STATE OF FLORIDA

OFFICE OF COMMISSION CLERK
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Public Service Commission

February 6, 2018

John A. Tomasino, Clerk
Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399

Re: Citizens of the State of Florida, through the Florida Office of Public Counsel vs. Florida Public Service Commission, PSC Docket No. 20180007-EI

Dear Mr. Tomasino:

Enclosed please find a certified copy of a Notice of Administrative Appeal, which was filed with the Public Service Commission on February 5, 2018, along with its attachment, Order No. PSC-2018-0014-FOF-EI. This appeal was filed on behalf of the Citizens of the State of Florida.

Please do not hesitate to contact me should you have any questions concerning this matter.

Sincerely,

Carlotta S Stauffer

Carlotta S. Stauffer
Commission Clerk

CSS: nah
Enclosure

cc: Stephanie A. Morse, Associate Public Counsel
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CITIZENS OF THE STATE OF FLORIDA, THROUGH THE FLORIDA OFFICE OF PUBLIC COUNSEL,	**IN THE FLORIDA PUBLIC SERVICE COMMISSION**
Appellants,	**DOCKET NO. 20180007-EI**
v.	
FLORIDA PUBLIC SERVICE COMMISSION,	**NOTICE OF ADMINISTRATIVE APPEAL**
Appellee.	

NOTICE IS GIVEN that the Citizens of the State of Florida, Appellants, through the Office of Public Counsel, appeal to the Supreme Court of the State of Florida the order of the Florida Public Service Commission, Order No. PSC-2018-0014-FOF-EI, rendered on January 5, 2018. A copy of Order No. PSC-2018-0014-FOF-EI is attached to this NOTICE OF ADMINISTRATIVE APPEAL as Exhibit "A."

The nature of the order is the Final Order Approving Projected Expenditures and True-Up Amounts for Environmental Cost Recovery.

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Attorneys for Citizens of
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **NOTICE OF ADMINISTRATIVE APPEAL** has been furnished by electronic mail on this 5th day of February, 2018, to the following:

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CITIZENS OF THE STATE OF FLORIDA, THROUGH THE FLORIDA OFFICE OF PUBLIC COUNSEL,	)	**IN THE FLORIDA PUBLIC SERVICE COMMISSION**
Appellants,	)	**DOCKET NO. 20180007-EI**
v.	)	
FLORIDA PUBLIC SERVICE COMMISSION	)	**NOTICE OF ADMINISTRATIVE APPEAL**
Appellee.	)	
_____	)	

EXHIBIT "A"

FLORIDA PUBLIC SERVICE COMMISSION
ORDER NO. PSC-2018-0014-FOF-EI, ISSUED JANUARY 5, 2018

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.	DOCKET NO. 20180007-EI ORDER NO. PSC-2018-0014-FOF-EI ISSUED: January 5, 2018

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN, Chairman
ART GRAHAM
RONALD A. BRISÉ
DONALD J. POLMANN
GARY F. CLARK

APPEARANCES:

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On behalf of Tampa Electric Company (TECO)

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

BY THE COMMISSION:

BACKGROUND

In this Environmental Cost Recovery Clause (ECRC) docket, the Florida Public Service Commission (Commission) reviews petitions for environmental cost recovery filed by Florida Power and Light Company (FPL or Company), Duke Energy Florida (DEF), Gulf Power Company (Gulf), and Tampa Electric Company (TECO), pursuant to Section 366.8255, Florida Statutes (F.S.). The Office of Public Counsel (OPC), the Southern Alliance for Clean Energy (SACE), Florida Industrial Power Users Group (FIPUG), and White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs (PCS) were intervenors in this docket. As part of our continuing ECRC proceedings, a hearing was held in this docket on October 25-27, 2017. PCS was excused from the hearing.

The parties have resolved all issues *except* Issues 10A-10E. The contested issues are discussed at Sections I-V of this Order. Our staff, DEF, FPL, Gulf, and TECO supported the proposed stipulation of Issues 1-9, 10F-G, 11, 12A-C, and 13, which are set forth in Attachment

A of this Order. SACE, PCS, and FIPUG took no position on the stipulations. OPC took no position on all of the stipulations except for Issue 10G, which it did not oppose and affirmatively stated that "OPC does not object to the process proposed by FPL." We approved the stipulations by a bench vote at the October 25, 2017 hearing. The contested issues relate to the FPL Turkey Point Cooling Canal Monitoring Plan Project (TP-CCMP or Monitoring Plan). To the extent that our decisions regarding the Monitoring Plan change the amount approved for recovery, the numbers for FPL, identified in Attachment A by an asterisk, may need to be "trued- up" in a subsequent ECRC filing. A non-exhaustive list of acronyms related to the contested issues is included in this Order as Attachment B.

FPL operates the Turkey Point Power Plant (Turkey Point), which has multiple generating units, including Units 3 and 4, which are nuclear steam units. For cooling these generating units, FPL utilizes a 5,900 acre cooling canal system (CCS) that was placed in service in 1973. By Order No. PSC-09-0759-FOF-EI (Approval Order),[1] issued on November 18, 2009, we approved the Monitoring Plan for cost recovery through the ECRC.

On September 2, 2016, FPL filed projection testimony in the ECRC docket for the Monitoring Plan that included a request for recovery of costs associated with recent actions of two of its environmental regulators. FPL entered into a Consent Agreement (CA) with the Miami-Dade Department of Environmental Resource Management (DERM) on October 7, 2015, which was amended on August 15, 2016, and referred to as the Consent Agreement Addendum (CAA). On June 20, 2016, FPL also entered into a Consent Order (CO) with the Florida Department of Environmental Protection (FDEP). Collectively, costs associated with the CA, CAA, and CO are referred to in this Order as the Monitoring Plan Disputed Costs.

By Order No. PSC-16-0535-FOF-EI, issued on November 22, 2016, we deferred consideration of issues associated with the Monitoring Plan Disputed Costs until 2017, directed FPL to file additional information in its 2017 Actual/Estimated Testimony in this docket, and established desired time periods for intervenor, staff, and rebuttal testimony filing dates.[2]

On January 3, 2017, we established Docket 20170007-EI.[3] OPC and FIPUG retained party status in the docket, and SACE was granted intervention. Collectively, OPC, FIPUG, and SACE are referred to in this Order as the Intervenors. DEF, TECO, Gulf, and PCS participated in this docket, but did not take positions on the contested issues.

On November 13, 2017, briefs were filed by FPL, OPC, and SACE regarding the contested issues. FIPUG filed a notice of joinder with OPC's brief, and the two are referred to in this Order collectively as OPC/FIPUG. As part of its November 13, 2017 filing, SACE filed proposed findings of fact and conclusions of law. Such filings are anticipated by Chapter 120, F.S., the Uniform Rules of Procedure, and our procedural orders. We have considered SACE's

[1]Issued November 18, 2009, in Docket No. 090007-EI, *In re: Environmental cost recovery clause.*
[2]In Docket No. 160007-EI, *In re: Environmental cost recovery clause.*
[3]Order No. PSC-17-0007-PCO-EI, issued January 3, 2017, in Docket No. 170007-EI, *In re: Environmental cost recovery clause.*

filings, as we would any other post-hearing filing. On December 12, 2017, the FPL Monitoring Plan Disputed Costs were addressed at our Agenda Conference.

We have jurisdiction over this subject matter pursuant to Section 366.8255, F.S.

ANALYSIS and DECISION

The stipulations of Issues 1-9, 10F-G, 11, 12A-C, and 13, as set forth in Attachment A of this Order, are approved. The contested issues address the FPL Monitoring Plan Disputed Costs, and are discussed below at Sections I-V.

I. ECRC Recovery of FPL's Prudently Incurred Costs, if any, Associated with the CO, CA, and CAA

A. Parties' Arguments

1. FPL

FPL asserts that it is required to comply with the 2015 CA, 2016 CO, and 2016 CAA, and that costs FPL has prudently incurred as a result of these requirements are recoverable pursuant to Section 366.8255, F.S. FPL argues that there is no legal basis to disallow costs determined to be prudently incurred to comply with environmental requirements.

