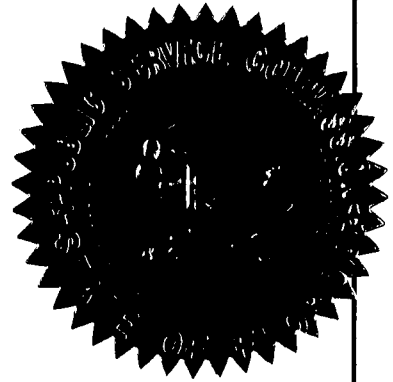


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070007-EI

In the Matter of  
ENVIRONMENTAL COST RECOVERY CLAUSE.



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PROCEEDINGS:           PREHEARING CONFERENCE

BEFORE:                 MATTHEW M. CARTER, II  
                          Prehearing Officer

DATE:                   Monday, October 22, 2007

TIME:                   Commenced at 1:40 p.m.  
                          Concluded at 2:00 p.m.

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

REPORTED BY:           LINDA BOLES, CRR, RPR  
                          Official FPSC Reporter  
                          (850) 413-6734

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## 1 APPEARANCES:

2 LEE L. WILLIS, ESQUIRE, and JAMES D. BEASLEY,  
3 ESQUIRE, Beggs & Lane Law Firm, Post Office Box 391,  
4 Tallahassee, 32302, appearing on behalf of Tampa Electric  
5 Company.

6 JEFFREY STONE, ESQUIRE; RUSSELL BADDERS, ESQUIRE; and  
7 STEVEN A. GRIFFIN, ESQUIRE, Beggs & Lane Law Firm, Post Office  
8 Box 12950, Pensacola, Florida 32591-2950, appearing on behalf  
9 of Gulf Power Company.

10 JOHN W. MCWHIRTER, JR., ESQUIRE, McWhirter Law Firm,  
11 400 North Tampa Street, Suite 2450, Tampa, Florida 33602,  
12 appearing on behalf of Florida Industrial Power Users Group.

13 JOHN T. BUTLER, ESQUIRE, Florida Power & Light  
14 Company, 700 Universe Boulevard, Juno Beach, Florida  
15 33408-0420, appearing on behalf of Florida Power & Light  
16 Company.

17 GARY V. PERKO, ESQUIRE, Hopping, Green & Sams, Post  
18 Office Box 6526, Tallahassee, Florida 32314, appearing on  
19 behalf of Progress Energy Florida, Inc.

20 CHARLIE BECK, DEPUTY PUBLIC COUNSEL; STEPHEN C.  
21 BURGESS, ESQUIRE; PATRICIA CHRISTENSEN, ESQUIRE; and JOE  
22 MCGLOTHLIN, ESQUIRE, Office of Public Counsel, c/o The Florida  
23 Legislature, 111 W. Madison Street, Room 812, Tallahassee,  
24 Florida 32399-1400, appearing on behalf of the Citizens of the  
25 State of Florida.

1 APPEARANCES (Continued):

2                   MARTHA BROWN, ESQUIRE, FPSC General Counsel's Office,  
3 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,  
4 appearing on behalf of the Commission Staff.

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## P R O C E E D I N G S

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2 COMMISSIONER CARTER: Let's prepare for the 07  
3 docket. The 07 docket. Okay. Ms. Brown, preliminary matters.

4 MS. BROWN: There are none that I'm aware of,  
5 Commissioner, at this point.

6 COMMISSIONER CARTER: Okay. Let's proceed through  
7 the Draft Prehearing Order. Okay. Section I, case background.  
8 Any corrections or changes?

9 Section II, conduct of proceedings.

10 Section III, jurisdiction.

11 Section IV, procedure for handling confidential  
12 information.

13 Section V, prefiled testimony and exhibits of  
14 witnesses.

15 Section VI --

16 MS. BROWN: Commissioner.

17 COMMISSIONER CARTER: Yes, ma'am.

18 MS. BROWN: Let me point out at this point --

19 COMMISSIONER CARTER: Section V.

20 MS. BROWN: -- that Progress has filed supplemental  
21 testimony that it's asking you to approve in this proceeding,  
22 and there will be additional exhibits that we will reflect in  
23 the Prehearing Order before we bring it to you for signature.

