

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

FILED 1/31/2019  
DOCUMENT NO. 00560-2019  
FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20180046-EI

CONSIDERATION OF THE TAX  
IMPACTS ASSOCIATED WITH TAX  
CUTS AND JOBS ACT OF 2017  
FOR FLORIDA POWER & LIGHT  
COMPANY.

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PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS  
PARTICIPATING: COMMISSIONER JULIE I. BROWN  
PREHEARING OFFICER

DATE: Wednesday, January 23, 2019

TIME: Commenced: 1:30 p.m.  
Concluded: 2:28 p.m.

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

REPORTED BY: ANDREA KOMARIDIS  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
114 W. 5TH AVENUE  
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1 APPEARANCES:

2 MARIA J. MONCADA, JOHN T. BUTLER, and WADE R.  
3 LITCHFIELD, ESQUIRES, 700 Universe Boulevard, Juno  
4 Beach, Florida 33408-0420, on behalf of Florida Power &  
5 Light Company.

6 J.R. KELLY, PUBLIC COUNSEL; CHARLES REHWINKEL,  
7 DEPUTY PUBLIC COUNSEL; PATRICIA A. CHRISTENSEN, and  
8 STEPHANIE A. MORSE, ESQUIRES, Office of Public Counsel,  
9 c/o the Florida Legislature, 111 W. Madison Street, Room  
10 812, Tallahassee, Florida 32399-1400, appearing on  
11 behalf of the Citizens of the State of Florida.

12 MAJOR ANDREW UNSICKER, CAPTAINS JOSH YANOV and  
13 ROBERT FREEMAN, Federal Executive Agencies,  
14 AFCED/JA-ULFSC, 139 Barnes Drive, Suite 1, Tyndall Air  
15 Force Base, Florida 32403, appearing on behalf of the  
16 Federal Executive Agencies.

17 ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA, III,  
18 ESQUIRES, Gardner, Bist, Wiener, Wadsworth, Bowden,  
19 Bush, Dee, LaVia & Wright, P.A., 1300 Thomaswood Drive,  
20 Tallahassee, Florida 32308, appearing on behalf of the  
21 Florida Retail Federation.

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

1 APPEARANCES (CONTINUED):

2 SUZANNE BROWNLESS and JOHANA NEVES, ESQUIRES,  
3 FPSC General Counsel's Office, 2540 Shumard Oak  
4 Boulevard, Tallahassee, Florida 32399-0850, appearing on  
5 behalf of the Florida Public Service Commission Staff.

6 KEITH HETRICK, GENERAL COUNSEL; Florida Public  
7 Service Commission, 2540 Shumard Oak Boulevard,  
8 Tallahassee, Florida 32399-0850, adviser to the Florida  
9 Public Service Commission.

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1 MR. MOYLE: Good afternoon. Jon Moyle, with  
2 the Moyle Law Firm, on behalf of the Florida  
3 Industrial Power Users Group, FIPUG. And I'd like  
4 to enter an appearance for Karen Putnal as well.

5 COMMISSIONER BROWN: Thank you.

6 MR. MOYLE: Thank you.

7 COMMISSIONER BROWN: FEA.

8 MAJOR UNSICKER: Good morning, ma'am. Myself,  
9 Major Andrew Unsicker, and Captain Robert Friedman  
10 here on behalf of the Federal Executive Agencies.  
11 We'd also like to enter an appearance of Colonel  
12 Josh Yanov as well.

13 COMMISSIONER BROWN: Thank you.

14 FRF.

15 MR. LaVIA: Good afternoon, Commissioner  
16 Brown. I'd like to enter an appearance on behalf  
17 of my law partner, Robert Scheffel Wright, and  
18 myself, John LaVia, on behalf of the Retail  
19 Federation -- Florida Retail Federation. Thank  
20 you.

21 COMMISSIONER BROWN: Thank you.

22 Office of Public Counsel.

23 MS. CHRISTENSEN: Good afternoon. Patti  
24 Christensen, with the Office of Public Counsel.  
25 I'd like to put in an appearance for J.R. Kelly,

1 the Public Counsel, Charles Rehwinkel, as well as  
2 put in an appearance for Stephanie Morse.

3 COMMISSIONER BROWN: Great. Thank you.  
4 Staff.

5 MS. BROWNLESS: Suzanne Brownless and Johana  
6 Nieves appearing on behalf of the Commission staff.  
7 And also appearing is Keith Hetrick, the general  
8 counsel.

9 COMMISSIONER BROWN: You're fast.  
10 And our general counsel?

11 MR. HETRICK: Keith --

12 MS. BROWNLESS: Yes, and our general counsel,  
13 Keith Hetrick.

14 COMMISSIONER BROWN: Very impressed. Thank  
15 you.

16 Okay. So, let's go to preliminary matters.  
17 Ms. Brownless, are there any preliminary matters  
18 that you're aware of?

19 MS. BROWNLESS: Yes, ma'am, there are very --  
20 two small matters that have come up. One is that I  
21 received corrections to the basic position of  
22 FIPUG. And those will be included in the final  
23 version of the prehearing order.

24 And also I received notice from Major Unsicker  
25 that their positions would change to agree with

1 OPC.

2 COMMISSIONER BROWN: Okay. Thank you.

3 Are any of the parties aware of any other  
4 preliminary matters at this time?

5 OPC?

6 MR. REHWINKEL: Yes, Madam Chairman. I think  
7 we're going to discuss it shortly, but our -- our  
8 positions on the numbered issues will change, based  
9 on discussions that were -- that are ongoing with  
10 Florida Power & Light about the numbers.

11 And at the appropriate time, we'll ask for  
12 leave to -- for time to file what we hope to be our  
13 stipulations on all of those issues with you for  
14 inclusion in the prehearing order.

15 COMMISSIONER BROWN: Will that be -- that will  
16 obviously be available prior to the February 5th  
17 hearing.

18 MR. REHWINKEL: Yes. We're -- we're hoping  
19 that we can get just a matter of -- you know, maybe  
20 until Monday of -- of next week to provide that  
21 to -- to you, if -- if that would be agreeable to  
22 you and your staff.

23 We -- we have been in discussions and we are  
24 working out really just a logistical kink. And  
25 once we get that taken care of, I think we'll --

1 all the dominoes will fall.

2 COMMISSIONER BROWN: Okay.

3 MR. REHWINKEL: And so --

4 COMMISSIONER BROWN: Want some water?

5 MR. REHWINKEL: I think I -- I probably should  
6 have some coffee.

7 COMMISSIONER BROWN: Oh, yeah, you need more.

8 MR. REHWINKEL: But I don't know if Counsel  
9 for FPL has anything else to add, but that's --  
10 that's generally what we would like to do is -- is  
11 be given leave to -- to do that and -- and amend  
12 our position accordingly.

13 And we would give notice and keep the other  
14 parties in the loop, especially ones who have said  
15 they agree with us. We want to make sure that we  
16 don't undercut them.

17 COMMISSIONER BROWN: Could I -- could I --  
18 could I get you to agree to a Friday, January 25th,  
19 by close of business, rather than Monday?

20 MS. CHRISTENSEN: That's more --

21 MS. MONCADA: Good --

22 MR. REHWINKEL: It all depends on the number-  
23 crunchers.

24 COMMISSIONER BROWN: Okay. FPL.

25 MS. MONCADA: Thank you.



1           We are working toward being able to provide  
2           OPC our completed calculations by tonight. If we  
3           are able to -- we can aim for Friday. Monday -- we  
4           would be more comfortable with Monday, given that  
5           OPC has to run the numbers also by their experts.