FPL asserts that as part of the Turkey Point Uprate Project, it was required by its Conditions of Certification (COC), specifically Section IX and X, to implement monitoring of various state surface and ground waters subject to the regulation of the FDEP, DERM, and South Florida Water Management District (SFWMD). As part of implementing the COC, FPL sought, and we granted approval of the Monitoring Plan in November 2009. FPL argues that it continued to meet its regulatory requirements of monitoring and, as part of that monitoring process, in April 2013, SFWMD determined that saline water had moved into water resources outside of the plant's boundaries. FPL was instructed to begin consultations with SFWMD to "identify measures to mitigate, abate, or remediate." FPL states that it then began working with its environmental regulators to evaluate options which resulted in an Administrative Order (AO) being issued by FDEP in December 2014.

FPL argues that one of its regulators, DERM, was unsatisfied with the FDEP's AO. As a result, DERM challenged the AO and issued a Notice of Violation (NOV) in October 2015. The challenge to the AO resulted in a Final Administrative Order that led to the FDEP issuing a separate NOV in April 2016. FPL asserts that both DERM's and the FDEP's NOVs were resolved by entering into the CO in June 2016 and the amended CAA in August 2016. Further, FPL contends that the actions required by the CAA and CO, which result in the Monitoring Plan Disputed Costs, are direct consequences of FPL's COC.

FPL alleges that it is overly simplistic for the Intervenor Parties to claim that the NOVs are violations of law. First, FPL contends that the environmental standards cited by all three of its environmental regulators are narrative standards that require the agency's judgement to determine if a violation has occurred, and that there is no bright line defining a violation of law. Second, FPL argues that it operated the CCS in full compliance with its regulations and that the environmental degradation is an unintended consequence. Last, FPL asserts that the NOVs are not the sole reason for the Monitoring Plan Disputed Costs, and that FPL would be obligated by its COC to perform the same actions.

FPL also argues that OPC is mistaken regarding this Commission's discretion regarding recovery, and that if we approve the Company's activities, we must allow cost recovery through the ECRC pursuant to Section 366.8255, F.S.

2. OPC/FIPUG

OPC/FIPUG assert that the jurisdictional portion of approximately 95 percent of the total O&M and capital expenditures of $132,577,031 in remediation costs to clean up the Biscayne Aquifer should be disallowed.

OPC/FIPUG argue that FPL has not met its burden of proof to be eligible for recovery of the Monitoring Plan Disputed Costs, which OPC/FIPUG refer to as the Retraction and Freshening Remediation Project (RFRP). OPC/FIPUG assert that in its original 1972 permitting, FPL was responsible for both monitoring and preventing the spread of saltwater from the CCS.

OPC/FIPUG contend that, while a Consent Order or Agreement does not preclude recovery through the ECRC, costs implementing remediation activities to correct violations of law are not eligible. OPC/FIPUG argue that FPL specifically justifies its activities by relying on the FDEP CO which resulted from an NOV. OPC/FIPUG assert that, as a result of the NOV, FPL would have been liable to the State of Florida for damage to the Biscayne Aquifer, and therefore, should not be eligible for recovery as though RFRP costs were payment of damages for unlawful conduct. OPC/FIPUG note that Section 366.8255, F.S., requires that costs must be "designed to protect the environment."

OPC/FIPUG argue that the ECRC recovery standard includes both prudence and public policy elements, and that we must be vigilant about improper efforts to recover costs through the ECRC.[4]

OPC/FIPUG state that the ECRC is an inappropriate method to recover costs associated with past harms. Instead, they contend that the clause is meant to allow recovery of costs required by new regulations to prevent future harm. OPC/FIPUG refer to our prior decisions in which we reference maintaining compliance or continuing compliance. OPC/FIPUG suggest

[4]At page 9 of OPC/FIPUG's Brief, OPC/FIPUG quote from Order No. PSC-07-0722-FOF-EI, issued September 5, 2007, in Docket No. 060162-EI., *In re: Petition by Progress Energy Florida, Inc. for approval to recover modular cooling tower costs through environmental cost recovery clause*. However, the quotation in OPC's Brief does not reflect the text of our Order. The correct text is "It is our opinion that, with respect to ECRC recovery, OPC's position restricts the eligibility of environmental costs beyond what the statute contemplates" *Id.* at 8.

that, because FPL has committed a violation and is out of compliance, FPL's costs are now ineligible under the ECRC. OPC/FIPUG acknowledge that we have allowed remediation costs before, but suggest that those circumstances were with specific regulations that are not similar to the circumstances presented by the Monitoring Plan Disputed Costs. OPC/FIPUG further argue that a Consent Order or Agreement is the equivalent of an environmental regulation when it has a prospective application to abate or eliminate future harm, and that in prior instances when we have approved cost recovery for a Consent Decree, such costs covered only prospective actions.

3. SACE

SACE asserts that FPL was issued an NOV by the FDEP in 2016 and by Miami-Dade County in 2015. SACE argues that we have never allowed a utility to recover costs through the ECRC for compliance costs arising from a violation of law, and that doing so in this case would establish a dangerous precedent in future ECRC proceedings. Moreover, SACE contends that recovery of costs should not be allowed because FPL's failure to mitigate the impact of the CCS-caused hyper-saline plume before 2014 was imprudent**.**

SACE alleges that FPL knew, or should have known, by 1992 that the operation of the CCS was causing an adverse impact to waters adjacent to the CCS. SACE argues that FPL failed to provide information to both SFWMD and this Commission regarding the scale of the environmental impacts of the CCS. SACE contends that FPL's imprudence caused the environmental compliance requirements of the CO and CA, and therefore, cost recovery should not be allowed.

SACE alleges that FPL downplayed, or even ignored, the conclusions of annual monitoring reports that were filed with environmental regulators. SACE asserts that had environmental regulators been provided with a complete analysis of the monitoring data, FPL's Turkey Point Uprate Project might not have been approved. Therefore, the COC FPL relies upon as an environmental requirement would not have been in place.

B. Analysis

The ECRC, enacted into law in 1993, provides an investor-owned utility the opportunity to recover the costs associated with changes in environmental regulations between rate cases. The statute authorizes us to review and decide whether a utility's environmental compliance costs are recoverable through an environmental cost recovery factor. When we first implemented the provisions of Section 366.8255, F.S., we identified the criteria required to demonstrate eligibility for cost recovery under the ECRC, and interpreted the statute to have three requirements for recovery of environmental compliance costs through the clause, as detailed below:

> Upon petition, we shall allow the recovery of costs associated with an environmental compliance activity if:
>
> 1. such costs were prudently incurred after April 13, 1993;

> 2. the activity is legally required to comply with a governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the Company's last test year upon which rates are based; and,
>
> 3. such costs are not recovered through some other cost recovery mechanism or through base rates.[5]

Pursuant to Section 366.8255, F.S., only the utility's prudently incurred environmental compliance costs are allowed to be recovered through the ECRC.[6] The prudency of the Monitoring Plan Disputed Costs is discussed below in Section II.

1. Timing

To be eligible for recovery under the ECRC, costs must have been prudently incurred after April 13, 1993, the effective date of Section 7, Chapter 93-35, Laws of Florida, which created Section 366.8255, F.S.[7] This threshold date has been applied by us many times since it was originally established.[8]

No party argues, and there is no substantial evidence in the record, that the Monitoring Plan Disputed Costs were incurred prior to this date. Therefore, we find that the Monitoring Plan Disputed Costs meet the first criterion of ECRC eligibility.

2. Regulatory Requirement/Test Year

To be eligible for the ECRC, costs must be for activities that are legally required to comply with a governmentally imposed regulation that has been enacted, or become effective, or whose effect was triggered after the Company's last test year upon which rates are based. Therefore, to determine eligibility of the Monitoring Plan Disputed Costs, we must first identify the new regulations and then determine if the dates of such regulations are after the Company's last test year.

