

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION FOR RATE INCREASE BY
FLORIDA POWER & LIGHT COMPANY.

DOCKET NO. 160021-EI

PETITION FOR APPROVAL OF
2016-2018 STORM HARDENING PLAN
BY FLORIDA POWER & LIGHT
COMPANY.

DOCKET NO. 160061-EI

2016 DEPRECIATION AND
DISMANTLEMENT STUDY BY,
FLORIDA POWER & LIGHT COMPANY.

DOCKET NO. 160062-EI

PETITION FOR LIMITED
PROCEEDING TO MODIFY AND
CONTINUE INCENTIVE MECHANISM,
BY FLORIDA POWER & LIGHT
COMPANY.

DOCKET NO. 160088-EI

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER
PARTICIPATING: COMMISSIONER LISA POLAK EDGAR
PREHEARING OFFICER

DATE: Friday, August 12, 2016

TIME: Commenced at 10:21 a.m.
Concluded at 12:58 p.m.

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

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

1 APPEARANCES:

2 J.R. KELLY, PUBLIC COUNSEL; CHARLES REHWINKEL;
3 ERIK L. SAYLER; and PATRICIA A. CHRISTENSEN, ESQUIRES,
4 Office of Public Counsel, c/o the Florida Legislature,
5 111 W. Madison Street, Room 812, Tallahassee, Florida
6 32399-1400, appearing on behalf of the Citizens of the
7 State of Florida.

8 JOHN T. BUTLER, R. WADE LITCHFIELD, KEVIN I.C.
9 DONALDSON, KENNETH RUBIN, JESSICA CANO, and MARIA
10 MONCADA, ESQUIRES, 700 Universe Boulevard, Juno Beach,
11 Florida 33408-0420; KEN HOFFMAN, ESQUIRE, 215 South
12 Monroe Street, Suite 810, Tallahassee, Florida 32301;
13 SUSAN F. CLARK, ESQUIRE, 301 South Bronough Street,
14 Suite 200, Tallahassee, Florida 32301; and CHARLES A.
15 GUYTON, ESQUIRE, 215 South Monroe Street, Suite 601,
16 Tallahassee, Florida 32301, appearing on behalf of
17 Florida Power & Light Company.

18 ROBERT SCHEFFEL WRIGHT and JOHN T. LaVIA, III,
19 ESQUIRES, Gardner Law Firm, 1300 Thomaswood Drive,
20 Tallahassee, Florida 32308, appearing on behalf of the
21 Florida Retail Federation.

1 APPEARANCES (Continued):

2 JOHN B. COFFMAN, ESQUIRE, Coffman Law Firm,
3 871 Tuxedo Boulevard, St. Louis, Montana, 63119-2044;
4 and JACK McRAY, ESQUIRE, 200 West College Avenue, Suite
5 304, Tallahassee, Florida, 32301, appearing on behalf of
6 American Association of Retired Persons.

7 JON C. MOYLE, JR., and KAREN PUTNAL, ESQUIRES,
8 Moyle Law Firm, P.A., 118 North Gadsden Street,
9 Tallahassee, Florida 32301, appearing on behalf of
10 Florida Industrial Power Users Group.

11 DIANA CSANK, ESQUIRE, 50 F Street, NW, 8th
12 Floor, Washington, DC 20001, appearing on behalf of
13 Sierra Club.

14 KENNETH L. WISEMAN, MARK F. SUNDBACK, WILLIAM
15 M. RAPPOLT, and KEVIN C. SIQVELAND, ESQUIRES, Andrews
16 Kurth, LLP, 1350 I Street NW, Suite 1100, Washington, DC
17 20005, appearing on behalf of South Florida Hospital and
18 Healthcare Association.

19 STEPHANIE U. ROBERTS, 110 Oakwood Drive, Suite
20 500, Winston-Salem, North Carolina 27103; and DERRICK
21 PRINCE WILLIAMSON, ESQUIRE, 1100 Bent Creek Boulevard,
22 Suite 101, appearing on behalf of Wal-Mart Stores East,
23 LP, and Sam's East, Inc.

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1 APPEARANCES (Continued):

2 NATHAN A. SKOP, ESQUIRE, 420 NW 50th
3 Boulevard, Gainesville, Florida 32607, appearing on
4 behalf of Mr. Daniel R. Larson and Mrs. Alexandria
5 Larson.

6 CAPTAIN NATALIE A. CEPAK and THOMAS A.
7 JERNIGAN, ESQUIRES, USAF Utility Law Field Support
8 Center, Air Force Legal Operations Agency, 139 Barnes
9 Drive, Suite 1, Tyndall Air Force Base, Florida 32403,
10 appearing on behalf of Federal Executive Agencies.

11 SUZANNE BROWNLESS, KYESHA MAPP, ADRIA HARPER,
12 DANIJELA JANJIC, MARGO LEATHERS, ESQUIRES, General
13 Counsel's Office, 2540 Shumard Oak Boulevard,
14 Tallahassee, Florida 32399-0850, appearing on behalf of
15 the staff of the Florida Public Service Commission.

16 KEITH HETRICK, General Counsel, and
17 MARY ANNE HELTON, ESQUIRES, FPSC General Counsel's
18 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida
19 32399-0850, appearing as advisors to the Florida Public
20 Service Commission.

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P R O C E E D I N G S

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2 **COMMISSIONER EDGAR:** Okay. Good morning,
3 everyone. I'm glad to see you all here. I call this
4 prehearing to order, and we'll start with asking the
5 staff to read the notice.

6 **MS. BROWNLESS:** By notice issued on July 15th,
7 2016, by the Commission Clerk, this time and place has
8 been set for a prehearing conference in Dockets No.
9 160021, 160061, 160062, and 160088-EI, petition for
10 increase in rates by Florida Power & Light Company,
11 petition for approval of the 2016 to 2018 storm
12 hardening plan by Florida Power & Light Company, the
13 2016 depreciation and dismantlement study by the Florida
14 Power & Light Company, and the petition for limited
15 proceeding to modify and continue incentive mechanism by
16 the Florida Power & Light Company.

17 **COMMISSIONER EDGAR:** Thank you, Ms. Brownless.
18 And I mentioned before I called the hearing to order, we
19 did have some revised issue statements filed late
20 yesterday afternoon. I appreciate everyone's
21 cooperation in getting that information in so that we
22 could have everything as much in order and ready to go
23 and discuss today as possible, but with that timeline, I
24 did want to give the staff a little additional time this
25 morning to get it all in order. So I appreciate your

1 patience since we are starting just a little behind the
2 noticed time. And with that, I'd like to move on and
3 take appearances.

4 **MR. BUTLER:** Thank you, Commissioner. John
5 Butler appearing on behalf of Florida Power & Light
6 Company. Also make appearances for R. Wade Litchfield,
7 Maria J. Moncada, Kevin Donaldson, and Ken Rubin of FPL;
8 and Susan Clark of the Radey law firm; Charles Guyton of
9 the Gunster law firm. Thank you.

10 **COMMISSIONER EDGAR:** Thank you.

11 **MS. CSANK:** Good morning. My name is Diana
12 Csank. I'm appearing on behalf of the Sierra Club.

13 **MR. MOYLE:** Good morning. Jon Moyle on behalf
14 of the Florida Industrial Power Users Group, FIPUG. I'd
15 also like to enter an appearance for Karen Putnal with
16 our firm.

17 **MR. WISEMAN:** Good morning. Kenneth Wiseman
18 for the South Florida Hospital and Healthcare
19 Association. And I'd also like to enter the appearances
20 of Mark Sundback, William Rappolt, and Kevin Sigveland,
21 all of the same law firm.

22 **COMMISSIONER EDGAR:** Thank you.

23 **CAPTAIN CEPAK:** Good morning. Captain Natalie
24 Cepak on behalf of the Federal Executive Agencies. And
25 I'm also entering an appearance for Mr. Drew Jernigan.

1 **COMMISSIONER EDGAR:** Thank you.

2 **MR. SKOP:** Good morning, Commissioner. Nathan
3 Skop appearing on behalf of Daniel and Alexandria
4 Larson.

5 **COMMISSIONER EDGAR:** Thank you.

6 **MR. LAVIA:** Good morning. J. Lavia on behalf
7 of the Florida Retail Federation. I'd like to also make
8 an appearance for my law partner Schef Wright.

9 **COMMISSIONER EDGAR:** Thank you.

10 **MR. SAYLER:** Good morning. Erik Sayler with
11 the Office of Public Counsel.

12 **MS. CHRISTENSEN:** Good morning. Patty
13 Christensen with the Office of Public Counsel. And I'd
14 also like to put in an appearance for Charles Rehwinkel
15 and J.R. Kelly, the Public Counsel.

16 **COMMISSIONER EDGAR:** Thank you.

17 **MS. ROBERTS:** Good morning. Stephanie Roberts
18 here on behalf of Wal-Mart and Sam's, and also make an
19 appearance for my partner Derrick Williamson.

20 **COMMISSIONER EDGAR:** Thank you. Good morning.

21 **MR. McRAY:** Good morning. I'm Jack McRay.
22 I'm appearing on behalf of AARP. And I'd also like to
23 notice the appearance of John Coffman for AARP.

24 **COMMISSIONER EDGAR:** Thank you. And
25 Commission staff.

1 **MS. BROWNLESS:** Yes, ma'am. Good morning.
2 Suzanne Brownless appearing on behalf of the Commission
3 staff. And I'd also like to enter an appearance for
4 Danijela Janjic, Kyasha Mapp, and Margo Leathers.

5 **COMMISSIONER EDGAR:** Thank you.

6 **MS. HELTON:** Mary Anne Helton. I'm here as
7 your advisor this morning. And I'd also like to enter
8 an appearance for your General Counsel, Keith Hetrick.

9 **COMMISSIONER EDGAR:** Thank you. Okay. It is
10 my understanding that we have a number of preliminary
11 matters to either acknowledge or address, discuss,
12 and/or rule. So we will move to preliminary matters,
13 and I'll ask our staff counsel, Ms. Brownless, to help
14 lead us off.

15 **MS. BROWNLESS:** Thank you. First, we'll
16 address the FPL motions. There was a motion to compel
17 discovery of South Florida Healthcare and Hospital
18 Association responses to FP&L's first set of
19 interrogatories, Nos. 7 and 8, and POD No. 3 that was
20 filed on July 1st. An order has been issued resolving
21 that, and that's Order PSC-16-0325, issued on August
22 11th, 2016.

23 The second motion identified was a motion to
24 strike the Larsons' replies to FP&L's objection to
25 intervention filed August 4th, 2016. This is now moot

1 because the Larsons' intervention was granted by Order
2 No. PSC-16-0323-PCO-EI issued on August 9th, 2016. And
3 I believe there was also another motion filed by
4 Mr. Skop; however, that too has been rendered moot by
5 the issuance of the Larsons' intervention order.

6 **COMMISSIONER EDGAR:** So it is my opinion that
7 both of those matters have been addressed. Is there any
8 other comment? All right. Thank you very much.

9 Ms. Brownless.

10 **MS. BROWNLESS:** Moving on. On the issue of
11 sequestration, the third order revising Order
12 Establishing Procedure, which is Order
13 PSC-16-0300-PCO-EI issued on July 27th, 2016, required
14 that witnesses -- requested to put in their prehearing
15 statement a request for sequestration of witnesses, and
16 that that -- if they did not do that, there would be --
17 that would constitute a waiver of the right to request
18 sequestration at the hearing absent a showing of good
19 cause at that time.

20 The -- FIPUG has, in fact, made such a request
21 and complied with the third order. And, therefore,
22 pursuant to the requirements of the OEP, they have met
23 the requirements of the OEP. I don't believe that
24 anybody else has requested sequestration. Is that
25 correct?

1 **COMMISSIONER EDGAR:** That is correct.

2 **MS. BROWNLESS:** Okay.

3 **COMMISSIONER EDGAR:** So to summarize, FIPUG
4 made a request for sequestration in compliance with the
5 time frame in the OEP procedures that had been laid out.
6 They are in a position to be able to request
7 sequestration at the time of the hearing. In keeping
8 with due process, that will be, if the request is made,
9 a ruling that will be heard and determined by the
10 presiding officer at that time.

11 **MR. MOYLE:** Thank you.

12 **COMMISSIONER EDGAR:** Thank you.

13 **MS. BROWNLESS:** Okay. Thank you. I do want
14 to mention that the South Florida Hospital and
15 Healthcare Association has raised a new issue which
16 deals with this, and we'll discuss that when we get to
17 the new issue section.

18 **COMMISSIONER EDGAR:** Okay. There --
19 Mr. Wiseman, we have a section towards -- later in our
20 agenda today to discuss contested issues, and I think it
21 makes sense to address that then, if that works for you.

22 **MR. WISEMAN:** Yes, that does. Thank you.

23 **COMMISSIONER EDGAR:** Okay. Thank you.

24 **MS. BROWNLESS:** Okay. Thank you.

25 The next issue has to do with witnesses, and I

1 believe that the Sierra Club originally, in their
2 prehearing statement, identified nine witnesses to
3 address standing, and on Wednesday, the 10th, they
4 provided revisions to their prehearing statement in
5 which they have deleted these witnesses. So I just want
6 to make sure that at this time you are no longer
7 requesting that those witnesses appear. And also I
8 think that you have filed a notice and attached
9 affidavits for those witnesses that you intend to ask
10 that those be included in the comprehensive prehearing
11 list. Is that correct?

12 **MS. CSANK:** Yes, that's correct.

13 **MS. BROWNLESS:** Okay.

14 **COMMISSIONER EDGAR:** Everyone clear? Any
15 objections or concerns at this time?

16 Mr. Butler.

17 **MR. BUTLER:** I'm not sure if this is the right
18 time to do so, maybe it's at the hearing, but, excuse
19 me, it seems that the affidavits are being offered kind
20 of in lieu of testimony. They are simply, you know,
21 statements of individuals that would be of the nature
22 that one would normally present as testimony. If the
23 intent is for them to be -- you know, for the Sierra
24 Club to ask that they be included as evidence at the
25 hearing, you know, as those persons' statements, we

1 would object to that. I don't think that it's relevant.
2 You know, they are already a party. We've not objected
3 to their standing. And beyond that, I think that if
4 there was any role for those witnesses, it would have to
5 be as witnesses. They would have to have prefiled
6 testimony by the deadlines for doing so.

7 So as I say, I'm not sure if that's something
8 that we're actually preparing to argue and rule on at
9 this point, but just you asked if there were objections,
10 and I wanted to state them.

11 **COMMISSIONER EDGAR:** Thank you.

12 Ms. Csank.

13 **MS. CSANK:** So in response to that then, the
14 Sierra Club would maintain the list of standing
15 witnesses offered in the original prehearing statement
16 if FPL is not stipulating to Sierra Club's standing, and
17 will object to the admission of the standing affidavits
18 into the record.

19 **MR. BUTLER:** Well, to be clear, we're not
20 objecting to your standing.

21 **COMMISSIONER EDGAR:** Standing has been
22 granted.

23 **MR. BUTLER:** We're just objecting to the
24 affidavits coming in as evidence in the hearing.

25 **MS. CSANK:** Right. To my understanding, there

1 has not been a stipulation to date as to Sierra Club's
2 standing.

3 **COMMISSIONER EDGAR:** Well, intervention has
4 been granted.

5 **MS. CSANK:** Indeed. But my understanding of
6 the rules in Florida is that to preserve our appeal
7 rights, we need to put evidence into the record that is
8 associational for -- for associational standing. We
9 have members and we're here on behalf of those members.

10 **COMMISSIONER EDGAR:** All right. Thank you for
11 the clarification. I appreciate that.

12 Okay. Let me propose this, and we can discuss
13 it, that the affidavits that have been put forward and
14 will be put forward by Sierra Club will be added to the
15 Comprehensive Exhibit List. A little later in our
16 discussion today, we will talk about a timeline for
17 concerns or objections to be raised as to any items on
18 the exhibit list, and that then would be a matter for
19 the presiding officer to rule on at the beginning of the
20 hearing.

21 So my direction as of now, without any further
22 concern or comment, is that the affidavits, as
23 appropriate, be added to the Comprehensive Exhibit List,
24 and any concerns or objections be raised timely in the
25 time frame that we'll discuss here in a little bit.

1 Ms. Brownless, does that work?

2 **MS. BROWNLESS:** Yes, ma'am, that's good.

3 **COMMISSIONER EDGAR:** Okay. Mr. Butler, are
4 you good with that?

5 **MR. BUTLER:** That's fine, yes.

6 **COMMISSIONER EDGAR:** Okay. All right. Thank
7 you.

8 **MS. BROWNLESS:** The next topic is expert
9 testimony and voir dire. Section 6A8 of the third order
10 revising OEP requires a party to identify witnesses they
11 wish to voir dire and to give page and line citations of
12 testimony they believe is in question for lack of
13 witness expertise. And if not done, the order says that
14 the party waives the right to voir dire the witness.

15 FIPUG has stated that they object to any
16 expert witness not designated as an expert and expressly
17 as an expert witness with areas of expertise identified;
18 however, FIPUG has not designated or identified any
19 specific witness as an expert or explicitly offered any
20 witness as an expert in a specific area of expertise.
21 They did not do that for their own witness, Mr. Pollock.
22 And because they have not specifically identified a
23 witness or specifically provided the page and line
24 numbers associated with contested material, we would
25 take the position that they have not complied with the

1 requirements of the third order.

