

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150001-EI

FUEL AND PURCHASED POWER COST
RECOVERY CLAUSE WITH
GENERATING PERFORMANCE
INCENTIVE FACTOR.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 3

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER JULIE I. BROWN
COMMISSIONER JIMMY PATRONIS

DATE: Thursday, August 27, 2015

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

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P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** Okay. Now let's go
3 back towards the top of the program to Issue No. --
4 Item No. 3.

5 **MR. SAYLER:** Mr. Chairman, we have an
6 exhibit we'd like to pass out.

7 **CHAIRMAN GRAHAM:** Sure. I'm sure we can
8 get somebody from staff to help you with that.
9 Behind you. Cheryl, thanks for trying.

10 Okay. Staff.

11 **MS. BROWNLESS:** Good morning. My name is
12 Suzanne Brownless with the Office of General
13 Counsel.

14 Item No. 3 is the request by the Office of
15 Public Counsel to include three factual issues
16 related to the hedging of natural gas in the issue
17 list of the fuel docket scheduled for hearing on
18 November 2nd and 5th of this year. These issues,
19 1A, 1B, and 1C, are listed on page 16 of the staff
20 recommendation.

21 The issue list on page 10 also contains
22 two broad policy issues on natural gas hedging which
23 are included on the issue list at this time, and
24 those are Issues 1D and 1E.

25 Staff's recommendation is that the three

1 issues raised by the Office of Public Counsel should
2 be excluded because they can be fully addressed in
3 the already present issues 1D and 1E. Staff has --
4 OPC has filed a request for oral argument on this
5 issue. Oral argument is discretionary with the
6 Commission, but should it be granted, staff
7 recommends five minutes be allocated to each party
8 wishing to speak.

9 Mr. Sayler is here on behalf of OPC,
10 Mr. Butler is here on behalf of FP&L, and Jon Moyle
11 is here on behalf of FIPUG.

12 We have an additional issue which has come
13 up. Mr. Moyle, on behalf of FIPUG, filed a response
14 to staff's recommendation on August 25th. FP&L then
15 filed a response to FIPUG's response on August 26th.
16 So I think the first thing that we need to do is to
17 figure out what we are going to consider: The first
18 list, whether we are going to consider only OPC's
19 issues that are contested, which is 1A, 1B, and 1C,
20 or whether we're going to consider Mr. Moyle's
21 issues as well, which is what he requested in his
22 response.

23 With regard to the staff's position on
24 that, because you wouldn't have had the benefit of a
25 written recommendation, it's our position that what

1 Mr. Moyle has filed is really a de facto motion to
2 include the issues; ergo, pursuant to the uniform
3 rules, everybody should be allowed seven days to
4 file a written response. So it is untimely at this
5 time.

6 And there's one final point I would make.
7 OPC's motion is before the full panel because the
8 Prehearing Officer looked at it and deemed that that
9 would be the most expedient and appropriate.
10 Because the response to Mr. Moyle's de facto motion
11 has not been filed, the time has not run for it to
12 be filed, he hasn't had the benefit of that or
13 anybody else's response and, therefore, has not made
14 a decision as to whether he can rule on it himself,
15 as is the normal procedure before the Prehearing
16 Conference, rule on it at the Prehearing Conference,
17 or recommend that the full Commission take it up.
18 So for those reasons, we believe that allowing
19 Mr. Moyle's issues to be discussed today and ruled
20 upon would be inappropriate.

21 **CHAIRMAN GRAHAM:** So we don't officially
22 have a response to the staff recommendation
23 category?

24 **MS. BROWNLESS:** No, sir. There is no
25 such pleading as a response to a staff rec.

1 **CHAIRMAN GRAHAM:** Okay. So what I
2 would -- my suggestion would be that we just go
3 through and handle this as a regular motion and
4 give the parties seven days to respond and let the
5 Prehearing Officer handle it from there, unless I
6 hear something different from my colleagues. So
7 we'll do it that way.

8 **MR. MOYLE:** Can I -- can I be heard on it
9 just briefly?

10 **CHAIRMAN GRAHAM:** No, sir.

