

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20180002-EG

ENERGY CONSERVATION COST
RECOVERY CLAUSE.

_____ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS
PARTICIPATING: COMMISSIONER GARY F. CLARK
PREHEARING OFFICER

DATE: Tuesday, October 23, 2018

TIME: Commenced: 9:30 A.M.
Concluded: 9:43 A.M.

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

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

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

1 APPEARANCES:

2 MARIA MONCADA and JOEL BAKER, ESQUIRES, 700
3 Universe Boulevard, Juno Beach, Florida 33408-0420,
4 appearing on behalf of Florida Power & Light Company.

5 MATTHEW R. BERNIER, ESQUIRE, 106 East College
6 Avenue, Suite 800, Tallahassee, Florida 32301-7740;
7 DIANNE M. TRIPLETT, ESQUIRE, 299 First Avenue North, St.
8 Petersburg, Florida 33701, appearing on behalf of Duke
9 Energy Florida, LLC.

10 RUSSELL A. BADDERS and STEVEN R. GRIFFIN,
11 ESQUIRES, Beggs & Lane, P.O. Box 12950, Pensacola,
12 Florida 32591-2950; JEFFREY A. STONE, ESQUIRE, One
13 Energy Place, Pensacola, Florida 32320, appearing on
14 behalf of Gulf Power Company.

15 JAMES D. BEASLEY and J. JEFFRY WAHLEN,
16 ESQUIRES, Ausley & McMullen, Post Office Box 391,
17 Tallahassee, Florida 32302, appearing on behalf of Tampa
18 Electric Company.

19 BETH KEATING, ESQUIRE, Gunster Law Firm, 215
20 South Monroe Street, Suite 601, Tallahassee, Florida
21 32301-1839, appearing on behalf of Florida Public
22 Utilities Company.

23 JON C. MOYLE, JR., and KAREN PUTNAL, ESQUIRES,
24 Moyle Law Firm, P.A, 118 North Gadsden Street,
25 Tallahassee, Florida 32301, appearing on behalf of

1 APPEARANCES (CONTINUED):

2 Florida Industrial Power Users Group.

3 JAMES W. BREW, OWEN J. KOPON AND LAURA A.

4 WYNN, ESQUIRES, Stone Matheis Xenopoulos & Brew PC, 1025

5 Thomas Jefferson Street, NW, Eight Floor, West Tower,

6 Washington, DC 20007, appearing on behalf of White

7 Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate

8 - White Springs.

9 J.R. KELLY, PUBLIC COUNSEL; CHARLES REHWINKEL,

10 DEPUTY PUBLIC COUNSEL; and PATRICIA A. CHRISTENSEN,

11 ESQUIRE, Office of Public Counsel, c/o the Florida

12 Legislature, 111 W. Madison Street, Room 812,

13 Tallahassee, Florida 32399-1400, appearing on behalf of

14 the Citizens of the State of Florida.

15 MARGO A. DuVAL, ESQUIRE, FPSC General

16 Counsel's Office, 2540 Shumard Oak Boulevard,

17 Tallahassee, Florida 32399-0850, appearing on behalf of

18 the Florida Public Service Commission Staff.

19 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE

20 HELTON, DEPUTY GENERAL COUNSEL; Florida Public Service

21 Commission, 2540 Shumard Oak Boulevard, Tallahassee,

22 Florida 32399-0850, Advisor to the Florida Public

23 Service Commission.

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P R O C E E D I N G S

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2 COMMISSIONER CLARK: Good morning. Welcome,
3 everyone this morning. Good to see each of you.
4 We will go ahead and call this prehearing to order.

5 I will ask staff, if they would, to read the
6 notice, please.

7 MS. DUVAL: Good morning. By notice issued
8 October 9th, 2018, this time and place was set for
9 a prehearing in Docket Nos. 20180001-EI,
10 20180002-EG, 20180003-GU, 20180004-GU and 2017 --
11 excuse me, 20180007-EI. The purpose of the
12 prehearing is set out in the notice.