2 **COMMISSIONER EDGAR:** So stated, so ruled.

3 **MS. BROWNLESS:** Are you going to --

4 **COMMISSIONER EDGAR:** Mr. Moyle?

5 **MR. MOYLE:** I was going to defer to you with
6 respect to whether we would be heard on that. I think
7 we just have a disagreement about how experts are
8 handled here, so I'll just leave it at that. You've
9 made your ruling, so thank you.

10 **MS. BROWNLESS:** Thank you.

11 **COMMISSIONER EDGAR:** And I apologize if I got
12 ahead of you. You certainly have the right to speak.
13 And if I miss anybody, just, you know, wave at me or let
14 me know.

15 And can we take five seconds? Stay in place.

16 (Pause.)

17 Thank you. Ms. Brownless.

18 **MS. BROWNLESS:** And just to kind of tie this
19 up a bit, and it's my understanding that no other party
20 has requested sequestration as well by filing -- I mean
21 --

22 **COMMISSIONER EDGAR:** We're talking about voir
23 dire.

24 **MS. BROWNLESS:** Sorry. Voir dire. Excuse me.

25 **COMMISSIONER EDGAR:** It was the same revised

1 OEP, so --

2 **MS. BROWNLESS:** By filing an indication in
3 their prehearing statement.

4 **MR. WISEMAN:** I think it actually was great
5 that Ms. Brownless brought that up. I'd like to go
6 back, and I apologize for this, but I wonder if it's --
7 hopefully it's not too late. SFHHA also would like to
8 request the right to sequester witnesses.

9 **MS. BROWNLESS:** But you did not put that in
10 your prehearing statement.

11 **MR. WISEMAN:** We did not put it in the
12 prehearing statement. But if possible, we'd like to --
13 since we are at the prehearing conference, we'd like to
14 reserve the right to do that.

15 **COMMISSIONER EDGAR:** Ms. Helton.

16 **MS. HELTON:** Madam Chairman, can you give me a
17 minute to go back and look at your order?

18 **COMMISSIONER EDGAR:** I can. It's subsection
19 10, Section 7A.

20 **MS. HELTON:** You issued an order on July the
21 27th which stated that parties were to include in their
22 prehearing statements a request for sequestration of
23 witnesses, and you also made a statement that "Failure
24 to make such a request shall constitute a waiver of the
25 right to request sequestration of witnesses absent a

1 showing of good cause." I don't think I've heard
2 Mr. Wiseman express any reason why he is now making that
3 statement or making that request.

4 **MR. WISEMAN:** I'm simply -- the parties have
5 been able to -- been permitted to amend their prehearing
6 statements as early -- as late as yesterday, and what
7 I'm basically asking is for the right to amend the
8 prehearing statement to include that request.

9 **COMMISSIONER EDGAR:** Ms. Helton?

10 **MS. HELTON:** Ms. Brownless would like to
11 address you, if that's --

12 **COMMISSIONER EDGAR:** Ms. Brownless.

13 **MS. BROWNLESS:** And, Mr. Wiseman, do you have
14 your revision with regard to your request for
15 sequestration at this time?

16 **MR. WISEMAN:** I don't have it here. We could
17 have it emailed before noon today.

18 **MS. BROWNLESS:** Thank you.

19 **COMMISSIONER EDGAR:** Mr. Wiseman, why is the
20 good cause -- what is the good cause that you did not
21 comply with the process that was laid out in the OEP
22 that this request be made in writing prior to this
23 hearing?

24 **MR. WISEMAN:** Your Honor, I will acknowledge
25 it was an oversight. And given the opportunity that has

1 been provided to others to amend the prehearing
2 statements that they were -- that were filed, supposed
3 to be filed, I believe it was last Friday, we're simply
4 asking for the same right to amend the statement on that
5 basis.

6 **COMMISSIONER EDGAR:** Let me come back to that.
7 I want to make sure that we're talking about the same
8 thing. And we all have a lot of paper in front of us
9 and there are a lot of dates to keep in mind, so I want
10 to make sure that I am clear.

11 But to our legal staff, am I correct that the
12 language for the prehearing statements in the OEP gave
13 leave for the issue statements to be revised up to
14 today?

15 **MS. BROWNLESS:** The OEP says that a party may
16 revise any position and raise any new issues up to the
17 prehearing conference, which is today.

18 **COMMISSIONER EDGAR:** Ms. Helton.

19 **MS. HELTON:** I think Ms. Brownless is right,
20 that the Order Establishing Procedure does acknowledge
21 that people may change positions or add positions up and
22 to the date of the prehearing conference.

23 **COMMISSIONER EDGAR:** Is this a position?
24 That's the distinction that I was trying to get at.

25 **MS. HELTON:** It's not a position to an issue

1 that was listed other than it is a position -- I guess
2 Mr. Wiseman did raise, as a contested issue, an issue
3 about sequestration. But a position to an issue in the
4 sense that we normally treat it, no.

5 **MR. WISEMAN:** Your Honor, if you could --

6 **COMMISSIONER EDGAR:** Would you like to take a
7 moment?

8 **MR. WISEMAN:** Yes, please.

9 **COMMISSIONER EDGAR:** You have it.

10 **MR. WISEMAN:** Yes. We've raised an issue
11 concerning the right of the Commission to bar the -- a
12 request to -- to deny a request for sequestration of
13 witnesses.

14 **COMMISSIONER EDGAR:** Yes, and we will address
15 that later in the agenda, as I stated. But that is not
16 the same thing as filing timely, as I believe was clear
17 in the OEP, the request to raise that issue.

18 **MR. WISEMAN:** I am -- I'm not debating that
19 the OEP was not clear. I said it was an oversight. As
20 I understand it, we can amend a position up to the date
21 of the hearing. Today is the date of the hearing -- or
22 prehearing. Excuse me.

23 **COMMISSIONER EDGAR:** So are you admitting the
24 position on that item?

25 **MR. WISEMAN:** I think this is -- it's not --

1 it's certainly a position. It's an issue in this case
2 of whether sequestration should be ordered or not, and
3 we are taking a position on it. I think that's -- I
4 think that's clear. Whether it's what you regard as a
5 --

6 **COMMISSIONER EDGAR:** When I was a first year
7 law student -- when I was a first year law student, my
8 legal writing professor, it's one of the many things
9 that from the first year of law has stayed with me, said
10 that, "If any attorney ever writes 'it is clear' or
11 'clearly,' you know that anything that follows is just
12 the opposite." Just a comment.

13 **MR. WISEMAN:** Well, again, we're requesting
14 the right to amend our prehearing statement as of today,
15 which we can do, and we can get that filed as of today.
16 Today's the date of the prehearing conference, and we're
17 requesting the right to sequester witnesses and would
18 ask for a ruling.

19 **COMMISSIONER EDGAR:** It's Friday and I'm in a
20 very good mood, although it's dissipating rapidly. I
21 think the intent was clear and I think you know that,
22 and that this is the type of issue you want to spend our
23 time on this morning I find of great issue. We will be
24 moving on efficiently and effectively. Because it's
25 Friday and I'm in a good mood, I'm going to let you file

1 it by 2:00 today.

2 **MR. WISEMAN:** Thank you very much.

3 **COMMISSIONER EDGAR:** You're welcome.

4 **MR. WISEMAN:** Appreciate it.

5 **COMMISSIONER EDGAR:** Anything else on this
6 matter? Well, there we have it.

7 **MS. BROWNLESS:** Are we back to expert witness
8 and voir dire?

9 **COMMISSIONER EDGAR:** Gosh, I hope so. We are.

10 **MS. BROWNLESS:** Are we back to that? Okay.

11 **COMMISSIONER EDGAR:** We are.

12 **MS. BROWNLESS:** All right. So, again, the
13 third order revising procedure indicates that if one has
14 an objection to the expertise of a witness, that you
15 must say the witness to whom you object and you must
16 identify the page and line numbers you specifically --

17 **COMMISSIONER EDGAR:** And I've already ruled on
18 that, Ms. Brownless.

19 **MS. BROWNLESS:** Okay. And we've already done
20 that.

21 **COMMISSIONER EDGAR:** Yes, we have.

22 **MS. BROWNLESS:** Okay. Thank you so much.

23 **COMMISSIONER EDGAR:** You're welcome.

24 **MS. BROWNLESS:** I got lost there.

25 **COMMISSIONER EDGAR:** That's okay.

1 **MS. BROWNLESS:** The next thing I want to talk
2 about is the Comprehensive Exhibit List. Parties should
3 have been emailed that, as well as I think there were
4 copies available today. If you can please look at
5 those, and will you please be prepared to state whether
6 you can stipulate to all or part of the list or will
7 object to specific exhibits by Wednesday, August 17th,
8 at 5:00 p.m.?

9 **COMMISSIONER EDGAR:** Again, lots of dates, so
10 there's another one. Mr. Butler.

11 **MR. BUTLER:** That's fine.

12 **COMMISSIONER EDGAR:** Okay. Thank you.

13 **MS. CHRISTENSEN:** Commissioner?

14 **COMMISSIONER EDGAR:** Yes, ma'am.

15 **MS. CHRISTENSEN:** Thank you.

16 **COMMISSIONER EDGAR:** Uh-huh.

17 **MS. CHRISTENSEN:** Patty Christensen with the
18 Office of Public Counsel. We did want to be heard on
19 that, and we were going to ask what staff's intention
20 was as to the list of discovery responses that they're
21 seeking to move into the record.

22 We have, I think, had multiple conversations
23 with staff in other venues that our position has been
24 and continues to be that we object to stipulating to the
25 wholesale entry of documents at the beginning of a

1 hearing. We believe that they should be moved in the
2 proper method through the witness, through
3 cross-examination with questioning, and we wanted to put
4 that forth today at the prehearing conference. You
5 know, we can work with staff. If they can identify
6 which witnesses they're intending to move these
7 documents through, we may be able to look at the
8 documents before those witnesses take the stand and
9 possibly tell them which ones we would agree to and
10 which ones we would not agree to. I think that's
11 probably a fairer compromise than trying to look through
12 probably -- there's 15 pages of listed documents. We're
13 probably talking over 2,000 documents, and three days is
14 just insufficient time for our office to be able to look
15 at them in sufficient detail to know whether or not we
16 would be able to stipulate to that. And taking them in
17 smaller chunks before the witnesses take the stand gives
18 us the opportunity to -- and if we're provided the
19 documents, to look at them and thoroughly vet them
20 before they come into the record. Because, as we all
21 are aware, discovery is -- you know, contains hearsay
22 and possibly other objectionable material, but not all
23 would be objected to by our office. And we're trying to
24 approach this in some sort of reasonable manner that we
25 can continue to move the hearing along without what we

1 would feel would be a hindrance to our right to be able
2 to fairly prosecute the case. So we did want to put
3 that out this morning. And we're here to discuss this
4 with staff further after the conference, but we wanted
5 to put that on the record. Thank you.

6 **COMMISSIONER EDGAR:** All right. Thank you.

7 **MS. BROWNLESS:** And may I just --

8 **COMMISSIONER EDGAR:** Ms. Brownless, yes.

9 **MS. BROWNLESS:** Yes, ma'am. I want to correct
10 one thing I said. I thought that we did have hard
11 copies of the Comprehensive Exhibit List here today, but
12 we do not. I did, however, email those to all parties
13 on August 11th at 4:13.

14 And I want to also make sure I understand what
15 Public Counsel is telling us. The prefiled testimony
16 has exhibits associated with it that the parties have
17 had in their possession for quite a while, both direct
18 testimony from Florida Power & Light, intervenor
19 testimony, exhibits and rebuttal exhibits. So,
20 Ms. Christensen, you're not objecting to the admission
21 of those exhibits, or are you? Are you going to wait
22 for each witness?

23 **MS. CHRISTENSEN:** My understanding is -- and I
24 have no objection to you pre-listing them. But what I
25 was discussing specifically were the listed discovery

1 responses that staff was asking us to review and get
2 back to them by August 17th, whether or not we could
3 stipulate to those discovery responses.

4 As traditionally will happen, as the witness
5 takes the stand on their testimony, they will address
6 their exhibits, and that would be the time to object to
7 anything in their exhibit list. And so we have no
8 objection to that procedure. Our objection would be the
9 attempt to have us respond to stipulating to the list of
10 discovery responses that staff has set forth that they
11 would like us to respond to by the 17th. And I'm trying
12 to make clear is that, as a matter of our policy for our
13 office at this point, we will not be agreeing to
14 stipulate to a comprehensive inclusion of discovery
15 responses into the record at the beginning of the
16 hearing. With -- and what we were asking is if staff,
17 to help facilitate the process, if staff wants to
18 identify which documents they want by witness, we may be
19 able to address and agree and look to stipulations as
20 those witnesses come up. But 2,500 pages or 3,000 pages
21 of documents is just too much in three days to try and
22 look through and make a determination of whether we have
23 any objections to information that's contained within
24 the discovery responses. So I wanted to give staff that
25 heads-up before we get to the 17th. And I hope that's

1 clear what position we're taking.

2 **MS. BROWNLESS:** So essentially what you're
3 stating, Ms. Christensen, is that you want -- that your
4 preferred method for the exhibits that the staff has
5 identified is to introduce them at hearing with a --
6 with the appropriate witness.

7 **MS. CHRISTENSEN:** Essentially, yes, that would
8 be my preferred method. But we are still willing to
9 look at exhibits to help speed along the hearing. If
10 you want us to look at -- on a witness basis look at
11 those documents before the witness takes the stand and
12 see if there are ones that are non-controversial so we
13 don't take up time through cross-examination, we
14 certainly are willing to do that, but not a wholesale
15 agreed stipulation of documents before the beginning of
16 the hearing. And I just wanted to make sure that we got
17 that on the record. Thank you.

18 **MS. BROWNLESS:** Okay.

19 **MR. MOYLE:** Could FIPUG also be noted as
20 adopting the position as articulated by the Office of
21 Public Counsel, just for the record?

22 **COMMISSIONER EDGAR:** So noted.

23 **MR. MOYLE:** Thank you.

24 **COMMISSIONER EDGAR:** FEA?

25 **CAPTAIN CEPAK:** Ma'am, FEA would also like to

1 adopt the position of OPC.

2 **MR. SKOP:** Commissioner, the Larsons would
3 also like to adopt that position of Public Counsel.

4 **COMMISSIONER EDGAR:** Mr. Wiseman.

5 **MR. WISEMAN:** SFHHA also would like to adopt
6 that position. Thank you.

7 **MS. CSANK:** As would the Sierra Club.

8 **MR. MCRAY:** Thank you. AARP would also adopt
9 the position of OPC.

10 **MS. ROBERTS:** And Wal-Mart will as well.

11 **COMMISSIONER EDGAR:** Who have we missed?

12 **MR. LAVIA:** Florida Retail Federation. And I
13 just would like to clarify, a stipulation is a voluntary
14 position taken by a party.

15 **COMMISSIONER EDGAR:** Agreed. Absolutely.

16 **MR. LAVIA:** And a forced stipulation is not
17 something that we can concede to at this point, so I
18 would add that to our -- to OPC's statement.

19 **COMMISSIONER EDGAR:** So noted. Again, those
20 things that we can go ahead and address and then --
21 efficiently and then be able to move on, that is our
22 intent here today. If there are matters that, you know,
23 it's not appropriate for whatever reason to address,
24 then we will find another way to do it.

25 So, Mr. Butler?

1 **MR. BUTLER:** Commissioner Edgar, yes. One
2 question really to -- maybe it's mostly to staff, but
3 I'm just a little confused here.

4 The current Comprehensive Exhibit List has the
5 prefiled exhibits for the witnesses identified by
6 exhibit -- I mean, by witness name. It doesn't have
7 witnesses listed for the exhibits or proposed exhibits
8 that I think Ms. Christensen was just referring to. Is
9 the intent that these are going to be parceled out
10 somehow to witnesses in a form that we would be seeing
11 in advance before the hearing and we'd know kind of what
12 was coming for each witness? Is that the --

13 **COMMISSIONER EDGAR:** Ms. Brownless, is that
14 possible?

15 **MS. BROWNLESS:** Well, I was unaware of OPC's
16 objection to doing what I had believed was the procedure
17 in the past, which was preparing a Comprehensive Exhibit
18 List, preparing CDs which included all of these
19 exhibits, and so we did not anticipate having to
20 identify Florida Power & Light direct witnesses for
21 these discovery requests. Some of these discovery
22 requests are associated with OPC's witnesses and other
23 intervenor witnesses as well. We can certainly prepare
24 that, and we'll diligently try to do so, and we'll try
25 to get that to everybody, as I would say, bunny quick.

1 So, you know, we can do that.

2 **COMMISSIONER EDGAR:** Mr. Butler.

3 **MR. BUTLER:** I mean, to be clear, we're
4 prepared to agree to the admission of these exhibits
5 that start after No. 398. But just it sounds like
6 there's going to be a process by which they're going to
7 be raised with respect to individual witnesses, and we'd
8 we like to have some notice of, you know, which ones are
9 going to be attributed to which witnesses.

10 **MS. BROWNLESS:** And we'll get that together.
11 I mean, we could get that together by Wednesday of next
12 week. Is that -- that's --

13 **COMMISSIONER EDGAR:** Everybody good? I'm
14 seeing nods.

15 Okay. Thank you, Ms. Brownless.

16 **MS. BROWNLESS:** Yes, sir (sic).

17 **COMMISSIONER EDGAR:** Okay. Next item.