11 As far as the oral arguments, I don't
12 necessarily have a problem with that. I'd look to
13 see if anybody else does. I don't have a problem
14 with granting them five minutes. Of course, maybe I
15 should take a minute off of OPC because it took me a
16 minute to read this. I'm just kidding. I don't
17 have a problem with granting the five minutes.
18 Staff, if there's nothing else, do we need to take a
19 vote on the oral argument?

20 **MS. BROWNLESS:** Yes, sir. That's Issue
21 No. 1.

22 **CHAIRMAN GRAHAM:** I will take a motion.

23 **COMMISSIONER EDGAR:** Mr. Chairman, I
24 would ask that we have five minutes per side for
25 oral argument.

1 **COMMISSIONER BRISÉ:** Second.

2 **CHAIRMAN GRAHAM:** It's been moved and
3 seconded. All in favor, say aye.

4 (Vote taken.)

5 Any opposed? By your action, we've
6 granted the oral -- the oral arguments.

7 Okay. We will start with OPC.

8 Mr. Sayler, you have the floor.

9 **MR. SAYLER:** I'm getting my timer set up.

10 **CHAIRMAN GRAHAM:** I got it. Don't worry.

11 **MR. SAYLER:** Good morning, Mr. Chairman,
12 Commissioners. I'm Erik Sayler with the Florida
13 Office of Public Counsel. On behalf of the
14 citizens of the State of Florida, thank you for
15 granting oral argument today on our motion to
16 include disputed issues of material fact, and also
17 for the opportunity to -- to explain why these
18 disputed issues of material fact should be included
19 for adjudication in this year's fuel clause
20 proceeding.

21 These issues are very near and dear and
22 important to the citizens of the State of Florida
23 because it affects their pocketbooks. I'd like to
24 reserve about one minute for rebuttal if I have any
25 time left.

1 First, the public, the people of the state
2 are entitled to an express determination by this
3 Commission in the sunshine verifying the magnitude
4 of the utilities' hedging gains or losses that they
5 have experienced since 19 -- excuse me -- 2002. As
6 you can see from the handout that was distributed
7 earlier, it was developed from discovery served to
8 the utilities. The hedging losses incurred by these
9 four electric utilities is enormous even by a
10 utility scale, over \$6.1 billion and counting. In
11 2015, the utilities are projected to lose
12 \$632 million of the customers' money through their
13 natural gas hedging.

14 To put these enormous natural gas hedging
15 losses in perspective, a new combined cycle natural
16 gas plant costs in the range of \$1 billion to
17 \$1.5 billion. Even the low end of FPL's estimated
18 cost to build its new nuclear power plant is
19 estimated to be \$13.7 billion.

20 In our motion, OPC is asking that the
21 Commission restore OPC's Issues 1, 2, and 3 to the
22 list of issues to be adjudicated and to be decided
23 in the upcoming proceeding. OPC's Issues 1A and 1B
24 tee up the issue of natural gas hedging gains or
25 losses for this period. Issue 1C tees up the issue

1 of expected future fuel price volatility. Natural
2 gas fuel price volatility is something that the
3 utilities claim that their hedging programs are
4 designed to mitigate against.

5 OPC's three disputed issues of material
6 fact are foundational issues which lead up to the
7 ultimate policy issue. We believe these issues help
8 inform the debate and the discussion to allow this
9 Commission to make a good decision as it relates to
10 the ultimate issue, which is is it in the customers'
11 best interest for the utilities to continue
12 financial hedging activities.

13 Moreover, OPC's three disputed issues of
14 material fact are relevant for determination in this
15 docket because the four utilities are seeking
16 approval of their confidential 2016 risk management
17 plans which govern their hedging activities.

18 Further, the Office of Public Counsel will
19 file testimony on September 23rd in support of our
20 hedging issues 1A through 1D. Our testimony will
21 support our request that the Commission stop the
22 bleeding and stop the utilities from wasting the
23 public's money in their zombie-like automatic
24 hedging programs. Therefore, these three disputed
25 issues of material fact which are being sought to be

1 excluded from this -- from your consideration in
2 this proceeding are ripe for the Commission's
3 determination.