6           That's where we are, Commissioner. By  
7           tonight, we expect to be able to turn numbers over  
8           for OPC's review.

9           COMMISSIONER BROWN: Okay. I'll -- and we'll  
10          get to that, but I'm assuming that applies to a lot  
11          of those issues, correct?

12          MR. REHWINKEL: Yes. There are some -- like,  
13          when we get to the lettered issues, A, B, and C, we  
14          have positions that we would like leave to file by  
15          tomorrow. We don't need to wait --

16          COMMISSIONER BROWN: Right.

17          MR. REHWINKEL: -- until then.

18          COMMISSIONER BROWN: That's great. So, I'd  
19          like to get a prehearing order out -- just for you  
20          all, for your own edification, I like to get it out  
21          at least a week prior to the hearing for purposes  
22          of the other Commissioners' ability to review it as  
23          well as the parties.

24          So, I would encourage you all to try to make a  
25          Friday deadline if at all possible because our

1 staff, then, has to incorporate all of that into  
2 our draft prehearing.

3 So, if -- if Monday is the only -- the -- the  
4 only possibility that you foresee, then, I would  
5 say noon by Monday --

6 MS. MONCADA: Okay.

7 COMMISSIONER BROWN: -- but I encourage you to  
8 try to get it in by 5:00 on the 25th.

9 MS. MONCADA: We will endeavor to do that.

10 MR. REHWINKEL: That's acceptable to us, too.

11 MS. BROWNLESS: May I just --

12 COMMISSIONER BROWN: Oh, sure, Suzanne. I'm  
13 trying to help you out here.

14 MS. BROWNLESS: Thank you -- ask this  
15 question: You are working on stipulation language,  
16 correct, for the cost issues?

17 MS. MONCADA: Yes.

18 MS. BROWNLESS: Okay. Can we go ahead and  
19 issue the prehearing order with the positions you  
20 have, now, on the cost issues, with the  
21 understanding that you will provide everyone with  
22 your proposed stipulations, which we can, then,  
23 make available to everybody?

24 COMMISSIONER BROWN: OPC?

25 MR. REHWINKEL: Yes, that would be fine with

1 us. We have no problem with that. The -- we would  
2 take -- ask to be given until noon or five,  
3 whatever your deadline is tomorrow, to provide  
4 whatever edits we need for those issues, even  
5 though we fully expect --

6 MS. BROWNLESS: Yes.

7 MR. REHWINKEL: -- to supersede them with --  
8 with agreed language with FPL, just -- just in  
9 case.

10 MS. BROWNLESS: That's fine.

11 COMMISSIONER BROWN: All right. Do any of the  
12 parties have an objection to 5:00 p.m. by tomorrow?

13 MS. MONCADA: On the other issues?

14 COMMISSIONER BROWN: On the other issues, yes.  
15 What we were just -- I know y'all were chatting  
16 there.

17 MS. BROWNLESS: And that's to provide whatever  
18 amendments you'd like to make to the position, as  
19 stated in the prehearing order you were provided.  
20 And we understand that, to the extent you reach  
21 stipulation language for the other issues, you will  
22 provide that to us as soon as you can.

23 MS. MONCADA: 5:00 p.m. tomorrow is fine.

24 COMMISSIONER BROWN: Okay. Great.

25 MR. REHWINKEL: Thank you.

1           COMMISSIONER BROWN: All right. Do any of the  
2 other parties have any preliminary mat- -- other  
3 matters that they'd like to address? Everyone is  
4 clear on time frames here?

5           MR. REHWINKEL: One other preliminary matter,  
6 and -- is we've circulated, this morning, some  
7 suggested revisions to --

8           COMMISSIONER BROWN: I saw, at 11:00 a.m.

9           MR. REHWINKEL: -- to Issues B and C. I've  
10 had conversations with all the parties and staff.  
11 And I believe, at the appropriate time, I think we  
12 can present you with agreed-upon language that will  
13 erase any discussion or debate about those, if it's  
14 okay with --

15          COMMISSIONER BROWN: Well, I am looking  
16 forward to that. So, are you saying that there is  
17 a -- an agreement on the wording of those issues  
18 that you propose in the 11:00 a.m. e-mail?

19          MR. REHWINKEL: Yes, I believe there is.

20          COMMISSIONER BROWN: Okay. Looking forward --  
21 so, let's just go through, right now, the draft  
22 prehearing order until we get to those issues. As  
23 you know, I'll identify the sections. If you have  
24 any corrections or changes that you'd like to make,  
25 I look forward to you speaking up.

1           So, we're going to go right ahead with  
2           Section 1, case background.

3           Seeing no changes, we're moving to Section 2,  
4           the conduct of proceedings. No changes.

5           All right. So, we're moving to Section 3, the  
6           jurisdiction.

7           Seeing no changes, moving to Section 4, the  
8           procedure for handling confidential information.

9           MS. BROWNLESS: Yes --

10          COMMISSIONER BROWN: Ms. Brownless.

11          MS. BROWNLESS: Yes, ma'am. If you intend to  
12          use confidential material at this hearing, please  
13          have copies for Commissioners, necessary staff, and  
14          the court reporter in red envelopes clearly marked  
15          with the nature of the contents.

16          Any party wishing to examine the confidential  
17          material that is not subject to an order granting  
18          confidentiality shall be provided copy in the same  
19          fashion as provided to the Commissioners, subject  
20          to exclusion of any appropriate protective  
21          agreement with the owner of the material.

22          COMMISSIONER BROWN: Thank you.

23          Any questions regarding that? Seeing none,  
24          we'll move Section 5, the prefiled testimony and  
25          exhibits and witnesses.

1 Ms. Brownless.

2 MS. BROWNLESS: Yes, ma'am. The draft  
3 prehearing order states that witness summaries are  
4 limited to three minutes. And we would just remind  
5 the parties of that.

6 COMMISSIONER BROWN: Any comments?

7 Seeing none, we're moving to Section 6, the  
8 order of witnesses.

9 Ms. Brownless.

10 MS. BROWNLESS: Yes, ma'am. The witnesses  
11 that we have are, for direct, Scott Bores for FP&L,  
12 Ralph Smith for OPC; and rebuttal from Mr. Bores.

13 Are there any witnesses at this time that you  
14 think can be stipulated?

15 COMMISSIONER BROWN: Oh, I'd like to ask that.  
16 Are there any witnesses that can be stipulated at  
17 this time?

18 MS. CHRISTENSEN: I think that will be  
19 dependent upon whether or not we can reach  
20 agreement on the numbers. And if -- if that is the  
21 case, then very likely, we can stipulate --

22 COMMISSIONER BROWN: On all --

23 MS. CHRISTENSEN: -- to all witnesses --

24 COMMISSIONER BROWN: Yeah.

25 MS. CHRISTENSEN: -- if the Commissioners

1 have no questions on -- for those witnesses.

2 COMMISSIONER BROWN: So, and -- and your -- if  
3 the stipulation is agreeable with the parties,  
4 then, you would stipulate to all of the witnesses.

