incremental 2001 security costs approved in Order No. PSC-01-2516-FOF-EI, arise out of the extraordinary circumstances of the terrorist attacks of September 11, 2001. The record indicates that the incremental O&M expenses associated with TECO's 2001, 2002, and 2003 security costs

were, or will be, incurred consistent with guidelines provided by NERC and TECO's internal assessment of the additional protections needed at its facilities. Accordingly, we approve recovery of the incremental O&M expenses associated with TECO's 2001, 2002, and 2003 security costs through a cost recovery clause. Because these costs are extraordinary, these costs shall be treated as current year expenses. Further, we require that these expenses be separately accounted to enhance our staff's ability to audit them.

Although TECO requested recovery of these costs through the fuel and purchased power cost recovery clause, witness Jordan agreed on cross-examination that recovery of these costs through the capacity cost recovery clause would cause these costs to be allocated among the rate classes on the same basis as those TECO security costs currently being recovered through base rates, i.e., allocated on a demand basis. To ensure a consistent allocation of all FPC security costs, witness Jordan stated that TECO would agree to recover its incremental O&M associated with 2001, 2002, and 2003 security costs through the capacity cost recovery clause. In addition, on cross-examination, witness Jordan indicated that TECO anticipated moving those costs into base rates at TECO's next traditional rate case. We believe this treatment is reasonable.

In conclusion, we approve recovery of incremental O&M expenses of $1,204,598, associated with TECO's 2001, 2002, and 2003 security costs, through the capacity cost recovery clause. These costs shall be treated as current year expenses and shall be separately accounted to enhance our staff's ability to audit them.

Review of Waterborne Coal Transportation Benchmark Price for Services Provided by TECO Affiliates

The parties stipulated that this Commission should not open a docket to evaluate whether the waterborne coal transportation benchmark price for services provided to TECO by TECO affiliates is still valid and reasonable. Instead, the parties stipulated that such a review should take place as part of our continuing fuel and purchased power cost recovery clause proceedings. We approve this stipulation as reasonable.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental Cost Recovery Clause.	DOCKET NO. 970007-EI ORDER NO. PSC-97-1047-FOF-EI ISSUED: September 5, 1997

APPEARANCES:

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On behalf of Gulf Power Company (Gulf).

LEE L . WILLIS, Esquire, and JAMES D. BEASLEY, Esquire, Ausley & McMullen, Post Office Box 391, Tallahassee, Florida 32302
On behalf of Tampa Electric Company (TECO).

JOSEPH A. MCGLOTHLIN, Esquire, and VICKI GORDON KAUFMAN, Esquire, McWhirter Reeves McGlothlin Davidson Rief & Bakas, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301
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On behalf of the Citizens of Florida (OPC).

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On behalf of the Commission Staff (Staff).

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
JOE GARCIA

ORDER APPROVING PROJECTED EXPENDITURES AND TRUE-UP AMOUNTS FOR ENVIRONMENTAL COST RECOVERY FACTORS

BY THE COMMISSION:

As part of the Commission's continuing fuel, energy conservation, purchased gas, and environmental cost recovery proceedings, a hearing was held on August 14, 1997, in this docket

Company - Specific Environmental Cost Recovery Issues

Florida Power & Light Company

Florida Power & Light Company requested recovery of costs of the Substation Pollutant Discharge Prevention and Removal Project through the Environmental Cost Recovery Clause. The amounts projected for this project should be adjusted downward by the level of ongoing O&M expense which FPL has historically experienced for substation transformer gasket replacement, substation soil contamination remediation, and the painting of substation transformers. The level of historical expenses for these ongoing O&M activities is assumed to be in base rates. Therefore, an adjustment of $700,295, for the 15-month period from July, 1997, to September 1998, is required to avoid double recovery.

We approve as reasonable the parties' stipulation that Florida Power & Light Company correctly calculated the Return on Average Net Investment for each of the projects. In its revised June projection filing, the Company made the appropriate corrections to its cost of capital rates. On a going forward basis, the Company has agreed to use the current year's March cost of capital rates for both the debt and equity components to be reported in the twelve month projection period. For the twelve month reprojection period, the Company has agreed to use the prior year's June cost of capital rates for both the debt and equity components. For the twelve month final true-up period, the Company has agreed to use the same cost of capital components as used in the reprojection period. The appropriate cost of capital rates are reported on a 13-month average, FPSC adjusted basis as filed in the monthly Earnings Surveillance Reports filed with the Commission. The relative ratios of capital components are consistent with the capital structure approved in the Company's last rate case in Order Nos. 13537 and 13948 (Docket No. 830465-EI).