4 Second, OPC's request for including these
5 three disputed issues of material fact are supported
6 by Commission practice and precedent, the statutes
7 which govern administrative proceedings before the
8 Commission affecting the substantial interest of
9 parties, and case law. It has always been the
10 Commission's practice and precedent to include
11 subsidiary issues, so-called factual issues, in
12 proceedings affecting utility rates and important
13 policy decisions.

14 For example, on page 5 of our motion we
15 indicated that there are a number of predicate
16 issues that lay the foundation for determining the
17 utility's return on equity. In this case, OPC says
18 these three predicate hedging issues lay the
19 foundation for the Commission's ultimate decision,
20 policy decision whether natural gas or -- excuse
21 me -- whether utilities should continue hedging
22 natural gas.

23 **CHAIRMAN GRAHAM:** You have about a minute
24 left.

25 **MR. SAYLER:** Thank you. I may run out of

1 time.

2 It is undisputed that also Chapter 120
3 applies to administrative proceedings and provisions
4 of Section 120.57(1) are applicable to hearings
5 involving disputed issues of material fact. It is
6 clear that OPC's issues are disputed issues of
7 material fact and should be included.

8 Finally, there is a case by the Florida
9 Supreme Court, Florida Natural Gas versus -- Gas
10 Company versus Public Service Commission, 534 So.2d
11 695. This case stands for the proposition that by
12 the very act of filing a rate case proceeding or a
13 rate change, a utility is put on notice that issues
14 of material fact can be raised and adjudicated by
15 the Commission. For these reasons, our issues
16 should be included.

17 And, in conclusion, we believe that the
18 public is entitled to an express determination by
19 this Commission in the sunshine on all hedging
20 issues, especially the issues that relate to the
21 magnitude of the utility's natural gas hedging gains
22 or losses since 19 -- 2002. Thank you.

23 **CHAIRMAN GRAHAM:** Thank you, Mr. Sayler.

24 Mr. Moyle.

25 **MR. MOYLE:** Thank you, Mr. Chairman.

1 I'll be brief. We support the arguments and the
2 issues raised by the Office of Public Counsel. And
3 I want to make a slightly -- slightly different
4 point. You know, this Commission has a historical
5 practice of hearing cases and witnesses being sworn
6 in, and it decides facts, calls balls and strikes
7 on facts. My understanding is many, many years ago
8 you all had hearing officers. You may have even
9 over the years sent some cases to the Division of
10 Administrative Hearings to be decided in terms of
11 the factual disputes.

12 The administrative procedures law, 120, is
13 set up to do a number of things, but one is -- is to
14 decide disputed issues of fact. And it seems that
15 OPC with their issues are -- are raising issues that
16 may be disputed issues of fact. They may be
17 stipulated, but they -- you know, at this point
18 we're still in the discovery process in this case,
19 and they ought not to have their issues shut out,
20 you know, at this point.

21 I know there was a story that was in a
22 paper this week about -- about hedging. Maybe it
23 was today there was a hedging story. And OPC, I
24 think, said, well, the Duke number was X, and the
25 Duke spokesman said, no, we think the number is Y.

1 I know you can't believe everything you read in the
2 paper, but it does suggest that potentially there's
3 a disputed issue of fact about the hedging amount,
4 which is, I think, the issue that's teed up in -- in
5 1A.

6 So I think at this stage of the
7 proceedings, given the, you know, Administrative
8 Procedures Act, Chapter 120, the direction that has
9 been provided there, the case law that addresses
10 this issue, that the decision of the Commission
11 should err on the side of having the issue in. As
12 things progress in these cases, as you all know, a
13 lot of times things get sorted out, get stipulated,
14 but at this point in the process we would suggest
15 that you err on the side of keeping these issues in
16 as the case -- cases continue to develop. I don't
17 think the prehearing is until October, so we do have
18 some -- some time and some discovery period left.
19 So we would support OPC's position and suggest that
20 the issues remain as -- as issues in the case.
21 Thank you.

22 **CHAIRMAN GRAHAM:** Thank you, Mr. Moyle.

23 **MS. BROWNLESS:** May staff respond?

24 **CHAIRMAN GRAHAM:** Let's hear from Florida
25 Power & Light.

1 **MS. BROWNLESS:** Oh, I'm sorry.

2 **CHAIRMAN GRAHAM:** Florida Power & Light.

3 **MR. BUTLER:** Yeah. Don't forget me.