Section 366.8255 (1)(c), F.S., defines environmental laws or regulations to include "all federal, state, or local statutes, administrative regulations, orders, ordinances, resolutions, or other requirements that apply to electric utilities and are designed to protect the environment." The FDEP and DERM are state and local environmental regulators, respectively, with the

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[5]Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, *In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.8255, Florida Statutes, by Gulf Power Company*

[6]Order No. PSC-05-0164-PAA-EI, issued February 10, 2005, in Docket No. 041300-EI, *In re: Petition for Approval of New Environmental Program for Cost Recovery Through Environmental Cost Recovery Clause, by Tampa Electric Company.*

[7]Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, *In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.0825, Florida Statutes by Gulf Power Company.*

[8]*See e*.g., Order No PSC-12-0493-PAA-EI, issued September 26, 2012, in Docket No 20110262-EI, *In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause, by Tampa Electric Company.*

authority to impose requirements on FPL's operations of the CCS and other relevant plants. The CO, CA, and CAA all include specific new requirements that apply to FPL in relation to its function as an electric utility. These are primarily detailed in Sections 20 through 33 of the FDEP's CO and Sections 17 and 34 in DERM's CA, as amended by the CAA. These requirements include items such as implementing plans to meet salinity thresholds, installation and operation of freshening projects, improving thermal efficiency, and engaging in remediation projects including a recovery well system.

We have previously interpreted a Consent Decree to be a qualifying requirement under the ECRC.[9] In another instance, we allowed ECRC cost recovery based on an agreement reached as a result of alleged violations of the Clean Air Act.[10] The record reflects that without the FDEP's NOV, FPL would not have signed a Consent Order. FDEP's NOV directed FPL to enter into a Consent Order or equivalent, and FPL is engaging in the Monitoring Plan Disputed Cost activities pursuant to the CO and CA.

The CO, CA, and CAA expressly require FPL to engage in remediation activities. We have previously approved recovery of costs associated with remediation activities under the ECRC.[11] Based on the statutory definition, our past interpretation of the statute, and the record in this docket, we find that the CO, CA, and CAA are new environmental regulations.

FPL's most recent rate case was resolved by a settlement between many parties, including FPL and OPC, and was approved by us by Order No. PSC-16-0560-AS-EI.[12] No party argues, and there is no substantial evidence in the record, that the Monitoring Plan Disputed Costs were triggered prior to FPL's last test year upon which rates are based. Therefore, the Monitoring Plan Disputed Costs meet the second criterion of ECRC eligibility.

3. Costs Not Recovered

To be eligible for the ECRC, costs also must not be recovered through some other cost recovery mechanism or through base rates. No party argues, and there is no substantial evidence in the record, that the Monitoring Plan Disputed Costs are being recovered through base rates or an alternate clause mechanism. Therefore, we find that the Monitoring Plan Disputed Costs meet the third criterion of ECRC eligibility.

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[9]Order No. PSC-07-0499-FOF-EI, issued June 11, 2007, in Docket No. 050958-EI, *In re: Petition for Approval of New Environmental Program for Cost Recovery through Environmental Cost Recovery clause by Tampa Electric Company.*

[10]Order No. PSC-00-2104-PAA-EI, issued November 6, 2000, in Docket No. 001186-EI, *In re: Petition for approval of new environmental programs for cost recovery through the Environmental Cost Recovery Clause by Tampa Electric Company.*

[11]Order No. PSC-05-1251-FOF-EI, issued December 22, 2005, in Docket No. 20050007-EI, *In re: Environmental Cost Recovery Clause.*

[12]Order No. PSC-16-0560-AS-EI, issued December 15, 2016, in Docket No. 160021-EI, *In re: Petition for rate increase by Florida Power & Light Company.*

C. Decision

Based on the foregoing, FPL shall be allowed to recover the Monitoring Plan Disputed Costs, if prudently incurred, through the ECRC. The Monitoring Plan Disputed Costs are costs incurred after the inception of the ECRC and are not being recovered through another clause mechanism or base rates. FPL is subject to new governmentally imposed requirements enacted after FPL's last test year. Whether the Monitoring Plan Disputed Cost activities are prudent is addressed immediately below in Section II.

II. Prudence of FPL Costs Associated with the CO, CA, and CAA

A. Parties' Arguments

1. FPL

FPL argues that the Company has prudently operated the CCS in compliance with its permits and applicable regulations and has cooperated with environmental regulators throughout its service life. FPL asserts that it has not violated the operational requirements in its environmental permits. FPL argues that, pursuant to regulatory requirements, it engaged in increased monitoring that resulted in the determination that corrective action was required, and that the Company is now engaging in corrective actions. FPL contends that the Monitoring Plan Disputed Costs are prudently incurred and that it is inappropriate for the Intervenor Parties to second guess the requirements of the Company's environmental regulators. FPL argues that the environmental actions required by the CO, CA, and CAA have significant overlap and that they require similar monitoring and corrective actions.

FPL avers that OPC failed to identify any imprudent management decisions that resulted in the Monitoring Plan Disputed Costs. FPL contends that the Company operated the system in compliance with regulations, which is acknowledged by its environmental regulators. FPL asserts that OPC's arguments are made with the benefit of hindsight using FPL's groundwater monitoring reports, that the COC acknowledges the existence of a hyper-saline plume, and that the enhanced monitoring requirements were the result of the Company's environmental regulators having insufficient data to determine what actions, if any, would need to be taken.

FPL specifically defends the prudence of the Recovery Well System (RWS) and related costs as a well understood remediation method that was the result of consensus between FPL and its environmental regulators. FPL argues that OPC's review of the RWS impacts on the hyper-saline plume uses invalid assumptions and misinterprets the modeling done to analyze it. FPL acknowledges that while uncertainty exists regarding the impact upon some layers of the aquifer, the operation of the RWS is subject to further review of the Company's environmental regulators and should move forward. FPL asserts that the need for future modification of its corrective actions is appropriate and does not undermine a determination of prudence for those activities. FPL asserts that regardless of the impact of the RWS, it is a specific requirement by the CO and CA and the associated modeling has been approved by DERM.

2. OPC/FIPUG

OPC/FIPUG argue that the costs of the Retraction Well System are remedial in nature and should not be imposed on FPL's customers. OPC/FIPUG assert that FPL's management knew or should have known that its actions in operating the CCS were creating material harm to the Biscayne Aquifer. OPC/FIPUG aver that FPL's actions and inaction over time placed the Company in violation of law and, therefore, constitute imprudence. OPC/FIPUG conclude that the costs of addressing the consequences of FPL's imprudence are not appropriate costs that should be borne by customers.

OPC/FIPUG contend that the build-up of salt from the CCS was foreseeable and would occur absent the attention and intervention by FPL. OPC/FIPUG argue that FPL failed to take actions on its own to prevent harm despite being required to monitor its wastewater and propose modifications to prevent such harm. OPC/FIPUG argue that FPL followed faulty advice from consultants and failed to follow recommendations to monitor trends and verify assumptions. OPC/FIPUG contend that OPC's observations are not hindsight, but are consistent with FPL's historic obligations under its environmental agreements. OPC/FIPUG also argue that FPL failed to prudently plan and execute tasks to avoid foreseeable damage, and that in the past, this Commission has found such failure to be imprudent.

OPC/FIPUG assert that FPL broke the law by violating groundwater protection rules and the Company's permit conditions causing damage to the aquifer, and that FPL is attempting to recover repair costs through customers for its violations. OPC/FIPUG argue that it is FPL's responsibility to pay for damages caused by its poor management of the situation that allowed the damage to occur. OPC/FIPUG contend that costs to remediate harm are ineligible for cost recovery through the ECRC (or any other mechanism) because of FPL's ability to foresee harm, if not violations of law, caused by the Company's operation of the CCS.

OPC/FIPUG aver that it is inappropriate for FPL to suggest that it relied upon environmental regulators to provide the requirement to act to address the damage caused by operation of the CCS. OPC/FIPUG argue that because FPL was in possession of the data and did not put forward any testimony from a manager of the water monitoring regulatory program, it has failed to meet its burden of proof. OPC/FIPUG assert that given the three-year lapse of reporting by FPL, not resulting in any action by SFWMD, that the regulator was not actively monitoring the environmental situation, and therefore, could not be relied upon to provide a requirement to act. OPC/FIPUG argue that reliance on the regulator's guidance was at the Company's risk and inappropriate, given that the regulator relied upon the Company's data and analysis.