24 COMMISSIONER CARTER: Okay. All righty. Section VI,  
25 order of witnesses.

1 MS. BROWN: Commissioner, I also want to point out  
2 that the current Draft Prehearing Order identifies certain  
3 witnesses that staff believes can be excused at this point.  
4 We're still in the process of negotiating stipulations and  
5 conducting discovery. I expect that by the time I bring you a  
6 Prehearing Order to sign there will be more stipulations and  
7 that, that draft will reflect the stipulations we've reached.

8 COMMISSIONER CARTER: Thank you. And thank you to  
9 the parties for working so dutifully on this matter. I know  
10 these are complicated matters, but we sincerely appreciate the  
11 integrity of the process. Thank you so kindly.

12 MS. BROWN: Also, Commissioner, one other thing. I  
13 just want to point out that staff will notify the parties by  
14 Thursday, November 1st, if their witnesses can be excused.

15 COMMISSIONER CARTER: Thank you. Section VII, basic  
16 positions.

17 MR. PERKO: Commissioner, if I could. Gary Perko on  
18 behalf of Progress. I notice that we have no position listed.  
19 I will provide a general position to Ms. Brown that will be  
20 consistent with the other positions we've taken.

21 COMMISSIONER CARTER: Okay. Thank you, sir. Any  
22 other parties on the basic positions?

23 Let's kind of take a moment. I want to thumb through  
24 Section VIII on issues and positions. If I could just -- I  
25 want to kind of go through that a little bit more.

1 I want to go issue by issue. Okay. We're on Section  
2 VIII, issues and positions. Okay. Issue 1.

3 MR. BUTLER: Commissioner Carter.

4 COMMISSIONER CARTER: Yes, sir.

5 MR. BUTLER: John Butler for Florida Power & Light  
6 Company. I don't know if you'd prefer to handle this now or  
7 when we get back to the stipulations, but there are two or  
8 three issues where I think there may be a possibility of  
9 stipulation for FPL and I'd just like to point them out. I'm  
10 not sure if we'll reach stipulation here today, but get things  
11 working in that direction. And at this point they're not  
12 identified in the Prehearing Order as potential stipulations.  
13 This is one of them, Issue 1. It doesn't seem to me that  
14 anything that is at issue specific to FPL would affect the 2006  
15 true-up amounts, and there isn't any disagreement with the  
16 dollar amounts that are shown here. So we at least propose it  
17 as something that seems like it should be stipulated for FPL.

18 COMMISSIONER CARTER: Okay. Ms. Brown.

19 MS. BROWN: Yes, Commissioner. I want to review that  
20 with, with staff, and we'll reflect that in the next draft of  
21 the Prehearing Order.

22 MR. BUTLER: Okay.

23 MR. PERKO: Commissioner, if I could.

24 COMMISSIONER CARTER: Mr. Perko.

25 MR. PERKO: Not to be repetitive, but I think the

1 same may hold true for Progress Energy as well.

2 COMMISSIONER CARTER: Okay.

3 MS. BROWN: So noted.

4 COMMISSIONER CARTER: Ms. Christensen.

5 MS. CHRISTENSEN: And OPC at this time can take no  
6 position on this issue, and that may facilitate the ability of  
7 the companies to enter some stipulation, noting that OPC takes  
8 no position.

9 COMMISSIONER CARTER: Thank you so kindly.

10 MS. BROWN: And if I might inquire of FIPUG if, if  
11 they are taking no position as well?

12 MR. McWHIRTER: That is correct.

13 COMMISSIONER CARTER: Thank you.

14 MR. STONE: Commissioner Carter, I assume that staff  
15 -- this is Jeff Stone on behalf of Gulf. I'm sorry. I assume  
16 that staff's review of Issue 1 would also relate to their  
17 position on Gulf Power as well.