18 **MS. BROWNLESS:** The next item is exhibit cover
19 sheets. We do have exhibit cover sheets that can be
20 used for exhibits at the hearing, if a party has not
21 already prepared its cover sheet for an exhibit. If you
22 use our cover sheets, that really helps our clerk keep
23 everything straight. So we would urge you to do that.

24 **COMMISSIONER EDGAR:** OPC.

25 **MS. CHRISTENSEN:** Thank you. Patty

1 Christensen with OPC. If staff could email us the cover
2 sheet that they'd like us to use, we would certainly be
3 happy to comply and use the cover sheet that staff
4 prefers.

5 **MS. BROWNLESS:** Sure. We can email it.

6 **COMMISSIONER EDGAR:** Sure. We'll be glad to
7 send out a form. And, again, it makes it -- things move
8 much more streamlined and easily during the hearing.
9 And one of the reasons we wanted to bring this up today
10 is because we do have some parties who haven't appeared
11 before us as frequently as some others, so that form
12 will be sent out as a request from staff that it be
13 utilized.

14 Okay. Ms. Brownless.

15 **MS. BROWNLESS:** Okay. And we just have one
16 other thing, which are hearing exhibits. To the extent
17 that you have impeachment exhibits that you wish to use
18 at the hearing, we would ask that you bring 40 copies of
19 those exhibits with you, hard paper copies, so that
20 everybody can follow along. And that with regard to any
21 confidential documents that you may have, that you wish
22 to use for impeachment or cross-examination purposes,
23 please remember that those have got to be put in red
24 folders and their confidentiality has to be maintained.
25 And if you have any questions about how to appropriately

1 do that, please call me, and I'll make sure you get the
2 right procedure.

3 **COMMISSIONER EDGAR:** Any questions or
4 comments? Okay. Thank you.

5 Okay. My understanding is that that closes
6 then the preliminary issues for discussion today, unless
7 there's anything else that anybody would like to raise
8 before we begin to look at and work through the draft
9 Prehearing Order.

10 Okay. Then as is kind of standard practice, I
11 will go by them section by section. Some I think we can
12 probably move through pretty quickly. There may be
13 others that there are comments to be made. If I move
14 past you, it is unintentional. Just get my attention.

15 So we will go by -- section by section,
16 beginning with Section I, which starts on page 3 of the
17 draft.

18 Mr. Skop.

19 **MR. SKOP:** Thank you, Commissioner. With
20 respect to case background, I know this is the draft
21 Prehearing Order.

22 **COMMISSIONER EDGAR:** This may be the first
23 prehearing I've ever been in that somebody raised a
24 question about the case background.

25 **MR. SKOP:** Yes, ma'am. If we look at the

1 narrative at the last paragraph that is in relation to
2 the FPL motion to strike the Larsons' reply, we also
3 filed a response in opposition to that. It's obviously
4 moot at this point. But in that response in opposition,
5 the crux of that was that the motion to strike, FPL did
6 not follow the rule that they cited.

7 **COMMISSIONER EDGAR:** Are you asking that it be
8 included in the list of motions that went back and
9 forth?

10 **MR. SKOP:** Yes, ma'am.

11 **COMMISSIONER EDGAR:** Okay. I have no problem
12 with that being comprehensive. It certainly was not an
13 advertent omission.

14 Mr. Butler.

15 **MR. BUTLER:** Why not just say that it's been
16 granted at this point, the intervention? It seems like
17 all that procedural history was something written maybe
18 at the point --

19 **COMMISSIONER EDGAR:** But it's so fascinating.

20 **MR. BUTLER:** There is that.

21 **COMMISSIONER EDGAR:** There is that.

22 We'll add it, and thank you for raising it.

23 Okay. Anything else on Section I?

24 Okay. Section II, conduct of proceedings,

25 page 3.

1 Section IV, procedure for confidential
2 information. Oh, did I miss jurisdiction? I skipped
3 jurisdiction. I did not mean to.

4 Well, how about this, Section III and Section
5 IV?

6 Okay. Section V, prefiled testimony of
7 exhibits and witnesses.

8 **MS. BROWNLESS:** And, yes, ma'am, on this one,
9 we would suggest that witness summaries be limited to no
10 more than five minutes per witness.

11 **COMMISSIONER EDGAR:** And that would be for
12 both direct and rebuttal?

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

14 **COMMISSIONER EDGAR:** Pretty much standard.
15 Seeing no objection, it is established.

16 Section VI, order of witnesses.

17 **MS. CHRISTENSEN:** Commissioner?

18 **COMMISSIONER EDGAR:** Yes, ma'am.

19 **MS. CHRISTENSEN:** Patty Christensen. Good
20 morning, Patty Christensen with the Office of Public
21 Counsel. We did have an issue. As -- I think, as was
22 addressed in one of the emails from staff, there seems
23 to be a break from our traditional use of the issues
24 number, and essentially parties have included, I would
25 say, a witness summary, a marketing list of what their

1 witness is going to testify to instead of traditional
2 numbers of the issues that they're testifying to. We
3 wanted to make an objection to that. We think that the
4 more appropriate methodology is just to list the issues,
5 especially since the issues themselves state the
6 positions of the parties, and you can identify which of
7 the witnesses are testifying to your positions under the
8 individual issues list. It seems it also is increasing
9 the length of the Prehearing Order unnecessarily. And
10 as the draft Prehearing Order itself states under
11 Section V, each of the witnesses is going to be given an
12 opportunity to provide an oral summary at the beginning
13 of their testimony, and it seems duplicative to have it
14 in the draft Prehearing Order. And we would just ask
15 that the narrative sections of those be stricken because
16 I think in the past if they have been identified by
17 words, it's usually just general.

18 **COMMISSIONER EDGAR:** Can you point me to an
19 example on a page just so I can be looking at what
20 you're --

21 **MS. CHRISTENSEN:** Certainly. If you turn to
22 page 5 of the draft prehearing exhibit(sic) --

23 **COMMISSIONER EDGAR:** Yes.

24 **MS. CHRISTENSEN:** -- under Mr. Reed, we'll
25 just take the first witness, it talks about "Sponsors

1 and describes a benchmarking study used to assess FPL's
2 operational" --

3 **COMMISSIONER EDGAR:** Okay. I'm there.

4 **MS. CHRISTENSEN:** So, I mean, it's much more
5 of a -- much more a witness summary than identifying
6 which issues the witness is addressing, and I think
7 that's fairly consistent for most of the witnesses. And
8 I see other parties have adopted that; whereas, we just
9 --

10 **COMMISSIONER EDGAR:** And so -- I apologize. I
11 do not mean to speak over you. But it does have then,
12 at the end of the narrative description, the issue
13 numbers identified is what I'm seeing here. I haven't
14 checked every one.

15 **MS. CHRISTENSEN:** Correct. And I think that
16 staff had asked them to add that after the verbal
17 description. I think, you know, we're asking that the
18 numbers just be identified. But if the Commissioner is
19 inclined to include a summary or basically a little
20 marketing kind of tidbit of what the witness is going to
21 testify to, then we would just ask for leave to go ahead
22 and amend our witnesses' section to include that and
23 identify by issue number.

24 **COMMISSIONER EDGAR:** Okay. What page do your
25 witnesses start on? Can you point me there?

1 **MS. CHRISTENSEN:** Our page starts on page 10
2 of the OEP.

3 **COMMISSIONER EDGAR:** Okay. Thank you. I'm
4 there.

5 **MS. CHRISTENSEN:** We have seven witnesses
6 listed there.

7 **COMMISSIONER EDGAR:** Ah, okay. Thank you.

8 **MS. CHRISTENSEN:** And you see we have just the
9 issue numbers listed, not kind of a summary of what
10 they're going to testify to.

11 **COMMISSIONER EDGAR:** Right. I understand.
12 Thank you. That's helpful.

13 Anybody else want to comment on that before I
14 turn to staff?

15 Mr. Butler.

16 **MR. BUTLER:** I would just observe that we've
17 used this procedure in a lot of prior proceedings. I
18 think it's helpful. I mean, it gives you some idea of
19 what witnesses are going to be talking about without
20 having to, you know, page back through the Prehearing
21 Order and see what the issues that are listed by number
22 say. So it seems to me like it would be better for
23 everybody to have that.

24 **COMMISSIONER EDGAR:** Anybody else?

25 Ms. Brownless? Ms. Brownless?

1 **MS. BROWNLESS:** I'm fine with people writing
2 words as --

3 **COMMISSIONER EDGAR:** I am as well. I just
4 wanted to make sure. So recognizing that we do have,
5 what I'm seeing here, two different approaches, it's
6 fine with me for you to turn in some descriptive
7 narrative that go with those, but I do want to put a
8 time on it. So what would you deem --

9 **MS. CHRISTENSEN:** If we could have till close
10 of business on Monday. I don't think they'll take us
11 that long, but just because it's already Friday.

12 **COMMISSIONER EDGAR:** Right. Any objection to
13 that or concern?

14 **MS. BROWNLESS:** No, ma'am.

15 **COMMISSIONER EDGAR:** Okay. I think that's
16 reasonable, and I appreciate you raising it.

17 **MS. CHRISTENSEN:** Thank you.

18 **COMMISSIONER EDGAR:** So that is the way we
19 will handle that. Thank you.

20 Anything else on order of witnesses?

21 **MS. HELTON:** Madam Chairman, I've noticed too
22 that there are some witnesses who have the verbiage
23 listed but not the exhibit (sic) number, and I think the
24 exhibit (sic) number is also helpful. So if -- for
25 instance, for FEA's witnesses --

1 **COMMISSIONER EDGAR:** Do you mean the issue
2 number?

3 **MS. HELTON:** I'm sorry.

4 **COMMISSIONER EDGAR:** That's okay.

5 **MS. HELTON:** I meant issue number.

6 **COMMISSIONER EDGAR:** I just wanted to make
7 sure we're talking about the same thing.

8 **MS. HELTON:** I'm sorry. Yes. So maybe if FEA
9 could provide the issue numbers.

10 **COMMISSIONER EDGAR:** Yes, ma'am.

11 **CAPTAIN CEPAK:** Yes, ma'am. We did. We
12 submitted ours late yesterday. Everybody was served
13 electronically, and so on that copy it is.

14 **COMMISSIONER EDGAR:** Okay.

15 **CAPTAIN CEPAK:** And at this point in time, if
16 you want, I can put on the record what the issue numbers
17 are, but it's also listed in the electronic copy we sent
18 out yesterday.

19 **COMMISSIONER EDGAR:** Okay. And I'm sure
20 everyone received that. And as I mentioned earlier, we
21 will -- did I mention that earlier? Yeah. We will
22 include that.

23 So, Mr. Wiseman.

24 **MR. WISEMAN:** Yes. One other issue on the
25 order of witnesses. My recollection of what we've done

1 in the past is we've worked collaboratively with each
2 other to schedule witnesses based around their travel
3 restrictions, and I know we have witnesses coming in
4 from out of town, everyone has witnesses coming in from
5 out of town, and every -- and all the witnesses have
6 other commitments. So I'm wondering -- I don't know
7 that we need to do this on the record, but I wonder if
8 we can modify the order of witnesses as a result of the
9 parties talking together and figuring out what schedule
10 would work, given their witnesses' restrictions.

11 **COMMISSIONER EDGAR:** Okay. First of all, I
12 think we've addressed the item with FEA as far as those
13 issue items.

14 **MS. HELTON:** I'm sorry. I did not realize
15 that.

16 **COMMISSIONER EDGAR:** That's okay. That's
17 okay. So we're all clear on that.

18 Okay. To order of witnesses, Mr. Wiseman, if
19 there is any party that knows that they would like to
20 request a change in the order today, let's raise it and
21 discuss it. Okay. Is that the case, Mr. Wiseman?

22 **MR. WISEMAN:** Yes. Well, our witnesses
23 would -- they can appear on August 25th and 26th, which
24 would -- it'll be problematic for them to appear later
25 than that. So we would request those dates.

1 **MS. BROWNLESS:** And that's for Mr. Baudino,
2 Mr. Baron, and Mr. Kollen?

3 **MR. WISEMAN:** Correct.

4 **MS. BROWNLESS:** And those are on pages 11 and
5 12 of the Prehearing Order.

6 **COMMISSIONER EDGAR:** Thank you.

7 **MS. BROWNLESS:** So they would be available the
8 25th and 26th. Does anyone else have dates that their
9 witnesses cannot be available?

10 **COMMISSIONER EDGAR:** AARP.

11 **MR. McRAY:** Thank you very much. Our witness,
12 Mike Brosch, which is, I believe, referenced on page 11,
13 he has a prior scheduled appearance in a utility rate
14 case in Illinois during the first week of this
15 particular case. We respectively would request that
16 Mr. Brosch's testimony be scheduled for the second week
17 of the hearing any day, but, if possible, we would like
18 to have either a specific date or a range of dates where
19 he needs to be available. But he's specifically
20 unavailable on the 24th and the 25th.

21 **COMMISSIONER EDGAR:** What if we finish in one
22 week?

23 **MR. McRAY:** I'm sorry?

24 **COMMISSIONER EDGAR:** What if we finish in one
25 week?

1 **MR. McRAY:** I'm sorry. I didn't hear you.

2 **COMMISSIONER EDGAR:** What if we finish in one
3 week?

4 **MR. McRAY:** Well, I guess we'll do our best to
5 get him here.

6 **COMMISSIONER EDGAR:** Thank you.

7 Yes, ma'am.

8 **MS. ROBERTS:** Wal-Mart also has a request.
9 Steve Chriss also has other utility hearings that he's
10 attending. He's our only witness. He is available the
11 first week on the 24th and the 25th, and he's available
12 the second week on the 1st and 2nd. But as soon as we
13 have a date for him, we would really appreciate that so
14 he can make his travel arrangements. Thank you.

15 **MR. MOYLE:** And, Madam Chair, FIPUG also, with
16 Mr. Pollock, would request the second week, the 25th or
17 the 26th. He has a problem on the back end, maybe not
18 on the front end. So, you know, I think we want to be
19 respectful of FPL's case in chief, but if we could get a
20 sense of when we might be able to have, you know,
21 intervenor witness time with special needs, that would
22 help. So I don't know that he's not available the first
23 week, but I know that the back half of the second week
24 is a problem. But I also know the 25th and the 26th --
25 I think that's a Tuesday, Wednesday of the second

1 week -- work. Maybe I have my dates wrong.

2 **COMMISSIONER EDGAR:** The 25th and 26th is
3 Thursday, Friday.

4 **MR. MOYLE:** Okay.

5 **COMMISSIONER EDGAR:** So that would be at the
6 end of the first scheduled week.

7 **MR. MOYLE:** I did have my dates wrong.

8 **COMMISSIONER EDGAR:** That's okay.

9 **MR. MOYLE:** The 30th and 31st, the Tuesday and
10 Wednesday of the second week.

11 **MS. BROWNLESS:** So he's available then or not
12 available?

13 **MR. MOYLE:** He is available then. He's not
14 available 1 and 2, and he may be available earlier,
15 because Mr. Wiseman had asked for the 25th and 26th. So
16 I just don't know whether -- you know, it seems to me if
17 you're going to take them out of order, FPL may have a
18 preference to take more than one out of order. So I
19 could maybe see if he could be down here the 25th and
20 26th.

21 **COMMISSIONER EDGAR:** Didn't I earlier say the
22 intent was to take them in order?

23 **MR. MOYLE:** You know how it is. So I went
24 last too. I've got good company with all these others.

25 **COMMISSIONER EDGAR:** That's fine. That's

1 fine.

2 All right. Mr. Butler.

3 **MR. BUTLER:** Well, as to the requested special
4 dates, I mean, we would certainly want to get through
5 our case in chief, if at all possible, consecutively
6 before we go into intervenor witnesses. But, otherwise,
7 we're happy to accommodate what is needed to move people
8 around.

9 The one thing that we have, it's not any
10 special date request, but just our first two witnesses
11 we want to reverse the order. It's listed here as
12 Mr. Reed first and Mr. Silagy second, and we would ask
13 to have Mr. Silagy first and Mr. Reed second. Thank
14 you.

15 **COMMISSIONER EDGAR:** Okay. I see no concern
16 with that, so we will make that change, Ms. Brownless.

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

18 **COMMISSIONER EDGAR:** What I would ask is
19 that -- and we obviously will have the transcript, but
20 I'm not sure when. So those of you who have given us
21 notice that you will be working with travel schedules
22 and specific dates request, if you would send that in an
23 email to our staff. Again, obviously, parties work
24 together on that as well, but so that that way the staff
25 has it in writing prior to the transcript being

1 available.

2 We will make the change that Mr. Butler has
3 requested. We will make -- I'm just -- I'm going to say
4 informal, for lack of a better word, note of the
5 requests that have been made and will be sent in email
6 to the staff. And as always, I'm sure the presiding
7 officer will make every attempt to work with all parties
8 and the needs of the witnesses in a matter to
9 accommodate what needs to be accommodated, with the
10 understanding that the case will also need to move
11 along. Does that work?

12 **MS. BROWNLESS:** And if I could just ask that
13 in the email that you send to me, very clearly state the
14 witness and when he will be available, and also say when
15 he will not be available so that I have both the
16 available dates and the not available dates for each
17 witness. Thank you.

18 **COMMISSIONER EDGAR:** Okay. Okay. Anything
19 else on order of witnesses?

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

21 **COMMISSIONER EDGAR:** Okay.