OPC/FIPUG contend that the $1.5 million escrow payment required by the CO is akin to a donation, that the funds might not be used towards mitigation of saltwater intrusion caused by FPL, and therefore, should be ineligible for recovery. Furthermore, OPC/FIPUG argue that land donations required by the CO, while not sought for recovery at this time, might result in a below market value transaction, and that such losses should be reviewed in a future proceeding and not determined at this time.

3. SACE

SACE asserts that: customers should not have to pay for FPL's mistakes; FPL knew or should have known that the CCS was causing an underground hyper-saline contamination plume spreading from its Turkey Point plant property by 1978, and certainly by 1992 at the latest; FPL failed to take any action to mitigate the impacts of the CCS on the Biscayne Aquifer (a G-II water source) until 2014. SACE argues that a prudent utility manager would have acted promptly and proactively well before 2014 to mitigate and/or remediate the growing hyper-salinity contamination plume outside the CCS boundary**.**

SACE argues that FPL failed to provide information to both SFWMD and this Commission regarding the scale of the environmental impacts of the CCS. SACE contends that FPL's imprudence caused the environmental compliance requirements of the CO and CA, and therefore, the Company should not be allowed cost recovery.

SACE argues that FPL is imprudent by its inaction because a reasonable utility manager would have attempted corrective actions prior to 2014, instead of failing to act despite having information about the environmental damage. SACE contends that FPL's failure to act allowed the damage to increase in size and concentration. SACE asserts that as late as 2010, FPL consultants provided a feasibility analysis that identified a solution that would have addressed the hyper-saline conditions within three years, but the Company failed to act.

SACE argues that FPL intentionally misled regulators by failing to provide SFWMD with reports for several years, and when those reports were provided, failed to provide analysis regarding the effectiveness of the Company's actions in preventing environmental damage, and instead attributed the greater salinity to seasonal conditions. SACE asserts that had environmental regulators been provided with a complete analysis of the monitoring data, FPL's Turkey Point Uprate Project might not have been approved; thereby negating the COC FPL relies upon as an environmental requirement. Moreover, SACE argues that FPL intentionally misled this Commission regarding the potential for mitigation measures in our review of the Monitoring Plan.

SACE alleges that the overall regulatory process associated with the CCS is poor, with FPL failing to provide monitoring data, using poor monitoring standards, and co-writing its AO which was deficient of charges. SACE argues that there was no provision in any of the Company's agreements with regulators that prevented FPL from altering the operation of the CCS, improving its monitoring and analysis, or proactively engaging its regulators regarding the need for corrective action.

B. Analysis

1. Standard

Pursuant to Section 366.8255, F.S., this Commission "shall allow recovery of the utility's prudently incurred environmental compliance costs."[13] Environmental compliance costs include "all costs or expenses incurred by an electric utility in complying with environmental laws or regulations."[14] As discussed at Section I of this Order, FPL incurred the Monitoring Plan Disputed Costs in response to new environmental requirements.

Because there are varying time periods in which costs were, or are to be incurred, we must apply separate standards of review to the Monitoring Plan Disputed Costs. This is consistent with our decision when we first addressed the ECRC:

> We shall not make a specific finding of prudence for any activity included in Gulf's petition at this time. There are several reasons for this. First, many of the costs included in Gulf's petition are based on projections, and some of the projects have not yet been implemented. Thus, it is premature to establish prudence for a project that has not been completed. Second, the environmental cost recovery clause, like the fuel cost recovery clause, will be an on-going docket involving trueing-up projected costs. We retain jurisdiction in the fuel cost recovery clause because of the true-up provisions associated with fuel filings.[15]

FPL's Witness Deaton testified in support of FPL's actual costs for 2016, actual/estimated costs for 2017, and projected costs for 2018. As 2015 and 2016 represent actual expenditures by FPL, these are subject to a full prudence determination at this time. However, 2017 and 2018 Monitoring Plan Disputed Costs cannot be determined as prudent or imprudent. Instead we subject these costs to a reasonableness test for inclusion in clause recovery, with prudency to be determined in a future ECRC proceeding as part of the traditional true-up mechanism.

FPL is currently recovering costs through the ECRC factor that include the Monitoring Plan Disputed Costs pursuant to a stipulation approved at the October 25, 2017 evidentiary hearing. Any adjustments or modifications we make regarding the disputed issues shall be addressed as a true-up in a future ECRC proceeding. The allocation between O&M and capital is addressed separately in this Order in Section IV, and may also impact the annual amount for cost recovery.

2. Activities

As discussed above in Sections I.B.-C., the 2015 CO, 2016 CA, and 2016 CAA introduce new regulatory requirements and are therefore eligible for potential recovery through the ECRC

[13]Section 366.8255, Florida Statutes at (2).
[14]*Id.* at (1)(d).
[15]Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, *In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.8255, Florida Statutes by Gulf Power Company.*

subject to a prudency review. As part of this review, we must analyze the Company's activities leading up to the CO, CA, and CAA. If prudently managed prior to the issuance of the CO, CA, and CAA, we must review whether FPL's expenditures for compliance are prudent and reasonable for recovery through the ECRC.

a. Activities Prior to New Requirements

The Intervenors assert that FPL was imprudent because it either knew or should have known about deteriorating environmental conditions, and that FPL should have taken action prior to the requirements of the CO, CA, and CAA. We review these assertions below.

FPL's Witness Sole outlined FPL's compliance with its monitoring requirements since the start of the Company's operation of the CCS, including well and surface water monitoring and quarterly reports. Witness Sole testified that monitoring data was provided to SFWMD on at least an annual basis. FPL's Witness Sole and OPC's Witness Panday agree that a three year gap in providing monitoring reports existed between 2005 and 2007, and was resolved in 2008. SFWMD did not take additional action once the monitoring oversight had been corrected.

Neither the FDEP nor the DERM NOV identified attempts to mislead or failure to provide data as a violation. The FDEP NOV identifies Rule 62-520.400, Florida Administrative Code, and the DERM NOV identifies Section 24-42(3) of the Code of Miami-Dade County, both of which address the water quality criteria.

FPL's Witness Sole asserts that, with the exception of the NOVs received from the FDEP and DERM, FPL has operated the CCS in compliance with its regulatory permits. OPC's Witness Panday agreed that at no time did SFWMD direct the utility to engage in consultation prior to its April 16, 2013 letter requesting consultation. The data collected during the three years was available to FPL's environmental regulators prior to SFWMD's letter requesting consultation. The record indicates that the regulatory bodies responsible for water quality were sufficiently informed of the condition of the Biscayne Aquifer, and no substantial evidence was provided that FPL intentionally withheld evidence or submitted false data.

OPC's Witness Panday argues that, based on its monitoring reports that showed hyper-salinity outside the boundaries of the CCS, FPL should have known, as early as 1990, that the salinity within the CCS exceeded the maximum level proposed in the 1978 Dames and Moore Report. Witness Panday asserts that the long-term trends were unmistakable signs that damage was occurring. Witness Panday alleges that by at least 1992, FPL should have known that the CCS was causing harm, but that FPL willfully or carelessly ignored these results. Witness Panday alleges that by failing to follow its experts' advice to track salinity changes, FPL failed in its obligations.

FPL's Witness Sole argues that if FPL had acted without prior direction from an environmental regulator, OPC or another party could have argued against cost recovery. We agree with this assertion because a clear governmental requirement is necessary for recovery of costs through the ECRC.

