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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20170009-EI
NUCLEAR COST RECOVERY CLAUSE.

_____ /

PROCEEDINGS: PREHEARING CONFERENCE
COMMISSIONER
PARTICIPATING: COMMISSIONER RONALD A. BRISÉ
PREHEARING OFFICER
DATE: Tuesday, August 2, 2017
TIME: Commenced at 1:30 p.m.
Concluded at 2:14 p.m.
PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida
REPORTED BY: ANDREA KOMARIDIS
Court Reporter

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

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4 Counsel, c/o the Florida Legislature, 111 West Madison
5 Street, Room 812, Tallahassee, Florida 32399-1400,
6 appearing on behalf of the Citizens of the State of
7 Florida.

8 MATTHEW R. BERNIER, ESQUIRE, Duke Energy
9 Florida, 106 East College Avenue, Suite 800,
10 Tallahassee, Florida 32301-7740, appearing on behalf of
11 Duke Energy Florida, LLC.

12 JESSICA CANO, ESQUIRE, Florida Power & Light
13 Company, 700 Universe Boulevard, Juno Beach, Florida
14 33408-0420, appearing on behalf of Florida Power & Light
15 Company.

16 GEORGE CAVROS, ESQUIRE, 120 East Oakland Park
17 Boulevard, Suite 105, Fort Lauderdale, Florida
18 33334-1106, appearing on behalf of Southern Alliance for
19 Clean Energy.

20 JON C. MOYLE, Jr., ESQUIRE, Moyle Law Firm,
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22 32301-1599, appearing on behalf of Florida Industrial
23 Power User's Group.

24

25

1 APPEARANCES (Cont.):

2 ROBERT SCHEFFEL "SCHEF" WRIGHT, and JOHN T.
3 LAVIA, III, ESQUIRES, Gardner, Bist, Bowden, Bush, Dee,
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5 Tallahassee, Florida 32308, appearing on behalf of
6 Florida Retail Federation.

7 KYESHA MAPP and MARGO DUVAL, ESQUIRES, FPSC
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9 Tallahassee, Florida 32399-0850, appearing on behalf of
10 the Florida Public Service Commission Staff.

11 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE HELTON,
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13 Commission, 2540 Shumard Oak Boulevard, Tallahassee,
14 Florida 32399-0850, Advisor to the Florida Public
15 Service Commission.

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

2 COMMISSIONER BRISÉ: Good afternoon. You'll
3 have to excuse my voice. I have a little bit of a
4 traveler's bronchitis, all the plane -- all the
5 flights, I suppose.

6 So, we'll go ahead and call this pre-hearing
7 conference to order, Docket No. 20170009-EI.
8 Today's the 2nd of August.

9 And Ms. Mapp, would you read the notice,
10 please.

11 MS. MAPP: Good afternoon. By notice issued
12 June 30th, 2017, this time and place was set for
13 pre-hearing on Docket No. 2017009-EI. The purpose
14 of the pre-hearing was set up in the notice.

15 COMMISSIONER BRISÉ: Thank you.

16 At this time, we'll take appearances.

17 MS. CANO: Good afternoon. Jessica Cano on
18 behalf of Florida Power & Light Company.

19 COMMISSIONER BRISÉ: Okay.

20 MR. BERNIER: Good afternoon. Matt Bernier on
21 behalf of Duke Energy Florida.

22 COMMISSIONER BRISÉ: Okay.

23 MR. CAVROS: Good afternoon, Commissioner.
24 George Cavros on behalf of Southern Alliance for
25 Clean Energy.

1 COMMISSIONER BRISÉ: Okay.

2 MR. WRIGHT: Good afternoon, Commissioner.
3 Robert Scheffel Wright on behalf of the Florida
4 Retail Federation. I'd also like to enter an
5 appearance for my partner, John T. Lavia, III.
6 Thank you.

7 COMMISSIONER BRISÉ: Okay. Thank you.

8 MR. REHWINKEL: Good afternoon, Commissioner.
9 Charles J. Rehwinkel and Patricia Christensen with
10 the Office of Public Counsel on behalf of Florida
11 citizens.

12 COMMISSIONER BRISÉ: All right. Thank you.

13 MS. MAPP: Kysha Mapp on behalf of Commission
14 staff. And I'd also like to enter an appearance
15 for Margo Duval.

16 MS. HELTON: And Mary Anne Helton. I'm here
17 as your adviser today. I'd also like to make an
18 appearance for your general counsel, Keith Hetrick.

19 COMMISSIONER BRISÉ: Thank you.

20 So, Ms. Mapp, are there any preliminary
21 matters that we need to address before we get to
22 the draft pre-hearing order?

23 MS. MAPP: Yes, Commissioner. The Duke Energy
24 Florida, LLC, Levy portion of this docket was
25 bifurcated pursuant to Order No. PSC-2017-0260-

1 PCO-EI, and will take place in October of this
2 year. And the only issues related to Duke will be
3 regarding the Crystal River Unit 3 uprate project.

4 And on June 23rd, 2017, the City of Miami
5 filed a notice of intent to use deposition
6 transcript of Steven Scroggs for purposes other
7 than impeachment. Pursuant to Section 5G of the
8 order establishing procedure, all parties were
9 given an opportunity to make a written objection to
10 the use of the transcript; however, no objections
11 were received.

12 Additionally, the City of Miami and PCS
13 Phosphate have been excused from attending this
14 pre-hearing. And PCS Phosphate has also been
15 excused from attending the hearing in this docket.

16 COMMISSIONER BRISÉ: Okay. Thank you.
17 Certainly hope the parties can work together to
18 resolve whatever challenges exist around the Duke
19 Energy piece.