5 MS. CHRISTENSEN: I would think so.

6 COMMISSIONER BROWN: Okay. Any of the other  
7 parties have any comments? Okay.

8 MS. BROWNLESS: Okay.

9 MR. MOYLE: We'll just -- we'll just wait and  
10 see how it plays out and if, you know, everybody is  
11 good, then we'll stipulate at that time.

12 COMMISSIONER BROWN: Sounds good.

13 MS. BROWNLESS: May I just ask, many of the  
14 Mr. -- much of Mr. Bores' testimony and Mr. Smith's  
15 testimony is related to what I refer to as the cost  
16 issues.

17 If the cost issues are satisfactorily  
18 resolved, do you believe that it will be necessary  
19 to have Mr. Bores or Mr. Smith respond to the  
20 Issues A, B, and C?

21 COMMISSIONER BROWN: And that question,  
22 Ms. Brownless, is directed -- I think you're  
23 directing it first to OPC and then the other  
24 parties?

25 MS. BROWNLESS: Yes, ma'am.

1 MS. CHRISTENSEN: Mr. Smith specifically has  
2 not testified to the issues raised. Subsequently,  
3 he is listed for Issues 1 through 17. So, the  
4 answer to the question would be no.

5 COMMISSIONER BROWN: That's what I would  
6 presume.

7 And the other parties agree with that premise?  
8 I see nods, and a nod, nod.

9 All right. Ms. Brownless?

10 MS. BROWNLESS: Okay. And would that also be  
11 true, FP&L, for you?

12 MS. MONCADA: That is correct.

13 MS. BROWNLESS: Thank you.

14 COMMISSIONER BROWN: Since we can all agree  
15 that, even the proposed issues, B, C -- A, B, C,  
16 are legal issues and that none of the witnesses  
17 that prefiled testimony have -- have addressed  
18 those issues; is that correct?

19 Everyone is nodding their heads yes.

20 MS. BROWNLESS: Good. Thank you.

21 The next issue that we have is that FIPUG and  
22 FRF have objected to any expert not designated as  
23 an expert and expressly offered as an expert  
24 witness with area of expertise identified.

25 We'd note that FP&L has filed its notice of



1 witness subject-matter expertise on January 10,  
2 2019, which lists the subject-matter expertise of  
3 Scott Bores, FP&L's only witness at the time.

4 The OEP, Order No. PSC 20180209,  
5 Section 5(A)(8), requires each party to identify  
6 each witness to whom they object and to state with  
7 specificity the portions of their testimony by page  
8 and line number to which the party objects.

9 We would request at this time that there be a  
10 ruling that it does not appear that either FIPUG or  
11 FRF have complied with these requirements of the  
12 OEP and, therefore, we don't believe it's  
13 appropriate for them to be able to question the  
14 expertise of any witness at the final hearing, to  
15 the extent that a witness is presented.

16 COMMISSIONER BROWN: Thank you.

17 I will give each of you an opportunity, if you  
18 would like, to address, before I render a ruling.

19 FRF.

20 MR. LaVIA: We were simply preserving our  
21 objection on January 7th. I don't anticipate  
22 having any objection at this point.

23 COMMISSIONER BROWN: Thank you.

24 FIPUG.

25 MR. MOYLE: In a similar vein, you know, we --

1 we were preserving our right to question an expert.  
2 I think this harkens back to voir dire and whether  
3 you can conduct voir dire or not. And, you know,  
4 staff has taken a position that you can't take --  
5 conduct voir dire, but I think, if a witness takes  
6 the stand, I think you can ask -- I would  
7 suggest -- ask the witness about his background  
8 during your cross-examination; that it's not  
9 precluded from inquiring about what the witness  
10 does and -- and -- and check on that.

11 But anyway, this is a remnant of some prior  
12 discussions that continues to follow us around.  
13 So, I just wanted to make that clear.

14 COMMISSIONER BROWN: So, if we do have a  
15 witness -- I will be the presiding officer. So, I  
16 will be sure to make -- remind you of your comments  
17 here today.

18 MR. MOYLE: Perfect.

19 COMMISSIONER BROWN: Okay. All right. So, I  
20 think we're good with that.

21 MS. BROWNLESS: Thank you.

22 COMMISSIONER BROWN: All right. Moving on to  
23 Section 7, the basic positions, are there any  
24 change- -- do the parties have any changes to the  
25 basic positions? Starting with Florida Power &

1 Light.

2 MS. MONCADA: Yes, Commissioner. Thank you.

3 Yes, FPL has a sentence or two that it would  
4 like to add to its statement of basic position.  
5 And like you requested earlier, we can provide  
6 staff that language, and we'll circulate it to all  
7 the parties by 5:00 p.m. tomorrow.

8 COMMISSIONER BROWN: Sounds good.

9 So, I was going to give everybody, by the way,  
10 a noon-on-Friday deadline, but 5:00 p.m. tomorrow,  
11 for all of these changes here, since we're --  
12 we're -- it's kind of a fluid discussion here with  
13 regard to the stipulations. Just a reminder,  
14 strive to get that by 5:00 p.m. on Friday.

15 MS. MONCADA: Yes.

16 COMMISSIONER BROWN: If you can get them --  
17 the changes to the basic positions or any of the  
18 issues that we're going to get to, by noon on  
19 Friday -- or 5:00 p.m. on Friday, that would be our  
20 preference, but if you can do it by tomorrow,  
21 that's -- that is fine.

22 MS. MONCADA: Thank you.

23 COMMISSIONER BROWN: Okay. Any of the other  
24 parties?

25 MS. CHRISTENSEN: Yes, OPC will be making some

1 changes to some numbers and we may also be adding  
2 some additional language, dependent on how the  
3 proceedings go today.

4 COMMISSIONER BROWN: Okay. Again, I encourage  
5 you to get it in by noon on Friday. Tomorrow is --  
6 is acceptable as well.

7 FRF.

8 MR. LaVIA: Same -- same for the Florida  
9 Retail Federation. Some of the numbers are going  
10 to change and we may be -- add additional language  
11 to our general position. And we'll do it by the  
12 time frames you suggested.

13 COMMISSIONER BROWN: Thank you.

14 FEA.

15 MAJOR UNSICKER: No changes to our basic  
16 positions right now --

17 COMMISSIONER BROWN: Thank you.

18 MAJOR UNSICKER: -- our issues.

19 COMMISSIONER BROWN: FIPUG.

20 MR. MOYLE: As staff has noted, FIPUG  
21 submitted --

22 COMMISSIONER BROWN: That's correct.

23 MR. MOYLE: -- changes previously. And those  
24 will be incorporated. Obviously, we're going to  
25 have some discussion about certain issues, so we

1           may modify those positions as well. And just to be  
2           clear, you're giving us until 5:00 on Friday to do  
3           that -- I mean, noon -- noon preferred?

4           MS. BROWNLESS: Noon --

5           COMMISSIONER BROWN: Noon. Noon. They'd like  
6           to -- I -- I personally would like to have a  
7           prehearing order out a week in advance of the --

8           MR. MOYLE: Okay.

9           COMMISSIONER BROWN: -- hearing. So, I would  
10          prefer noon on Friday, but if F- -- as FPL said,  
11          that they could get it in by tomorrow. So, that  
12          would be even more desirable, if you can do that.