The Intervenors argue that FPL should have engaged in action prior to the CO, CA, and CAA; however, no substantial evidence was provided in the record as to what actions should have been taken and the potential alternatives or cost savings measures that FPL could or should have implemented prior to engaging in the activities that resulted in the Monitoring Plan Disputed Costs. The record indicates that FPL adhered to the monitoring requirements and was under the continuous oversight of environmental regulators from the inception of the power plant in the 1970s; these regulators included FDEP, DERM, and SWFMD. No substantial evidence was provided that FPL intentionally withheld or submitted false data to environmental regulators or to this Commission. Based on our review of the record, given what FPL knew or should have known at the time, we find FPL was prudent in its actions regarding the historic operation of the CCS.

b. Compliance with New Requirements

OPC's Witness Panday argues that FPL's RWS, a requirement of the CO, CA, and CAA, will have only a marginal effect on the hyper-saline plume, and even when combined with freshening will not accomplish the retraction of the hyper-saline plume to the boundaries of the CCS. FPL's Witness Sole defends the use of the RWS as a common remediation method that was selected after evaluating other alternatives.

The CO at Section 20(c) states that FPL shall "[i]mplement a remediation project that shall include a recovery well system." Section 20(c) also contains several milestones leading to the construction of the RWS. Witness Panday agreed that DERM had approved the use of the RWS as of May 2017. Thus, regardless of the efficacy of the RWS, it is a requirement imposed by a governmental authority as part of FPL's remediation efforts.

The 2015 CO, 2016 CA, and 2016 CAA introduce a variety of new requirements for inspections, monitoring, data analysis, reporting, planning, construction, operation, and other activities associated with the operation of the CCS and remediation of environmental damage. The requirements also include a deposit of funds with the Florida Department of Financial Services and the conveyance of land to SFWMD. Excluding the escrow deposit and the land conveyance which are discussed in more detail below, we find that the Monitoring Plan Disputed Costs comply with the requirements of FPL's continued monitoring under the Monitoring Plan and the new requirements of the CO, CA, or CAA. It is not our role to determine if the requirements of the CO, CA, or CAA are appropriate or will be effective at mitigating saltwater intrusion from the CCS. The record indicates that FPL adhered to the monitoring requirements and the associated continuous oversight of FDEP, DERM, and SWFMD. In addition, no substantial evidence was presented that FPL intentionally withheld or provided false or misleading data to environmental regulators. Therefore, we find that the actual Monitoring Plan Disputed Costs for 2015 and 2016 expenditures are prudent, and that FPL's actual/estimated 2017 expenditures and projected 2018 expenditures are reasonable such that they are eligible for recovery through the ECRC.

3. Adjustments for Escrow and Land Conveyance

Section 23(c) of the CO requires FPL to deposit $1.5 million in a Florida Department of Financial Services escrow account. FPL projected payment of the $1.5 million is to be completed in December 2017. FPL's Witness Sole testified that these funds may be used by the DEP to address projects that do not have any relation to FPL's CCS or the related hyper-saline plume. Witness Sole also testified that the $1.5 million is not a fine or administrative penalty. OPC/FIPUG argue that FPL failed to meet its burden of proof that the $1.5 million deposit is a reasonable cost that will directly benefit FPL's customers. While the $1.5 million escrow deposit is a requirement of the CO, we find that the $1.5 million component is not associated with the operation of the CCS for the benefit of FPL's customers and that FPL failed to meet its burden of proof for the recovery of the $1.5 million.

Regarding the land conveyance, Section 23(b) of the CO requires FPL to provide land to SFWMD if requested. OPC/FIPUG argue that approval of such a transaction should be withheld until a later review. We agree with OPC/FIPUG; thus, in this docket, we neither approve nor disapprove cost recovery for this component of the CO. An accounting review of such a land transaction would be more appropriate in the Company's next base rate proceeding.

C. Decision

Upon review, except for the $1.5 million escrow deposit and land conveyance discussed above, we find that FPL has prudently incurred the 2015 and 2016 Monitoring Plan Disputed Costs, and that its request for 2017 and 2018 Monitoring Plan Disputed Costs are reasonable. The 2017 and 2018 Monitoring Plan Disputed Costs and removal of the $1.5 million escrow payment are subject to true-up in future ECRC proceedings.

III. Costs Within Scope of FPL Turkey Point Cooling Canal Monitoring Plan Project

A. Parties' Arguments

1. FPL

FPL asserts that requirements for the Monitoring Plan project have progressed from monitoring to implementing corrective actions. At the time the Monitoring Plan project was approved for recovery through the ECRC in 2009, FPL made clear that such a progression was a potential outcome. FPL argues that the 2009 Order makes clear that the scope of the project extended to historic impacts of the CCS generally – not just those related to the Uprate Project. FPL contends that it provided testimony at key project expansion points and reflected incremental costs for the expansion of its compliance activities each year in its ECRC filings.

FPL asserts that in our Approval Order we acknowledged the potential for the Monitoring Plan project to include corrective actions. FPL argues that its request for the Monitoring Program

included the Conditions of Certification IX and X which contained specific language that would require FPL to engage in corrective action. FPL states that its monitoring activities in the Monitoring Program directly produced information used by its environmental regulators to determine that additional actions were necessary. FPL argues that similar activities were approved as part of the 2015 ECRC docket, specifically water delivery projects and sediment management. FPL argues that while the Approval Order states that "the eligibility of ECRC recovery for any similar project will depend on individual circumstances and shall, therefore, be considered on a case-by-case basis," this is a reference to a potential disagreement of the location of recovery, through the ECRC or through the Nuclear Cost Recovery Clause, not that costs would be unrecoverable in general.

2. OPC/FIPUG

OPC/FIPUG contend that our Approval Order was strictly limited to monitoring impacts associated with the Turkey Point Uprate Project. OPC/FIPUG argue that the scale of the Monitoring Plan Disputed Costs compared to Monitoring Program costs requires review independent of that conducted for the Monitoring Plan in 2009. Further, OPC/FIPUG assert that the Company did not disclose the full scope of the remediation projects, and that when the Company agreed to the CA, CAA, and CO the environmental regulators did not approve specific actions such as the RWS system. OPC/FIPUG argue that the Monitoring Plan Disputed Costs are not related to the Monitoring Program and inclusion in the Monitoring Program is an attempt to evade scrutiny and the Company's burden of proof that costs are reasonable and prudent. OPC/FIPUG note that a change of scope has been considered a new activity in prior cases, and that therefore the Monitoring Plan Disputed Costs constitute a new program, with a separate evaluation necessary for recovery. OPC/FIPUG contend that the Approval Order did not mention remediation, correction, or corrective action. OPC/FIPUG argue that the Monitoring Program should not include costs to halt and retract the hyper-saline plume as they are unassociated with the Turkey Point Uprate Project. OPC/FIPUG note that the Approval Order states that new projects would be considered on a case-by-case basis.

3. SACE

SACE argues that FPL omitted material information on its exposure to significant environmental corrective action and costs related to its operation of the CCS. SACE contends that FPL knew that the CCS-caused hyper-saline plume had pushed the saltwater interface well west of the boundary of the CCS in 2009 and that the Company's consultants started developing remediation plans months after the Commission approved the project. SACE concludes that recovery of costs should not be allowed because FPL's failure to mitigate the impact of CCS-caused hyper-saline plume before 2014 was imprudent.

SACE alleges that FPL was aware, or should have been aware, that measures would be required to address the hyper-saline plume prior to our approval of the Monitoring Plan. SACE argues that the Company failed to mention the potential magnitude of costs that would be associated with the CCS. SACE contends that we approved the Monitoring Plan with incomplete information due to intentional omissions by the Company.

B. Analysis

The Monitoring Plan Approval Order specifically included discussion of the potential for mitigation costs. The Monitoring Plan Approval Order included a stipulation between FPL, OPC, FIPUG, and the Federal Executive Agencies (FEA), in which OPC, FIPUG, and FEA took no position on the approval of the program. Specifically, the Monitoring Plan Approval Order states, in relevant part:

> These activities will be incremental to FPL's current monitoring efforts. . . . The CCM Plan has been designed to focus on the objectives as they relate to the cooling canal system and the Uprate Project and those resources that may be affected adjacent to the cooling system. . . . [R]eports will be submitted every six months during the pre Uprate period and initially during the post Uprate period. . . . The potential additional measures that might be required include . . . the development and application of a 3-dimensional coupled surface and groundwater model to further assess impacts of the Uprate Project on ground and surface waters . . . **[and] mitigation measures to offset such impacts of the Uprate Project necessary to comply with State and local water quality standards**. [16]

(emphasis added)

The bold portion of the text above is also a quotation from the Conditions of Certification, Section X, Subsection D.2.