18 MS. BROWN: Yes, and TECO.

19 COMMISSIONER CARTER: Okay. Any, any further  
20 comments on Issue 1?

21 Issue 2.

22 MS. BROWN: Commissioner, I think we're probably in  
23 the same stance for Issue 2 as we are for Issue 1, if OPC and  
24 FIPUG could confirm that.

25 MS. CHRISTENSEN: Office of Public Counsel would also

1 take no position on this issue. And I believe we can either do  
2 it as the issues come up, but I -- or we can do it now, but  
3 Issues 1 through 8 we would just change our positions from no  
4 position at this time to no position. And I can address that  
5 by issue or we can just note that now and make those changes.

6 COMMISSIONER CARTER: So Issues 1 through 8 is no  
7 position.

8 MS. CHRISTENSEN: Correct. And then we would address  
9 the company-specific issues as they come up.

10 COMMISSIONER CARTER: Mr. McWhirter.

11 MR. McWHIRTER: FIPUG didn't use the phrase no  
12 position. We said we do not contest the position taken, which  
13 is, I guess, essentially the same thing.

14 COMMISSIONER CARTER: Is that for the same number,  
15 Issues 1 through 8?

16 MR. McWHIRTER: In essence we stipulate to the thing  
17 going down, but it's like pleading nolo contendere. We're not  
18 fighting about it at this time, but we might at some time in  
19 the future.

20 COMMISSIONER CARTER: Let's do -- let's just go to  
21 Issue 8 unless there's any, any questions. Or could we --  
22 maybe -- is that okay with everyone, just move on through to  
23 Issue 9? Ms. Christensen, you said no position up through  
24 Issue 8; is that correct?

25 MS. CHRISTENSEN: Correct. And that should hopefully



1 facilitate on those issues.

2 COMMISSIONER CARTER: Is that okay with the parties?  
3 We're all -- everybody is --

4 MS. BROWN: Yes, Commissioner. I think that's  
5 correct. That will speed the process up too.

6 COMMISSIONER CARTER: Okay. All right then. You  
7 guys just didn't want me to go issue by issue. Okay. That's  
8 okay.

9 How about Issue 9A? Issue 9A. Okay.

10 MS. BROWN: It doesn't look like that can be  
11 stipulated yet.

12 COMMISSIONER CARTER: Okay. Issue 9B.

13 MR. BUTLER: I think that 9B should be stipulated.

14 COMMISSIONER CARTER: Did you get that, Ms. Brown?  
15 Mr. Butler --

16 MS. BROWN: Yes. That's correct, Commissioner.

17 COMMISSIONER CARTER: Okay. Okay. So we can move to  
18 9C.

19 Okay. 9D.

20 MR. BUTLER: I think this one should be stipulated  
21 for the same reason as 9B.

22 COMMISSIONER CARTER: Okay. 9E, as in echo.

23 MS. BROWN: Commissioner, if I might go back for a  
24 minute and request a statement from OPC and FIPUG whether or  
25 not they are going to take a position on these company-specific

1 issues. We are at the Prehearing Conference stage and it is  
2 usually the time when companies need to take a position on a  
3 particular issue.

4 COMMISSIONER CARTER: So we need to back up to Issues  
5 -- let's go back to 9A.

6 MS. BROWN: 9A.

7 MR. BURGESS: 9A and 9C. Commissioner --

8 COMMISSIONER CARTER: Yes, sir.

9 MR. BURGESS: -- OPC is not going to contest this  
10 issue. We're not going to present evidence. And so what the  
11 parties do -- I note that all the parties, staff have no  
12 position at this time. We are not going to take a position at  
13 the hearing or we are not going to contest the allowance at the  
14 hearing.

15 COMMISSIONER CARTER: Is that on 9A, 9B, 9C, 9D, 9E,  
16 9F, 9G?

17 MR. BURGESS: Yes. We're not -- and as I say, I need  
18 to make it clear for the record that this is not that we are  
19 acquiescing to the correctness of it, but we are simply not  
20 bringing it into contest in the hearing. Thank you.

21 COMMISSIONER CARTER: Is that, then is that the case  
22 for all, both the issues in 9, the issues in 10 -- you're  
23 saying about the company-specific issues, 11 and, yeah, Issues  
24 11.