13 COMMISSIONER CLARK: All right. We will take
14 appearances, and I guess for the sake of
15 convenience, we will just go ahead and take
16 appearances for all of the dockets while we are
17 here this morning if that's okay with everybody.

18 Who wants to start? Start on this end.

19 MS. MONCADA: Good morning. Maria Moncada for
20 FPL. Also would like to enter appearances for Joel
21 Baker in the 01, 02 and 07 docket. I am appearing
22 in the 01, 02 and 07 docket. And also in the 01
23 docket, I would like to enter an appearance for
24 Will Cox.

25 COMMISSIONER CLARK: Okay. Thank you.

1 MR. BERNIER: Good morning, Commissioner.
2 Matt Bernier for Duke Energy appearing in the 01,
3 02 and 07 dockets. And I would also like to enter
4 an appearance for Dianne Triplett in those same
5 dockets.

6 COMMISSIONER CLARK: Okay.

7 MR. BADDERS: Good morning, Commissioner.
8 Russell Badders on behalf of Gulf Power. I would
9 like to enter an appearance for myself, Steven
10 Griffin with the law firm of Beggs & Lane, and
11 Jeffery Stone with Gulf Power in the 01, 02 and 07
12 dockets.

13 COMMISSIONER CLARK: Thank you.

14 MR. BEASLEY: Good morning, Commissioner. Jim
15 Beasley appearing with Jeff Wahlen on behalf of
16 Tampa Electric Company in the 01, 02 and 07
17 dockets. Also would like to enter an appearance on
18 behalf of myself and Andrew Brown and Ansley Watson
19 both of the law firm of Macfarlane, Ferguson &
20 McMullen on behalf of Peoples Gas System in the 03
21 PGA docket and the 04 natural gas cost recovery
22 docket.

23 COMMISSIONER CLARK: Thank you, Mr. Beasley.

24 MS. SPARKMAN: Good morning. Paula Sparkman
25 on behalf of Messer Caparello representing Sebring

1 Gas in the 04 docket.

2 MS. KEATING: Good morning, Commissioner.
3 Beth Keating with the Gunster law firm here today
4 on behalf of FPU in the 01 and 02 dockets.
5 Appearing also on behalf of Florida City Gas and
6 FPU in the 03 and 04 dockets, as well as FPU and
7 Chesapeake in the 04 dockets.

8 And I would also like to enter an appearance
9 for Greg Munson, also of the Gunster law firm, on
10 behalf of Florida City Gas in the 03 and 04 dockets
11 and I, and Chris Wright also on behalf of Florida
12 City Gas in the 03 and 04 dockets.

13 COMMISSIONER CLARK: Okay.

14 MR. BREW: Good morning, Commissioner. I am
15 James Brew. I'm here for White Springs
16 Agricultural Chemicals, PCS Phosphate in the 01, 02
17 and 07 dockets. And I would like to make an
18 appearance for Laura Wynn as well.

19 COMMISSIONER CLARK: Thank you.

20 MR. MOYLE: Good morning. Jon Moyle with the
21 Moyle Law Firm on behalf of the Florida Industrial
22 Power Users Group. I would like to also enter an
23 appearance for Karen Putnal who is with our firm.
24 And we are a hearing in the 01, 02 and 07 dockets.

25 COMMISSIONER CLARK: Thank you.

1 MR. CAVROS: Good morning, Commissioner.

2 George Cavros on behalf of Southern Alliance for
3 Clean Energy. I am here for the 07 docket.

4 Thank you.

5 MS. CHRISTENSEN: Good morning, Commissioner.

6 Patty Christensen with the Office of Public
7 Counsel. I would also like to put an appearance in
8 for Charles Rehwinkel and J.R. Kelly, the Public
9 Counsel, in the 01, 02, 03, 04 and 07 dockets.