4 **MS. BROWNLESS:** Never, Mr. Butler.

5 **MR. BUTLER:** Good morning, Commissioners.

6 FPL fully supports staff's recommendation
7 that OPC's motion to add hedging issues be denied.
8 OPC's proposed additional issues are simply
9 unnecessary to a full and fair review of the
10 utilities' hedging practices. Staff and the parties
11 have agreed to four issues -- to two generic issues
12 that have been referred to previously, plus two
13 additional utility-specific issues for each of the
14 utilities -- all addressing hedging. There's
15 absolutely no need to expand that list.

16 The Commission frequently excludes issues
17 that are irrelevant, redundant, or properly subsumed
18 within other issues, and that's what should be done
19 here. OPC's proposed issues about hedging gains or
20 losses are irrelevant. Worse, as OPC's motion and
21 their handout today illustrate, they are part and
22 parcel of an attempt to distract the Commission's
23 attention from the true purpose of hedging, which is
24 stated in FPL's risk management plan. Quote, a
25 well-managed hedging program does not involve

1 speculation or market timing. Its primary purpose
2 is not to reduce FPL's fuel costs paid over time,
3 but rather to reduce the variability or volatility
4 in fuel costs over time. Hedging can result in
5 significant lost opportunities for savings in the
6 fuel costs to be paid by customers if fuel prices
7 actually settle out at lower levels than at the time
8 the hedging -- the hedges were placed, end quote.
9 I'd note that FPL's language that I just quoted is
10 very closely tracking Section 4 of the hedging
11 guidelines that the Commission approved in Order No.
12 PSC-08-0667.

13 So, in other words, hedging losses are a
14 natural consequence of natural gas prices turning
15 out to be lower than they were forecasted at the
16 time the hedges were placed. Lower prices are a
17 boon for FPL's customers who benefit from the lower
18 prices on the substantial portion of FPL's total gas
19 requirements that are unhedged. On the other hand,
20 when prices turn out to be higher than forecast, and
21 this happened in 2005, it happened again in 2013,
22 2014, customers benefit from protection against
23 those higher prices on the portion of gas
24 requirements that are hedged.

25 In short, FPL's hedging program is all

1 about volatility reduction and is structured to
2 retain benefits to customers -- excuse me --
3 regardless of whether gas prices rise or fall.
4 OPC's proposed issues about hedging gains or losses
5 are a red herring that have no place in this year's
6 fuel clause docket.

7 In addition, OPC's proposed issues are
8 unnecessary because they are properly subsumed
9 within the four hedging issues to which the parties
10 have agreed.

11 OPC would have the Commission make
12 specific determinations on hedging gains or losses
13 as well as forecasted fuel price volatility.
14 Neither of those determinations would have any
15 direct consequences for the determination of 2016
16 fuel factors, which is the fundamental and ultimate
17 purpose of this docket. Rather, they are simply
18 data points that OPC can use in support of its
19 positions on Issues 1D and 1E concerning whether
20 utilities' financial hedging programs should
21 continue and whether any changes should be made to
22 those programs.

23 FPL is confident that the Commission can
24 and will take into account all relevant information
25 presented by OPC and the other parties in deciding

1 those issues.

2 OPC tries to analogize its proposed issues
3 to the practice in rate cases of having separate
4 building block issues for rate base, net operating
5 income, and return on equity, which ultimately roll
6 up into determining the amount of rate relief that
7 should be approved. This is a fundamentally flawed
8 analogy, however, and that flaw illustrates why
9 OPC's proposed issues aren't needed.

10 In a rate case, the issue of what rate
11 relief should be approved is inextricably, indeed
12 mathematically linked to determinations of test year
13 rate base and net operating income and to the
14 appropriate return on equity. Naturally there need
15 to be issues in a rate case addressing those
16 building blocks.

17 In sharp contrast, OPC's proposed issues
18 here cannot plausibly be characterized as building
19 blocks for the Commission's policy decision on
20 utility hedging practices. Nothing about that
21 policy decision will mathematically flow from how
22 big hedging gains or losses have been or what the
23 future volatility in fuel prices will be. Whatever
24 evidence the parties present will be taken into
25 account by the Commission in making a policy

1 decision, not a mathematical computation about
2 hedging. There is no need and no role for specific
3 separate issues regarding the various types of
4 evidence that may be presented concerning your
5 decision, and I thank you for the opportunity to
6 present our views.