25 MR. BURGESS: That is for Florida Power & Light the

1 issues in 9, but not for the, not for each of, each of the  
2 others. We'll have to deal with those.

3 COMMISSIONER CARTER: So you're just talking about  
4 Issues 9 then.

5 MR. BURGESS: Yes, sir. Yes, Commissioner.

6 COMMISSIONER CARTER: All right then. Ms. Brown --

7 MR. McWHIRTER: FIPUG concurs in that.

8 COMMISSIONER CARTER: Mr. McWhirter.

9 MR. McWHIRTER: FIPUG concurs in that and would be  
10 willing to stipulate to those issues.

11 COMMISSIONER CARTER: Okay.

12 MS. BROWN: Thank you to the parties. That will  
13 facilitate staff's discussions with the company on these  
14 particular issues. And it does look --

15 COMMISSIONER CARTER: Okay. Everybody clear on, is  
16 everybody clear on where we are now? We're going now to Issue  
17 10.

18 MS. BROWN: Yes. At this time staff isn't prepared  
19 to stipulate to Issue 9A but they are to Issue 9B. Not  
20 prepared to stipulate to Issue 9C --

21 COMMISSIONER CARTER: Okay.

22 MS. BROWN: -- pending further discovery that's going  
23 on this week, but we are prepared to stipulate to Issue 9D.  
24 And we're not prepared to stipulate to Issue 9E, and we're not  
25 prepared to stipulate to Issue 9F at this time.

1           COMMISSIONER CARTER: Thank you. I appreciate it. I  
2 normally go section by section, but because we had these issues  
3 here, I wanted to kind of break those out. I hope that that  
4 helps to facilitate the process so all parties can be heard on  
5 each one of the issues.

6           MR. BUTLER: Commissioner Carter.

7           COMMISSIONER CARTER: Yes, sir, Mr. Butler.

8           MR. BUTLER: I don't mean to take up any significant  
9 time on this, but I'm just curious for staff, Issue 9F falls  
10 into the pattern of the ones like Issue 9B and 9D. They're  
11 basically just how the costs are allocated for recovery, and  
12 I'm wondering if it's possible to stipulate to that issue.

13           MS. BROWN: No, it isn't possible at this time. We  
14 have a couple of clarifying questions. I expect to be able to  
15 get back to FP&L on that shortly.

16           MR. BUTLER: All right. Thank you.

17           COMMISSIONER CARTER: Okay.

18           MS. BROWN: Commissioner, also Issue 9G, staff is not  
19 prepared to stipulate to that issue for FP&L either.

20           COMMISSIONER CARTER: Okay. Now did we cover  
21 everything from Issues 1 through 9G?

22           MS. BROWN: Yes.

23           COMMISSIONER CARTER: Everybody on board? Okay.  
24 Let's proceed to Issue 10A.

25           MS. BROWN: Commissioner, I'm uncertain of the

1 position that OPC and FIPUG are taking on this issue. Staff is  
2 not prepared to stipulate to this issue yet, although I would  
3 point out that we are having discussions on wording on a  
4 possible stipulation that should clear this up.

5 COMMISSIONER CARTER: Ms. Christensen.

6 MS. CHRISTENSEN: At this time staff or, I'm sorry,  
7 OPC -- I've been with staff too long. But at this time OPC is  
8 maintaining its position as stated. We've had some discussions  
9 with the company. I think we're going to try and have some  
10 further discussions and see if we can't agree how to best deal  
11 with these issues. There's a couple of them which are related,  
12 10A, 10B and 10C.

13 COMMISSIONER CARTER: Okay.

14 MS. CHRISTENSEN: And at this point we would not be  
15 changing our position. But if we can reach some stipulation,  
16 then we would present that to staff and try and resolve that  
17 prior to the hearing.