10 Thank you.

11 COMMISSIONER CLARK: Thank you.

12 MR. WRIGHT: Commissioner.

13 COMMISSIONER CLARK: Oh, I am sorry.

14 MR. WRIGHT: I snuck in late. Thank you.

15 Robert Scheffel Wright of the Gardner law firm
16 on behalf of the Florida Retail Federation. I
17 would also like to enter an appearance for my law
18 partner, John T. LaVia, III, same law firm, for the
19 Retail Federation in the 01 docket, the fuel
20 docket.

21 Thank you, sir.

22 COMMISSIONER CLARK: Thank you.

23 All right, Margo.

24 MS. DUVAL: Margo DuVal on behalf of staff in
25 the 02 docket, and also Rachel Dziechciarz in the

1 04 docket, Kurt Schrader in the 03 docket, Charles
2 Murphy and Ashley Weisenfeld in the 07 docket, and
3 Suzanne Johana Nieves in the 01 docket.

4 MS. HELTON: Mary Anne Helton. I am here as
5 your advisor for all the dockets. I would also
6 like to enter an appearance for your General
7 Counsel, Keith Hetrick.

8 COMMISSIONER CLARK: All right. Wow, what a
9 list of players. Have we got everybody?

10 Okay. Let's move into the order of the
11 dockets. Margo, do you want to announce the order?

12 MS. DUVAL: Yes, sir. I believe we will be
13 doing the 02, 04, 03, 07 and then the 01 docket.

14 COMMISSIONER CLARK: All right. So that's our
15 order for today, 02, 04, 03, 07 and 01 is the order
16 we are going to take them in.

17 All right. Let's begin with the 02 docket.

18 Preliminary matters, Ms. DuVal, any
19 preliminary matters we need to address?

20 MS. DUVAL: Yes, Commissioner.

21 If stipulations can be reached in the next few
22 days, the prehearing order will be modified to
23 reflect such agreements. If those agreements are
24 reached, staff proposes to circulate an amended
25 draft of the prehearing order before it's issued.

1 Other than that, there are no other
2 preliminary matters that I am aware of.

3 COMMISSIONER CLARK: Okay. Any of the parties
4 have any preliminary matters?

5 All right. You got to be patient with me.
6 This book is thick. It's tabbed. And I am going
7 to try to keep up and go back and forth between my
8 notes, and y'all just bear with me as we go through
9 this thing.

10 Let's start going through the prehearing order
11 now. I am going to go through section by section.
12 I will identify them. If you have any issues,
13 speak up or we will move on rather quickly today.

14 Beginning with Section I, Case Background.

15 Section II, Conduct of Proceedings.

16 III, Jurisdiction.

17 IV, Procedure for Handling Confidential
18 Information.

19 V, Prefiled Testimony and Exhibits, staff.

20 MS. DUVAL: Yes, Commissioner.

21 In its prehearing statement, FIPUG objects to
22 a witness being considered an expert witness unless
23 that witness affirmatively states the subject
24 matter areas in which he or she claims expertise
25 and voir dire, if requested, is permitted.

1 However, Section VI A(8) of the Order Establishing
2 Procedure requires that a party shall identify each
3 witness the party wishes to voir dire as well as
4 state with specificity the portions of that
5 witness' prefiled testimony by page and line
6 number, and/or exhibits by page and line number, to
7 which party objects. If the party fails to
8 identify the portions of the prefiled testimony or
9 exhibits to which it objects in their prehearing
10 statement, the party is not allowed to conduct voir
11 dire at the hearing absent a showing of good cause.
12 And the good cause exemption does not apply to the
13 identification of a witness if a party does not
14 identify the witness it wishes to voir dire it then
15 waives its right to voir dire.

16 In its prehearing statement, FIPUG has not
17 identified the witnesses that it wishes to voir
18 dire, therefore its essentially waived the right to
19 do so since it has not complied with the OEP. And
20 since FIPUG has not complied with the OEP, it's
21 staff's belief that it should not be allowed to
22 challenge the expertise of any witness.