13          MR. MOYLE: Okay.

14          COMMISSIONER BROWN: Thank you.

15          All right. We are going to move on.

16          Oh, Suzanne, anything else to add to basic  
17          positions?

18          MS. BROWNLESS: No, ma'am. I just want to  
19          make sure that I understand the time line we're all  
20          going by, which is going to be noon on Friday, if  
21          you can do it, change -- any changes that you want  
22          to make to the prehearing-order positions. As  
23          stated, sooner than that, that would be lovely, but  
24          the drop-dead deadline is noon on Friday.

25          COMMISSIONER BROWN: That's right.

1 MS. BROWNLESS: Is that correct?

2 COMMISSIONER BROWN: Right. Trying to help  
3 everyone else out here. All right -- and get a  
4 good draft order out in advance. All right --  
5 final order.

6 Section 8, issues and positions. All right.  
7 I will start with Florida Power & Light and then  
8 move along.

9 Do any -- do you have any changes to the  
10 positions on Issues 1 through 18?

11 MS. MONCADA: We have no changes on Issues 1  
12 through 18, subject to reaching stipulations with  
13 OPC.

14 COMMISSIONER BROWN: Again, thank you. And  
15 those stipulations, you said -- you suggested  
16 Monday at the latest.

17 MS. MONCADA: At the latest, but we will  
18 endeavor to meet your 5:00 p.m. Friday deadline.

19 COMMISSIONER BROWN: Okay. Thank you.

20 FIPUG, do you have any changes to any of the  
21 positions, other than what you've provided on  
22 Issues 1 through 18?

23 MR. MOYLE: No, not at this time.

24 COMMISSIONER BROWN: Okay. FEA, any changes?

25 MAJOR UNSICKER: Yes, ma'am. As Ms. Brownless

1 mentioned, our -- we originally deferred to staff's  
2 position, and our position would change to defer to  
3 OPC's position.

4 COMMISSIONER BROWN: Okay. On Issues 1  
5 through 18.

6 MAJOR UNSICKER: Yeah, correct. Yes, ma'am.

7 COMMISSIONER BROWN: Even -- even as modified.

8 MAJOR UNSICKER: Yes, ma'am.

9 COMMISSIONER BROWN: All right. Thank you.

10 F- -- FRF.

11 MR. LaVIA: Thank you, Commissioner.

12 I think we are in lockstep with -- agree with  
13 OPC. So, to the extent OPC's change, ours will  
14 change, too.

15 COMMISSIONER BROWN: Sounds good.

16 And OPC.

17 MS. CHRISTENSEN: Yes, I believe we'll have  
18 changes to Issues 9, 14, and 15, related to some of  
19 the numbers and some of the positions on those as a  
20 result of some of the discussions. So, those will  
21 be changing, and -- and we'll address, I guess, A,  
22 B, and C's, from Mr. Rehwinkel.

23 COMMISSIONER BROWN: All right. Sounds good.

24 Before we get to any contested issues,  
25 anything else that we need to address?

1 MS. BROWNLESS: Are we going to take up  
2 Issues 16 and 17 under the contest- -- contested  
3 issues?

4 COMMISSIONER BROWN: Yes, we are.

5 MS. BROWNLESS: Okay. Thank you.

6 COMMISSIONER BROWN: So, let's -- let's move  
7 ahead to that. The contested issues are Issues 16  
8 and 17, correct, Ms. Brownless?

9 MS. BROWNLESS: Yes, ma'am. And our  
10 understanding was that the parties were working to  
11 come to some kind of agreement on Issues 16 and 17.  
12 These are the issues that deal with requiring a  
13 private-letter ruling. And I guess we just --

14 COMMISSIONER BROWN: Where are we at?

15 MS. BROWNLESS: -- need some feedback.

16 COMMISSIONER BROWN: OPC.

17 MR. REHWINKEL: Yes, as part of our  
18 discussions in the overall resolution of -- of  
19 Issues 1 through 17, we will -- we think Issue 16  
20 is going to go away, and we'll endeavor to do some  
21 safety-net language that will be similar to what  
22 the Commission has already seen in the Gulf Power  
23 case with FPL, but we're -- we're -- that's just --  
24 will be part of our discussions.

25 COMMISSIONER BROWN: And you just referred to



1           16.   What about 17?

2           MR. REHWINKEL:   17 would be the one that would  
3           be sort of -- that -- what would happen if the IRS  
4           ruled contrary to the way FPL has accounted for it  
5           today.

6           COMMISSIONER BROWN:   Uh-huh.

7           MR. REHWINKEL:   We would -- we're going to  
8           speak to them about language that will be similar  
9           to what was done with Gulf Power that would be kind  
10          of neutral, hold-harmless language.

11          So, we think that, in any event, 16 and 17  
12          will go away.

13          COMMISSIONER BROWN:   And we'll have that  
14          decision by Friday or --

15          MR. REHWINKEL:   The -- the 5:00 Friday  
16          deadline, unless there's something that makes us go  
17          to Monday at noon, yes.

18          COMMISSIONER BROWN:   FPL?

19          MS. MONCADA:   Agreed.   We will work within the  
20          same time frame for Issues 1 through 18.

21          COMMISSIONER BROWN:   Thank you.

22          All right.   Does anybody else have anything  
23          they would like to offer on the contested issues?

24          Okay.   Seeing none, moving on, we are going to  
25          go, I guess, at this time, Suzanne --

1 Ms. Brownless, please correct me if I'm off -- off  
2 track here, but I think we're going to go to  
3 Issue A of the contested issues.

4 MS. BROWNLESS: Yes, ma'am. Now, Issues A and  
5 B are really addressing the same thing, which is  
6 what to do with the tax savings, any tax savings  
7 that result from the Tax Cuts and Jobs Act of 2017.  
8 So, I think it would be good to hear from the  
9 parties at this time. I think they may have worked  
10 out some language, as Mr. Rehwinkel was suggesting  
11 before.

12 COMMISSIONER BROWN: Okay. So, we could just  
13 take them all up together, A, B, and C, which are  
14 the three remaining contested issues. Would you --  
15 do you all mind starting with OPC?

16 MS. BROWNLESS: No, that's fine.

17 MS. MONCADA: We don't mind.

18 COMMISSIONER BROWN: Okay.

19 MR. REHWINKEL: Okay. Thank you.

20 My 11:00 a.m. e-mail this morning -- 11:15, I  
21 think it was -- proposed to the staff and parties  
22 and the Commission that Issues B and C be reworded.

23 And what we presented to the Commission and  
24 the parties was: Here is the way it's worded  
25 today; here is the way, if we had -- were the king

1 of the world, we'd word it; and here is how we  
2 think it could be worded neutrally. So, we didn't  
3 come to argue our position on this. We came to ask  
4 for the neutral wording.

5 As a -- as a result of sending this out, the  
6 staff and FPL have suggested a revision to the  
7 current wording that we agree will work and will be  
8 neutral.

9 And for Issue B, that wording would -- would  
10 strike the words "FPL treat" and then put the words  
11 "be treated" in front of the question mark at the  
12 end. So, the issue would read, "How should the  
13 savings associated with the Tax Cuts and Jobs Act  
14 of 2017 be treated?"

15 And if -- if the issue is worded that way, we  
16 believe it is completely neutral and fair to  
17 everyone. And we would be recommending that. I  
18 think everyone is in agreement with that.

19 COMMISSIONER BROWN: Is everyone in agreement  
20 with that? FPL?

21 MS. MONCADA: Yes, and we appreciate OPC  
22 working with me earlier, right before the hearing,  
23 to get this worked out.