Gulf Power Company

We approve as reasonable the parties' stipulation that the Commission approve Gulf Power Company's request to recover the cost of Above Ground Storage Tank Integrity Inspections and Secondary Containment Upgrades through the Environmental Cost Recovery Clause. This activity includes installation of secondary containment facilities, cathodic protection upgrades, and inspection of existing field-erected oil storage tank systems. This activity is a requirement of Chapter 62-762.520(1) of the

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.	DOCKET NO. 030001-EI ORDER NO. ISSUED:

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on October 23, 2003, in Tallahassee, Florida, before Commissioner Braulio L. Baez, as Prehearing Officer.

APPEARANCES:

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

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On behalf of Florida Industrial Power Users Group (FIPUG).

ROBERT D. VANDIVER, ESQUIRE, Associate Public Counsel, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC).

WM. COCHRAN KEATING, IV, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
JENNIFER A. RODAN, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (STAFF).

DRAFT 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 continuing fuel and purchased power cost recovery clause and generating performance incentive factor proceedings, an administrative hearing is set for November 12-14, 2003, to address the issues set forth in the body of this Prehearing Order. The Commission has the option to render a bench decision on any or all of the issues set forth herein. Opening statements, if any, shall not exceed ten minutes per party.

III. 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

Rate Schedule	Capacity Cost Recovery Factor (cents per kWh)
Average Factor	0.216
RS	0.267
GS and TS	0.244
GSD, EV-X	0.210
GSLD and SBF	0.185
IS-1, IS-3, SBI-1, SBI-3	0.016
SL-2, OL-1 and OL-3	0.105

(Witness: Jordan)

FIPUG: No position at this time.

OPC: No position at this time.

STAFF: FPL: No position at this time.

GULF:

Rate Class	Capacity Recovery Factor (cents/kWh)
RS, RSVP	.194
GS	.188
GSD, GSDT, GSTOU	.157
LP, LPT	.135
PX, PXT, RTP, SBS	.118
OS-I, OS-II	.057
OS-III	.122
OS-IV	.056

PEF: No position at this time.
TECO: No position at this time.

ISSUE 30: **What is the appropriate methodology for determining the incremental costs of security measures implemented as a result of terrorist attacks committed on or since September 11, 2001?**

POSITIONS:

FPL: There were no incremental power plant security expenses resulting from the events of September 11,

2001, or from Homeland Security responses included in FPL's 2002 MFRs. Therefore, there is no need to compare such expenses to a "base line" to determine the appropriate amount to be recovered through the Capacity Cost Recovery Factor. None of the disclosures in Staff's audit warrants an adjustment to the manner in which FPL determines incremental power plant security expenses. (DUBIN)

GULF: Gulf believes that it is appropriate for such costs to be recoverable through an appropriate cost recovery factor outside of base rates, but takes no position at this time regarding the appropriate methodology.

PEFI: For Progress Energy, the incremental costs of post-9/11 security measures should be determined using the Company's 2002 MFR's to establish baseline O&M expenses (see PEF's position under Issue 131) and the methodology described on pages 33 through 35 of Mr. Portuondo's projection testimony.

TECO: Tampa Electric's incremental operations and maintenance costs incurred for security measures implemented to protect the company's generating facilities as a result of terrorist attacks committed on or since September 11, 2001 should continue to be separately recorded in accounts created specifically for capturing such expenses. With this treatment, incremental security operations and maintenance expenses are never commingled with the company's on-going security expenses. (Witness: Jordan)

FIPUG: No position at this time.

OPC: No position at this time.

STAFF: When a company seeks to recover security costs resulting from post 9/11/2001 security requirements or guidelines, the company should demonstrate such costs are incremental by filing three sets of amounts: A) gross costs resulting from these security projects/activities; B) the portion of costs in category A which are recovered through base rates; and C) the net of A and B costs.

The base year costs (category B) should be reconciled to the projected test year (PTY) costs of the most recent Minimum Filing Requirements (MFR's) filed by FPL, PEFI, and Gulf if possible. For Teco, base years costs should be reconciled to the actual costs of the fiscal year preceding September 2001.

For those companies whose base year costs are based on MFR's, the supporting documentation to the MFR's including company documents or records not filed as a part of the MFR's may need to be reviewed in order to determine what is or is not in the MFR PTY costs. Recognizing that MFR's and their supporting documentation may not be sufficiently detailed to determine whether a given type of cost was in the MFR PTY expenses or in what amount, actual costs may be used for base year costs.

Once the base year costs are determined, the costs would be grossed up (or down) for the growth (or decline) in KWH sold from the base year to the recovery year.

COMPANY-SPECIFIC CAPACITY COST RECOVERY FACTOR ISSUES

Progress Energy Florida

ISSUE 31A: **Are Progress Energy Florida's actual and projected expenses for 2002 through 2004 for its post-September 11, 2001, security measures reasonable for cost recovery purposes?**

POSITIONS:

PEFI: Yes. Progress Energy's post-9/11 incremental security costs for 2002 through 2004 have been determined using the appropriate baseline O&M expenses and calculation methodology.

FIPUG: No position at this time.

OPC: No position at this time.

STAFF: No position pending resolution of Issue 30 and review of outstanding discovery.