18 COMMISSIONER CARTER: Okay. And that's referenced to  
19 10A, 10B and 10C; correct?

20 MS. CHRISTENSEN: That is correct.

21 COMMISSIONER CARTER: Mr. McWhirter.

22 MR. McWHIRTER: I take the same position that Patty  
23 did.

24 COMMISSIONER CARTER: Okay. Good. I just wanted to  
25 make sure everyone gets an opportunity to be heard. Okay.

1 Ms. Brown -- any other parties before I go to  
2 Ms. Brown?

3 MR. PERKO: I'll just confirm that the company is in  
4 discussions with the Office of Public Counsel. We'll try to  
5 reach a stipulation and bring it to staff, if we can.

6 MS. BROWN: And staff will try to facilitate that and  
7 have it reflected in the Prehearing Order when I bring it to  
8 you for signature.

9 COMMISSIONER CARTER: Okay. Any other questions on  
10 10A, B and C? Everybody had an opportunity to be heard?

11 Okay. Let's proceed now to Issue -- I guess we can  
12 go to 11A and B. There's no C there. We had symmetry going  
13 for us and then all of the sudden, you know, we just break.

14 Okay. You guys ever watch Sesame Street where they  
15 have -- there's, when they're doing the sets and they have one  
16 thing, "One of these things is not like the other." Anyway,  
17 never mind. I won't quit my day job. It's just 11A and 11B.

18 (Laughter.)

19 Ms. Christensen, you're recognized.

20 MS. CHRISTENSEN: I think Ms. Brown was going to note  
21 that I think we've reached a resolution of these issues.

22 COMMISSIONER CARTER: Ms. Brown.

23 MS. BROWN: No, not, not quite yet. I need to confer  
24 with staff.

25 COMMISSIONER CARTER: Was it my singing that did it?

1 MS. BROWN: I'm not certain that we have and I'm  
2 not -- but we need a little bit more discussion, and we'll have  
3 that reflected in the Prehearing Order when I bring it to you  
4 for signature.

5 COMMISSIONER CARTER: And that's on Issue 11, Issues  
6 11A and 11B. Okay.

7 MS. BROWN: Yes. We have discovery still outstanding  
8 and I'm just being cautious. We're close, I think, but I'm not  
9 willing to make that representation at the moment.

10 COMMISSIONER CARTER: Ms. Christensen.

11 MS. CHRISTENSEN: Well, given that caveat, we'll just  
12 leave the position as it is stated, the same. But I think the  
13 company and myself have, have an understanding that we think  
14 this issue is not necessary for the proceeding. But in the  
15 abundance of caution we can wait for staff to, you know --

16 MS. BROWN: Yes. That's, that's the proposal that  
17 the company and OPC have presented that these issues be dropped  
18 from this proceeding for this year. I just need to run that by  
19 my staff to make sure they agree with that.

20 COMMISSIONER CARTER: Okay. Anybody else in this  
21 matter? Okay.

22 I think that was 11A and B were the last. So now we  
23 go to Section IX, exhibit list. Ms. Brown.

24 MS. BROWN: Yes, Commissioner. There are several  
25 issues that will be, as I've said, that will be stipulated, and

1 the testimony of the witnesses and the exhibits can be entered  
2 into the record, and the Comprehensive Exhibit List that staff  
3 prepares before the hearing will reflect that.

4 COMMISSIONER CARTER: Okay. Section X, proposed  
5 stipulations.

6 MS. BROWN: This section will also reflect the  
7 stipulations when they're completed.

8 COMMISSIONER CARTER: Okay. Section XI, pending  
9 motions.

10 MS. BROWN: Commissioner, there are no pending  
11 motions at this time. The Prehearing Order reflects that.

12 COMMISSIONER CARTER: Okay.

13 MS. BROWN: Oh, no. I'm sorry. Back up. There is  
14 one pending motion. It's Progress's motion to file  
15 supplemental testimony. And staff recommends that you can rule  
16 approving this motion from the bench today and the Prehearing  
17 Order will reflect that.

18 COMMISSIONER CARTER: Any objections of any of the  
19 parties? Do any of the parties object?

20 Ms. Christensen, you're recognized.

21 MS. CHRISTENSEN: We have no objection to the  
22 supplemental testimony as described in the e-mail, which I  
23 think was fairly limited. With that caveat, no objection.