23 So at this time, staff would request that a
24 ruling to that affect would be made.

25 COMMISSIONER CLARK: Mr. Moyle, would you like

1 to address it?

2 MR. MOYLE: We've had this discussion
3 repeatedly with respect to how experts are handled,
4 and if the experts aren't identifying what areas
5 they have expertise in, it's kind of hard to
6 understand what they are being offered for. So we
7 don't -- I don't think we are going to have any
8 issues in this docket, so we don't need to make a
9 big issue about this today.

10 We are just going to state that for our
11 position about how expert witnesses are handled,
12 and we think the better practice is for the expert
13 witness to identify and say, I am an expert in
14 hydrology. I mean, your days at DEP, I am sure you
15 were at DOAH and saw how it was done over there,
16 where an expert is raising their hand and telling
17 you what they are an expert in as compared to just
18 putting all of this testimony in and then you are
19 left going, well, maybe they are an expert in
20 something. So it seems a little unfair to say,
21 well, you can't ask them questions about what they
22 are an expert in.

23 That's the issue, but I don't think it's going
24 to be ripe and relevant in this proceeding.

25 COMMISSIONER CLARK: Okay. Thank you, sir.

1 All right. Let's move to Section VI, Order of
2 Witnesses.

3 MS. DUVAL: Staff is hopeful that all issues
4 with the parties can be stipulated and witnesses
5 excused in this docket, and staff will continue
6 working towards that end.

7 COMMISSIONER CLARK: All right.

8 MS. KEATING: Commissioner, I need to make one
9 change for FPU in the order of witnesses, Danielle
10 Mulligan is listed as testifying Issues 2 through
11 4. It should be you 2 through 7.

12 COMMISSIONER CLARK: As opposed to 2 through
13 4.

14 MS. KEATING: Yes, sir.

15 COMMISSIONER CLARK: Okay. Any other noted
16 changes?

17 All right. Moving to Issues and Positions.

18 MS. DUVAL: I am sorry, sir, have we done the
19 Basic Positions and I just missed that?

20 COMMISSIONER CLARK: I am sorry, Basic
21 Positions. Any changes to Basic Positions?

22 All right, I am sorry. Moving on, Issues and
23 Positions.

24 MS. DUVAL: Yes, sir.

25 The order establishing procedure requires that

1 a party take a position at the prehearing
2 conference unless good cause is shown as to why the
3 party cannot take a position at that time.

4 Accordingly, if a party's position in the
5 draft prehearing order is currently no position at
6 this time, that party must change its position or
7 show good cause why it cannot take a position.
8 Otherwise, the prehearing order will reflect no
9 position for that party for that issue.

10 Staff will also suggest that the parties who
11 have not yet taken a position, or wish to change
12 their position, be allowed to submit their position
13 in writing no later than the close of business
14 today.

15 Additionally, FIPUG has stated that for the --
16 has following for all issues -- actually, I don't
17 believe it's all issues, for some of their issues:
18 The petitioner has the burden of proof and must
19 carry its burden. That, as well, is not a
20 statement of position. It's a statement of
21 evidentiary burden of proof. So in order to be
22 consistent with the OEP, FIPUG must also take a
23 position by close of business today on those issues
24 or show good cause why it cannot do so, or have its
25 position changed to no position.

1 COMMISSIONER CLARK: All right. Any
2 questions? Any concerns?

3 MR. MOYLE: Is there anything -- I mean, in a
4 number of prior proceedings, it was close of
5 business tomorrow as compared to today. Is there
6 anything magic about today as compared to tomorrow?