20 Are there any other preliminary matters that
21 parties may have that we need to address at this
22 time? Okay. Seeing none, let's proceed.

23 So, we'll go through the pre-hearing -- the
24 draft pre-hearing order now. I'll identify the
25 sections. And I want the parties to let me know if

1 there are any corrections or changes to be made.

2 We may try to go through this pretty quickly.
3 However, if there are things that you want to
4 address, please feel free to speak up if you desire
5 to make a change or seek a correction that needs to
6 be made.

7 Okay. So, with that, we'll go to Section 1,
8 case background. All right.

9 MS. CANO: Excuse me.

10 COMMISSIONER BRISÉ: Yes.

11 MS. CANO: Prior to Section 1, actually, on
12 Page 1, a minor detail. Mr. Hoffman is not
13 entering an appearance in this docket.

14 COMMISSIONER BRISÉ: Okay.

15 MS. CANO: So, he should be stricken there.

16 COMMISSIONER BRISÉ: Thank you. So, we'll
17 note that for the record.

18 Okay. Anything else? If not, Section 1, case
19 background. Okay.

20 Section 2, conduct of proceedings.

21 Section 3, jurisdiction.

22 Section 4, procedure for handling confidential
23 information. Staff, are there any changes to the
24 procedure for handling confidential information
25 that we need to address?

1 MS. MAPP: There are no changes to procedure,
2 but staff will note that this hearing may involve
3 confidential exhibits and, as a result, parties are
4 advised that, pursuant to this section of the pre-
5 hearing order, it's the parties' responsibility to
6 have copies for the Commission, necessary staff,
7 court reporter, and other parties in red envelopes
8 clearly marked with the nature of the contents and
9 with the confidential information highlighted;
10 except for prefiled testimony and attached
11 exhibits, which staff will provide for
12 Commissioners, staff, and the court reporter.
13 Staff would recommend having 25 copies of each
14 exhibit for hearing.

15 COMMISSIONER BRISÉ: Okay. Are there any
16 questions or comments with respect to that? Okay.

17 Seeing none, we'll move to Section 5, prefiled
18 testimony and exhibits and witnesses.

19 MS. MAPP: Staff will suggest that witness
20 summary of their testimony be no longer than three
21 minutes.

22 COMMISSIONER BRISÉ: Okay. Section 6. Do the
23 parties have any witnesses to be taken out of
24 order?

25 MS. CANO: Commissioner Brisé? Hi there. No

1 witnesses to be taken out of order, but this is the
2 first section that would be affected by the City of
3 Miami's withdrawal, if that were to occur.

4 I won't call out those edits in every section,
5 but I -- I would point out that FPL and the City of
6 Miami have reached a settlement agreement. It's
7 been executed by FPL. It awaits the City of
8 Miami's signature. So, we expect that withdrawal
9 to occur shortly.

10 And when that occurs, FPL's rebuttal testimony
11 would be withdrawn in addition to the City of
12 Miami's. So, that would have the effect of
13 striking some of the witnesses listed in this
14 section.

15 COMMISSIONER BRISÉ: Okay. Thank you.

16 So, at this time, we'll pause and take
17 Mr. Moyle's appearance.

18 MR. MOYLE: Thank you, Mr. -- Mr. Chairman.
19 Jon Moyle on behalf of the Florida Industrial Power
20 User's Group. And I apologize for -- for being
21 tardy.

22 COMMISSIONER BRISÉ: No problem. Just glad
23 that you made it here safely.

24 MR. MOYLE: Yeah. Thanks.

25 COMMISSIONER BRISÉ: Okay. So, do any other

1 parties have witnesses that they would like to be
2 taken out of order or excused? Okay.

3 Staff, are there any witnesses that may be
4 excused?

5 MS. MAPP: Yes. DEF Witness Foster has been
6 excused by the pre-hearing officer and the
7 Commission. And all parties have stipulated to his
8 testimony and exhibits. And staff would like --
9 has asked all parties if they were able to
10 stipulate to the audit testimony of staff
11 witnesses. And staff has not yet heard back from
12 all parties as to an agreement on that.

13 COMMISSIONER BRISÉ: Okay.

14 MR. REHWINKEL: The Public Counsel can
15 stipulate to that.

16 COMMISSIONER BRISÉ: Okay. So, let's -- let's
17 be sure -- to make sure I understand which
18 witnesses -- so, that's Witness Piedra --

19 MR. REHWINKEL: This is in --

20 COMMISSIONER BRISÉ: -- Rich --

21 MR. REHWINKEL: The --

22 COMMISSIONER BRISÉ: -- Lehmann, Mav- --
23 Mavrides --

24 MS. MAPP: Yes.

25 COMMISSIONER BRISÉ: -- and Vinson.

1 MR. REHWINKEL: Commissioner, I was speaking
2 to the Duke piece.

3 COMMISSIONER BRISÉ: Okay.

4 MR. REHWINKEL: I apologize. Mr. Mavrides and
5 Mr. Vinson -- Mav-ri-dees?

6 COMMISSIONER BRISÉ: Okay. So, you can
7 stipulate to Mavrides, Vinson, but not to Piedra,
8 Rich, and Lehmann.

9 MR. REHWINKEL: I don't know yet on that one.
10 I thought we were speaking --

11 COMMISSIONER BRISÉ: -- to the Duke piece.

12 MR. REHWINKEL: Yeah.

13 COMMISSIONER BRISÉ: Gotcha. Okay.

14 MR. BERNIER: Commissioner, Duke Energy will
15 stipulate to -- I'm not going to try saying his
16 name -- to the staff witnesses --

17 (Laughter.)