7 **CHAIRMAN GRAHAM:** Thank you, Mr. Butler.

8 Okay. Commissioners, any comments before
9 I go back to staff?

10 Staff, you had --

11 **MS. BROWNLESS:** Thank you. Just making a
12 few points. Essentially I agree with Mr. Butler's
13 point that the ultimate issue here is the
14 development of the fuel factor, and that net gains
15 or losses associated with hedging activity has
16 absolutely nothing to do with the development of
17 the fuel factor. The prayer for relief and the
18 point of the fuel docket is to develop a fuel
19 factor for each of the investor-owned utilities.

20 Second, I would note that although the
21 amount of net gain or loss is a disputed issue of
22 material fact apparently between OPC and the various
23 investor-owned utilities, this is an issue list, not
24 -- not the equivalent of a proposed findings of
25 fact. We are not in any way, by moving an issue

1 from the contested list to -- by -- let me start
2 over. We're not in any way, by excluding an issue,
3 prohibiting the Office of Public Counsel from
4 presenting any testimony they want to on hedging,
5 from talking about how those facts support their
6 contention that natural gas hedging should be
7 excluded at this time. This is not an exclusionary
8 ruling. All evidence will be presented -- all
9 evidence that is tendered on the subject of hedging
10 is properly allowed in the docket, and I'm sure will
11 be allowed and will be considered. So they're not
12 prejudiced in any way by not having the issue.

13 Further, I would say that if you look on
14 page 16 at their issue on C, fuel price volatility,
15 the companies, in their responses to discovery, have
16 indicated that they don't predict fuel price
17 volatility, that that is a fallout from what the
18 prices actually were. So with regard to that issue,
19 you also have an issue of relevance, as it were.

20 So our bottom line is that we do agree
21 that historically the Commission has winnowed
22 issues -- that's normally done by the Prehearing
23 Officer at the Prehearing Conference, and it's an
24 appropriate activity for both the staff and the
25 Commission to engage in -- and that because Issues

1 1D and 1E are included in the docket, that all of
2 Public Counsel's concerns can be addressed there and
3 all the matters raised can be addressed there.

4 Thank you very much.

5 **CHAIRMAN GRAHAM:** Thank you, staff.

6 Mr. Sayler, you look like you're chomping at the
7 bit.

8 **MR. SAYLER:** I was wondering if I had any
9 time left or if -- an indulgence of maybe 30
10 seconds.

11 **CHAIRMAN GRAHAM:** I have -- you have some
12 indulgence.

13 **MR. SAYLER:** Okay. First off, FPL and
14 staff have indicated that the purpose of the fuel
15 clause docket is to set the fuel factor. We agree
16 with that. However, part of that fuel clause
17 docket has been grafted on in 19 -- or 2008 was the
18 approval of the utilities' risk management plans as
19 well as also the activities that the utilities have
20 done to mitigate fuel price volatility. So the
21 fuel clause docket is no longer just the fuel
22 factor that is being approved. There are two
23 issues. Maybe there should be a separate docket as
24 it relates to hedging, but I think it's
25 administratively useful to just put them together

1 and allow all issues to be heard.

2 And also to staff's point that -- it says
3 the utilities in discovery, they don't try to
4 predict fuel price volatility, but perhaps they
5 should because we're going to be having testimony as
6 it relates to the future volatility of natural gas
7 prices. And if hedging is supposed to mitigate
8 against and prevent fuel price volatility, maybe
9 that is something that should be teed up before the
10 Commission to consider as it relates to the
11 viability of any changes to the hedging program or
12 even the discontinuance of their hedging program.

13 And last, I'd note that in our motion, the
14 other investor-owned utilities did not oppose our
15 motion to request that these issues be included.
16 Thank you.

17 **CHAIRMAN GRAHAM:** Thank you, Mr. Sayler.
18 Commissioners? Commissioner Brown.