24 COMMISSIONER CARTER: Okay. Mr. Perko.

25 MR. McWHIRTER: No objection from FIPUG.



1 COMMISSIONER CARTER: Any other parties?

2 MS. BROWN: Staff recommends that you approve the  
3 motion.

4 COMMISSIONER CARTER: Show it done.

5 Okay. Section XII, pending confidentiality matters.

6 MS. BROWN: At present there are three Progress  
7 Energy requests for confidentiality. They're in process at the  
8 moment and I hope that they will be completed by the hearing.

9 MR. PERKO: Commissioner.

10 COMMISSIONER CARTER: Yes, sir.

11 MR. PERKO: Based on some production that we made  
12 this morning, we will likely be filing another request for  
13 confidential classification, so that would make four. We'll  
14 get that in as soon as possible.

15 MR. STONE: Commissioner Carter, this is Jeff Stone  
16 on behalf of Gulf Power Company. I believe we filed a request  
17 last week, so there would be one pending for Gulf as well.

18 COMMISSIONER CARTER: Okay. All righty.

19 MR. BUTLER: I would think the same is going to apply  
20 for FPL. I'm sorry.

21 COMMISSIONER CARTER: Okay.

22 MR. BUTLER: We're going to be filing one actually  
23 today.

24 MS. BROWN: Yes. These are all new requests that are  
25 coming from the discovery that staff has made just recently.

1 COMMISSIONER CARTER: All righty. Good.

2 Section XIII, posthearing procedures.

3 MS. BROWN: If the Commission makes a bench decision  
4 at the hearing, no posthearing filings will be necessary. But  
5 staff believes that this section should remain in the  
6 Prehearing Order since we won't know that until the hearing.

7 COMMISSIONER CARTER: Show it done.

8 Section XIV, rulings.

9 MS. BROWN: Commissioner, staff has stated in the  
10 Draft Prehearing Order that if the hearing is held, opening  
11 statements should not exceed ten minutes. I think that should  
12 be consistent with the other dockets and it should be five  
13 minutes.

14 COMMISSIONER CARTER: So it would be five minutes per  
15 party. Is that what we've been -- we've been saying that. I  
16 think we've been saying that consistently throughout. Isn't  
17 that --

18 MS. BROWN: Yes. Per party.

19 COMMISSIONER CARTER: Don't you guys -- isn't that  
20 what we're saying? Five minutes per party; right? Okay.

21 MS. BROWN: And, Commissioner, as I mentioned before,  
22 if more witnesses, witnesses can be excused from the hearing,  
23 the staff will contact the other Commissioners to make sure  
24 they have no questions and then contact the company by  
25 November 1st to let them know if their witnesses have been

1 excused.

2 COMMISSIONER CARTER: Great.

3 MR. BEASLEY: Commissioner Carter.

4 COMMISSIONER CARTER: Yes, sir.

5 MR. BEASLEY: Jim Beasley for Tampa Electric Company.

6 We have, I believe, one pending motion for confidential  
7 treatment of a discovery response.

8 MS. BROWN: Okay.

9 MR. BEASLEY: Recently filed.

10 COMMISSIONER CARTER: Are there -- before I go back  
11 to Ms. Brown, are there any other matters from any other of the  
12 parties before I ask staff -- are there any other matters  
13 outstanding for any other parties before I go back and ask  
14 staff? Ms. Brown, are there any other matters outstanding in  
15 this docket that we need to address today?

16 MS. BROWN: Not that I'm aware of, Commissioner.

17 COMMISSIONER CARTER: Okay. If there are no other  
18 matters in this docket, we'll adjourn this docket and move to  
19 the 01 docket.

20 (Prehearing Conference adjourned at 2:00 p.m.)

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1 STATE OF FLORIDA )  
2 COUNTY OF LEON )

CERTIFICATE OF REPORTER

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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 25th day of October, 2007.

Linda Boles  
LINDA BOLES, RPR, CRR  
FPSC Official Commission Reporter  
(850) 413-6734