18 COMMISSIONER BRISÉ: Staff witnesses.

19 MR. BERNIER: -- as well.

20 COMMISSIONER BRISÉ: Okay. Thank you.

21 Yes?

22 MR. CAVROS: And SACE can stipulate to the
23 staff witnesses related to the DEF issues.

24 COMMISSIONER BRISÉ: Okay. Perfect.

25 MR. WRIGHT: And the same for the FRF. Thank

1 you.

2 MR. MOYLE: FIPUG joins with that stipulation
3 as it relates to the DEF staff witnesses.

4 COMMISSIONER BRISÉ: Okay. Thank you.

5 MR. REHWINKEL: Commissioner, I would also
6 note, I believe -- I believe, on information and
7 belief, that PCS Phosphate, who has been excused
8 from the hearing, would agree to that as well, but
9 since they are not appearing, I think that's kind
10 of a moot point.

11 So, I think the staff witnesses, as long as
12 the Commissioners don't have questions, can be
13 excused --

14 COMMISSIONER BRISÉ: Okay.

15 MR. REHWINKEL: -- from the parties'
16 standpoint.

17 COMMISSIONER BRISÉ: Okay.

18 MS. MAPP: And just to be clear, we're
19 speaking of the witnesses' testimony as well as
20 their attached exhibits, correct? Okay.

21 MR. REHWINKEL: That -- that is our
22 stipulation.

23 MS. MAPP: Staff will reach out to all offices
24 of the Commission to determine if they have
25 questions for the DEF witnesses. And we will also

1 send a follow-up e-mail to all parties to determine
2 if they are able to stipulate to the staff audit
3 witnesses regarding the FPL portion of this docket.

4 COMMISSIONER BRISÉ: Okay. Perfect. Thank
5 you.

6 So, now we're going to move to basic
7 positions. Do the parties have any changes to
8 their basic positions?

9 MR. REHWINKEL: Public -- Commissioner, the
10 Public Counsel, in the process of basically being
11 part of facilitating a -- this -- the stipulated
12 posture of the Duke portion of the docket,
13 overlooked providing a basic position on the Duke
14 piece.

15 I don't know that it's entirely necessary, but
16 for completeness of the record, we -- we can
17 support -- I mean, we can submit by the -- whatever
18 deadline you establish a position that will be
19 identical to PCS Phosphate's, except substituting
20 OPC for PCS Phosphate in their basic position on
21 Page 14.

22 COMMISSIONER BRISÉ: Okay. Thank you.

23 Anyone else have anything that they need to
24 address with respect to basic positions?

25 MS. MAPP: Staff would suggest that based --

1 any changes to positions be submitted to staff and
2 all parties no later than the close of business
3 Friday, August 4th.

4 COMMISSIONER BRISÉ: Okay. So, did everyone
5 get that in terms of the August 4th close-of-
6 business in case you need to make any changes to
7 positions -- right?

8 Okay. All right. So, do we need to go
9 through the issues one by one or do we want to just
10 simply address the contested issues?

11 MS. MAPP: I believe we can just take the
12 issues in a group and address the contested ones
13 separately.

14 But first, staff would note that, if a party's
15 position is to adopt the position or agree with the
16 position of another party and that other party's
17 position is no position, that party's position will
18 also be changed to no position.

19 And any party that lists their position as no
20 position at this time, if a revised position is not
21 received by Friday, close of business, it will also
22 be changed to no position.

23 COMMISSIONER BRISÉ: Okay. Everyone is clear
24 on that? Okay. Any issues with that?

25 Seeing none, hearing none -- perfect. All

1 right. So, continuing to issues and -- continuing
2 on with issues and positions, let's go through one
3 through four.

4 MR. MOYLE: So -- so, just to clarify that
5 last statement about if you have a change to your
6 position, close of business Friday, we do have a
7 couple of changes to positions in one through four.
8 And I can avoid burdening the record with those
9 just by sending in a -- you know, a note to staff
10 and say, please, you know, modify FIPUG's position
11 as follows? Or I can tell you what they are,
12 depending on whatever your preference is.

13 COMMISSIONER BRISÉ: Sure. Let me see what
14 staff's preference is with that.

15 MS. MAPP: Staff would like a written copy of
16 the changes. However, if the Commissioner would
17 like to hear them on the record as well, it's your
18 discretion.

19 COMMISSIONER BRISÉ: Okay. With that said,
20 you can just send them in.

21 MR. MOYLE: Okay.

22 COMMISSIONER BRISÉ: Mr. --

23 MR. REHWINKEL: Yes, Commissioner. I
24 apologize. I would like to do something like
25 backing up on that rental car lot where they have

1 the spikes that flatten your tires.

2 COMMISSIONER BRISÉ: Okay.

3 (Laughter.)

4 MR. REHWINKEL: And I don't -- I think I
5 understood -- I would like to go back to the
6 stipulation on the two staff witnesses.

7 COMMISSIONER BRISÉ: Sure.

8 MR. REHWINKEL: And the -- the Duke issues
9 related to Levy are deferred for an October
10 hearing. And it's not our intention to, at this
11 point in time, stipulate to that testimony -- or at
12 least stipulate away our ability to cross-examine
13 those witnesses in that phase of the hearing.

14 And I didn't know if the intention -- I
15 thought the intention was as to this -- this phase
16 that's the subject of the pre-hearing today was all
17 we're doing.