The Intervenors are correct in their argument that the costs for O&M and capital have increased for the Monitoring Plan. However, we find that an increase in costs itself is not a change in scope of a project. While OPC/FIPUG assert that the Monitoring Plan is specifically referencing the Turkey Point Uprate Project and does not mention remediation, correction, or corrective action, our Approval Order stated the following:

> Because the costs for the TP-CCMP Project are predominantly O&M expenses that will continue for an uncertain duration, and because the water-quality issues the Project is being undertaken to address relate to operation of the Turkey Point **plant as a whole and not just the TP Nuclear Uprate**, FPL should be allowed to recover the costs associated with the TP-CCMP Project through the ECRC. [17]

(emphasis added)

[16]Order No. PSC-09-0759-FOF-EI, issued November 18, 2009, in Docket No. 090007-EI, *In re: Environmental cost recovery clause.*
[17]*Id.* at 13.

Thus, by the Approval Order we considered the concern raised by OPC/FIPUG and addressed the concern directly by providing that the Monitoring Program is inclusive of the plant as a whole. As stated by FPL's Witness Sole, environmental compliance programs evolve based upon information that determines the next appropriate action. The costs FPL is requesting to recover are the result of the anticipated evolution of the original Monitoring Program. The Intervenors concerns regarding prudency of the Monitoring Plan Disputed Costs are addressed at Section II of this Order.

C. Decision

Based on the record and the Approval Order, the Monitoring Plan Disputed Costs shall be considered part of the existing Monitoring Program. The costs FPL is requesting to recover are the result of the anticipated evolution of the original Monitoring Program.

IV. Allocation of FPL's Disputed Costs between O&M and Capital

A. Parties' Arguments

1. FPL

FPL asserts that its proposed allocation between O&M and capital appropriately identifies the extent to which the RWS will achieve retraction of the hyper-saline plume back to the FPL CCS boundaries (O&M) versus containment of the hyper-saline plume within the FPL CCS boundaries (capital). FPL argues that capitalization will appropriately spread the cost recovery of the asset over the expected life of the asset.

FPL argues that the RWS must be allocated to both capital and O&M because it serves both containment and remediation functions. FPL contends that it used a conservative approach based on Tetra Tech's analysis of the salt mass removal to produce a 74 percent prevention (capital) and 26 percent remediation (O&M) allocation of costs for the RWS project. FPL proposes that its recovery of capital for prevention or mitigation expenses is appropriate and similar to the treatment of emissions control equipment. FPL asserts that a volumetric approach would result in a higher capital percentage. FPL argues that OPC's Witness Panday's suggested approach of revisiting the allocation periodically is inappropriate and not consistent with generally accepted accounting principles (GAAP).

2. OPC/FIPUG

OPC/FIPUG assert that: the costs of the Retraction Well System are remedial in nature and should not be imposed on FPL's customers; FPL's management knew or should have known that its actions in operating the CCS were creating material harm to the Biscayne Aquifer; and, FPL's actions and inaction over time placed the Company in violation of law and, therefore, constitute imprudence. OPC/FIPUG conclude that the costs of addressing the consequences of FPL's imprudence are not properly costs that should be borne by customers.

OPC/FIPUG argue that the consideration of allocation between expense and capital is not appropriate, as it relates to the Monitoring Program. OPC/FIPUG assert that FPL's analysis shows that under the Company's proposed remediation methods, FPL will be unable to complete its remediation efforts within the 10 year period required by the CO. OPC/FIPUG argue that FPL is ignoring the Company's own models with respect to the impacts of the CCS on the deepest portions of the aquifer.

OPC/FIPUG contend that the proposed freshening activities are more effective than the RWS for remediation for the initial ten years of operation. OPC/FIPUG argue that freshening activities eliminate the need for containment except in the deepest layers of the aquifer. OPC/FIPUG contend that the RWS will be ineffective because it will not adequately impact the aquifer's upper or lower layers, and that it is an imprudent activity that should be disallowed. In contrast, OPC/FIPUG assert that FPL's proposed RWS would serve a remediation function for the first ten years of its operation, followed by a potential ten years as a containment function.

OPC/FIPUG argue that compliance with the CO merely resolves FPL's prior DEP NOV; therefore, the containment phase of FPL's remediation project should be considered a separate project from the remediation project, and not recoverable from customers during the first ten years of operation.

3. SACE

SACE asserts that FPL shareholders should not be permitted to benefit from FPL's mistakes and that while FPL argues that its Recovery Well System is preventative, the requirements stemming from the Consent Order and Consent Agreement are not preventative. SACE argues that the term "abatement" as used in the Consent Order means to "minimize" and that the Recovery Well System that is intended to "remediate" will not prevent hyper-salinity in deeper layers from migrating westward. SACE contends that GAAP accounting principles are permissive on allocating costs to capital investment. SACE concludes that recovery of costs should not be allowed because FPL's failure to mitigate the impact of CCS-caused hyper-saline plume before 2014 was imprudent.

SACE argues that we cannot approve cost recovery if a utility is imprudent. SACE alleges that FPL was imprudent in its actions and inactions with regards to the Turkey Point CCS that resulted in the Monitoring Plan Disputed Costs. SACE also asserts that it is inappropriate for FPL to capitalize any of the Monitoring Plan Disputed Costs as activities associated with these costs will fail to prevent or retract the hyper-saline plume in deeper layers of the aquifer.

B. Analysis

The RWS is required by the FDEP CO. FPL is also required by the CO to implement the Nutrient Management Plan and a Thermal Efficiency Plan, and construct an Upper Floridian Aquifer well system to provide freshening water. FPL asserts that all of these functions serve to decrease salinity entering the Biscayne Aquifer from the CCS and result in both remediation and containment. FPL Witness Ferguson testified that the RWS serves both a remediation and preventive function. Based on the record, we find that the RWS and related systems

simultaneously serve both the function of containment of the hyper-saline plume within the boundaries of the CCS and retraction or remediation of the hyper-saline plume outside the boundaries of the CCS. Therefore, costs associated with these functions shall be allocated to both containment and remediation activities. The CO also requires the completion of projects associated with Barge Canal and Turkey Point Canal. FPL has allocated these projects to containment. FPL asserts that all of the costs associated with the Barge Canal Turning Basin Back Fill should be capitalized because that project is preventive in nature.

1. Allocation Percentage

Both FPL's Witness Ferguson and OPC's Witness Panday rely upon a model of salt mass removal developed by Tetra Tech to determine the appropriate cost allocation between capital and O&M. The Tetra Tech model attempts to determine the total mass of salt removed from various layers of the aquifer, and allocates them to remediation or containment based on whether the salt mass originated inside or outside the boundaries of the CCS. The primary difference in analysis between these witnesses is the timeframe used. FPL Witness Ferguson asserts that the appropriate period to consider is 20 years, the expected life of the RWS; this results in a 74 percent containment, and a 26 percent remediation allocation. OPC Witness Panday argues instead for 11 years, when the hyper-saline mass is anticipated to be fully removed; this results in a 65 percent containment, and a 35 percent remediation allocation. FPL argues that the use of 11 years does not acknowledge that the RWS will be operating in a containment function for the remaining nine years of its operational life.

OPC's Witness Panday testified that the allocation between remediation and prevention should be reevaluated on a more regular basis. Witness Panday testified that this is particularly true after the first two years of operating the RWS. For the initial two-year period, Witness Panday proposes an alternative of using the first two years of the Tetra Tech model to allocate 41 percent to containment and 59 percent to remediation. OPC/FIPUG do not support the use of this methodology and instead advocate that all activities should be categorized as either remediation or containment until the end of all remediation activities.

2. Accounting Treatment

Accounting Standards Codification 410-30-25-16 to 18 (ASC 410-30) describes the conditions that must be met in order to capitalize all or a portion of the costs related to environmental contamination treatment. It provides that the costs can be capitalized if "the costs mitigate or prevent environmental contamination that has yet to occur and that otherwise may result from the future operation or activities." FPL Witness Ferguson testified that costs related to mitigation or prevention can be capitalized, and costs related to remediation should be expensed.