22 **MS. BROWNLESS:** We believe that it's possible
23 to stipulate the testimony of Rhonda Hicks and Iliana
24 Piedra. These are the staff witnesses for the staff
25 audit and the quality of service stuff.

1 **COMMISSIONER EDGAR:** Are there any parties who
2 are not able to stipulate to the two staff witnesses,
3 Ms. Hicks and Ms. Piedra, today?

4 **MR. MOYLE:** FIPUG is not.

5 **COMMISSIONER EDGAR:** You're not able to do
6 that today?

7 **MR. MOYLE:** No.

8 **MS. CHRISTENSEN:** OPC would not be as well,
9 although we will take a look at it and see if we can
10 make a determination before the beginning of the
11 hearing.

12 **COMMISSIONER EDGAR:** Okay.

13 **MS. CHRISTENSEN:** And we'll get back to staff
14 as soon as we make that determination so travel
15 arrangements can be called off or made.

16 **MS. BROWNLESS:** And we would ask also for you
17 to look at their exhibits, which is the staff audit and
18 the exhibit that Ms. Hicks prepared. And if you're able
19 to stipulate to the witness, also look and see if you
20 will be able to stipulate to the exhibits associated
21 with their testimony.

22 **MS. CHRISTENSEN:** If we agree to stipulate,
23 we'd be stipulating to the testimony prefiled and all
24 exhibits attached thereto. And we'll endeavor to try
25 and do that early -- by early next week.

1 **COMMISSIONER EDGAR:** Thank you. That would be
2 helpful.

3 Mr. Wiseman.

4 **MR. WISEMAN:** Yes, Your Honor, SFHHA would ask
5 for the same.

6 **COMMISSIONER EDGAR:** For the same.

7 **MR. WISEMAN:** Yes. Thank you.

8 **COMMISSIONER EDGAR:** Mr. Moyle, can you do the
9 same?

10 **MR. MOYLE:** Right, right. One of the
11 witnesses, I think, has service quality, you know, did a
12 big review of your service quality stuff.

13 **MS. BROWNLESS:** Rhonda, yeah.

14 **MR. MOYLE:** And so there's some stuff in
15 there. It may depend on how that service issue gets
16 addressed.

17 **COMMISSIONER EDGAR:** If you can stipulate,
18 knowing that in advance would be helpful. If you can't,
19 you can't.

20 **MR. MOYLE:** Got it.

21 **COMMISSIONER EDGAR:** Okay. Ms. Brownless.

22 **MS. BROWNLESS:** That's all for us. Thank you.

23 **COMMISSIONER EDGAR:** Okay. Anything else on
24 this section? Yes, ma'am.

25 **MS. CSANK:** I just noticed that for some of

1 the rebuttal witnesses that FPL puts forward the issue
2 numbers are not identified. So for about half of them
3 they are, but for the other half they aren't. Is that
4 something that --

5 **COMMISSIONER EDGAR:** Mr. Butler?

6 **MR. BUTLER:** For the witnesses where we've
7 identified issues, it's people who are appearing only on
8 rebuttal in those dockets, and so it's the first time
9 that they're listed. We elected not to list the issues
10 on rebuttal where we've already listed the issues for
11 direct. But we can go back and provide issues on the
12 rebuttal as well, if that would be easier for everybody
13 to follow.

14 **COMMISSIONER EDGAR:** I think so. Please do
15 so.

16 **MR. BUTLER:** Okay. We will do so.

17 **COMMISSIONER EDGAR:** All right. Thank you.

18 Okay. That brings us to Section VII, basic
19 positions, page 16.

20 **MR. MOYLE:** FIPUG has a slight modification or
21 addition to its basic position. I'm happy to just send
22 that in writing to staff by noon on Monday, if you would
23 like, or I can read it into the record.

24 **COMMISSIONER EDGAR:** Ms. Brownless?

25 **MS. BROWNLESS:** If it's short, why don't you

1 just go ahead and read it into the record, and you can
2 send it to us also in writing.

3 **COMMISSIONER EDGAR:** Let's do both, Mr. Moyle.

4 **MR. MOYLE:** Okay. The position modification
5 would be "Industrial customers receiving electrical
6 service under GSLDT-2 and CILC-1T are confronting a
7 proposed FPL base rate increase of 45 percent and
8 89 percent respectively compared to a proposed average
9 system base rate increase of 24 percent. These proposed
10 increases to industrial customers are unreasonable and
11 unwarranted."

12 **COMMISSIONER EDGAR:** Thank you.

13 Okay. And I think I mentioned this earlier,
14 but if I didn't, let me make sure that I did, that the
15 revised position statements recently submitted by FEA,
16 Larsons, and FIPUG will be incorporated as substituted
17 in the final Prehearing Order.

18 Ms. Christensen, on OPC Issue 5, was there a
19 slight revision that you would like to make?

20 **MS. CHRISTENSEN:** On issue -- on Issue 5 in
21 the Prehearing Order?

22 **COMMISSIONER EDGAR:** On your issue statement.
23 Position statement is what I meant.

24 **MS. CHRISTENSEN:** I'm trying to think. The
25 basic position statement, I don't believe we had any

1 changes that we had not already written and provided to
2 staff.

3 **COMMISSIONER EDGAR:** Ms. Brownless.

4 **MS. CHRISTENSEN:** Unless I'm --

5 **MS. BROWNLESS:** I believe that they have a
6 revision to Issue No. 5, not their basic position.

7 **COMMISSIONER EDGAR:** Ah, okay. I apologize.

8 **MS. CHRISTENSEN:** Sorry for the confusion.

9 **COMMISSIONER EDGAR:** No, that was mine.

10 That's okay. And I may be jumping ahead.

11 **MS. CHRISTENSEN:** Issue 5, since we've started
12 discussing it, we would change our position to just
13 "No," period.

14 **COMMISSIONER EDGAR:** Okay. Sorry for the back
15 and forth. Okay. So noted, and that change will be
16 made as well.

17 Okay. Anything else for this section?
18 Ms. Brownless?

19 **MS. BROWNLESS:** No, ma'am. I think we're on
20 to issues and positions.

21 **COMMISSIONER EDGAR:** Okay. We'll --
22 Mr. Butler, were you looking to speak?

23 **MR. BUTLER:** Are we going to go issue by
24 issue?

25 **COMMISSIONER EDGAR:** I want to -- my

1 suggestion was to take them up as a block.

2 **MR. BUTLER:** Okay.

3 **COMMISSIONER EDGAR:** And if there was any
4 issue or item within that block, just, again, holler or
5 wave. Does that work?

6 **MR. BUTLER:** That's fine. With that in mind
7 then, I have a change in the position for FPL on Issue
8 48, which is on page 78 of the draft Prehearing Order.

9 **COMMISSIONER EDGAR:** Okay. And we're not
10 there yet. Just like I jumped ahead on Ms. Christensen,
11 but I'm going to ask you to hold for just a moment and
12 we will come to that.

13 So, Ms. Christensen, this is when I should
14 have asked you about Issue 5. I jumped ahead of myself.
15 So let's take it in a block. The legal issues, which
16 begin on page 37, with the change that Ms. Christensen
17 has given, are there any others?

18 **CAPTAIN CEPAK:** Ma'am, just for clarification,
19 we provided it last Thursday with all of our changes.
20 Do I need to bring those forward on the record now, or
21 is the electronic one that we submitted to everybody on
22 Thursday sufficient?

23 **COMMISSIONER EDGAR:** I believe that's
24 sufficient, unless the staff has a question or anybody
25 else.

1 **MS. BROWNLESS:** We're good. We'll just put
2 whatever you've provided us, Captain, in the --

3 **CAPTAIN CEPAK:** Thank you.

4 **COMMISSIONER EDGAR:** Okay.

5 **MR. MOYLE:** And to be clear, that's what you
6 made -- you made that comment where you said you've
7 gotten some additional positions. I know FIPUG, late
8 yesterday evening, sent something to Ms. Brownless.
9 But all that, we don't have to go through and say change
10 it. You're good with what was sent to staff --

11 **COMMISSIONER EDGAR:** Unless somebody has a
12 concern from something they've seen, in which case,
13 bring it up and we'll go over it. Yes.

14 **MR. MOYLE:** Okay. Thanks.

15 **COMMISSIONER EDGAR:** Okay. So we'll move on
16 then to the section on storm hardening issues, Issues
17 7 through 18. Ms. Christensen.

18 **MS. CHRISTENSEN:** Just for clarification on
19 the record, and since we have new persons here, we've
20 taken no position at this time. And I'm assuming that
21 it's staff position still that it will be changed to no
22 position if we have not taken an affirmative position?

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

24 **MS. CHRISTENSEN:** Okay.

25 **MS. BROWNLESS:** All the "No positions at this

1 time" will be changed to "No position" unless you
2 either, in your -- in the statements that have been
3 provided by FEA, FIPUG, and the Larsons, unless you've
4 taken positions.

5 **COMMISSIONER EDGAR:** Okay. Moving on then to
6 Issue 19, wooden pole inspection program, page 51.
7 Hearing nothing, I'm going to keep moving.

8 10-point storm preparedness initiative, Issue
9 20, page 51.

10 Approval of storm hardening plan, page 52,
11 Issue 21.

12 Costs for storm hardening and 10-point
13 initiatives, Issues 22 through 23.

14 Test period and forecasting, Issues 24 through
15 38.

16 Quality of service, Issue 39.

17 Depreciation study, Issues 40 through 52.

18 **MR. LAVIA:** Commissioner, just a minor change
19 to the Retail Federation's Issue 42.

20 **COMMISSIONER EDGAR:** Can you point me to a
21 page?

22 **MR. LAVIA:** It's on page 70.

23 **COMMISSIONER EDGAR:** Let me get there.

24 **MR. LAVIA:** It's missing a word. It's a typo.

25 **COMMISSIONER EDGAR:** Okay. Can you go ahead

1 and tell us?

2 **MR. LAVIA:** The first line, "The appropriate
3 depreciation parameters" -- "and" should be inserted --
4 "depreciation rates." The word "and" just needs to be
5 inserted. Thank you.

6 **COMMISSIONER EDGAR:** Thank you. That change
7 will be made.

8 **MR. BUTLER:** And I think this is now my
9 section for Issue 48.

10 **COMMISSIONER EDGAR:** Hang on. Yes, it is.
11 Mr. Butler.

12 **MR. BUTLER:** Thank you. Thank you. On Issue
13 48, FPL would change its position to strike what
14 currently appears after "used," the "and no other
15 corrective reserve measures should be taken at this
16 point," and insert in its place, "unless another
17 disposition has the ability to defer or avoid future
18 base rate proceedings."

19 **COMMISSIONER EDGAR:** Could you read that one
20 more time?

21 **MR. BUTLER:** Certainly. "Unless" --

22 **COMMISSIONER EDGAR:** Why don't you read it as
23 a full sentence, if that's okay.

24 **MR. BUTLER:** Okay, sure. So the full issue
25 position would read, "The remaining life technique

1 should be used, unless another disposition has the
2 ability to defer or avoid future base rate proceedings."

3 **COMMISSIONER EDGAR:** Okay. Thank you. Okay.
4 That change will be made. Got it, Ms. Brownless?

5 **MS. BROWNLESS:** Hold on a sec.

6 **COMMISSIONER EDGAR:** Okay.

7 **MS. BROWNLESS:** And I'm just going to read
8 this back so I can make sure I have it right, John.

9 **COMMISSIONER EDGAR:** Okay.

10 **MS. BROWNLESS:** "The remaining life technique
11 should be used unless another disposition has the
12 ability to defer or avoid further (sic) base rate
13 proceedings."

14 **MR. BUTLER:** I'm sorry. "Future" instead of
15 "further."

16 **MS. BROWNLESS:** Oh, "to avoid future."

17 **MR. BUTLER:** "Future," yes.

18 **MS. BROWNLESS:** Okay. Yes, sir. Thank you.

19 **COMMISSIONER EDGAR:** Okay. We're good.
20 Anything else on Issues 40 through 52? Okay. Then
21 we'll move on.

22 Next block, rate base, Issues 53 through 77.
23 Everybody good? Ms. Christensen?

24 **MS. CHRISTENSEN:** I just wanted clarification.
25 We've taken as a position on several issues throughout

1 the prehearing statement that FPL has the burden of
2 demonstrating that it is appropriate to account for the
3 impact of Cedar Bay in this issue, which is 54. And
4 we've taken that as a position, but I understood that
5 there may be some disagreement whether that's a
6 sufficient position. I just wanted to make sure that we
7 are good with that being our position. Otherwise, we
8 would ask for time to either place a "No" or a "Yes," as
9 appropriate, before that if staff is requiring that.

10 **COMMISSIONER EDGAR:** Ms. Brownless.

11 **MS. BROWNLESS:** As we discussed with FIPUG,
12 Mr. Moyle, simply stating the burden of proof
13 requirement is not a position, so we would ask that
14 where you have done that, you give us a position, "Yes,"
15 "No," "Agree with" somebody, or "Take no position."

16 **MS. CHRISTENSEN:** If I could have till close
17 of business on Monday, then I will go ahead and amend
18 each one of these to either say, "Yes, burden of proof,"
19 or, "No, they have the burden of proof" as appropriate.
20 And I will provide those to staff, if I can be given
21 that leeway.

22 **MS. BROWNLESS:** And that's Monday by 5:00?

23 **MS. CHRISTENSEN:** Correct, so we don't have to
24 go through each one of them, because I think there's --
25 it's numerous.

1 **MS. BROWNLESS:** Thank you.

2 **COMMISSIONER EDGAR:** Okay. That works. Thank
3 you.

4 **MR. WISEMAN:** Your Honor?

5 **COMMISSIONER EDGAR:** Yes, sir.

6 **MR. WISEMAN:** And just as a clarification, in
7 instances where a party, SFHHA is an example, has said,
8 "Supports the position of OPC," if OPC changes its
9 position by inserting "No" or "Yes," we, SFHHA, would
10 not have to make an additional change to its position.
11 Would that be correct?

12 **MS. BROWNLESS:** I assume that if you're
13 agreeing with OPC, that that'll be fine, that you don't
14 have to change anything else, Mr. Wiseman.

15 **MR. WISEMAN:** Thank you.

16 **MS. CHRISTENSEN:** And, Madam Commissioner,
17 just for clarification, it's not our intention to not
18 take a position on any of those issues so that the other
19 parties that have adopted ours -- ours is to firm up a
20 position that meets staff's requirement.

21 **COMMISSIONER EDGAR:** Okay. Everybody good?
22 Yeah? Good? Okay. That's clear. Thank you.

23 Okay. Does that bring us to cost of capital
24 issues?

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

1 **COMMISSIONER EDGAR:** 78 to 86. Okay. Seeing
2 no comment, we'll move on.

3 Issues 87 through 120, net operating income.
4 OPC?

5 **MR. SAYLER:** What page? No. Just what page?

6 **COMMISSIONER EDGAR:** Oh, yeah. My notes say
7 that that section starts on page 132.

8 **MR. SAYLER:** Thank you.

9 **COMMISSIONER EDGAR:** Sure. Okay. Then we'll
10 move on. Revenue requirements, Issues 121 to 123, page
11 177.

12 Okay. Next section, Okeechobee limited scope
13 adjustment, beginning on page 181, Issues 124 through
14 133.

15 Next section, asset optimization incentive
16 mechanism, Issue 134, page 191.

17 Okay. I think that brings us to the end of
18 that portion of our discussion today. Ms. Brownless, is
19 there anything else?

20 **MS. BROWNLESS:** Cost of service on page --

21 **COMMISSIONER EDGAR:** Did I miss cost of
22 service?

23 **MS. BROWNLESS:** No, you skipped that one.

24 **COMMISSIONER EDGAR:** Okay. Cost of service?

25 Any other section, Ms. Brownless?

1 **MS. BROWNLESS:** And other issues.

2 **COMMISSIONER EDGAR:** Other issues.

3 Okay. We'll give everybody a few -- a few
4 moments to make sure that we're all caught up and we
5 haven't missed anything.

6 Okay. I'm seeing -- I'm hearing crickets, as
7 I say.

8 **MR. BUTLER:** Well, let me interrupt --

9 **COMMISSIONER EDGAR:** Mr. Butler.

10 **MR. BUTLER:** Let me interrupt the crickets for
11 just a second.

12 **COMMISSIONER EDGAR:** Okay.

13 **MR. BUTLER:** I'm sorry. This is going to be a
14 go-back.

15 **COMMISSIONER EDGAR:** That's okay.

16 **MR. BUTLER:** But we noticed it in flipping
17 through. On page 159, in Issue 106A.

18 **COMMISSIONER EDGAR:** Okay. Let us get there.
19 Okay. Page 159, Issue 106A.

20 **MR. BUTLER:** I think, as you can tell from the
21 A on it, this is a relatively late addition, and we
22 don't have a position stated there. Our position can be
23 "No" to this issue, and we'd like to state that as our
24 position.

25 **COMMISSIONER EDGAR:** Okay. Okay. So noted.

1 **MS. BROWNLESS:** And does AARP have an issue, a
2 position? Because you stated "No position" provided for
3 106A.

4 **COMMISSIONER EDGAR:** Actually, as did AARP,
5 FEA, and FIPUG, and Sierra Club.

6 **MS. BROWNLESS:** I think -- yeah, I think we
7 probably have FEA and FIPUG's somewhere.

8 **COMMISSIONER EDGAR:** Okay. In the more recent
9 submittal. That's fine. I just want to make sure we
10 don't miss anybody.