18 COMMISSIONER BRISÉ: Right.

19 MR. REHWINKEL: For the -- for the August
20 hearing phase.

21 COMMISSIONER BRISÉ: Sure.

22 MR. BERNIER: Mr. Commissioner, if -- I would
23 agree that, if the exhibits go in in totality right
24 now for the CR3 portion of the phase and they
25 include Levy discussions, I agree that you have not

1 waived any right to cross-examine, from Duke's
2 perspective. We would have no objection to cross
3 later in the October portion.

4 MS. MAPP: Yes, that was staff's intent. At
5 this stage, it is very difficult to parse out the
6 Levy portions from the CR3 portions. So, we
7 intended to introduce everything into the record at
8 once.

9 COMMISSIONER BRISÉ: Sure.

10 MS. MAPP: However, only the CR3 portion --

11 COMMISSIONER BRISÉ: -- portion --

12 MS. MAPP: -- would be relevant for this phase
13 of the hearing.

14 MR. REHWINKEL: I appreciate that
15 clarification. I think that was everyone's intent.

16 COMMISSIONER BRISÉ: Right.

17 MR. REHWINKEL: But for the record, I wanted
18 to make sure we hadn't given anything away,
19 especially since I sold PCS down the river on that.

20 (Laughter.)

21 MR. REHWINKEL: They -- they were going to be
22 here for that phase of the hearing.

23 MR. BERNIER: And for the record, Mr. Foster's
24 testimony includes Levy information. But same
25 thing.

1 MR. REHWINKEL: Yeah.

2 MR. BERNIER: I have no objection to cross at
3 that time, in October.

4 MR. REHWINKEL: Thank you.

5 MR. BERNIER: Yeah.

6 COMMISSIONER BRISÉ: Thank you for bringing
7 that up so that can be completely clear on the
8 record.

9 All right. So, as for the issues and
10 positions, since we do have that deadline, feel
11 free to send in those changes by the deadline.
12 Just remember that, if they come in after the
13 deadline, the position that you currently have is
14 the one that you keep.

15 All right. So, we've gone through one through
16 four. Let's deal with Issues -- let me see -- 6B
17 through 9 to see if there are any changes. And
18 we'll come back to the contested issues.

19 MS. MAPP: Staff would note for the record
20 that the City of Miami, for Issues 9 and 10,
21 basically state that they cannot take a position on
22 those two issues. So, if a revised position
23 statement is not provided by the deadline of
24 Friday, then these statements will be changed to no
25 position.

1 COMMISSIONER BRISÉ: Okay. Thank you.

2 MR. CAVROS: Commissioner, I have a question
3 for staff. If the City of Miami withdraws as a --
4 as a party, what's the status of their issues at
5 that point?

6 MS. MAPP: At this point, the only -- there
7 are only two contested issues. And the other
8 issues proffered by Miami are included in the issue
9 list and all other parties have -- had a position
10 on them. So, they would remain, unless all other
11 parties choose to withdraw their position on those
12 issues.

13 COMMISSIONER BRISÉ: Okay. So, in other words
14 those issues remain live.

15 MS. MAPP: Yes.

16 COMMISSIONER BRISÉ: Okay. Thank you.

17 Yes, Ms. Christensen.

18 MS. CHRISTENSEN: On Issue 9, just for clarity
19 of our position, we would change it to, "The costs
20 are unknown." And we will provide that in writing
21 by close of business Friday.

22 COMMISSIONER BRISÉ: Okay. Thank you.

23 So, does that cover everything from 6B to 9?

24 MR. WRIGHT: Commissioner, we will probably
25 provide an updated position on Issue 9 as well. We

1 can do that by Friday at 5:00?

2 COMMISSIONER BRISÉ: Sure.

3 MR. WRIGHT: Great. Thank you.

4 COMMISSIONER BRISÉ: Okay. Issue 10.

5 MR. CAVROS: Commissioner, I'll -- SACE will
6 probably provide an updated -- updated position to
7 Issue 10, given that the nuclear reactor in South
8 Carolina has now been canceled between the time I
9 wrote this and today.

10 COMMISSIONER BRISÉ: Okay.

11 MS. CHRISTENSEN: And as well, on Issue 10, we
12 would -- for clarity of the record, we would just
13 state that the date of planned commercial operation
14 is unknown.

15 COMMISSIONER BRISÉ: Perfect.

16 Okay. Anything else on those issues? Okay.
17 If not, we'll go back to Issue 5A at this time.

18 MS. MAPP: Commissioner, staff would recommend
19 taking 5A and 5B up at the same time --

20 COMMISSIONER BRISÉ: Sure.

21 MS. MAPP: -- as these two issues are
22 essentially the same with the primary --

23 COMMISSIONER BRISÉ: The difference --

24 MS. MAPP: -- difference -- yes.

25 COMMISSIONER BRISÉ: Perfect. Thank you.

1 All right. So, we'll take up Issues 5A and B
2 together. And you have the floor.

3 MS. MAPP: Yes, I believe OPC would like to
4 have a moment to speak on 5B.

5 COMMISSIONER BRISÉ: Sure.

6 MS. CHRISTENSEN: Yes, briefly, the issue here
7 is whether or not the -- we should reference the
8 statute in the rule in this issue. And I would
9 submit, Commissioner, that there would be no reason
10 for a finding of reasonableness unless FPL is
11 seeking to recover these costs at some point in the
12 future under the NCRC clause. Therefore, reference
13 to the statute and the rules are relevant to the
14 Commission's determination of this rule.

15 Otherwise, if they were to do -- if they were
16 to seek this under their own dollar and potentially
17 put it in cost later on when the plant went into
18 service, the Commission wouldn't be addressing this
19 issue now.