OPC's Witness Panday did not testify as to whether the costs should be capitalized or expensed. However, Witness Panday did advocate reevaluating the allocation between expense and capitalization after two years of operation. FPL argued that Witness Panday's proposed treatment is not consistent with GAAP or the Federal Energy Regulatory Commission (FERC) Uniform System of Accounts (USOA) because Witness Panday's approach could change the

historical cost of an asset already placed into service. FERC USOA account 101 A specifically states:

> This account shall include the original cost of electric plant, included in accounts 301 to 399, prescribed here-in, owned and used by the utility in its electric utility operations, and having an expectation of life in service of more than one year from date of installation, including such property owned by the utility but held by nominees.

Neither OPC Witness Panday nor any other Intervenor offered any alternative accounting treatment for this project that is consistent with GAAP.

Upon review, we find that the accounting treatment proposed by FPL for the costs associated with the RWS and Barge Canal Turning Basin Back Fill Project is appropriate.

C. Decision

We find that the RWS and related activities perform both remediation and containment functions. Consistent with accounting principles, remediation expenses shall be recovered as O&M, and containment shall be recovered as capital. Based on the record, we find that the Company's proposed allocation of costs are appropriate, and shall be 74 percent containment (capital) and 26 percent remediation (O&M) for the RWS and related activities.

V. Allocation of FPL Disputed Costs to Rate Classes

A. Parties' Arguments

1. FPL

FPL argues that we established the appropriate allocation methodology for the Monitoring Plan by Order No. PSC-09-0759-FOF-EI and that costs associated with the 2015 CA, 2016 CO, and 2016 CAA should be allocated in the same manner as all other environmental cost recovery amounts approved for recovery under the Monitoring Plan project.

2. OPC/FIPUG

OPC/FIPUG did not present arguments regarding this issue.

3. SACE

SACE asserts that: no customer, regardless of class, should have to pay for FPL's mistakes; FPL knew or should have known that the CCS was causing an underground hyper-saline contamination plume spreading from its Turkey Point plant property by 1978, and certainly by 1992 at the latest; and FPL failed to take any action to mitigate the impacts of the CCS on the Biscayne Aquifer (a G-II water source) until 2014. SACE concludes that a prudent

utility manager would have acted promptly and proactively well before 2014 to mitigate and/or remediate the growing hyper-salinity contamination plume outside the CCS boundary. SACE argues that we cannot approve cost recovery if a utility is imprudent and that the Company was imprudent in its actions and inactions regarding the Turkey Point CCS resulting in the Monitoring Plan Disputed Costs.

B. Analysis

By Order No. PSC-09-0759-FOF-EI, we approved the Monitoring Plan and how costs associated with the Monitoring Plan shall be allocated to rate classes. It states:

> We approve the following stipulation regarding how the costs associated with the TP-CCMP Project shall be allocated to the rate classes:
>
> Capital costs for the TP-CCMP Project shall be allocated to the rate classes on an average 12 CP demand and $1/13^{th}$ energy basis. O&M costs shall be allocated on an energy basis.

C. Decision

Upon review, we find that the approved Monitoring Plan Disputed Costs shall be allocated pursuant to Order No. PSC-09-0759-FOF-EI.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the stipulations and findings set forth in Attachment A and the body of this Order are hereby approved. It is further

ORDERED that each utility that was a party to this docket shall abide by the stipulations and findings herein which are applicable to it. It is further

ORDERED that Florida Power & Light Company shall be allowed to recover through the Environmental Cost Recovery Clause, the Turkey Point Cooling Canal Monitoring Plan costs, if prudently incurred, of complying with the June 20, 2016 Consent Order between FPL and the Florida Department of Environmental Protection, the October 2015 Consent Agreement between FPL and the Miami-Dade County Department of Environmental Resources Management, as amended by the August 15, 2016 Consent Agreement Addendum. It is further

ORDERED that Florida Power & Light Company prudently incurred the 2015 and 2016 Monitoring Plan Disputed Costs, and that the Company's request for 2017 and 2018 Monitoring Plan Disputed Costs are reasonable except that the $1.5 million escrow deposit component of the Monitoring Plan Disputed Costs is not recoverable under the Environmental Cost Recovery Clause and this disallowance shall be addressed as a "true-up" in the 2018 ECRC proceeding. It is further

ORDERED that we neither approve nor deny a land conveyance from Florida Power & Light Company to SFWMD. It is further

ORDERED that the Florida Power & Light Company's approved costs associated with the CA, CAA, and CO are part of the existing Monitoring Plan project. It is further

ORDERED that Florida Power and Light Company's proposed allocations of costs associated with the CA, CAA, and CO are approved. For the RWS and related activities, the allocations shall be 74 percent containment (capital) and 26 percent remediation (O&M). It is further

ORDERED that Florida Power & Light Company's Monitoring Plan approved costs associated with the CA, CAA, and CO shall be allocated pursuant to Order No. PSC-09-0759-FOF-EI. It is further

ORDERED that the utilities named herein are authorized to collect the environmental cost recovery amounts and use the factors approved herein beginning with the first billing cycle for January 2018 and thereafter through the last billing cycle for December 2018. The first billing cycle may be read before January 1, 2018, and the last cycle may be read after December 31, 2018, so that each customer is billed for twelve months regardless of when the adjustment factor became effective. These charges shall continue in effect until modified by this Commission. It is further

ORDERED that the revised tariffs reflecting the environmental cost recovery amounts and factors determined to be appropriate in this proceeding are hereby approved. Our staff is directed to verify that the revised tariffs are consistent with our decision. It is further

ORDERED that the Environmental Cost Recovery Clause docket is a continuing docket and shall remain open.

By ORDER of the Florida Public Service Commission this 5th day of January, 2018.

Carlotta S Stauffer

CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

CWM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ATTACHMENT A APPROVED STIPULATED ISSUES

1. Final Environmental Cost Recovery True-Up Amounts for January 2016 through December 2016

The appropriate final environmental cost recovery true-up amounts for the period January 2016 through December 2016 are as follows:

FPL: $23,872,381 over-recovery

DEF: $1,266,492 over-recovery

TECO: $658,080 under-recovery

GULF: $3,262,290 under-recovery

2. Estimated/Actual Environmental Cost Recovery True-Up Amounts for January 2017 through December 2017

The appropriate estimated/actual environmental cost recovery true-up amounts for the period January 2017 through December 2017 are as follows:

*FPL: $28,797,701 over-recovery

DEF: $1,751,015 over-recovery

TECO: $6,759,424 over-recovery

GULF: $11,475,260 over-recovery

* Subject to modification from company-specific issues.

3. Projected Environmental Cost Recovery Amounts for January 2018 through December 2018

The appropriate projected environmental cost recovery amounts for the period January 2018 through December 2018 are as follows:

*FPL: $212,389,989

DEF: $62,786,148

TECO: $72,821,226

GULF: $211,656,376

* Subject to modification from company-specific issues.

4. Environmental Cost Recovery Amounts, Including True-Up Amounts, for January 2018 through December 2018

The appropriate environmental cost recovery amount, including true-up amounts, for the period January 2018 through December 2018, are as follows:

*FPL: $159,834,905

DEF: $59,811,674

TECO: $66,767,920

GULF: $203,589,886

* Subject to modification from company-specific issues.

5. Depreciation Rates Used to Develop the Depreciation Expense Included in the Total Environmental Cost Recovery Amounts for January 2018 through December 2018

For the period January 2018 through December 2018, the depreciation rates used to calculate the depreciation expense shall be the rates that are in effect during the period the allowed capital investment is in service.