19 **COMMISSIONER BROWN:** Thank you. Well,
20 when I first saw this, I thought it was pretty
21 straightforward, something that the Prehearing
22 Officer could have ruled on. And I appreciate the
23 Prehearing Officer giving us the opportunity to
24 respond, with the knowledge that Public Counsel
25 probably would call for a motion for rehearing if

1 they didn't get their -- the way -- the answer in
2 the way that they wanted. So thank you,
3 Mr. Chairman.

4 This really seems straightforward to me.
5 Over the past few years Public Counsel has asked for
6 these issues, staff, to be included in -- in the
7 clauses. How many times have they asked for these
8 similar -- similarly particular issues be included?

9 **MS. BROWNLESS:** Unfortunately this is my
10 first year with the fuel docket, but I don't
11 believe they asked any hedging issues last year.

12 **COMMISSIONER BROWN:** They didn't.

13 **MS. BROWNLESS:** As Mr. Sayler has
14 indicated, obviously the cost of hedging is part of
15 the -- each company's risk management plan. The
16 cost of that risk management plan is included in
17 the calculation of the fuel clause so that they
18 have never -- or didn't last year, which is all I
19 know about, have issues specifically dealing with
20 whether hedging should or should not be continued.

21 **COMMISSIONER BROWN:** I remember that.
22 Thank you. I think they've asked four times
23 over -- since 2002 for these similar issues to be
24 included.

25 I'm just trying to see the harm. I

1 understand Public Counsel's concern that these
2 issues are near and dear to the public, but there
3 are very generic issues that they could easily argue
4 the points that they're raising, correct, under
5 those?

6 **MS. BROWNLESS:** Yes, ma'am.

7 **COMMISSIONER BROWN:** So they're not -- is
8 there any harm?

9 **MS. BROWNLESS:** As I indicated, obviously
10 they will be able to file testimony on their
11 position on net gaining, hedge losses, and how it
12 supports their ultimate position that hedging
13 should be excluded, and that can be done in Issues
14 1D and 1E.

15 **COMMISSIONER BROWN:** Mr. Chairman, can
16 I -- I'd like to ask Public Counsel and FIPUG to
17 kind of elaborate on the reasons for including
18 these specific issues in, in this docket,
19 particularly when I do believe you have the
20 opportunity, as staff indicated, to argue the same
21 things under other issues.

22 **MR. SAYLER:** Thank you, Commissioner
23 Brown. Good question. We are -- whether these
24 issues are in or out, we are planning to file
25 testimony responsive to all these issues.

1 However, back in the spring when I did
2 some -- just did a quick review of the magnitude of
3 the hedging gains and losses, I had no idea that
4 they were this enormous. And I looked at the
5 various filings that the Commission -- were
6 presented to the Commission in the true-ups in March
7 of every year, and I brought that number to
8 Mr. Kelly, the Public Counsel. And he and I were
9 both -- alarmed might be too strong of a term --
10 about these enormous costs that the customers are
11 paying for to avoid fuel price volatility. And for
12 the last several years there's been very little fuel
13 price volatility in the market, so we decided to ask
14 the utilities in discovery about their hedging gains
15 or losses. And when we did that, we were surprised
16 by -- that there were differences in the numbers.
17 And I've been working diligently trying to
18 understand --

19 **COMMISSIONER BROWN:** Mr. Sayler, I
20 appreciate all of that.

21 **MR. SAYLER:** But, yes, we can argue all
22 our points underneath the two issues, but we just
23 believe that it's a better practice to have those
24 predicate issues teed up so that the Commission can
25 verify whether Public Counsel's numbers are correct

1 or the utilities' numbers are correct.

2 **COMMISSIONER BROWN:** Okay. But your
3 answer is that you can argue those same issues --
4 those same arguments under the issues --

5 **MR. SAYLER:** Yes, ma'am.

6 **COMMISSIONER BROWN:** -- that have been
7 agreed to by all the parties?

8 FIPUG?

9 **MR. MOYLE:** The -- I mean, the question
10 in some respects is can an issue be subsumed within
11 a larger issue, and we've had this discussion many
12 times over the years. And I think a good point to
13 say why it's appropriate to have individual issues
14 is -- is because it gives the parties an
15 opportunity to focus, to have the issues squarely
16 in front of the trier of fact to call it as a ball
17 or a strike.