11 **MS. CHRISTENSEN:** Yes. This was an issue that
12 was added late by OPC, and we realized we had testimony
13 and there was no identified issues. So we apologize for
14 the lateness of that.

15 **COMMISSIONER EDGAR:** Okay. That's fine.
16 Thank you. Are we good?

17 **MR. McRAY:** We don't have any.

18 **COMMISSIONER EDGAR:** You're good? Okay.
19 Everybody is fine with that. Okay.

20 **MS. BROWNLESS:** Well, I guess what I'm still
21 confused about is what is your position for 106A?

22 **COMMISSIONER EDGAR:** Do you want to take a
23 minute and look at it? We can do that.

24 **MR. McRAY:** And we're on 106?

25 **COMMISSIONER EDGAR:** 106A.

1 **MS. BROWNLESS:** Right, 106A on page 159.

2 **MR. McRAY:** We have "No position."

3 **MS. BROWNLESS:** Okay.

4 **MR. MOYLE:** And FPL's position is changed to
5 what?

6 **COMMISSIONER EDGAR:** "No."

7 **MR. BUTLER:** "No."

8 **MR. MOYLE:** "No." So is it even an issue
9 still? I mean, I guess --

10 **COMMISSIONER EDGAR:** OPC?

11 **MS. CHRISTENSEN:** Yes. We raised the issue of
12 the director/officer and director/liability insurance,
13 and it is our position that there should be a reduction
14 to director and officer liability insurance expense.
15 So, yes, we believe that's still a live issue and --

16 **MR. MOYLE:** Okay.

17 **MR. BUTLER:** And to be clear, "No" means we
18 don't think the adjustment should be made, Jon. That's
19 why it's still an issue.

20 **MR. MOYLE:** Right. And I think I may have
21 answered that "No," which I probably need to change to
22 "Yes."

23 **MS. BROWNLESS:** Okay. And, FEA, do you need
24 to make any changes based upon this discussion?

25 **CAPTAIN CEPAK:** No, ma'am. We have filed

1 yesterday that we adopt the position of OPC. Yes,
2 ma'am.

3 **MS. BROWNLESS:** Okay.

4 **COMMISSIONER EDGAR:** Okay. Great. Again, we
5 can take a moment. Anything else on any of these
6 sections, because we did move kind of fast on them?

7 **MS. BROWNLESS:** And what about Ms. Csank,
8 Sierra Club?

9 **MS. CSANK:** We'll take "No position" on that.

10 **MS. BROWNLESS:** Okay. And Wal-Mart.

11 **MS. ROBERTS:** "No position."

12 **MS. BROWNLESS:** And the Larsons -- Mr. Skop,
13 you've taken a position. Do you need to change that?

14 **MR. SKOP:** It's as we filed in our amended
15 prehearing statement.

16 **MS. BROWNLESS:** Okay.

17 **COMMISSIONER EDGAR:** Okay. Great.

18 Okay. Our next item or section for discussion
19 will be contested issues, and then we'll go through the
20 remaining sections and handle any other matters and
21 post-hearing. So I suggest -- we've gotten a lot done.
22 Let's take just a five-minute stretch, if that's all
23 right. And -- okay. We'll make it seven minutes.
24 We'll come back at 20 minutes to the hour by this clock
25 on the wall, just give us all a breath. Thank you.

1 (Recess taken.)

2 **COMMISSIONER EDGAR:** Okay. We will go back on
3 the record, and we are moving to the section on
4 contested issues. Before we get to that, again, since
5 we had a few minutes to just go back and review anything
6 that anybody wants to raise from what we've already
7 discussed.

8 Okay. Seeing none, we will begin on contested
9 issues. What I have is Issues 162 through 166, page
10 224.

11 Ms. Brownless, would you like to kick us off?

12 **MS. BROWNLESS:** I think the contested issues
13 start on page 227.

14 **COMMISSIONER EDGAR:** Oh, okay. Thank you for
15 the correction.

16 **MS. BROWNLESS:** And the first one is the OPC
17 issue: "Does the Commission have the authority to
18 approve rate base adjustments based upon a test year
19 subsequent to the period ending December 31st, 2017?"
20 And OPC can address that.

21 **COMMISSIONER EDGAR:** Ms. Christensen.

22 **MS. CHRISTENSEN:** I don't think that was the
23 issue we raised, since we're not taking an issue with
24 the ability of the Commission to approve subsequent year
25 adjustments. I think we addressed that under the legal

1 issue anyway. There was a separate legal issue that
2 talked about whether or not it was appropriate for
3 subsequent year adjustments. So I'm not sure if it's
4 our issue to defend or not or if somebody else had
5 raised it. We didn't raise it.

6 **COMMISSIONER EDGAR:** Okay. So the issue that
7 is, as Ms. Brownless stated to us, it is -- and thank
8 you for the correction -- it is at the very bottom of
9 page 227. It is identified as an OPC issue. Does
10 somebody else claim filing it? Okay. Well, then that
11 takes us --

12 **MR. MOYLE:** Well, I'll -- if it doesn't have a
13 --

14 **COMMISSIONER EDGAR:** If it doesn't have a
15 home?

16 **MR. MOYLE:** If it doesn't have a home, you
17 know. No, I think actually we did bring this up as an
18 issue in discussions at some of the informal
19 conferences, and we'd suggest it just -- it remain. I
20 think it largely is a legal issue, so maybe shifting it
21 into legal issues and give us the ability to brief it.

22 **MS. BROWNLESS:** So I just want to make sure I
23 understand. You're not saying that this is already part
24 of legal issues that have been raised; is that right?
25 Patty, is that what you're saying? Or do you think it's

1 included in any legal issues that we've already
2 identified?

3 **MS. CHRISTENSEN:** I think originally that's
4 where it was, in the legal issue section, and then it
5 got moved back to the contested issue section.

6 **MS. BROWNLESS:** Yeah, because it was
7 contested.

8 **MS. CHRISTENSEN:** But it was not -- I don't
9 know that it was specifically an issue OPC raised. I
10 don't know if somebody else raised it. It was probably
11 raised during the issue identification meetings as a
12 legal issue.

13 **COMMISSIONER EDGAR:** Well, then we can just --
14 we can just handle it this way. And, again, thank you
15 for the clarification. But it is my understanding that
16 this issue has already been settled as a matter of law,
17 so I rule it excluded, and we will move on.

18 **MR. MOYLE:** So just for the record, one of the
19 points that FIPUG was going to make was with respect to
20 whether a subsequent -- this Commission can bind a
21 subsequent Commission. We think that the same rule that
22 applies to the legislature, you can't have one
23 legislature bind a subsequent legislature, would be
24 equally applicable to an arm of the legislature, which
25 the PSC is. So to the extent that you were making rate

1 case decisions in 2018, you know, this will be -- it'll
2 be a different Commission in 2018. So we wanted
3 the right --

4 **COMMISSIONER EDGAR:** It'll be a different
5 Commission in 2017.

6 **MR. MOYLE:** Yeah, that's right. But we wanted
7 the ability to make that argument as a legal basis. And
8 as you know, you know, as long as you have a good faith
9 basis for bringing forward an issue for review, you
10 know, just because a court hasn't cited it, more likely
11 than not, they'll say, "Yes, we're going to stick to our
12 guns on a decision we made."

13 **COMMISSIONER EDGAR:** Excluding it --

14 **MR. MOYLE:** But, you know, all courts don't do
15 that. I mean, sometimes they change their mind and they
16 go, "We have to recede," or things like that. So we
17 want to just preserve the ability to raise the issues.
18 So I assume, to preserve the record, will we still have
19 a chance to brief it or how is that going to work?

20 **COMMISSIONER EDGAR:** Well, the excluding the
21 issue from this docket for this hearing, for this time,
22 for the issues that will be before us certainly does not
23 preclude any party from raising some other legal issue
24 in the future.

25 **MR. MOYLE:** Right. But just to the legal

1 point about this Commission acting on rates in the
2 future, we would like to have the ability to say, "No,
3 that should not be done as a matter of law because this
4 Commission can't set rates in the future and bind a
5 subsequent Commission." I mean, you take it to a
6 logical extreme, you say, "Well, you know, you guys can
7 set rates in 2025," but I don't think that would be
8 legally allowed. So that's what this issue is kind of
9 designed to get at. And obviously, you know, we talked
10 about --

11 **COMMISSIONER EDGAR:** It seems somewhat
12 hypothetical.

13 **MR. MOYLE:** Well, not based on FPL's filing
14 it's not, because they want a rate increase in '17 and
15 another in '18.

16 **MS. BROWNLESS:** And may I address this?

17 **COMMISSIONER EDGAR:** You may.

18 **MS. BROWNLESS:** Our point on this is that this
19 legal issue has been decided by Order PSC-10-0153 issued
20 on March 17th, 2010, in Docket No. 080677-EI. And the
21 Florida Supreme Court has definitively ruled upon this
22 in *Floridians United for Safe Energy, Inc. versus PSC*,
23 475 So.2d 241, Florida 1985; and *Citizens versus Florida*
24 *Public Service Commission*, 146 So.2d -- So.3d, I'm
25 sorry, 1143, 1157, Florida 214, 2014, Docket No. 120051.

1 And in that decision, the Supreme Court reaffirmed the
2 Commission's authority to adopt rules which allow for
3 the adjustment of rates based on revenues and costs
4 during the period new rates are to be in effect and for
5 incremental adjustments in rates for subsequent periods.
6 Our position is that to the extent that you believe this
7 is not an appropriate instance in which subsequent test
8 period adjustments should be made, you can address that
9 in Issues No. 25, 26, 27, 124, and 125. So for that
10 reason, we believe it should be excluded.

11 **MR. MOYLE:** I guess I don't want to get too
12 hung up on the process, but all those are factual issues
13 and my point simply is a legal issue. And I hear what
14 Ms. Brownless is saying. I mean, that's more akin to an
15 argument that you'd be making, you know, to someone
16 deciding the issue, and, "Well, here's what you did
17 before."

18 But my point is simply -- you know, I
19 understand the projected test year, but in this case
20 it's somewhat unusual because you have a rate increase
21 in '16 -- I'm sorry, '16, '17, and '18. I may have my
22 years wrong. '17, '18, '19. But it's, in effect,
23 future rate cases, and we do not think that, number one,
24 it's good policy or good practice for one Commission to
25 make rate case decisions in the future that would bind

1 another Commission, you know, new Commissioners coming
2 on. If you -- when you came on and you said, "Well, you
3 don't have any ability to do anything about this because
4 your prior Commission already decided it for you," you
5 know, I'm not sure that would sit well with new
6 Commissions. So that's the point we want to raise. If
7 staff is saying, "You can raise it, Moyle, at some point
8 in a legal issue," then fine. We just want to have the
9 ability to raise it if it's part of a factual issue, but
10 we'd like to get that issue out there.

11 **COMMISSIONER EDGAR:** Mr. Butler.

12 **MR. BUTLER:** I heard Mr. Moyle refer to
13 policy, and I think the issues that Ms. Brownless
14 identified clearly give him the ability to address this
15 as a policy point. I mean, to me, the Commission
16 abundantly has authority. It's determined it does. The
17 statute says it does. The Supreme Court says it does.
18 And I just don't see why we need a legal issue to
19 address something that has been that definitively
20 determined.

21 **COMMISSIONER EDGAR:** Ms. Helton.

22 **MS. HELTON:** Well, to the extent that this
23 issue has been decided already by the Supreme Court, I
24 agree with Ms. Brownless. I'm not sure that I
25 understand why it needs to be an issue here today.

1 **COMMISSIONER EDGAR:** I agree. My previous
2 ruling stands. It's excluded. We'll move on to the
3 next contested issue. Mr. Moyle.

4 **MS. BROWNLESS:** And that is on page 228 of the
5 Prehearing Order.

6 **COMMISSIONER EDGAR:** This has to do with
7 Turkey Point, Mr. Moyle.

8 **MR. MOYLE:** I know.

9 **COMMISSIONER EDGAR:** Okay.

10 **MR. MOYLE:** No. So this -- this issue, "Has
11 FPL appropriately managed the cooling canal system at
12 its Turkey Point Power Plant?" -- I'd like to be able to
13 take credit for stating the issue as clearly as it's
14 stated, but I have to give credit where credit is due
15 here. And my colleague Mr. Butler, during our informal
16 Issue ID meeting, helped me frame the issue. But I'll
17 tell you why we put it in this case, because FPL is
18 asking for an additional 50 basis points as an adder for
19 good performance, for exemplary performance, and is
20 going to -- has filed testimony, prefiled testimony, and
21 argued for you that in addition to recovering certain
22 monies, they should get a bonus for good performance.

23 We believe that if that is going to be an
24 issue in the case, which it is, then there's a whole
25 array of issues that should be considered. Not just the

1 good things that have taken place, but maybe some of the
2 things that are not so good. And the Turkey Point
3 cooling canal system has been subject to a lot of
4 review, a lot of scrutiny. I think there may be a
5 legislative committee that's been constituted to look at
6 this issue. I think DEP has been involved in looking at
7 this issue and made some determinations, and we want to
8 have the ability to make sure that this issue -- if the
9 50-basis-point adder is at issue, then there shouldn't
10 be any limit to say, "Well, you can only, you know, talk
11 about these things. You can't talk about some other
12 things that are relevant to overall performance," which
13 is, I think, the issue in dispute.

14 So for that reason, we have proposed it as a
15 separate issue and would like to be able to ask
16 questions about it, put exhibits in about it, and make
17 it an issue in the case.

18 **COMMISSIONER EDGAR:** Anybody else? OPC.

19 **MS. CHRISTENSEN:** Yes. We agree that we
20 should at least be able to address the issue, but we
21 have some concerns about it being a separate issue as
22 framed as to whether or not FPL appropriately managed
23 the cooling canal system. I think that's an issue
24 that's being raised now in the 07 environmental docket,
25 as we speak, with testimony specifically on that issue.

1 We do agree with Mr. Moyle's sentiment that
2 since FPL has raised their quality of service along with
3 the positive quality of service items that they want to
4 raise, we should also be able to address certain current
5 issues that are negative.

6 We have placed in testimony on that issue and
7 we have addressed that under quality of service and the
8 50-basis-point adder issue. So from our standpoint, I
9 think we would feel more comfortable if we didn't have a
10 separate issue that asked about whether it was being
11 managed prudently, because I'm not sure that we have
12 sufficient testimony in this docket to address that
13 issue as worded. But we think it is appropriate to
14 address it in the -- with regard to the other aspect of
15 quality of service. So that was our opinion.

16 **COMMISSIONER EDGAR:** Okay. Thank you. Thank
17 you. Anybody else?

18 Mr. Butler.

19 **MR. BUTLER:** Yes. You have Issue 84 regarding
20 the 50-basis-point ROE adder --

21 **COMMISSIONER EDGAR:** Yes.

22 **MR. BUTLER:** -- and Issue 39 regarding the
23 quality of our service. And I think that Mr. Moyle's
24 points can be addressed more than adequately there. And
25 I think he certainly is entitled to address them there,

1 and I'm sure he will. But I share OPC's concern that
2 this seems to be overly specific. We've got the topic
3 cued up in another docket, and I just don't think that
4 there's enough in the record here that it would be
5 productive to pursue it.

6 **COMMISSIONER EDGAR:** I agree. Did I just hear
7 OPC and FPL both take the same position?

8 **MR. MOYLE:** Yeah. I was going to note, that's
9 kind of --

10 **COMMISSIONER EDGAR:** I did, and I agree with
11 both of them, so.

12 **MS. CHRISTENSEN:** We can mark this day.

13 **COMMISSIONER EDGAR:** So with the discussion
14 that we've had, and noting that FPL, in this docket, is
15 not asking for cost recovery related to the cooling
16 canal system items, and I do believe that the issue is,
17 for lack of a better term, subsumed within Issue 84 and
18 quality of service, I'm not aware of a limitation at
19 this time on what can be considered. That, of course,
20 will kind of be case by case at the -- in hearing. So
21 with that understanding and discussion, this issue will
22 be excluded.

23 **MR. MOYLE:** Thank you.

24 **COMMISSIONER EDGAR:** Thank you. That brings
25 us to SFHHA. You're up.

1 **MR. WISEMAN:** Thank you, Your Honor. We've
2 raised -- I think, the first of a couple of issues we've
3 raised relates to our proposal to establish a mechanism
4 to capture the benefit of merger savings as a result of
5 FPL's -- or really NextEra's acquisitions of other
6 entities.

7 An issue that is in this case, without any
8 question, everyone would agree, is what's the proper
9 revenue requirement for FPL. One of the elements that
10 contributes to that revenue requirement are corporate
11 services charges, and the corporate service charges get
12 allocated to FPL in two different ways.

13 Now the corporate service charges are charges
14 for basically corporate overhead costs of its
15 headquarters is an example; management in some instances
16 where people have responsibility with respect to
17 multiple -- NextEra, people at the NextEra level have
18 responsibilities that go to different affiliates,
19 including FPL.

20 So the corporate service charges get allocated
21 in two ways. They're the direct charges, which are sent
22 directly to the appropriate affiliate, FPL in this
23 instance, where services can be tracked directly to a
24 particular affiliate. And then there are the ones that
25 can't be tracked specifically that get allocated based

1 upon the Massachusetts Formula.