6. Appropriate Jurisdictional Separation Factors for the Projected Period January 2018 through December 2018

The appropriate jurisdictional separation factors for the projected period January 2018 through December 2018 are as follows:

FPL

Retail Energy Jurisdictional Factor - Base	95.7811%
Retail Energy Jurisdictional Factor - Intermediate	94.2579%
Retail Energy Jurisdictional Factor - Peaking	94.8545%
Retail Demand Jurisdictional Factor - Transmission	88.7974%
Retail Demand Jurisdictional Factor - Base/Solar	95.6652%
Retail Demand Jurisdictional Factor - Intermediate	94.1431%
Retail Demand Jurisdictional Factor - Peaking	94.7386%
Retail Demand Jurisdictional Factor - Distribution	100.0000%

DEF

The Energy separation factor is calculated for each month based on retail kWh sales as a percentage of projected total kWh sales. The remaining separation factors are below and are consistent with the Revised Stipulation and Settlement Agreement approved in Order No. PSC-13-0598-FOF-EI as well as DEF's 2017 Second Revised and Restated Stipulation and Settlement Agreement ("2017 Agreement"), filed on August 29, 2017 in Docket No. 20170183-EI.

Transmission Average 12 CP Demand – 70.203%
Distribution Primary Demand – 99.561%

Production Demand:
Production Base – 92.885%
Production Intermediate – 72.703%
Production Peaking – 95.924%
Production A&G – 93.221%

TECO

Energy: 100.00%
Demand: 100.00%

GULF

The demand jurisdictional separation factor is 97.18277%. Energy jurisdictional separation factors are calculated each month based on retail kWh sales as a percentage of projected total territorial kWh sales.

7. Environmental Cost Recovery Factors for January 2018 through December 2018, by Rate Group

The appropriate environmental cost recovery factors for the period January 2018 through December 2018 for each rate group are as follows:

***FPL**

Rate Class	Environmental Cost Recovery Factor (cents/kWh)
RS1/RTR1	0.159
GS1/GST1	0.150
GSD1/GSDT1/HLFT1	0.136
OS2	0.083
GSLD1/GSLDT1/CS1/CST1/HLFT2	0.131
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.115
GSLD3/GSLDT3/CS3/CST3	0.116
SST1T	0.102
SST1D1/SST1D2/SST1D3	0.126
CILC D/CILC G	0.116
CILC T	0.109
MET	0.128
OL1/SL1/SL1M/PL1	0.030
SL2/SL2M/GSCU1	0.109
Total	0.146

* Subject to modification from company-specific issues.

DEF

Rate Class	ECRC Factors
Residential	0.157 cents/kWh
General Service Non-Demand	
@ Secondary Voltage	0.154 cents/kWh
@ Primary Voltage	0.152 cents/kWh
@ Transmission Voltage	0.151 cents/kWh
General Service 100% Load Factor	0.150 cents/kWh
General Service Demand	
@Secondary Voltage	0.152 cents/kWh
@ Primary Voltage	0.150 cents/kWh
@ Transmission Voltage	0.149 cents/kWh
Curtailable	
@ Secondary Voltage	0.151 cents/kWh
@ Primary Voltage	0.149 cents/kWh
@ Transmission Voltage	0.148 cents/kWh
Interruptible	
@ Secondary Voltage	0.147 cents/kWh
@ Primary Voltage	0.146 cents/kWh
@ Transmission Voltage	0.144 cents/kWh
Lighting	0.146 cents/kWh

TECO

Rate Class		**ECRC Factor (¢/kWh)**
RS		0.343
GS, CS		0.343
GSD, SBF		
	Secondary	0.342
	Primary	0.338
	Transmission	0.335
IS		
	Secondary	0.337
	Primary	0.333
	Transmission	0.330
LS1		0.339
Average Factor		0.342

GULF

RATE CLASS	ENVIRONMENTAL COST RECOVERY FACTORS ¢/kWh
RS, RSVP, RSTOU	2.124
GS	1.956
GSD, GSDT, GSTOU	1.733
LP, LPT	1.547
PX, PXT, RTP, SBS	1.482
OS-I/II	0.570
OS-III	1.361

8. Effective Date of New Environmental Cost Recovery Factors for Billing Purposes

The new environmental cost recovery factors shall be effective beginning with the first billing cycle for January 2018 and thereafter through the last billing cycle for December 2018. The first billing cycle may be read before January 1, 2018, and the last cycle may be read after December 31, 2018, so that each customer is billed for twelve months regardless of when the adjustment factor became effective. These charges shall continue in effect until modified by this Commission.

9. Approval of Revised Tariffs Reflecting the Environmental Cost Recovery Amounts and Environmental Cost Recovery Factors Determined to be Appropriate in this Proceeding

The Commission hereby approves revised tariffs reflecting the environmental cost recovery amounts and factors determined to be appropriate in this proceeding. The Commission staff is directed to verify that the revised tariffs are consistent with the Commission's decision.

10F. Temporary Manatee Heating System for the Fort Lauderdale Plant ("PFL") Site as part of FPL's Existing Manatee Temporary Heating System ("MTHS") Project

The modification to include a manatee temporary heating system for the PFL is hereby approved. Costs for the PFL manatee temporary heating system will be allocated to rate classes in the same manner as all existing costs for the MTHS project.

10G. Effects on the 2018 Environmental Cost Recovery Factors of the St. Johns River Power Park Transaction (SJRPP), Approved by the Commission on September 25, 2017

The net impact of the SJRPP Transaction will be a reduction in the environmental cost recovery factors for 2018. At this point, FPL cannot prepare and file an updated filing reflecting the SJRPP Transaction in time for parties to have a reasonable opportunity to review it before the hearing scheduled in this docket on October 25-27, 2017. Therefore, FPL will file a mid-course correction limited to the impacts of the SJRPP Transaction by no later than November 17, 2017, to allow ample time for Commission staff and parties to review and conduct discovery, if any, before the mid-course correction is brought to the Commission for decision at the February 6, 2018 Agenda Conference, with the intent that the revised environmental cost recovery factors go into effect on March 1, 2018.

11. Revenues Included in Tampa Electric's Projected ECRC Cost Recovery Amount for 2018 Associated with Phase II of the Company's Coal Combustion Residuals Compliance Program ("CCR Program")

Approval of the projected revenues for the costs associated with the Phase II of the CCR program is conditioned on this Commission's approval of the CCR program in Docket No. 20170168-EI. To the extent the scope of the CCR program costs differ from costs of the approved program in Docket No. 20170168-EI, the revenues collected for the CCR program in Docket No. 20170007-EI shall be subject to true-up.

12A. DEF's 316(b) Compliance Plan

DEF's 316(b) Compliance Plan is reasonable as it meets the criteria for recovery through the Environmental Cost Recovery Clause. Recovery of related costs through the ECRC is approved.

12B. Allocation of Costs Associated with DEF's 316(b) Compliance Plan

Costs associated with DEF's 316(b) Compliance Plan shall be allocated to the rate classes on a demand basis.

12C. Regulatory Asset Treatment of the Alderman Road Fence

The Commission approves DEF's proposed treatment for the Alderman Road Fence - Project 3.1(a).

13. Docket to Remain Open

While a separate docket number is assigned each year for administrative convenience, this is a continuing docket and shall remain open.

ATTACHMENT B ACRONYM LIST FOR CONTESTED ISSUES

AO	Administrative Order
Approval Order	Commission Order No. PSC-09-0759-FOF-EI
CA	Consent Agreement
CAA	Consent Agreement Addendum
CCS	Cooling Canal System
CO	Consent Order
COC	Conditions of Certification
DERM	Miami-Dade Department of Environmental Resources Management
ECRC	Environmental Cost Recovery Clause
EPA	Environmental Protection Agency
FDEP	Florida Department of Environmental Protection
FEA	Federal Executive Agencies
FERC	Federal Energy Regulatory Commission
FIPUG	Florida Industrial Power Users Group
FPL	Florida Power and Light
F.S.	Florida Statutes
GAAP	Generally Accepted Accounting Principles
GULF	Gulf Power Company
NOV	Notice of Violation
O&M	Operation and Maintenance
OPC	Office of Public Counsel
PSU	Practical Salinity Units
RFRP	Retraction and Freshening Remediation Project
RWS	Recovery Well System
SACE	Southern Alliance for Clean Energy
SFWMD	South Florida Water Management District
TP	Turkey Point
TP-CCMP or Monitoring Plan	Turkey Point Cooling Canal Monitoring Plan
USOA	Uniform System of Accounts