24 COMMISSIONER BROWN: All right. Just going to  
25 go down the line. FIPUG?

1 MR. MOYLE: We don't -- we don't have any  
2 objection to the language.

3 COMMISSIONER BROWN: So, does that mean that  
4 you're withdrawing your Issue A?

5 MR. MOYLE: No, I -- I wasn't a party to those  
6 conversations. I'm kind of -- it's all happening  
7 pretty quickly, as -- as --

8 COMMISSIONER BROWN: We'll slow it down.  
9 We'll slow it down for you. So, I'm just asking if  
10 you have a problem with inclusion of the neutral  
11 language that is being proposed by OPC and FPL.

12 MR. MOYLE: No, we don't -- we don't -- we  
13 don't have an objection, but we don't believe it  
14 supplants Issue A, either.

15 COMMISSIONER BROWN: All right. We'll get to  
16 that, too.

17 MR. MOYLE: Okay.

18 COMMISSIONER BROWN: All right. FEA.

19 MAJOR UNSICKER: No objection, ma'am.

20 COMMISSIONER BROWN: Thank you.

21 FRF.

22 MR. LaVIA: The language is acceptable.

23 COMMISSIONER BROWN: Okay. I actually changed  
24 the language to exactly that, even from the  
25 original proposal, so -- but I don't want to rule

1           on it before we get to Mr. Moyle's argument on  
2           Issue A. So, Mr. Moyle, you have the floor to  
3           address Issue A.

4           MR. MOYLE: Thank you. And we -- we've had a  
5           number of tax proceedings. You all opened a host  
6           of them after Congress passed the federal tax  
7           reform in 2017. I believe that most of them, if  
8           not all of them, have been resolved in a way that  
9           has resulted in money flowing back to the  
10          ratepayers.

11          And FIPUG has appeared before you and the  
12          other Commissioners before and said some things  
13          that we would ask for; that it be transparent; that  
14          it be certain with respect to when rate relief will  
15          be seen; that the dollars will be known and -- and  
16          the other cases, I think we've -- we've achieved  
17          that.

18          Gulf Power flowed back over a hundred million.  
19          And we knew when it was. It's already happened.  
20          TECO is flowing back money now. And Duke is  
21          scheduled to flow -- flow back money, with  
22          certainty, on a -- on a date certain.

23          We don't have that same level of comfort with  
24          respect to the flow-back in this case because  
25          it's -- it's something that we think that you all

1           should consider and -- and act on. You know, your  
2           pre- --

3           COMMISSIONER BROWN: Can I ask you, though --

4           MR. MOYLE: Sure.

5           COMMISSIONER BROWN: -- if we included the  
6           language that is being proposed as Issue B,  
7           couldn't you make this exact argument under  
8           Issue B?

9           MR. MOYLE: Well, I think -- I think -- I  
10          think it asks slightly different questions. So,  
11          the -- you know, the -- FIPUG is what is the rate  
12          decrease. FPL has said, we don't like "decrease"  
13          because it assumes a -- a decrease. Since just  
14          about every other utility we're aware of has flowed  
15          back money as a decrease, we think that's a fair  
16          assumption, but that is specifically asked, what is  
17          the decrease.

18          And that's a factual question. You had said,  
19          is that a legal question. I mean, I think that is  
20          more of a factual question: What is the rate  
21          decrease or impact, if -- if, you know, objection  
22          to "decrease" is used.

23          COMMISSIONER BROWN: Or "treatment."

24          MR. MOYLE: And then -- and then, it's when --  
25          and when will those rate decreases become

1 effective. Again, another factual question. April  
2 May of this year? April May of two years? So --  
3 so, you know, we think that this issue is a good  
4 issue. It should stay in the case.

5 And I think in the TECO case -- I mean,  
6 this -- this language appeared in a very similar  
7 form, if not the same form, in the -- in the TECO  
8 case. And I think it was put in largely to be  
9 informative so that customers and ratepayers will  
10 know with certainty what is the result of the  
11 federal tax reform. Are we going to see rates --  
12 rates going down as a result and, if so, when would  
13 that be.

14 And that's -- that's what we're trying to  
15 drive at. And I would argue, Madam Chair, that  
16 that's the very purpose of this docket. You know,  
17 the very first sentence in the prehearing order,  
18 case background, says -- and I'll -- if you'll just  
19 bear with me, I'll just read that first sentence:  
20 This docket was opened by the Florida Public  
21 Service Commission on April 21, 2018, to consider  
22 the rate impacts affecting FPL --

23 COMMISSIONER BROWN: It says "tax impacts,"  
24 yeah.

25 MR. MOYLE: -- as a result of the passage of

1 the tax act.

2 So, we think the issue is consistent with the  
3 purpose of the case, it's consistent with what was  
4 in the Tampa Electric case, and it should be an  
5 issue that is considered and decided.

6 So, thank you for allowing me to express our  
7 view with that. And again, we think it's -- you  
8 know, it's appropriate as a factual issue. I  
9 understand there's some legal issues that are out  
10 there. I don't know if you want to get into  
11 those --

12 COMMISSIONER BROWN: Not right now.

13 MR. MOYLE: -- or not, but -- okay.

14 COMMISSIONER BROWN: Thank you.

15 Do any -- does FPL or any of the parties --  
16 would you like to address --

17 MS. MONCADA: Thank you.

18 COMMISSIONER BROWN: -- Mr. Moyle's comments?

19 MS. MONCADA: Thank you.

20 FPL does believe that Issue B replaces  
21 Issue A. In fact, it was offered originally by FPL  
22 as a substitute for Issue A; meant to be -- and I  
23 believe we have accomplished -- a more-neutral  
24 wording to the issue that doesn't presuppose or  
25 assume that there will be a rate decrease or that



1           one is required.

2           Mr. Moyle has pointed out that there is a  
3           difference between the legal issues in the -- which  
4           we might talk about later, and a factual issue.  
5           And Issue B is a factual issue, and Issue C is the  
6           legal issue.

7           So, it addresses all of Mr. Moyle's points.  
8           He, within the wording of Issue B, can make all of  
9           points he has made today to his heart's content and  
10          make the factual points in -- under Issue B, and  
11          make any legal arguments he wishes to make under  
12          Issue C.

13          COMMISSIONER BROWN: Thank you.

14          Mr. -- yes, Mr. Rehwinkel.

15          MR. REHWINKEL: Yes, we stayed out of -- of  
16          this issue, but I -- just from a practitioner's  
17          standpoint, the only comment I would make is I  
18          think the use of the clause, "if any," offset with  
19          the commas, makes it neutral, but I just commend  
20          that to your -- for your consideration. And I'll  
21          wait for Issue C to come around.

22          COMMISSIONER BROWN: Thank you.

23          Any of the other parties?

24          MR. LaVIA: We -- the Retail Federation would  
25          support including the issue.

1 COMMISSIONER BROWN: Okay.

2 MAJOR UNSICKER: FEA would as well.

3 COMMISSIONER BROWN: Okay. I will turn to  
4 staff, but I wanted to just comment on Mr. Moyle's  
5 reference to the other dockets that we have already  
6 adjudicated.

7 I think this particular docket is a unique  
8 docket. In the other documents [sic], the  
9 settlement agreements in those contemplated what to  
10 do specifically with those tax-saving dollars.