2 Now in this case, FPL -- while I may take
3 issue with the amount of corporate overhead that they
4 propose to be allocated, they properly do seek
5 allocation of some of those costs, the recovery of some
6 of those costs in the revenue requirement. When they
7 were going to acquire Hawaiian Electric, which was a
8 transaction which was on the table when they filed their
9 initial -- filed their application and their direct
10 testimony, they actually acknowledged that the
11 allocation of corporate overhead costs, the ones that
12 are not directly assigned, would get reduced because of
13 the ability to spread those costs over more affiliates
14 as a result of the acquisition. The Hawaiian merger or
15 acquisition is off the table; we know that. But FPL --
16 I apologize -- NextEra has proposed to acquire Oncor.
17 It's an \$18 billion proposed acquisition. At this
18 point, we don't know whether it will go through, but it
19 may. I'm sure NextEra and FPL obviously want it to be
20 completed.

21 If that merger is completed, then just as the
22 Hawaiian acquisition was going to result in an impact
23 with the revenue requirement, specifically a reduction
24 to the revenue requirement because of spreading the
25 costs over more entities, so will the acquisition of

1 Oncor. In fact, arguably, depending upon how they apply
2 the Massachusetts Formula, it could result in a much
3 more significant reduction to the revenue requirement
4 than would have occurred with respect to the Hawaiian
5 Electric merger.

6 All right. Now if this rate case were focused
7 purely on one test year, 2017, we might say, well, okay,
8 you know, that's an issue for the future. It's not
9 clear what the impact will be in 2017. Don't need to
10 address it. But that's not what FPL has proposed. What
11 FPL has proposed is a 2017 test year, a 2018 test year,
12 and then an adjustment for Okeechobee in mid 2019.

13 Clearly, if the merger is going to be approved
14 and go through, it's -- well, I hate to use the word
15 "clearly." You admonished me about that earlier.
16 Likely if the merger is going to be approved, it's going
17 to happen certainly before mid 2019 and possibly in
18 2018, maybe even in 2017. Just the -- the elements that
19 are considered in this rate case can't be just a one-way
20 adjustment where FPL gets to put in the -- to increase
21 its rate base in mid 2019 when it brings Okeechobee
22 online. It can't be just that FPL gets to freeze its
23 2000 estimate in time and disregard other things that
24 are on the table that we actually know about right now,
25 which is the proposal to acquire Oncor and what the

1 impact, at least directionally, would be on the revenue
2 requirement.

3 So what we're proposing is FPL wants to look
4 into the future, okay, fine, that it's got to be a
5 two-way street. Let's set up a mechanism so that when
6 the Oncor merger or acquisition is completed and if it's
7 completed, that then those merger savings get -- that
8 result and that would negatively impact revenue
9 requirement get flowed back to ratepayers.

10 **COMMISSIONER EDGAR:** Thank you. Are there any
11 other intervenors who would like to comment on this
12 issue? Mr. Skop.

13 **MR. SKOP:** Thank you, Commissioner.

14 The Larsons would like to join in South
15 Florida Hospital and Healthcare Association's request
16 for the same principle arguments that have been raised.
17 You know, obviously the burdening of corporate expenses,
18 whether from NextEra to FPL or for FPL to its
19 affiliates, is an issue that affects revenue
20 requirements and the rates that are paid by FPL
21 customers. I also thought that the asymmetric sharing
22 is a relevant issue. I know that FPL constantly, you
23 know, talks about asymmetric. But in this case, if
24 rates were set and acquisitions were made that resulted
25 in substantial savings, then only FPL inures those

1 benefits. So I think it's an issue that's worthy of
2 joining in support of South Florida Hospital and
3 Healthcare Association. Thank you.

4 **COMMISSIONER EDGAR:** Okay. Thank you.

5 Anybody else? Mr. Moyle.

6 **MR. MOYLE:** FIPUG would like to also join. I
7 mean, it seems it's just -- to use maybe an analogy
8 appropriate in Tallahassee, it shouldn't be a one-way
9 street, it should be a two-way street. So if this
10 occurs and it inures to the benefit of FPL and their
11 ratepayers, it ought to be something that there's an
12 ability to capture and to credit ratepayers. So we'd
13 support the arguments of the hospital association.

14 **COMMISSIONER EDGAR:** Okay. Ms. Christensen.

15 **MS. CHRISTENSEN:** Just briefly. Yes, we
16 concur with South Florida Hospital and have put a
17 position in for this issue.

18 **COMMISSIONER EDGAR:** Thank you. Yes, ma'am.

19 **CAPTAIN CEPAK:** FEA supports the hospital on
20 this issue.

21 **COMMISSIONER EDGAR:** Okay. Thank you.

22 **MR. McRAY:** AARP --

23 **COMMISSIONER EDGAR:** Yes, AARP.

24 **MR. McRAY:** AARP would also adopt South
25 Florida's position, SFHHA.

1 **COMMISSIONER EDGAR:** Okay. Okay. Anybody
2 else?

3 **MS. CSANK:** As would Sierra Club.

4 **COMMISSIONER EDGAR:** As would Sierra.

5 **MR. LAVIA:** As would the Retail Federation.

6 **COMMISSIONER EDGAR:** Okay. Okay. Mr. Butler?

7 **MR. BUTLER:** We don't think this issue is
8 necessary or appropriate here. We think that it's
9 really based on speculation on things that it's
10 impossible to know how they will happen. It is a
11 one-way mechanism. We're not proposing, nobody else is
12 proposing for us anything that would be corresponding
13 adjustments that would increase our rates in the future
14 if it turns out our expenses are higher than expected in
15 our projections. And the Commission retains authority,
16 as it always has and will, to review our earnings
17 through the earnings surveillance report if something
18 happened that was extraordinary, increased our earnings
19 as a result of some short of sharing, and it resulted in
20 our earnings going outside the allowed range. The
21 Commission has plenty of mechanisms to address that, as
22 do other parties. So, excuse me, we just think it's
23 unnecessary, and it's really -- it's kind of a generic
24 proposal that seems more like something one would do
25 through rulemaking rather than in the middle of a rate

1 case. So for those reasons, we don't think it should be
2 included.

3 **COMMISSIONER EDGAR:** Thank you.

4 Ms. Brownless.

5 **MS. BROWNLESS:** Yes, ma'am. South Florida's
6 witness Kollen has filed testimony on this point and it
7 has not been and cannot be subsumed in another issue, so
8 we would agree that it should be an issue.

9 **COMMISSIONER EDGAR:** I'm not 100 percent sure
10 that this is the best forum for this issue or the best
11 docket. However, noting, as Ms. Brownless said, that
12 testimony has been filed, I will include the issue with
13 the understanding that it will be discussed at hearing
14 and that the testimony needs to carry the burden.

15 **MR. WISEMAN:** Thank you, Your Honor.

16 **COMMISSIONER EDGAR:** All right. Thank you.

17 **MS. BROWNLESS:** And before we leave this --

18 **COMMISSIONER EDGAR:** Yes.

19 **MS. BROWNLESS:** -- did I hear a position from
20 Wal-Mart on this issue?

21 **MS. ROBERTS:** "No position."

22 **MS. BROWNLESS:** Thank you.

23 **COMMISSIONER EDGAR:** Okay. Great.

24 Okay. Then that brings us to the next
25 contested issue from South Florida Hospital.

1 **MR. WISEMAN:** Yes. Thank you. The next issue
2 concerns requirements, if any, that should be put in
3 place as a result of FPL's affiliation with Sabal Trail
4 and also the -- I apologize -- it's the FSISC
5 pipeline -- I'm sure FPL will correct me on the exact
6 name. But the point is this: Typically, interstate
7 pipelines are not affiliated with local utilities. In
8 fact, in 1935, when the federal government first enacted
9 PUCA (phonetic), that was one of the most specific
10 reasons for it is that the intent of PUCA was to protect
11 ratepayers from being required to pay charges that were
12 in effect the result of monopoly power all the way back
13 to the wellhead.

14 Now PUCA 1935 doesn't exist any longer, and
15 FPL certainly was within its rights to acquire an
16 interest in an interstate pipeline. That's not
17 debatable. But nonetheless, there's still -- the
18 acquisition raises an interest that -- actually a
19 conflict of interest on FPL's part. Typically, a local
20 utility has an incentive to participate in FERC rate
21 cases and to negotiate with the interstate pipeline from
22 which it receives natural gas to reduce the
23 transportation charges as low as possible. FPL doesn't
24 have that interest any longer because it's in a
25 conflict. The corporate interests of NextEra would be

1 for the interstate pipes to have -- to be able to earn
2 the highest possible return on equity they can.

3 So recognizing that conflict of interest on
4 FPL's part, we think it's appropriate to establish a
5 mechanism simply to, in effect, monitor FPL and make
6 sure that it's actually protecting the interests of
7 Florida ratepayers with respect to the transportation,
8 excuse me, charges they charge to -- or that are charged
9 by interstate pipelines from which they receive service
10 rather than the interests of NextEra's investors. Thank
11 you.

12 **COMMISSIONER EDGAR:** Thank you. Any other
13 Intervenors have a comment on this one at this time?

14 **MR. LAVIA:** The Retail Federation supports the
15 Hospital.

16 **COMMISSIONER EDGAR:** Okay. Anybody else?

17 **MR. MOYLE:** Same for FIPUG.

18 **COMMISSIONER EDGAR:** Okay. Sierra?

19 **MS. CSANK:** So does Sierra Club.

20 **COMMISSIONER EDGAR:** Okay.

21 **MS. CHRISTENSEN:** OPC does as well. We've put
22 in a position on this issue.

23 **MR. SKOP:** Commissioner, the Larsons also
24 support the South Florida Hospital Association position.

25 **COMMISSIONER EDGAR:** Okay. Anybody else?

1 Mr. Butler.

2 **MR. BUTLER:** I'm going to take a little bit of
3 time to explain this, although I think less time than
4 Mr. Wiseman did to state it.

5 We have requested that the Commission approve
6 a mechanism for transferring the Martin-to-Riviera
7 pipeline lateral from base rates to the Florida
8 Southeast Connection, an affiliate of FPL's, that we
9 would pay a lower rate to FSC, shorthand for Florida
10 Southeast Connection, than we would be recovering
11 through base rates.

12 There is an issue, 163, that addresses that,
13 and it includes the question of whether there should be
14 a mechanism of the sort that Mr. Wiseman just described,
15 and we don't object to that being an issue. We have a
16 position we will be taking on it.

17 This issue goes to a broader, more generic
18 question. There's no connection between Sabal Trail
19 transmission and this Martin-Riviera pipeline lateral.
20 We're not -- we don't have any rate that we would be
21 paying the Sabal Trail. Sabal Trail is, if you recall
22 from when we had the third pipeline approved, it's the
23 upstream pipeline that's part of the overall project of
24 bringing gas into Florida from the Gulf region.

25 And so, in our view, this issue that is stated

1 on page 229 is completely outside the scope of this
2 proceeding and is unnecessary because the very point
3 they want to address, which is whether there should be
4 this obligation to pursue Section 5 rate cases with
5 respect to the charge that FPL would be paying to FSC
6 for this Martin-Riviera lateral, that's covered by Issue
7 163. So this would be just expanding it into a very
8 generic discussion of how to treat the relationship
9 between FPL and affiliate pipelines. We're not asking
10 for any money at all in this proceeding that has to do
11 with Sabal Trail transmission. You know, to whatever
12 extent amounts are recovered for Sabal Trail, it's a
13 fuel clause issue, and I think that it's completely
14 irrelevant to this proceeding and would urge you to
15 exclude it.

16 **COMMISSIONER EDGAR:** Thank you.

17 Ms. Brownless.

18 **MS. BROWNLESS:** We agree with Florida Power &
19 Light that this is a fuel clause issue and it should be
20 excluded here.

21 **COMMISSIONER EDGAR:** As do I. The issue is
22 excluded.

23 Mr. Wiseman.

24 **MR. WISEMAN:** I'm sorry. Sorry. Are we going
25 to the issue about sequestering?

1 **COMMISSIONER EDGAR:** I am.

2 **MR. WISEMAN:** Oh, okay. I don't know that we
3 need to discuss this at length. There's --

4 **COMMISSIONER EDGAR:** I agree, but you can, if
5 you want.

6 **MR. WISEMAN:** I don't see the point. There's
7 obviously -- there's a Florida Supreme Court case
8 pending, and the court will say what it says and resolve
9 the issue, I think.

10 **COMMISSIONER EDGAR:** Okay. Would you withdraw
11 the -- withdraw the issue?

12 **MR. WISEMAN:** Yes, we'll withdraw it.

13 **COMMISSIONER EDGAR:** Okay. Thank you very
14 much.

15 And I believe that brings us to the Sierra
16 Club.

17 **MS. CSANK:** Yes, thank you. So Sierra Club,
18 although it does not appear here in the draft order, has
19 proposed three additional issues, and we submit that the
20 Commission and the parties need clarification of what
21 was included in current Issue No. 57. This is the issue
22 that goes to the prudence of FPL's \$1.25 billion gas
23 peaking projects.

24 Issue 57 reads, quote, is FPL's replacement of
25 its peaking units reasonable and prudent, end quote? As

1 I'll briefly explain, Sierra Club proposes three
2 supplemental issues to clarify the scope of the prudence
3 review for all of the gas peaking projects at issue in
4 this proceeding, not just the replacement projects.

5 First, there's the legal threshold question --
6 and I should add, before I go on, that the three issues
7 that Sierra Club is proposing was circulated to the
8 parties in an email, I believe, yesterday afternoon
9 around 4:00 p.m. But I will read them here as well.

10 So the first issue proposed by Sierra Club
11 goes to the threshold legal question of whether the
12 projects require a need determination under the Siting
13 Act as well as other pre-approvals that these projects
14 need to obtain. These issues go -- or this legal
15 threshold question goes to prudence because the projects
16 cannot be prudent if construction started unlawfully
17 before FPL obtained the required preconstruction
18 approvals. We want to make sure that this is not lost
19 on anyone, and that's why we propose a separate issue or
20 at least clarification that this threshold legal
21 question is part of the proceeding. So we submit that
22 there should be an additional issue that reads, quote,
23 did FPL obtain all required preconstruction approvals,
24 including a need determination for the \$1.25 billion gas
25 peaking projects?

1 Second, Issue 57 appears to leave out a
2 significant portion of FPL's gas peaking projects.
3 These are the \$450 million changes to FPL's existing gas
4 combustion turbines. To be clear, there are two sets of
5 gas peaking projects at issue in this proceeding.
6 First, there are the \$800 million, quote, unquote,
7 replacement projects, and that consists of retiring 44
8 gas turbines and replacing them with seven new
9 combustion turbines. Issue 57, as it currently reads,
10 only refers to these replacement projects. Then there
11 are also the \$450 million, quote, unquote, modification
12 projects, and these are changes to FPL's existing 26
13 combustion turbines.

14 These latter projects should be expressly
15 referenced in the issue list. They absolutely are a
16 part of this proceeding, a part of the company's
17 request, and therefore should be a part of the issue
18 list.

19 Sierra Club submits that there should be a
20 second issue that states, "Are FPL's \$1.2 billion gas
21 peaking projects, including replacement and modification
22 projects, reasonable and prudent?"

23 Finally, the issue list should be clear that
24 the prudence review for all the gas projects, gas
25 peaking projects includes whether these projects are, A,

1 necessary to serve customers and, B, the best choice
2 compared to alternatives. Specifically, alternatives
3 should include timing, that is, whether the timing of
4 these projects -- in other words, making all these
5 investments at once at this time -- is actually the best
6 choice, given what we know about today's market where
7 solar and storage have dramatically and continuously
8 dropped in price as well as the company's load. And so,
9 therefore, we submit that a third issue here should be,
10 quote, did FPL meet its burden to show that the
11 \$1.25 billion gas peaking projects are necessary to
12 serve customers and are better than alternatives
13 involving other resources and/or incremental replacement
14 of the 1970s-era gas peakers. Thank you.

15 **COMMISSIONER EDGAR:** Thank you. Any other
16 comments before I turn to Mr. Butler?

17 Mr. Moyle.

18 **MR. MOYLE:** FIPUG would support the inclusion
19 of the issues, I mean, particularly the question about,
20 you know, did they meet all their preconstruction
21 approvals. That seems probably a combined fact in law
22 question. But, you know, I would think if they're in
23 here saying we want 800 million, that that should be
24 something that is discussed. And if there's a belief
25 that they didn't, surely a party should be able to raise

1 that as an issue and say, "Well, you didn't get your
2 approvals," whether it's site certification under the
3 Power Plant Siting Act or, you know, a local wetlands
4 permit. So we support the inclusion of the issues.

5 **COMMISSIONER EDGAR:** Anybody else?

6 **MR. SKOP:** Yes, Commissioner. The Larsons
7 also support the inclusion of the issues by the Sierra
8 Club.

9 **COMMISSIONER EDGAR:** Okay.

10 **MS. CHRISTENSEN:** OPC would support inclusion
11 of the issues related to all the peakers, especially if
12 the company is seeking to move those units in any form
13 into rate base in this rate case. I think that it makes
14 it a live issue.

15 And to be clear, that we're not just excluding
16 a portion of that, especially if there was no other
17 pre-approval process, now would be the time to address
18 whether or not those projects were reasonably and
19 prudently done.

20 **MR. LAVIA:** The Retail Federation supports
21 inclusion of the issues.

22 **MR. WISEMAN:** SFHHA supports the inclusion of
23 the issues.

24 **COMMISSIONER EDGAR:** Okay. Yes, sir.

25 **MR. MCRAY:** AARP will support the inclusion as

1 well.