20 So, it is relevant and it is pertinent. And I
21 think, for clarity of the record, the rule and the
22 statute needs to be referenced. In fact, FPL has
23 asked to have these costs not only to find that
24 they are reasonable, but they're asking to be able
25 to defer these costs for subsequent and later

1 recovery through the NCRC clause. And I think
2 we've taken our position that, you know, in future
3 and other issues, that the statute and the rule has
4 a lot to say about whether or not that can be done.

5 So, I don't think you can divorce the
6 reasonableness issue from the docket and the
7 statute and the rules that they're attempting to
8 proceed under.

9 And while we certainly will address those
10 arguments under either wording, I think, for
11 clarity and for clarity of the record, and if there
12 there's an appeal, that should be referenced in
13 there. And I really don't see any prejudice to the
14 parties, and particularly FPL, from referencing the
15 rules under which they're going to be seeking
16 recovery.

17 Thank you.

18 COMMISSIONER BRISÉ: Okay. Anyone else wish
19 to address Issue 5B?

20 MR. WRIGHT: Commissioner, just to say that we
21 agree with and support the Public Counsel on this.

22 COMMISSIONER BRISÉ: Okay.

23 MR. CAVROS: And Commissioner, SACE also
24 agrees with and supports Public Counsel on this as
25 well.

1 COMMISSIONER BRISÉ: Okay.

2 MR. MOYLE: As does FIPUG. And we would join
3 in suggesting that 5B is the -- you know, the
4 appropriate issue for -- for consideration. You
5 know, you all, as -- as fact finders and applying
6 law, you know, find facts and apply law.

7 And this, without the reference to the statute
8 and the rule, kind of -- kind of has you making
9 a -- making a reasonable determination without a
10 polestar or a couple of polestars to look to with
11 respect to the statute and the rule -- the statute
12 that the Legislature put in place and the rule that
13 the Commission adopted to set forth policy.

14 So, we -- we think it -- you know, it's
15 helpful to tie it to the statute and the rule and
16 would urge that that be the position that is
17 traveled under as we go forward.

18 COMMISSIONER BRISÉ: Okay. Anybody else?

19 Sure.

20 MS. CANO: Yes, FPL would like to respond.

21 Thank you.

22 COMMISSIONER BRISÉ: Sure.

23 MS. CANO: FPL supports staff's framing of the
24 issue because it accurately presents the relief
25 that FPL has sought in this -- in this docket,

1 which is for a reasonableness finding on a
2 particular decision made in 2017; nothing more,
3 nothing less.

4 Similar issues examining the reasonableness of
5 a company's decision or actions has been considered
6 in the Nuclear Cost Recovery docket in the past.
7 There are at least six other such examples where
8 the reasonableness of a decision was asked to be
9 examined by the Commission, typically by
10 intervenors. And in none of those prior instances
11 was this additional language that OPC is seeking to
12 add now tacked on to the end of that issue.

13 With respect to the prejudice or lack thereof
14 that OPC claims, the additional language is very
15 limiting in its nature. It limits the framework
16 that's available to the Commission to consider the
17 issue. It's potentially limiting with respect to
18 the types of arguments that a party can make in
19 defending its position on the issue.

20 On the other hand, staff's framing avoids
21 those problems. It's fair to all parties because
22 it protects all parties' interests and ability to
23 argue whatever it is it wishes to argue under that
24 issue.

25 If OPC or another party would like to argue

1 that a particular section of the statute or rule
2 comes into play here, it may do so. And similarly,
3 if a different party would like to argue that the
4 Commission's authority otherwise supports the
5 finding, it may do so.

6 So, all parties' interests are properly
7 protected, and all arguments can be made under
8 staff's framing. That's not the case under OPC's
9 framing.

10 So, for all those reasons, it's -- it's an
11 inappropriately-limiting way to revise the rule --
12 or I'm sorry -- the issue. It's not necessary. It
13 hasn't been necessary in the past. And we would
14 urge that those edits be stricken. Thank you.

15 COMMISSIONER BRISÉ: All right. Thank you.
16 So, I'll take all of this under advisement.

17 MR. REHWINKEL: Commissioner, I -- I
18 anticipated that you might take this under
19 advisement. And I would just feel compelled to
20 advise you --

21 (Laughter.)

22 MR. REHWINKEL: -- that this -- this issue in
23 this case seems headed -- headed to a -- a tribunal
24 beyond this Commission. We will feel compelled to
25 bring to you -- your attention and the Court's

1 attention a potentially-developing issue in another
2 docket that FPL is making the exact opposite
3 argument on. And then -- and I don't know which
4 Commissioner will be presented with this, but it
5 has to be one way or the other.

6 And this is the St. Johns River Power Park
7 case. There is an issue that -- that we are on
8 opposite sides of the fence on. So, this needs to
9 be resolved under advisement. And your staff will
10 have access to both sets of information there for a
11 consistent way to be handled. I just felt the need
12 to advise you of that.

13 Thank you.

14 COMMISSIONER BRISÉ: Thank you for that.

15 Okay. So, as for Issue 5B, which is also
16 related to 5A, I will take that into advisement.

17 Let's move on to Issue 6A.

18 MS. MAPP: Yes, this is an issue that was
19 proffered by SACE. And I believe they also would
20 like a moment to speak on it.

21 COMMISSIONER BRISÉ: Sure. Go right ahead,
22 Mr. Cavros.

23 MR. CAVROS: Thank you, Commissioner, for the
24 opportunity to address you.

25 This issue should look very familiar to you.

1 And -- and let me read it in for the record:
2 Should the Commission approve what FPL has
3 submitted as its 2017 annual detailed analysis of
4 the long-term feasibility of completing the Turkey
5 Point 6 and 7 project, as provided for rule in
6 25-6.0423 Florida Administrative Code?