11 In this docket, we need to determine -- to  
12 determine what to do with those tax savings. We're  
13 not in the same posture here as we have been in  
14 other dockets that we have been presented with  
15 stipulations by all of the parties. So, I wanted  
16 to point that out to you, for the record.

17 I do always prefer neutral wording. I do  
18 think, even if you have the words "if any" in  
19 there, it does -- I don't think that negates the --  
20 the presumption that there would be reduction. I  
21 think you are not being harmed by any way because  
22 you will still be allowed the opportunity -- all of  
23 the parties will be allowed the opportunities to  
24 argue under the agreed-upon language Public Counsel  
25 has presented us today, under Issue B.

1           But I will let our staff opine on it and see  
2           if they have anything else to add.

3           MS. BROWNLESS: Thank you.

4           Commissioner, we do believe that, obviously,  
5           the issue is relevant, but we also think that  
6           FP&L's Issue B, amended as we have discussed  
7           today -- meaning, how should the savings associated  
8           with the Tax Cuts and Jobs Act of 2017 be  
9           treated -- is a better statement of the basic  
10          issue. And the basic issue is what should happen  
11          to the tax savings that have been generated by the  
12          changes to the federal tax law.

13          FIPUG's wording presumes that a rate-base  
14          reduction will occur, and that is one of the large  
15          issues in this case: What to do with the tax  
16          savings.

17          So, our preference is for the wording of  
18          Issue B as amended today.

19          COMMISSIONER BROWN: Mr. Moyle?

20          MR. MOYLE: Thank you. I'd -- I would feel  
21          more comfortable, if people are saying, well, you  
22          can argue this and this will be subsumed, if FPL  
23          would represent that they would answer the question  
24          what the -- what the rate impact is. I think it's  
25          740 or 700-and -- it's, like, three-quarters of a

1 billion dollars is the number that I've seen  
2 floating around.

3 But if -- if we do that, then they would say  
4 when should we -- when should customers see that.  
5 I think the danger of saying, oh, it's subsumed is  
6 when people --

7 COMMISSIONER BROWN: You mean the issue is  
8 subsumed.

9 MR. MOYLE: Yeah, the issue is subsumed is I  
10 don't -- I don't know when the ratepayers will see  
11 those monies. I don't know when they'll flow back.  
12 If you have it as an issue that's called out and  
13 specifically set out, the parties are compelled to  
14 answer the question.

15 If you subsume it in the -- in the -- in  
16 the -- I think that the two issues are materially  
17 different. If you subsume it into how should FPL  
18 treat the savings associated with the Tax Cuts and  
19 Jobs Act, they could simply say, FPL should be  
20 allowed to use the savings to replenish the  
21 reserve-amortization fund and -- and that would be  
22 an answer, but it wouldn't talk about the amount of  
23 savings and what the plans are to flow back money,  
24 you know, to the -- to the ratepayers.

25 So, that's --

1 COMMISSIONER BROWN: So --

2 MR. MOYLE: We're -- we're pressing to try to  
3 understand the plan, what the plan is, and when  
4 ratepayers potentially could see these tax dollars  
5 coming back to them.

6 COMMISSIONER BROWN: And you don't think that  
7 the -- the way that Issue B is worded, how the  
8 savings associated with the tax act should be  
9 treated will address that exact issue? I'm having  
10 a hard time seeing how that doesn't immediately  
11 address that issue. Do you want -- what -- what --  
12 what direction are you asking?

13 MR. MOYLE: I -- I'm -- the issue that we're  
14 focused on is when -- when will ratepayers see the  
15 benefits of the federal tax reform enactment  
16 that -- that took place. You know, my --

17 COMMISSIONER BROWN: Got it.

18 MR. MOYLE: My members would like to know  
19 that. I think other FPL ratepayers would like to  
20 know that. You know, when would the tax savings  
21 be -- be realized.

22 COMMISSIONER BROWN: Okay. FPL would you like  
23 to respond before I turn to staff?

24 MS. MONCADA: Sure. He asked -- Mr. Moyle  
25 asked about two things. And first, he said he'd

1           like to see the number. Issue 9 directly asks what  
2           that number will be. And that number will be  
3           answered by FPL either with the positions stated  
4           here today or through the stipulation reached with  
5           OPC, which we will endeavor to get to you as soon  
6           as possible.

7                       With regard to when the monies will be flowed  
8           back, to use his terms, FPL has already stated,  
9           numerous times, they -- the impacts -- the benefits  
10          of the tax act have already been experienced by  
11          customers. They were experienced so nearly  
12          immediately. And we will state so again in our  
13          position, under Issue B.

14                      MS. BROWNLESS: And --

15                      COMMISSIONER BROWN: Now I'm going to turn to  
16          Ms. Brownless.

17                      MS. BROWNLESS: Okay. With regard to what can  
18          be stated in -- under Issue B -- if Mr. Moyle wants  
19          to know how any tax savings would be divided up  
20          among the rate classes, which was an issue that was  
21          at issue in the Gulf docket and the DEF and the  
22          TECO docket -- those were at issue in those dockets  
23          because the settlement agreements in those dockets  
24          specifically said that there would be a tax refund.

25                      COMMISSIONER BROWN: Right.

1 MS. BROWNLESS: And we, obviously, do not have  
2 that here.

3 The other significant difference between those  
4 dockets and here is, here is the only instance in  
5 which we have, essentially, a \$1.25 billion  
6 amortization reserve account. And that was not at  
7 issue in any of those other dockets.

8 But to more-specifically get to Mr. Moyle's  
9 point, FP&L has consistently taken the position,  
10 from January of last year, unless I'm wrong, that  
11 they did not believe any type of rate-base  
12 adjustment was necessary associated with the tax  
13 savings. I think that is still their position.  
14 So, in that case, there wouldn't be any return,  
15 according to FP&L, at this time. Okay.

16 Others and Mr. Moyle can take the position in  
17 this issue that the tax savings should be  
18 immediately returned and that the savings should be  
19 allocated among customer classes, any method that  
20 he thinks is appropriate. In the other tax  
21 dockets, they were allocated uniformly, if I  
22 remember correctly, among all the classes.

23 So, I think he is able to state what he  
24 believes should be done in the appropriate  
25 treatment under Issue B.

1           COMMISSIONER BROWN: I would agree. I --  
2           seeing no other further comment, we are going to  
3           remove Issue A and go with the proposed language  
4           that we've discussed on Issue B, which I believe  
5           all of the arguments that have been presented here  
6           and discussion that has been presented here can be  
7           made under Issue B.

8           So, let's move on to Issue C now. I'm going  
9           to turn to Mr. Rehwinkel.

10          MR. REHWINKEL: Thank you, Madam Chairman.

11          The Issue C was presented the same as Issue B,  
12          with the current wording; how we would word it, if  
13          we could; and how we think a neutral wording could  
14          be accomplished. And so, we would substitute the  
15          word "credit" for the word "replenish." And I  
16          think everyone is in agreement that that is neutral  
17          and it doesn't presume the outcome of -- of a  
18          central issue in dispute in this -- in other -- in  
19          another case.