18 And I think a good example of the -- you
19 know, if you said everything could be subsumed, you
20 could have a rate case with one issue, which is, you
21 know, is the utility company's request for X million
22 dollars in rates prudent, yes, no, and everything
23 can be argued up under that. So we think it's a
24 better --

25 **COMMISSIONER BROWN:** I was thinking the

1 counter, though. You could have a rate case with
2 400 issues if we get to this point, if we -- if we
3 agree with what you're asking for.

4 **MR. MOYLE:** And most of the time the rate
5 cases have been a hundred. I mean, there are a lot
6 of issues, but I don't think this is an unusual
7 number of issues. It's 20 or 30.

8 And I guess the other response to the
9 answer, I would refer you to the case of Payne vs.
10 City of Miami, 52 So.3d 707. That's a Florida Third
11 DCA opinion which suggests that the fact finder's
12 decision to not consider a sub-element in a
13 comprehensive land use element was -- was wrong and
14 that that should be decided and considered by
15 the -- by the trier of fact.

16 So, you know, I think there's some
17 judicial support as well as a practical approach,
18 which is having the issues framed clearly identifies
19 the issue. This is going to be something before you
20 that you're going to be asked to decide. In years
21 past, you know, the hedging has kind of gone along.
22 One year FIPUG asked a lot of questions and made it
23 an issue. This year OPC is teeing it up, and I
24 think they want to say, hey, we're teeing this up,
25 we're going to have some issues, and clearly put

1 them in front of the Commission for decision.

2 So we think it's more appropriate to not
3 subsume it, make it part and parcel of a larger
4 issue, and have the issues spelled out specifically
5 for a decision.

6 **COMMISSIONER BROWN:** Mr. Butler.

7 **MR. BUTLER:** May I respond briefly?

8 **COMMISSIONER BROWN:** Yeah. Mr. Chairman,
9 if it's okay.

10 **MR. BUTLER:** I think that there is little
11 question that evidence on the amount of hedging
12 gains or losses are going to be presented to the
13 Commission in November. I think there's little
14 question that you will get to the bottom of what
15 the proper figures are for that, and that you will
16 take it into account in deciding what you want to
17 do with hedging going forward. You just don't need
18 these three separate issues in order to do that.
19 So I think they're certainly subsumed within it.
20 OPC has already indicated what they intend to
21 present. And I have every confidence that you will
22 take it into account and that your order will
23 reflect your conclusions about it without the need
24 to have these issues. Thank you.

25 **COMMISSIONER BROWN:** Thank you.

1 Mr. Chairman, I think this is a pretty
2 straightforward --

3 **MS. BROWNLESS:** Can I just make one
4 comment about the Payne case? Yes, sir.

5 **CHAIRMAN GRAHAM:** Commissioner Brown.

6 **COMMISSIONER BROWN:** I was just saying I
7 think this is pretty straightforward, Mr. Chairman.
8 And I appreciate the -- you allowing me the
9 opportunity to talk, but I'm ready to make a
10 motion.

11 **CHAIRMAN GRAHAM:** One more Commissioner.
12 Commissioner Brisé.

13 **COMMISSIONER BRISÉ:** Thank you,
14 Mr. Chairman. And I think, if I've gotten to know
15 Commissioner Brown well enough, I think I have a
16 sense of where the motion is going to be, and I
17 think I'm going to support the motion if it's what
18 I think it's going to be.

19 For practical purposes from what I'm
20 hearing, the issues that are of concern to OPC and
21 FIPUG will be covered during the hearing. So,
22 therefore, us, as triers of facts, we will have the
23 facts before us and we will determine a decision --
24 make a decision based upon the issues that we have
25 before us rather than having a broader laundry list

1 of issues, and I think ultimately that is what is of
2 most importance. And -- and so, therefore, I would
3 be in support of a motion that would support staff's
4 recommendation.

5 **CHAIRMAN GRAHAM:** Commissioner Edgar.

6 **COMMISSIONER EDGAR:** Thank you,
7 Mr. Chairman. As we all know, I've been here a
8 long time, but this may be a first that we've
9 actually heard the term "zombie-like" as a
10 descriptor of these proceedings. I'm not sure I
11 appreciate it, quite frankly. No. And it's
12 interesting to hear case law cited within the same
13 breath as stories, and I think story is the
14 appropriate descriptor.