7 This -- this issue references directly the
8 Commission's rule. And the rule I'm referencing is
9 the rule that was promulgated by this Commission
10 after it got clear guidance from the Legislature in
11 2006 and then again in 2013 on how the Commission
12 must address costs associated with the new nuclear
13 construction.

14 And you know -- and -- and let me read that --
15 that provision of the rule to you. It -- again,
16 Rule 25-6.0423 Subsection (6)(c)(5), which states,
17 in part: Along with the filings required by this
18 paragraph, each year, a utility shall submit for
19 Commission review and approval, a detailed analysis
20 of the long-term feasibility of completing the
21 power plant.

22 This is -- this is not a permissive option for
23 the utility. It's -- it's a required filing. It's
24 a threshold issue. It's a threshold question that
25 must be answered if the Commission is going to come

1 to a fact-based decision on reasonableness, which
2 is what FP&L is asking in this case.

3 So, you know, this issue is -- is not subsumed
4 appropriately by any other issue. And you know,
5 there has been pushback from FP&L. And you may
6 hear their counsel say that it makes certain
7 presumptions.

8 The only presumptions this issue makes is that
9 FPL is required to comply with the Commission's
10 rules. And the second presumption is that the
11 Commission will apply its rules. As such, you
12 know, it deserves to be in there, and I ask that it
13 be included.

14 COMMISSIONER BRISÉ: Any other parties wish to
15 address this issue?

16 MR. REHWINKEL: Yes, Public Counsel --

17 COMMISSIONER BRISÉ: Sure.

18 MR. REHWINKEL: -- does. We support SACE.
19 And we -- we also believe that the authorization to
20 defer under the statute is the authorization to
21 recover costs because, once you authorize this
22 deferral by the statutory language, you're
23 authorizing the accrual of carrying costs that
24 inure to the benefit of the shareholders of FPL
25 because there's a component of equity return in

1 that -- carrying costs that inure to the benefit of
2 the shareholders.

3 Mr. Cavros is correct, we believe, that --
4 that a predicate to the continued accumulation of
5 costs that you are legally obligated once they are
6 authorized to allow recovery for, in the absence a
7 filing of a feasibility study, is contrary to the
8 intent of the law, which is intended to not
9 accumulate advance -- not accumulate carrying costs
10 for inclusion in rate base, but to write them off
11 in an orderly manner before the construction occurs
12 and before the balances go into rate base. And it
13 is contrary to your rule.

14 So, we -- we strongly support SACE's position
15 because we think what FPL has submitted is -- is
16 nothing. And that is, by itself, important and a
17 relevant fact.

18 Thank you.

19 COMMISSIONER BRISÉ: Okay. Thank you.

20 MR. WRIGHT: We support SACE and the Public
21 Counsel's arguments on the inclusion of this issue.

22 Thank you.

23 COMMISSIONER BRISÉ: Okay. Thank you.

24 MR. MOYLE: FIPUG, likewise, supports SACE and
25 would adopt SACE's position and proposed issue as

1 its own, as if fully set forth herein.

2 COMMISSIONER BRISÉ: Okay. Thank you.

3 Ms. Cano?

4 MS. CANO: Yes, thank you.

5 Mr. Cavros quickly wandered in the substance
6 of some of the legal arguments he intends to make
7 in this case, as did OPC. So, I won't be
8 responding to everything that's just been said.

9 I will respond to one comment, which is, if
10 SACE or OPC is looking for FPL to state that it has
11 not filed a feasibility analysis, we've already
12 stated that. It's in the prefiled testimony. So,
13 that really isn't something to be gained by
14 including this issue.

15 With respect to the framing of the issue,
16 which is what we're here to discuss, SACE's
17 proposed issue assumes this counterfactual scenario
18 in which FPL has filed a long-term feasibility
19 analysis for the Commission to review and approve.
20 That's not the state of facts as they exist today.
21 And so, assuming that that has occurred is just not
22 workable from -- from an issue perspective.

23 It also assumes within the issue that the
24 feasibility provision of Rule 25-6.0423 applies,
25 despite the fact that FPL has not sought cost

1 recovery. That, itself, is a legal conclusion that
2 is subject to debate. And so, including that legal
3 conclusion in the issue again makes it unworkable.

4 Lastly, Issue 6A is subsumed. It's subsumed
5 by Issue 6B, which also addresses the feasibility-
6 analysis filing requirement. So, everything that
7 SACE and others wish to argue can be argued in
8 response to that issue.

9 Thank you.

10 COMMISSIONER BRISÉ: Thank you. I will take
11 this issue under advisement as well. And I will
12 render a ruling on both of the contested issues.
13 Okay?

14 All right. Any other contested issues? Okay.
15 And I think we have stip- -- some sort of
16 stipulations on Issues 11 through 15. And we'll
17 address that shortly.

18 So, exhibit lists.

19 MS. MAPP: Staff has prepared a draft
20 comprehensive exhibit list that lists all prefiled
21 exhibits and exhibits that staff would like to
22 include in the record. Staff will circulate this
23 list to all parties and check prior to hearing if
24 the parties are able to stipulate to the list,
25 itself, and the exhibits that staff would like

1 entered into the record.