20          COMMISSIONER BROWN: Okay. So -- and it is a  
21          legal issue.

22          MR. REHWINKEL: Yes.

23          COMMISSIONER BROWN: So, let's just -- can you  
24          just read it for the record?

25          MR. REHWINKEL: Yes, it says, "Does the 2016



1 settlement agreement allow FPL to credit the  
2 amortization reserve with the tax savings resulting  
3 from the Tax Cut and Jobs Act of 2017. And so, we  
4 would commend that. I think everyone is in  
5 agreement that that -- that issue --

6 COMMISSIONER BROWN: Should go --

7 MR. REHWINKEL: -- would work.

8 COMMISSIONER BROWN: And you're saying replace  
9 "credit" with "replenish," or are you saying --

10 MR. REHWINKEL: Replace the word "replenish,"  
11 which is in the --

12 COMMISSIONER BROWN: With "credit." With  
13 "credit." Okay.

14 MR. REHWINKEL: -- current issue, with the  
15 word "credit."

16 COMMISSIONER BROWN: I've got to look -- all  
17 right. Is everyone in agreement with that?

18 MS. MONCADA: Yes.

19 COMMISSIONER BROWN: Thank you.

20 MR. MOYLE: No --

21 COMMISSIONER BROWN: FIPUG.

22 MR. MOYLE: No objection.

23 COMMISSIONER BROWN: Thank you.

24 FEA.

25 MAJOR UNSICKER: Yes, ma'am.

1 COMMISSIONER BROWN: Thank you.

2 MR. LaVIA: Language is acceptable.

3 COMMISSIONER BROWN: Okay. Seeing all -- full  
4 agreement with the language that is being proposed,  
5 the word "replenish" -- pardon me -- the word  
6 "credit" will be included in -- for Issue C, and it  
7 will replace the word "replenish."

8 MR. REHWINKEL: Yes.

9 COMMISSIONER BROWN: All right. Staff, do you  
10 have anything else to add?

11 MS. BROWNLESS: No, ma'am. That sounds good.

12 COMMISSIONER BROWN: Okay.

13 MR. LaVIA: Commissioner? Hi.

14 COMMISSIONER BROWN: Yes.

15 MR. LaVIA: On Issue C, if we're going to move  
16 past it and include it, I would like to state for  
17 the record that the Retail Federation is a joint  
18 petitioner in another docket, 20180224, in which  
19 this issue is squarely before the Commission,  
20 similarly stated, and, for the record, would like  
21 to state that inclusion in this docket does --  
22 should not, in any way, affect our ability to raise  
23 whatever issues we want in that existing docket --

24 COMMISSIONER BROWN: Absolutely.

25 MR. LaVIA: -- which is teed up. There is no

1 motion to dismiss pending, and it's ready to go.

2 COMMISSIONER BROWN: I appreciate you bringing  
3 that other docket up. I -- I do want to stress to  
4 the parties that I do not want to delay the  
5 adjudication of the tax savings associated with the  
6 tax act for the benefit of the customers here.

7 As a result of that new docket that was filed,  
8 I think that the limited scope of this docket and  
9 the issues that are proposed and that we are going  
10 to include in here -- and we're going to address at  
11 and look -- address specifically the tax impact and  
12 how the settlement agreement treats that.

13 So, I think that, for those limited purposes,  
14 I think it's acceptable. And, obviously, the --  
15 the other docket that was filed -- that was also  
16 filed in this particular docket, but that has now  
17 since been opened up to a separate docket -- you  
18 are -- that you're not precluded from arguing  
19 anything in that docket, of course.

20 But we will be addressing the tax implications  
21 and savings associated and taking into  
22 consideration of how the settlement agreement  
23 addresses it.

24 MR. REHWINKEL: For the record, the Public  
25 Counsel concurs in the remarks of Mr. LaVia and the

1           Retail Federation, but we're anxious to hear more  
2           about the process and the procedure as we go  
3           forward.

4           I would state for the record also, you are  
5           correct, we filed the -- the petition in this  
6           docket, that we assiduously filed it for  
7           information only, but yes -- yes, ma'am, we -- we  
8           concur.

9           Thank you.

10          COMMISSIONER BROWN: Okay. Any of the  
11          other -- FIPUG?

12          MR. MOYLE: We would just join -- we would  
13          just join in the objection -- I turned it on,  
14          but --

15          COMMISSIONER BROWN: It's time -- time to shut  
16          it down.

17          (Laughter.)

18          MR. MOYLE: We would join the objection.

19          COMMISSIONER BROWN: He says he -- you got it.  
20          All right. FEA, do you have anything else to  
21          add, before I turn to FPL?

22          MAJOR UNSICKER: No, ma'am.

23          COMMISSIONER BROWN: Okay. Florida Power &  
24          Light.

25          MS. MONCADA: No comments. We are ready to

1 answer Issue C in this docket.

2 COMMISSIONER BROWN: Okay. So -- all right.  
3 staff, let's talk about the procedure now, then, to  
4 be followed, unless you'd like to comment on  
5 anything that was just raised.

6 MS. BROWNLESS: No, ma'am.

7 COMMISSIONER BROWN: Okay. So, let's talk  
8 about process.

9 MS. BROWNLESS: Okay. Having thought about  
10 what should be done procedurally to give everyone a  
11 full and fair opportunity to address the legal  
12 issue in this docket, we would propose that the  
13 following procedure be followed: That, at the  
14 February 5th, 29th [sic], hearing, after the  
15 parties are given -- have given their opening  
16 state- -- statements, that we're hopeful that there  
17 will be stipulations on the cost issues, 1 through  
18 18, which can be entered into the record at that  
19 time.

20 We have given all the parties a comprehensive  
21 exhibit list, which basically consists of the  
22 prefiled exhibits as well as the discovery that has  
23 been conducted by all parties in this case. We'd  
24 hope that could be admitted and that, also, the  
25 witnesses could be excused and their testimony

1 admitted into the record as though read.

2 Our idea is that we would have initial briefs  
3 on the legal issue filed on February 22nd of 2019,  
4 and reply briefs filed on March 8th, 2019, and that  
5 the February 5th hearing would be continued until a  
6 later date to allow the parties to file these  
7 briefs.

8 So, the thought process is everybody will file  
9 initial briefs at the same time, and then everybody  
10 will file reply briefs to those initial briefs at  
11 the same time.

12 And then, when we reconvene the hearing -- and  
13 I understand that's tentatively set for April 16th,  
14 after internal affairs -- that the parties would be  
15 given an opportunity to present an extensive oral  
16 argument at the discretion -- the time being set by  
17 the Chair. And then the Commissioners would also  
18 have an opportunity to talk and question the  
19 parties at that time, and then we'd close the  
20 record.

21 So, that's kind of the procedure that we think  
22 would give all parties an adequate opportunity to  
23 fully address the legal issue and give the  
24 Commissioners an opportunity to have question-and-  
25 answer with all the parties on their briefs.

1           COMMISSIONER BROWN: All right. I think it --  
2           it does seem like a reasonable and fair process.

3           Obviously, at the February 5th hearing, we  
4           will set the oral-argument time, which will be --  
5           all the parties will be given great latitude for  
6           oral -- oral argument on the issues, B and C, to be  
7           taken up at that proposed con- -- continued  
8           hearing, Tuesday April 16th, following internal  
9           affairs.

10           Does anybody have any questions? FPL.

11           MS. MONCADA: Just for clarity, the briefs  
12           would be -- we would have the opportunity to  
13           address both Issues B and C in the briefs, yes?

14           COMMISSIONER BROWN: That was my  
15           understanding, correct.

16           MS. BROWNLESS: Yes, ma'am.

17           MS. MONCADA: Thank you.

18           COMMISSIONER BROWN: So, again, the date is  
19           initial briefs, February 22nd; reply briefs  
20           March 8th; oral argument, which would -- the  
21           continued hearing would be April 16th. And then  
22           the item will be taken up at the May 14th, 2019,  
23           agenda conference for final consideration.