15 So with that said, I agree with
16 Commissioner Brisé. And, quite frankly, I think
17 that our proceedings address the issues that are
18 before us, and I look forward to the actual issues
19 and not television terms and not stories in the
20 media. I look forward to the hearing, I look
21 forward to the evidence, I look forward to the
22 testimony, and I look forward to actual
23 evidence-based discussion.

24 **CHAIRMAN GRAHAM:** Commissioner Brown,
25 your motion, please.

1 **COMMISSIONER BROWN:** Thank you. And I
2 appreciate Commissioner Edgar and Brisé's comments
3 and agree with them. And with that, I would move
4 staff recommendation on Issues 1, 2, and 3.

5 **COMMISSIONER PATRONIS:** Second.

6 **CHAIRMAN GRAHAM:** Staff recommendation on
7 Issue 2 and 3, and it's been seconded.

8 **COMMISSIONER BROWN:** Thank you.

9 **CHAIRMAN GRAHAM:** All in favor, say aye.

10 (Vote taken.)

11 Any opposed? By your action, you've
12 approved staff recommendation on Issue No. 2 and 3.

13 Commissioners, I want to thank you. I
14 know this was something that was very important to
15 OPC, and that's the reason why, as Prehearing
16 Officer, I punted it to the full Commission, because
17 I wanted for them to see that we fully vetted this.
18 And I do appreciate your -- your time on that.

19 I think that concludes our agenda for
20 today. Staff, once again, I want to thank you so
21 very much for your time and effort on this one.

22 We are --

23 **MR. SAYLER:** Thank you, Mr. Chairman, for
24 hearing our motion.

25 **CHAIRMAN GRAHAM:** Oh, not a problem. I

1 hope that everybody travels safely home, and we are
2 adjourned.

3 We'll have IA in this room in ten minutes,
4 which will be a quarter till by that clock in the
5 back of the room. We're adjourned.

6 (Agenda Conference adjourned at 10:35
7 a.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

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

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

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

18 DATED THIS 3rd day of September, 2015.

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LINDA BOLES, CRR, RPR
FPSC Official Hearings Reporter
(850) 413-6734

Natural Gas Hedging Gains (Losses) for 2002-2015

Company	Gains (Losses) for 2002-2014*	Projected Gains (Losses) for 2015*	Cumulative Hedging Losses for 2002-2015	Number of Customers in 2014**
Duke	\$ (1,265,241,959.00)	\$ (196,900,000.00)	\$ (1,462,141,959.00)	1,697,844
FPL	\$ (3,775,960,449.00)	\$ (382,000,000.00)	\$ (4,157,960,449.00)	4,729,392
Gulf	\$ (127,278,227.00)	\$ (43,981,755.00)	\$ (171,259,982.00)	444,047
TECO	\$ (381,363,733.00)	\$ (9,365,645.00)	\$ (390,729,378.00)	712,169
Totals	\$ (5,549,844,368.00)	\$ (632,247,400.00)	\$ (6,182,091,768.00)	7,583,452

* Gains (Losses) for the period 2002-2015 obtained from DEF, Gulf, and TECO's responses to OPC's First Set of Interrogatories Nos. 2 and 5, and FPL responses to OPC's Fourth Set of Interrogatories Nos. 26 and 29.

** Source: IOU Annual Service Reliability Report for 2014, available at <http://www.psc.state.fl.us/utilities/electricgas/distributionreports.aspx>

OPC's Request:

Include, for the benefit of the Public and in the best interests of open Government, OPC's three disputed issues of material fact for determination by the Commission in this year's Fuel Docket:

- ISSUE 1A: For the years 2002 through 2014, what was the total net hedging gain or loss associated with each utility's hedging activities?
- ISSUE 1B: Does the utility anticipate reporting a hedging gain or loss for calendar year 2015, and if so, what is the projected amount of the anticipated hedging gain or loss associated with each utility's hedging activities?
- ISSUE 1C: What fuel price volatility, if any, does each utility forecast will be the market price for natural gas through 2040?

~~Parties~~ Staff Handout
 Internal Affairs/Agenda
 on 8/27/15
 Item No. 3