2 **COMMISSIONER EDGAR:** Okay.

3 **MS. ROBERTS:** We take "No position."

4 **COMMISSIONER EDGAR:** Okay. All right. Yes,
5 ma'am.

6 **CAPTAIN CEPAK:** We take "No position."

7 **COMMISSIONER EDGAR:** Okay. Thank you. Thank
8 you. I appreciate all of those statements, recognizing
9 that these did come in yesterday. So, Mr. Butler.

10 **MR. BUTLER:** Thank you. I have a proposal for
11 a compromise here. First of all, I think that in spite
12 of the characterization of these as all gas peakers,
13 what we're really talking about is there's the
14 replacement of old gas turbines with new combustion
15 turbines at Fort Myers and the, excuse me, Lauderdale
16 plant site, and that's the subject of Issue 57 as it's
17 currently written.

18 There's another project that is an upgrade to
19 improve the both efficiency and output of the combustion
20 turbines in FPL's fleet, although the overwhelming
21 majority of those are the front end of combined cycle
22 units. And so the characterization of them as peakers
23 is really inaccurate. I mean, the highly efficient
24 combined cycle units are pretty much FPL's main baseload
25 and intermediate load source of power in its current

1 system. But we would have no objection to adding an
2 issue 57A, whatever the appropriate number, something
3 like, "Is FPL's .05 combustion turbine upgrade
4 reasonable and prudent?" And then with that, you would
5 have both of the two projects that are discussed in
6 Mr. Barrett's testimony and in Ms. Kennedy's testimony
7 cued up. I think that anything that Ms. Csank or others
8 want to raise about the approval process, about the need
9 for the power that they will be generating, et cetera,
10 can be fully and completely addressed within the topic
11 of whether, you know, our proposed projects are
12 reasonable and prudent. And just it would be, I think,
13 a cleaner way in a rate case to handle that issue.

14 **COMMISSIONER EDGAR:** Sierra?

15 **MS. CSANK:** If I may, the concern for us in
16 subsuming issues, as I think FPL's proposal would
17 achieve that result of subsuming the issues that Sierra
18 Club has proposed, is problematic because it will
19 potentially preclude specific analysis of these
20 component parts that we have identified that are -- that
21 certainly go to prudence but need specific analysis.
22 And we would hate to -- we're not saying we necessarily
23 will get to an appeal, but we would hate for these
24 issues not to be properly specified and addressed in the
25 record, and we know of some precedent where subsuming

1 important issues has resulted in some trouble down the
2 road. And so we would submit that these -- specifically
3 the preconstruction approvals and whether the need
4 determination was properly obtained for these gas
5 projects, whether they're characterized as peakers or
6 not, should be clearly listed as a separate issue.

7 **MR. BUTLER:** Well, in response, I would simply
8 say that I don't see that need. I mean, I think there
9 is plenty of room to address that topic within these
10 issues. Issues reading "reasonable and prudent" are
11 pretty open-ended, and people can say something isn't
12 reasonable or prudent for a whole variety of reasons, if
13 that's their position.

14 **COMMISSIONER EDGAR:** Ms. Brownless.

15 **MS. BROWNLESS:** Yes, ma'am. With regard to
16 the replacement projects, I would agree with Mr. Butler
17 that adding another issue that talks about the -- we've
18 got an issue on replacement, but adding another issue
19 that talks about modification would solve that problem.
20 What he's suggesting, I would agree with.

21 To the extent that the projects are already in
22 rate base, that Ms. Csank's concerns can be addressed in
23 Issue No. 59, which is the general plant-in-service
24 issue. But I do think that John's suggestion for an
25 additional issue that breaks out the difference between

1 replacement and modification is fair, and that all of
2 the concerns about whether it was prudent to pursue
3 natural gas or peakers rather than other alternatives
4 could be adequately addressed there.

5 **COMMISSIONER EDGAR:** Ms. Helton.

6 **MS. HELTON:** I agree with Ms. Brownless.

7 **COMMISSIONER EDGAR:** Okay. So we will add an
8 Issue 57A, as has been discussed and described. And the
9 three issues submitted, three proposed issues submitted
10 by Sierra yesterday afternoon will be excluded, with the
11 understanding that 57A will be added, and that there is
12 the opportunity under Issue 59, if not more, to address
13 much of that concern.

14 **MS. BROWNLESS:** And before we leave this,
15 could Mr. Butler read the issue again as he's rephrased
16 it?

17 **MR. BUTLER:** My proposal is to say, "Is FPL's
18 .05 combustion turbine upgrade project reasonable and
19 prudent?"

20 **MS. BROWNLESS:** Thank you.

21 **COMMISSIONER EDGAR:** Okay. I believe that --

22 **MR. MOYLE:** Can I just ask one clarification
23 on that?

24 **COMMISSIONER EDGAR:** Sure. Yes. Yes.

25 **MR. MOYLE:** So I guess we'll get a chance to

1 see that and take positions on that new issue in
2 accordance with your prior rulings about close of
3 business Monday?

4 **COMMISSIONER EDGAR:** That's my intent, yes.

5 **MR. MOYLE:** Right. But just -- so -- just to
6 make sure, so there's one issue on 800 million, kind of
7 replacement gas turbines. And, John, you're saying
8 another is the modification to the 450 million; is that
9 right?

10 **MR. BUTLER:** That's correct, yes.

11 **MR. MOYLE:** Okay. Thank you.

12 **COMMISSIONER EDGAR:** Okay. Thank you. Okay.
13 Anything else, Ms. Brownless, before we move on?

14 **MS. BROWNLESS:** Now does -- do you have
15 additional issues, Sierra Club, that you wish to discuss
16 as well, or does this resolve all of your issues?

17 **MS. CSANK:** Well, if I may then, the one point
18 of clarification that I did have was just to be clear on
19 the record that within the capacious prudence review, we
20 will be able to address this question of pre-approvals
21 and the applicability of a need determination under the
22 Siting Act as to these projects.

23 **MS. BROWNLESS:** Yes, ma'am, I think that's
24 fair.

25 **COMMISSIONER EDGAR:** Okay. Great.

1 **MS. BROWNLESS:** And just so I'm clear, so on
2 page 230 of the prehearing order, you have an issue that
3 talks about "Has FP&L shown that the 1.25 billion
4 natural gas-burning, peaking generation projects are
5 necessary to serve customers?" Do you still want that
6 issue, or is that an issue that can be dropped?

7 **MS. CSANK:** I would prefer the
8 characterization that it's part of 57 and 57A and it's
9 part of the prudence review as opposed to dropped.

10 **MS. BROWNLESS:** Well, I mean as a specific
11 separate, standalone issue.

12 **MS. CSANK:** Yes. I think we've resolved the
13 contested issues that Sierra Club had proposed with the
14 changes made.

15 **MS. BROWNLESS:** And, I'm sorry, I'm just
16 trying to go down my page.

17 **COMMISSIONER EDGAR:** That's okay. While we're
18 all here together.

19 **MS. BROWNLESS:** And then the new issue that is
20 identified on page 230 about "optimal amounts of clean,
21 low cost, low risk resources including solar power, wind
22 power, energy efficiencies, batteries," is that still an
23 issue that you wish to have included?

24 **MS. CSANK:** I believe that also is now part of
25 Issues 57 and 57A.

1 **MS. BROWNLESS:** Okey-doke. And then finally,
2 you have another issue in the Prehearing Order on 231,
3 and that says, "Has FP&L shown that its expenditures
4 help mitigate the Commission's strategic concerns
5 regarding overreliance on out-of-state natural gas
6 imports?" What is your position with regard to that?
7 Would you like to --

8 **MS. CSANK:** Yes, I believe this issue also is
9 now part of Issues 57 and 57A.

10 **MS. BROWNLESS:** Thank you so much.

11 **MS. CSANK:** Thank you.

12 **MS. BROWNLESS:** Thank you for the
13 clarification.

14 **COMMISSIONER EDGAR:** Good. Yes.

15 **MR. MOYLE:** And to be clear, is that right, so
16 the idea of diversity is an issue that we can -- that
17 can be raised?

18 **COMMISSIONER EDGAR:** Could you be a little
19 more specific, Mr. Moyle?

20 **MR. MOYLE:** Well, I read their issue to "help
21 mitigate the Commission's strategic concerns regarding
22 overreliance on out-of-state natural gas imports." So
23 it's kind -- it's a pretty broad issue, so just trying
24 to understand how that factors in and plays in.

25 **MS. BROWNLESS:** Well, if I may --

1 **COMMISSIONER EDGAR:** You may.

2 **MS. BROWNLESS:** -- one could argue that in the
3 ROE adder that there's not enough fuel diversity and one
4 could address it there, or one could address --

5 **COMMISSIONER EDGAR:** That would be my
6 recommendation.

7 **MR. MOYLE:** Okay. Thanks.

8 **COMMISSIONER EDGAR:** Okay. Sure.

9 **MS. BROWNLESS:** And I think that South Florida
10 has withdrawn their contested issue on page 231;
11 correct?

12 **MR. WISEMAN:** Yes.

13 **COMMISSIONER EDGAR:** Okay. Are we good?

14 **MS. BROWNLESS:** I think we're good.

15 **COMMISSIONER EDGAR:** Okay. I think so too.

16 **MS. BROWNLESS:** And I don't think there are
17 any other contested issues either.

18 **COMMISSIONER EDGAR:** Mr. Wiseman.

19 **MR. WISEMAN:** Yeah. I just -- thank you. I
20 just wanted to note for the record that pursuant to your
21 order this morning, we have already filed the amended
22 prefiling -- prehearing statement.

23 **COMMISSIONER EDGAR:** Thank you.

24 **MR. WISEMAN:** Thank you.

25 **COMMISSIONER EDGAR:** Okay. That is going to

1 bring us to Section IX, exhibit list. I have page 32.

2 Ms. Brownless.

3 **MS. BROWNLESS:** I have a note here, but
4 honestly I can't remember what I'm supposed to be saying
5 about this.

6 Has everybody had an opportunity to look over
7 these and see if we've properly identified your
8 exhibits? And if there is any changes that you would
9 like to make to that because we've messed something up,
10 can you please let us know by Monday at 5:00 p.m.?

11 **COMMISSIONER EDGAR:** That's exactly what you
12 were supposed to say.

13 **MS. BROWNLESS:** Oh, thank you.

14 **COMMISSIONER EDGAR:** You're welcome. Any
15 concerns?

16 **MR. BUTLER:** No concerns, but there's one
17 thing I wanted to raise. This is maybe the right place.
18 If it isn't, tell me when it would be more appropriate.

19 The Order Establishing Procedure talks about
20 identifying exhibits that a party intends to display at
21 hearing. And we have in the past, and intend to in this
22 case, "posterize," make big blow-ups of a few of the
23 existing exhibits that are on this list or contained
24 within the prefiled testimony. But I have a short list
25 of those that I can either read now or I can provide it

1 to staff to include in the Prehearing Order, if that's
2 appropriate. We just don't want -- we want to be sure
3 that we don't miss the opportunity to advise the
4 Commission of the ones that we intend to use in blow-up
5 form.

6 **COMMISSIONER EDGAR:** Okay.

7 **MS. BROWNLESS:** And these are demonstrative
8 exhibits? They're posters of --

9 **MR. BUTLER:** They're poster-sized versions of
10 exhibits that are already in the prefiled testimony.

11 **MS. BROWNLESS:** Oh, okay. Thank you.

12 **COMMISSIONER EDGAR:** Okay. Any --

13 **MR. MOYLE:** We'd like to see the list. That
14 would be helpful to see the list.

15 **COMMISSIONER EDGAR:** Sure. Mr. Butler, can
16 you send the list to our staff and the parties?

17 **MR. BUTLER:** I will do so, yes.

18 **MS. BROWNLESS:** And do that also by Monday at
19 5:00?

20 **MR. BUTLER:** We will do it by the end of the
21 day.

22 **MS. BROWNLESS:** Oh, fabulous.

23 **COMMISSIONER EDGAR:** Great. Okay. Anything
24 else on Section IX?

25 Okay. Then that brings us to Section X. Last

1 I knew, there were not any proposed stipulations.

2 However, I think staff may have an offering.

3 **MS. BROWNLESS:** Yes, ma'am. When we looked
4 through everybody's positions, we thought that perhaps
5 Issues 73 and 117 could be stipulated. Could everybody
6 take a minute and look at those? 73 and 117.

7 **MR. SAYLER:** Can you tell us what page number
8 that would be on?

9 **MS. BROWNLESS:** I knew you were going to ask
10 that.

11 **COMMISSIONER EDGAR:** I cannot but --

12 **MS. BROWNLESS:** 108 for 73.

13 **COMMISSIONER EDGAR:** 108.

14 **MS. BROWNLESS:** And the issue is, "What is the
15 appropriate methodology for calculating Florida Power &
16 Light's working capital for the 2017 projected test year
17 and, if applicable, for the 2018 subsequent projected
18 test year?"

19 **MR. BUTLER:** And, Suzanne --

20 **MS. BROWNLESS:** Yes, sir.

21 **MR. BUTLER:** -- to be clear here, since it's a
22 "what is" instead of "is something true," so there's not
23 a yes or no, is the proposed stipulation on FPL's stated
24 position on it, or what would the proposed stipulation
25 be?

1 **MR. MOYLE:** It seems to me that OPC is saying
2 something very similar to FP&L, but FPL has more
3 historical narrative stuff. The balance sheet approach
4 is the approach to use, so I think less is more.

5 **MS. BROWNLESS:** And it seems like everybody
6 agrees that the balance sheet approach, which is what
7 the first sentence of FP&L's position says --

8 **MR. BUTLER:** We could go with the short form.

9 **COMMISSIONER EDGAR:** Okay. OPC.

10 **MS. CHRISTENSEN:** We're certainly -- yeah,
11 we're certainly willing to stipulate to our position.

12 **COMMISSIONER EDGAR:** Okay.

13 **MS. BROWNLESS:** AARP, you have "No position"
14 on this. You still have "No position"?

15 **MR. McRAY:** What page are you on?

16 **MS. BROWNLESS:** I'm on page 108, and for Issue
17 73 you took "No position." So I assume you're still
18 taking "No position."

19 **MR. McRAY:** It's "No position."

20 **MS. BROWNLESS:** Okay. FEA?

21 **CAPTAIN CEPAK:** "No position."

22 **MS. BROWNLESS:** Okay. And, Jon, you're okay
23 with the balance sheet approach?

24 **MR. BUTLER:** That's J-o-n?

25 **COMMISSIONER EDGAR:** Mr. Moyle.

1 **MR. MOYLE:** No. Just so we're clear, on Issue
2 74, the proposal is to go to OPC's position -- I'm
3 sorry, 73.

4 **MS. BROWNLESS:** 73.

5 **MR. MOYLE:** I'm sorry, 73.

6 **COMMISSIONER EDGAR:** 73, yes.

7 **MS. BROWNLESS:** On page 108.

8 **MR. MOYLE:** Yeah, that's -- we would be okay
9 with a Class B stipulation; right? So that's fine.

10 **COMMISSIONER EDGAR:** Okay. Suzanne.

11 **MS. BROWNLESS:** Okay. Let's see. It seems
12 that FRF also would adopt the working capital approach;
13 is that right, sir?

14 **MR. LAVIA:** It is our position.

15 **MS. BROWNLESS:** Okay. And Mr. Skop for the
16 Larsons?

17 **MR. SKOP:** Yes. Larsons adopt OPC's position
18 on both of the issues.

19 **MS. BROWNLESS:** Okay. And Mr. Wiseman.

20 **MR. WISEMAN:** Yes. We -- and just to be
21 clear, this is not precluding adjustments that we had
22 recommended, is that correct, by stipulating to the
23 methodology?

24 **MS. BROWNLESS:** Yes. Right.

25 **MR. WISEMAN:** Yeah. Then we're fine with it

1 as well. Thank you.

2 **MS. BROWNLESS:** And Sierra Club?

3 **MS. CSANK:** We're fine with it as well.

4 **MR. SUSAC:** And Wal-Mart.

5 **MS. ROBERTS:** We still have no position.

6 **MS. BROWNLESS:** Okay. So that looks like that
7 could be stipulated.

8 **COMMISSIONER EDGAR:** Yes, ma'am.

9 **MS. BROWNLESS:** Okay. Thank you. And now
10 we're to 117, which is on page 172. And this issue is,
11 "What is the appropriate level of gain or loss on
12 disposal of utility property?" And for the 2017
13 projected test year, we agree with the position of FP&L,
14 and that's what we're tendering as a stipulation.

15 **MR. MOYLE:** But there's a difference, I guess,
16 in that OPC doesn't address the 2018.

17 **MS. BROWNLESS:** It's only for '17. The "A" is
18 for 2017 projected test year.

19 **MS. CHRISTENSEN:** I believe we're in agreement
20 on the amount for 2017, but there appears to be a
21 difference in 2018. If you could give us just --

22 **MS. BROWNLESS:** We're just talking about 2017
23 now, just A for 2017.

24 **MS. CHRISTENSEN:** Rather than agree to a
25 stipulation today, because there is some differences,

1 particularly with what FPL is proposing on some of our
2 numbers, if staff could give us what they propose to
3 stipulate to, if it's just A or B or both, we can look
4 at that and get back to them by close of business on
5 Monday.

6 **MS. BROWNLESS:** We can tell you right now it's
7 just A.