7 COMMISSIONER CLARK: We had discussed with the
8 number of dockets that we are trying to move
9 through that we were going to try to tighten that
10 timeline up and get them in by today. I think we
11 actually even said tomorrow morning would be fine.
12 I am -- I can be flexible if you need some
13 additional time. It's --

14 MR. MOYLE: Yeah, if noon tomorrow would work,
15 that would help me with the afternoon schedule.

16 COMMISSIONER CLARK: Good compromise. I will
17 take noon tomorrow.

18 MR. MOYLE: Thank you.

19 COMMISSIONER CLARK: Thank you.

20 All right. Any other questions?

21 All right. Let's go to Section IX, Exhibit
22 List.

23 MS. DUVAL: Staff has prepared a comprehensive
24 exhibit list, which includes all prefiled Exhibits,
25 and also includes those exhibits that staff wishes

1 to include in the record.

2 Staff will check with the parties prior to the
3 hearing to determine if there are any objections to
4 the exhibit list or any of staff's proposed
5 exhibits being entered into the record.

6 COMMISSIONER CLARK: Any comments?

7 All right. Section X, Proposed Stipulations.

8 MS. DUVAL: There are no proposed stipulations
9 at this time, but staff is hopeful that those
10 stipulations can be reached, and we will continue
11 working toward that end.

12 COMMISSIONER CLARK: Anybody want to do any
13 stipulating? All right.

14 MR. MOYLE: Could I just make a comment
15 here --

16 COMMISSIONER CLARK: Yes.

17 MR. MOYLE: -- that might be useful in a
18 variety of contexts?

19 So, you know, we have these Type A and B
20 stipulations, and I think that FIPUG is likely to
21 take -- to not get in the way of things, but not
22 affirmatively stipulate, but just say, we are not
23 going to oppose any stipulations.

24 So I think that will work for people, but I
25 just wanted to make that point on the record and be

1 clear with respect to not affirmatively stipulating
2 if we just take no position and say we are not
3 going to contest it, that that should still move
4 things along.

5 COMMISSIONER CLARK: That will not excuse the
6 witness, if I am correct, though; is that right?

7 MS. DUVAL: No, sir. We will still have to
8 circulate that when the time comes.

9 COMMISSIONER CLARK: Okay.

10 MR. MOYLE: So we could also waive the right
11 to cross-examine. I have had situations where we
12 have stipulated to something to move it a long
13 where it comes back and said, oh, you affirmatively
14 agreed and stipulated, and it kind of gets wrapped
15 around your neck, which --

16 COMMISSIONER CLARK: Okay. Understood.

17 All right. Anything else under stipulations?

18 Pending Motions.

19 MS. DUVAL: There are no pending motions.

20 COMMISSIONER CLARK: Pending Confidentiality
21 Motions.

22 MS. DUVAL: There are no pending
23 confidentiality requests.

24 COMMISSIONER CLARK: Post-Hearing Procedures.

25 MS. DUVAL: Although staff believes that the

1 issues in this docket may be able to be stipulated,
2 I would like to just note a few post-hearing
3 procedures.

4 If issues are stipulated and parties agree to
5 waive briefs, the Commission may make a bench
6 decision for this portion of the docket. If there
7 are any issues to be briefed, staff would recommend
8 post-hearing briefs be no longer than 40 pages.

9 COMMISSIONER CLARK: Are we all in agreement?
10 Okay.

11 MS. DUVAL: And I would also note that if
12 briefs are filed, they will be due on
13 November 16th, 2018.

14 COMMISSIONER CLARK: All right. Moving to
15 rulings.

16 Opening statements will be limited to three
17 minutes per party, unless parties choose to waive
18 those opening statements.

19 Briefs will be limited to 40 pages.

20 All right. Other matters. Are there other
21 matters that need to be addressed at this
22 prehearing conference?

23 MS. DUVAL: There are no other matters that
24 staff is aware of, sir.

25 COMMISSIONER CLARK: Any parties?

1 All right. We will adjourn the 02 hearing.

2 (The prehearing concluded at 9:43 A.M.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, 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, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 31st day of October, 2018.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #GG015952
EXPIRES JULY 27, 2020