2 COMMISSIONER BRISÉ: Okay. Is that clear?

3 Perfect. Thank you.

4 Section 10, proposed stipulations.

5 MS. MAPP: Yes, there are proposed
6 stipulations on Issues 11 through 15 as reflected
7 herein.

8 COMMISSIONER BRISÉ: And these are Type 2
9 stipulations?

10 MS. MAPP: Yes, they are Type 2 stipulations.

11 COMMISSIONER BRISÉ: Okay. And so, I think we
12 have agreement on those issues as Type 2
13 stipulations.

14 All right. Pending motions?

15 MS. MAPP: Pending motions are listed within
16 the section of the pre-hearing order.

17 MS. CANO: Commissioner Brisé.

18 COMMISSIONER BRISÉ: Yes.

19 MS. CANO: I said I wouldn't point it out
20 every time -- and I still won't -- but this is one
21 instance where I would like to point out that,
22 assuming the City of Miami withdraws and returns
23 the confidential documents provided to the City,
24 then FPL would, likewise, withdraw this motion for
25 protective order.

1 COMMISSIONER BRISÉ: Okay. Thank you.

2 Okay. Pending confidentiality motions.

3 MS. MAPP: All pending motions are -- sorry --
4 pending confidentiality matters are listed within
5 this section; however, staff would note that
6 several of these orders have been recently issued,
7 and this section will be revised prior to issuing
8 this order.

9 COMMISSIONER BRISÉ: All right. Thank you.
10 Anything from the parties regarding the
11 confidentiality motions?

12 Okay. Post-hearing procedures.

13 MS. MAPP: The parties have indicated that
14 they would like to file post-hearing briefs on the
15 issues in this docket. And pursuant to
16 Rule 28-106.215 Florida Administrative Code, a
17 party's proposed findings of facts and conclusion
18 of law, if any, and statements of issues and
19 positions and brief shall not total more than 40
20 pages, unless otherwise authorized. Therefore,
21 staff will recommend that post-hearing briefs
22 limited to 40 pages.

23 COMMISSIONER BRISÉ: Okay. Parties in
24 agreement with that?

25 Ms. Christensen?

1 MS. CHRISTENSEN: Yes, I think we can address
2 the issues within the 40-page limit, but I did want
3 to address, when the time came, the 50-word offset
4 for the position statement.

5 COMMISSIONER BRISÉ: Sure. So, is everyone
6 comfortable with the 40 pages?

7 MR. MOYLE: Yes.

8 COMMISSIONER BRISÉ: Okay.

9 MR. WRIGHT: (Indicating.)

10 COMMISSIONER BRISÉ: Okay. Seems like we are.
11 All right. So, I think we're moving to the
12 next section, staff, with the 50 words.

13 MS. MAPP: Yes, it was staff's recommendation
14 to limit each position statement to 50 words,
15 offset with an asterisk.

16 COMMISSIONER BRISÉ: All right. Thank you.
17 So, Ms. Christensen?

18 MS. CHRISTENSEN: I -- I would ask that at
19 least 75 words, which is not significantly longer,
20 but it will help with certain ones of the issues
21 that are -- reference rules and statutes. I know
22 there's a few of the positions that we have in here
23 that are a little bit longer than the 50 words.
24 And if we can keep it shorter, we'll endeavor to do
25 it, but 75 words, I think, would be helpful.

1 COMMISSIONER BRISÉ: Okay.

2 MS. CANO: Commissioner Brisé?

3 COMMISSIONER BRISÉ: Yes.

4 MS. CANO: I will see OPC's 75 and ask that it
5 be raised to 100, which is the word limit that was
6 provided for in 2015.

7 MS. CHRISTENSEN: And I would have no
8 objection to the hundred, obviously.

9 (Laughter.)

10 MR. WRIGHT: We'll -- we'll support that
11 raise.

12 COMMISSIONER BRISÉ: Staff, let me hear from
13 you.

14 MS. MAPP: Staff has no position on this. We
15 would defer to the Commissioner's discretion.

16 COMMISSIONER BRISÉ: Okay.

17 MR. REHWINKEL: Commissioner Brisé, just -- in
18 case it's not clear, we do not intend to file
19 briefing, do any briefing on the Duke portion of
20 this docket. I don't know if that's clear in the
21 record, but I think we're waiving briefs there.

22 COMMISSIONER BRISÉ: Okay.

23 MR. BERNIER: We completely agree with that.
24 I don't plan on filing a brief either.

25 COMMISSIONER BRISÉ: Okay. All right. So,

1 you know what, OPC? I think we'll go with your 75
2 words. And I think we'll make that work. Everyone
3 will have to make that work.

4 And so, when are the draft -- the briefs due?

5 MS. MAPP: Briefs are due August 31st, 2017.

6 COMMISSIONER BRISÉ: All right. Thank you.

7 Moving on to rulings.

8 MS. MAPP: Yes, staff would suggest that
9 opening statements not exceed five minutes per
10 party.

11 COMMISSIONER BRISÉ: Perfect. That works for
12 me.

13 MS. CANO: Commissioner Brisé?

14 COMMISSIONER BRISÉ: Yes.

15 MS. CANO: Thank you. In prior years,
16 specifically 2015, FPL and Duke -- although this
17 may not apply to Duke this year -- each received
18 ten minutes, and then each intervenor received five
19 minutes, given the total time on each side of the
20 issue. So, FPL would ask that that be considered
21 this year as well.

22 COMMISSIONER BRISÉ: Let me hear from the
23 parties.

24 MR. WRIGHT: No objection from the Retail
25 Federation. That's fine.

1 MR. REHWINKEL: Yeah, the -- the Public
2 Counsel, again, doesn't intend to make any opening
3 statements with respect to Duke. So, there will be
4 more time for others that --

5 MS. CHRISTENSEN: And we have no objection
6 regarding FPL. I think five minutes would be
7 sufficient to cover FPL issues.