8 **MS. CHRISTENSEN:** I'd still prefer to take a
9 look at it and see the language that you're proposing
10 for the stipulation because FPL has slightly different
11 language, so --

12 **COMMISSIONER EDGAR:** Okay. So you need a
13 little more time.

14 **MS. CHRISTENSEN:** Yes, please.

15 **MS. BROWNLESS:** So maybe you could get back to
16 us by 5:00 on Monday?

17 **MR. MOYLE:** We would also not agree to
18 stipulations until seeing the actual stipulation in
19 writing, so.

20 **MS. CHRISTENSEN:** Yes. We would ask that if
21 staff has some language they would like us to consider
22 for the stipulation on 17 -- 117A, if they could send
23 that to us, we will look at it and get back to them by
24 close of business on Friday (sic) whether or not we are
25 in a position to stipulate or not.

1 **COMMISSIONER EDGAR:** Close of business Friday?
2 Do you need a full week for that?

3 **MR. BUTLER:** How about your language --

4 **MS. CHRISTENSEN:** I'm sorry.

5 **COMMISSIONER EDGAR:** Hold on, Mr. Butler. You
6 said, "By close of business Friday." Do you need a full
7 week?

8 **MS. CHRISTENSEN:** Oh, I meant Monday. I'm
9 sorry.

10 **COMMISSIONER EDGAR:** Okay. That's what I
11 thought. I just wanted to be sure.

12 Mr. Butler.

13 **MR. BUTLER:** I'm sorry. I didn't mean to
14 interrupt. I was just going to say we can agree to
15 OPC's language on 117A.

16 **MS. BROWNLESS:** Yeah, and that would be the
17 whole stipulation.

18 **MR. BUTLER:** That would be the stipulation.

19 **MS. CHRISTENSEN:** In that case, I can agree to
20 my language. I would stipulate to my own language.
21 Thank you.

22 **COMMISSIONER EDGAR:** All right. Mr. Moyle.

23 **MR. MOYLE:** I'd like to --

24 **COMMISSIONER EDGAR:** You still want some more
25 time?

1 **MR. MOYLE:** Yeah.

2 **COMMISSIONER EDGAR:** Okay.

3 **MR. MOYLE:** Because here it is, it's kind of
4 like, "Here, stipulate," you know.

5 **COMMISSIONER EDGAR:** I understand. I
6 understand.

7 **MR. MOYLE:** I'm not sure I got it.

8 **COMMISSIONER EDGAR:** So does COB Monday work
9 for that for you?

10 **MR. MOYLE:** Yes.

11 **COMMISSIONER EDGAR:** Okay.

12 **MR. BUTLER:** So you don't really mean you're
13 adopting OPC's position on this; right?

14 **MR. MOYLE:** Well, I think, as I said
15 yesterday, right, when I came back and -- no. I'll -- I
16 just want to -- when you stipulate, you --

17 **COMMISSIONER EDGAR:** If you need to the end of
18 Monday, that's fine. That's fine.

19 **MS. BROWNLESS:** We'll look for you Monday.

20 **COMMISSIONER EDGAR:** Yes. And anybody else?
21 No? Are we good?

22 **MS. BROWNLESS:** And we'll send that language
23 out to everybody all at the same time and let them have
24 until Monday.

25 **COMMISSIONER EDGAR:** Okay.

1 **MS. BROWNLESS:** Okay. Now we're down to --

2 **COMMISSIONER EDGAR:** Any other proposed
3 stipulations from any -- any or all parties? Well, you
4 know, it never hurts to ask.

5 Okay. That brings us to Section XI, pending
6 motions.

7 **MS. BROWNLESS:** Pending motions. We discussed
8 the first two already that are identified on 256. And
9 the Larsons' motion for intervention also has been
10 discussed. That's already been granted.

11 The pending confidentiality orders, orders
12 have been issued for all of these, and I'll just read
13 them into the record.

14 For the second request, it's Order No.
15 PSC-16-0312 issued August 3rd. For the third request,
16 it's Order No. PSC-16-0311 issued August 3rd. For the
17 fourth request, it's Order No. PSC-16-0326 issued
18 August 11th. For the fifth request, it's Order No.
19 PSC-16-0327 issued August 11th. For the sixth request,
20 it's Order No. PSC-16-0331 issued August 11th. For the
21 Temporary Protective Order for the materials submitted
22 May 31st, 2016, it's Order No. PSC-16-0330 issued
23 August 11. For the Temporary Protective Order on
24 materials associated with the June 6th, 2016, request,
25 it's Order No. PSC-16-0329 issued on August 11th.

1 We just yesterday got a brand new request for
2 confidentiality for late-filed deposition exhibits of
3 Mr. Barrett, No. 4 and 6. And I have not done that
4 order yet, but I promise to do it by next week.

5 **MR. BUTLER:** Bunny quick.

6 **MS. BROWNLESS:** Bunny quick, yes, sir.

7 **COMMISSIONER EDGAR:** We will get it out early
8 next week.

9 Okay. Any other comments or points to be
10 raised for Section XI and Section XII?

11 No, okay. That brings us to Section XIII,
12 post-hearing procedures. Ms. Brownless.

13 **MS. BROWNLESS:** Yes, ma'am. We were -- are
14 suggesting that post-hearing positions be limited to
15 75 words for all issues and that the post-hearing briefs
16 be limited to 150 pages.

17 **COMMISSIONER EDGAR:** I agree.

18 **MS. CHRISTENSEN:** May I briefly be heard on
19 that?

20 **COMMISSIONER EDGAR:** Ms. Christensen.

21 **MS. CHRISTENSEN:** In the last FPL rate
22 proceeding, it had been agreed that for each party,
23 they'd be allowed to select up to seven issues for which
24 the summary of the positions could be expanded to no
25 more than 180 words offset by asterisks. I would ask

1 that that be adopted here as well because there are
2 going to be a few issues that are just much more
3 complicated and for which 75 words for the position
4 statement is just insufficient, but to allow parties the
5 leeway to choose those issues.

6 **COMMISSIONER EDGAR:** Anybody else have a
7 comment?

8 **MR. SKOP:** Yes, Madam Chair. Larsons would
9 support the OPC request as a reasonable accommodation.
10 Thank you.

11 **MR. WISEMAN:** And SFHHA supports the proposal
12 as well.

13 **MS. CSANK:** So does Sierra Club.

14 **MR. McRAY:** AARP does as well.

15 **MS. ROBERTS:** So does Wal-Mart.

16 **CAPTAIN CEPAK:** FEA supports OPC.

17 **MR. LAVIA:** So does the Retail Federation.

18 **MR. MOYLE:** And so does FIPUG. I keep
19 thinking we're going to have to come up with a shorthand
20 way to have everybody say, "Me too."

21 **COMMISSIONER EDGAR:** Okay. So why seven
22 issues?

23 **MS. CHRISTENSEN:** I think that was what was
24 agreed upon in the last rate case. I think that there
25 were thoughts -- we have depreciation issues in this

1 case, we have some ROE issues that are more complex.
2 And to keep it from getting too long in the brief, the
3 limit was -- there had to be some reasonable limit, and
4 I think seven was just a number that was agreed upon in
5 the last rate case. I don't know that there's any magic
6 number to seven, but that would give us certainly plenty
7 of issues to address the more complicated issues. You
8 know, and if we don't have to use all seven, we won't
9 use all seven, but we would appreciate to be -- to have
10 the flexibility to do that.

11 **COMMISSIONER EDGAR:** Okay. Mr. Butler.

12 **MR. BUTLER:** I guess I have to be a little
13 contrary here. First of all, we don't object. We're
14 fine with the extra words, if we're allowed it. But
15 I've always understood this to be kind of for staff's
16 benefit so that we end up with really succinct little
17 packages of what our positions are on the issues that
18 they can use for their purposes. And we're prepared to
19 live within the 75 words and just be extra succinct on
20 the more complicated issues, if need be. But we don't
21 object to the OPC proposal.

22 **COMMISSIONER EDGAR:** Okay. All right. Then
23 we'll go ahead and allow 180 words for seven issues of
24 each party's choosing, 75-word limitation for all
25 others, keeping with the 105-page (sic) brief

1 limitation. And I will just --

2 **MS. BROWNLESS:** It's a 150-page brief.

3 **COMMISSIONER EDGAR:** Did I not say that?

4 Thank you.

5 **MS. BROWNLESS:** You said 105.

6 **COMMISSIONER EDGAR:** Oh, I meant 150. I'm
7 sorry. Thank you for the correction. 150. But I will,
8 of course, share the time-honored phrase "less can be
9 more," and keep that in mind.

10 Okay. I think that covers Section XIII.
11 Anything else on that, Ms. Brownless?

12 **MS. BROWNLESS:** Summaries by witnesses. We
13 would suggest that, both on direct and rebuttal, that be
14 limited to five minutes per witness.

15 **COMMISSIONER EDGAR:** Okay. I think we're on
16 opening statements. Didn't we already do summaries by
17 witnesses?

18 **MS. BROWNLESS:** I don't know. Did we do that
19 already?

20 **COMMISSIONER EDGAR:** We did. Summaries by
21 witnesses, five minutes both on direct and rebuttal.
22 And in keeping with my discussions with staff, I am
23 setting for opening statements 20 minutes for FPL, ten
24 minutes for OPC, and five minutes each for all parties.
25 Consider it done.

1 **MS. BROWNLESS:** Okay.

2 **MR. MOYLE:** Can we ask for seven? And at my
3 peril, you gave me an opening by saying you're in a good
4 mood.

5 **COMMISSIONER EDGAR:** I am. Can't you tell?

6 **MR. MOYLE:** You know, I guess -- you know,
7 it's an important case and a lot of -- there are a lot
8 of -- I know there are a lot of intervenors, but it is a
9 two-week trial and I think --

10 **COMMISSIONER EDGAR:** I know, but we want to
11 get to the witnesses. Five minutes. Thank you.

12 **MR. LAVIA:** Commissioner, there's a typo on
13 the very last line.

14 **COMMISSIONER EDGAR:** Okay.

15 **MR. LAVIA:** The very last line, "There shall
16 should be no or sharing."

17 **MS. BROWNLESS:** Oh, that's an alternative
18 as -- for the Commissioner to decide whether there would
19 be sharing of time or would not be sharing.

20 **MR. LAVIA:** And then there's an extra rulings
21 at the bottom.

22 **COMMISSIONER EDGAR:** No sharing.

23 **MR. LAVIA:** Okay.

24 **COMMISSIONER EDGAR:** Thank you.

25 **MR. LAVIA:** And there's extra reference to

1 rulings at the bottom of the page.

2 **COMMISSIONER EDGAR:** Okay. Thank you.

3 **MR. MOYLE:** And can I go back on the comment
4 about the direct, the summaries?

5 **COMMISSIONER EDGAR:** Yes.

6 **MR. MOYLE:** Can we -- to the extent, and I
7 don't think FPL plans to do it, but to extent that
8 there's a decision to combine rebuttal and direct, can
9 we get notice of that, you know, in advance of it being
10 done?

11 **COMMISSIONER EDGAR:** Mr. Butler.

12 **MR. BUTLER:** We don't intend to do it. I
13 mean, the only way it would come up is if somehow it was
14 a compromise that was agreed during the proceeding for
15 some timesaving reasons. But right now, our intent is
16 to have the -- all of the rebuttal testimony presented
17 separately after the intervenor witnesses.

18 **MR. MOYLE:** Okay. Well, it does come up. You
19 know, sometimes you prepare for -- we need a little
20 notice to prepare.

21 **COMMISSIONER EDGAR:** If it does come up, we
22 will ask that all parties be notified. Absolutely. I
23 think that's very reasonable. And thank you for the
24 corrections.

25 Okay. I think we're at other matters. Are

1 there other matters? Ms. Brownless.

2 Oh, go ahead. We'll let -- we'll start this
3 way and then I'll come back to Ms. Brownless.

4 Mr. Moyle.

5 **MR. MOYLE:** So there's one matter I'd like to
6 bring up and maybe seek a little direction from you and
7 your legal staff with respect to how you would prefer to
8 handle an issue that arises frequently, I think, in
9 administrative proceedings, which is how to handle
10 hearsay. And, you know, in Chapter 120, it's clear that
11 hearsay cannot form -- cannot be the basis for a finding
12 of fact in and of itself. Hearsay can be used to
13 supplement factual matters that have been presented in a
14 non-hearsay fashion. And, you know, I think one way is
15 to object to hearsay, which I think will slow down
16 things and take some time. And another I think is just
17 to recognize that anything that comes in, that the law
18 provides that hearsay cannot be the basis for a finding
19 of fact. So my understanding is that it's been done
20 both ways at the Division of Administrative Hearings and
21 other places, so just looking for guidance on that
22 point.

23 **COMMISSIONER EDGAR:** Ms. Helton.

24 **MS. HELTON:** My recommendation would be that
25 if there's evidence on the stand or testimony on the

1 stand that someone believes that it is hearsay evidence,
2 that the objection should be made then. And then more
3 than likely, if -- it will be admitted into the record
4 or allowed into the record and then the Commission will
5 be on notice that it can't rely on just that notice if
6 it is, in fact, hearsay.

7 **COMMISSIONER EDGAR:** Mr. Moyle, does that give
8 you clarification?

9 **MR. MOYLE:** I think so, so appreciate it.

10 **COMMISSIONER EDGAR:** Okay. Absolutely.

11 Thank you, Ms. Helton.

12 Any other "Other matters"? Okay. We are --
13 we're almost there.

14 We are intending to begin at 9:30 on
15 August 22nd. It is my understanding that as we start
16 off our formal proceedings, that the presiding officer,
17 that our Chairman will lay out a general schedule, you
18 know, kind of addressing time periods and breaks,
19 recognizing that, of course, there will be flexibility
20 built in, depending on how things are going and where a
21 natural break would be.

22 I know that this will be the case, but I do
23 strongly suggest and request that there is an effort by
24 all parties to work together and to really make an
25 effort to reduce the possibility of irrelevant,

1 immaterial, duplicative, unduly repetitious, and
2 friendly cross. I know that it's everybody's desire and
3 intent to run -- or to have this be an effective and
4 efficient proceeding so that we can get through a lot
5 of, a lot of issues, a lot of witnesses in a manner that
6 helps us to arrive at a decision point.

7 And I would also ask that, realizing that
8 we've had -- we've set in some other deadlines to get us
9 from here to there, please continue, as I know you will,
10 to work with one another as parties, but also to work
11 closely with our staff so that everybody can be on
12 notice as much as humanly possible.

13 And when we come to the exhibits, I would ask
14 that identifying sponsors for the staff exhibits, please
15 again work closely with our staff to identify that
16 information.

17 Are there any other comments or questions?

18 Yes, Mr. Moyle.

19 **MR. MOYLE:** And I just -- all I did was say,
20 yes, we support the OPC position. But it's -- I mean,
21 there's a lot of paper in this docket.

22 **COMMISSIONER EDGAR:** Yes.

23 **MR. MOYLE:** And I think, as referenced
24 yesterday at 4:00, a 15-page document went around with
25 here are the list of the exhibits that staff wants to

1 put in. You know, and all of us have to do the prefiled
2 stuff, and so there's exhibits out there. So it's -- as
3 you're trying to get ready for trial, it's a challenge
4 to say, "Well, let me take a break, you know, and go try
5 to find all these proposed exhibits that want to come
6 in." And I think the point was made clear, but I guess
7 I just wanted to underscore it, if the staff wants, you
8 know, stipulated exhibits to come in, it will be very,
9 very helpful if they can provide the exhibits on a disk
10 or in some way so, you know, the parties aren't doing,
11 you know, "Where is Waldo?" trying to find all the, you
12 know, stuff that they want to put in. I mean, that's
13 what we'd do at a hearing. If we don't stipulate,
14 they'd have to say here's the exhibit, here's the
15 authentication, and have to put them in. And we're
16 willing to work with them, but, you know, I don't think
17 it's reasonable to say, "Here's a 15-page document with
18 a bunch of exhibits," without giving us the documents as
19 well. So I just wanted to make that point.

20 **COMMISSIONER EDGAR:** Sure.

21 **MS. BROWNLESS:** Can I --

22 **COMMISSIONER EDGAR:** We truly want to be as
23 efficient as we can for all involved, but absolutely
24 recognizing things take time as well.

25 Yes, Ms. Brownless.

1 **MS. BROWNLESS:** We do -- I would point out a
2 couple of things. First of all, that all of the
3 documents that we've identified that staff wants to put
4 in the record have been provided to every single party,
5 so that's number one, because most of them are discovery
6 responses. But we do usually, and not only usually but
7 do as a matter of course make a CD that includes all the
8 exhibits. But it is very difficult for us to have a
9 final CD prior to the hearing, and usually we provide
10 that on the first day of the hearing. What we can --
11 what I can talk to the staff about is to the extent that
12 they have compiled a CD to date, we can try to provide
13 that, but there may be subsequent additions to that. So
14 with that caveat, I just want to say we'll look into
15 trying to do that.

16 **COMMISSIONER EDGAR:** Okay. I think we all
17 want the same thing, a smooth process, timely, timely,
18 effective, efficient, but with the time that is needed
19 to make sure that everything is done correctly.

20 Okay. I think we're about there. Any other
21 items, matters, comments before we close?

22 All right. Thank you all for your patience.
23 Thank you for working together. Thank you for working
24 closely with our staff. And I wish you all a great
25 weekend, and we will look forward to hearing. We're

1 adjourned.

2 (Proceeding adjourned at 12:58 p.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 15th day of August, 2016.

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