8 COMMISSIONER BRISÉ: No objections to ten
9 minutes -- they're asking for ten.

10 MS. CHRISTENSEN: I'm sorry. Yes, and no
11 objection to the ten minutes for FPL.

12 COMMISSIONER BRISÉ: Okay. So, we'll go to
13 ten minutes. All right.

14 Okay. Any other matters?

15 MR. MOYLE: I -- I have --

16 COMMISSIONER BRISÉ: Oh, I'm sorry.

17 MR. MOYLE: I have two questions that I was --

18 COMMISSIONER BRISÉ: Sure.

19 MR. MOYLE: -- hoping -- hoping to ask maybe
20 and get some clarification on.

21 One relates to the schedule of the hearing.
22 You know, now that the Duke matter has been sort of
23 deferred and is going to be taken up later, I'm
24 just curious with respect to the timing from the
25 parties. Is this looking like a one-day hearing?

1 A two-day hearing?

2 FPL, it's your case. I was hoping you might
3 be able to shed some insight on that.

4 MS. CANO: May I respond?

5 COMMISSIONER BRISÉ: Go right ahead.

6 MS. CANO: Thank you.

7 Some of that depends on whether the City of
8 Miami withdraws, as we expect them to do. In which
9 case, I can't picture it going too long, but
10 that -- that will help us ascertain the expected
11 length.

12 MR. MOYLE: Okay. And you think that will
13 happen within the next week or so; that's either
14 going to happen or not happen?

15 MS. CANO: I certainly hope so, yes.

16 MR. MOYLE: And then I had just one other
17 matter --

18 COMMISSIONER BRISÉ: Sure.

19 MR. MOYLE: -- if you will indulge me.

20 COMMISSIONER BRISÉ: Sure. Go right ahead.

21 MR. MOYLE: So, we -- we haven't jumped in on
22 a lot of these issues, other than kind of formally
23 adopting positions.

24 I just want to make sure that FPL is clear and
25 understands that -- and it's -- it's set forth in

1 the positions -- I'm not sure that there is an
2 issue that is expressly drawn to it. And I have
3 one if FPL disagrees that they're not on notice
4 that this is an issue.

5 But I think a lot of parties are going to say,
6 we believe that there's a rule on -- in place with
7 respect to filing a feasibility study that, if you
8 don't file a feasibility study or you file one that
9 doesn't meet the rule requirements or is deficient,
10 that you shouldn't get the money.

11 And you know, in response to this other issue
12 that Mr. Cavros raised, you said parties are free
13 to make their legal arguments. And I just wanted
14 to confirm that you're aware that that's the
15 position that some of us are taking, and understand
16 it, and would be free to sort it as appropriate in
17 the issues as framed.

18 COMMISSIONER BRISÉ: Ms. Cano?

19 MS. CANO: I certainly understand that that is
20 the position that certain parties are taking.

21 MR. MOYLE: Okay. Thank -- thank you.

22 Thank you, Mr. Chairman. Otherwise, I had a
23 very-detailed issue that I was going to suggest be
24 put in there. But I think, you know, given the
25 practice of subsuming and FPL's express recognition

1 that they're on notice that that's something that's
2 front and center, I think I'm good.

3 COMMISSIONER BRISÉ: Okay. Thank you.

4 Any other matters? Staff?

5 MS. MAPP: Yes, Commissioner. Staff would
6 just like to confirm for the record that all
7 parties, as relates to the Duke CR3 portion, are
8 waiving both opening statements and post-hearing
9 briefs.

10 MR. REHWINKEL: Public Counsel is, yes.

11 MR. BERNIER: Duke is, yes.

12 MR. MOYLE: FIPUG is.

13 MR. WRIGHT: As is the FRF. Thank you.

14 MR. CAVROS: Yes for SACE.

15 COMMISSIONER BRISÉ: Okay.

16 MS. MAPP: Okay. Staff would just like to
17 remind all parties that we would request 25 copies
18 of all exhibits that will be distributed during the
19 hearing to be prepared to -- and collated prior to
20 each witness taking the stand for cross-examination
21 purposes.

22 And staff would also like to remind all
23 parties that we are -- we are now 75 words for
24 position statements in the post-hearing briefs, and
25 those are limited to 40 pages.

1 And all parties are given five minutes for
2 opening statements with the exception of FPL, who
3 is given ten minutes. And I believe that are --
4 that's all the matters that staff had to address.

5 COMMISSIONER BRISÉ: Okay. So, seeing no
6 additional matters, this concludes the pre-hearing.
7 And the pre-hearing conference -- let me give you a
8 last chance. Yes.

9 MR. REHWINKEL: Commissioner, I just wanted to
10 thank you for allowing us to bifurcate the Duke
11 piece --

12 COMMISSIONER BRISÉ: Sure.

13 MR. REHWINKEL: -- and defer it, and let us
14 see what goes on in the federal court proceeding
15 and make the most of it. So, thank you very much.

16 COMMISSIONER BRISÉ: Thank you.

17 With that, if there are no further comments,
18 we stand adjourned.

19 (Whereupon, the proceedings were concluded at
20 2:13 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, ANDREA KOMARIDIS, Court Reporter, do hereby
certify that the foregoing proceeding was heard at the
time and place herein stated.

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

I FURTHER CERTIFY that I am not a relative,
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attorney or counsel connected with the action, nor am I
financially interested in the action.

DATED THIS 7th day of August, 2017.



ANDREA KOMARIDIS
NOTARY PUBLIC
COMMISSION #GG060963
EXPIRES February 9, 2021