24           Do you want me to repeat the dates or is  
25           everybody clear? Mr. Moyle?

1           MR. MOYLE: No, I think we're clear on the  
2           dates. And I appreciate working with staff to  
3           accommodate dates that might have presented issues.

4           COMMISSIONER BROWN: They have.

5           MR. MOYLE: And the prehearing officer. So,  
6           thank you.

7           The part that I guess I was -- it sounded  
8           like it -- I guess, technically, we'll have  
9           evidence in the record, but we'll be able to --  
10          this -- this is a contemplated as an -- interactive  
11          questions asked -- it's -- it's not going to be --  
12          you know, it will be a lively exchange, I -- I take  
13          it, based on what staff is saying with respect to  
14          the oral arguments that are presented in April.

15          COMMISSIONER BROWN: So, you're just talking  
16          about the oral arguments.

17          So, Commissioners will have an opportunity to  
18          review both the initial briefs and response briefs  
19          prior to the oral argument. Every party will be  
20          given an opportunity to present ample argument.  
21          And then Commissioners will be given an opportunity  
22          to question all of the parties of any information  
23          that has been presented.

24          And that is the process that we have  
25          contemplated, correct?



1 MS. BROWNLESS: Yes, ma'am.

2 MR. MOYLE: And -- and just one follow-up. Is  
3 it contemplated that, after that oral argument,  
4 then -- then staff would provide a recommendation  
5 that would, then, go to agenda conference or would  
6 there --

7 MS. BROWNLESS: Yes.

8 MR. MOYLE: -- be a ruling --

9 COMMISSIONER BROWN: Yes.

10 MR. MOYLE: -- from the bench or --

11 MS. BROWNLESS: There would be -- well, to be  
12 honest, if the Commissioners wished to take a bench  
13 vote, they could, because we would close the  
14 hearing at that time, and they would have an  
15 opportunity to do that; however, if they don't want  
16 to do that, the staff will write a written  
17 recommendation, which will be considered at the May  
18 agenda.

19 COMMISSIONER BROWN: So, unless a bench  
20 decision is rendered at the April 16th hearing,  
21 then the Commission will take up the item at the  
22 May 14th agenda item. Got it?

23 MR. MOYLE: Yes, ma'am.

24 COMMISSIONER BROWN: Thank you.

25 Anybody else? OPC?

1 MR. REHWINKEL: Thank you.

2 I have maybe an unusual question to ask. I've  
3 never had to ask this kind of question at a  
4 prehearing conference. And I certainly understand  
5 if there's not an answer forthcoming, but the  
6 issues that -- that are in this docket, as  
7 Mr. Moyle pointed out, are north of \$700 million.

8 The issues that are in the re- -- somewhat  
9 related petition docket are, again, in that  
10 magnitude, depending on how you -- you argue or  
11 read the -- the petition. And I believe that the  
12 Commission has endeavored for these cases to  
13 schedule the full Commission panel for resolution  
14 of the cases.

15 It's come to our attention today that -- that  
16 the panel is now a four-member panel at this point  
17 in time. And I ask the question only because I  
18 believe Chapter 350 provides that the only person  
19 who can break a deadlock is the Chairman.

20 So, my question is: Is there -- is it  
21 contemplated that the Chairman would be available  
22 to break a deadlock or will the -- is it  
23 contemplated that the panel would be reassigned to  
24 an odd number? And I -- I just put that out there.  
25 I'm not asking you to answer it today, but that is

1           some -- something --

2           COMMISSIONER BROWN: I think our legal staff,  
3           Mr. Hetrick, may be able to answer that question.

4           MR. REHWINKEL: Okay. Thank you.

5           COMMISSIONER BROWN: Mr. Hetrick?

6           MR. HETRICK: I think it's absolutely true  
7           that the Chairman would have to break a deadlock if  
8           there was a tie with the Commission. If that  
9           occurred, we'd have to -- if, either on April 16th  
10          or May 14th, the Commission was deadlocked, we'd  
11          have to adjourn, continue the hearing, allow the  
12          Chairman to review the record that's been made so  
13          far and then come in and -- and have -- in June, I  
14          suppose, at that agenda, have him come in and break  
15          that deadlock.

16          COMMISSIONER BROWN: Any further questions?

17          MR. REHWINKEL: Thank you. I -- I -- I wasn't  
18          meaning to cloud things. It just --

19          COMMISSIONER BROWN: No.

20          MR. REHWINKEL: It was just something that was  
21          on our minds today. Thank you.

22          Thank you, Mr. Hetrick.

23          COMMISSIONER BROWN: Okay. Anything else  
24          before we move on process? I want to make sure  
25          that everybody is clear of -- of how we are going

1 to proceed.

2 And again, oral-argument time frame will be  
3 set at that February 5th time frame so that you all  
4 have a great amount of time to prepare for that  
5 oral argument in April.

6 MR. LaVIA: One quick question.

7 COMMISSIONER BROWN: Sure.

8 MR. LaVIA: Is there a page limit on briefs?

9 COMMISSIONER BROWN: There will -- we're going  
10 to get to that.

11 MR. LaVIA: Okay. Thanks.

12 COMMISSIONER BROWN: And yes, there is.

13 We're going to move to -- now that we all  
14 understand the process and nobody has objections to  
15 it, and we're going to move ahead. Okay. We're  
16 moving --

17 MR. REHWINKEL: Yeah, I just want to say,  
18 again, thank you for accommodating the  
19 conversation. It's been very important to us to  
20 have a process that -- that had sufficient time,  
21 not only for briefing, but for oral argument. And  
22 I appreciate the effort that -- that you and your  
23 staff have gone to to work with the parties for  
24 that.

25 Thank you.

1           COMMISSIONER BROWN: Thank you. I -- I thank  
2           you for that thank you. And we have made a great  
3           deal of effort to make sure that everyone is given  
4           a fair opportunity here today and in the future.

5           So, Section 9, exhibit list.

6           MS. BROWNLESS: Thank you. We have prepared a  
7           comprehensive exhibit list, which lists all the  
8           prefiled exhibits and those exhibits staff wishes  
9           to include in the record.

10          The draft list was given to the parties to see  
11          if there were any changes or objections to the CEL  
12          or to the introduction of any of staff's exhibits  
13          being entered into the record.

14          At this time, we'd like to see if anybody  
15          objects to the draft comprehensive exhibit list.

16          COMMISSIONER BROWN: Seeing no objection -- I  
17          see none. Move along.

18          MS. BROWNLESS: Thank you, ma'am.

19          COMMISSIONER BROWN: We --

20          MS. BROWNLESS: Thanks.

21          COMMISSIONER BROWN: Okay. So, Section 10,  
22          the appro- -- approved proposed stipulations.  
23          Obviously, we -- there have been comments made  
24          today that there will be some forthcoming,  
25          hopefully before close of business on Friday.

1           So, we will move to Section 11, the pending  
2           motions.

3           MS. BROWNLESS: There are none.

4           COMMISSIONER BROWN: Thank you, Suzanne. You  
5           are wonderful.

6           Section 12, pending confidentiality motions.

7           MS. BROWNLESS: None of those either.

8           COMMISSIONER BROWN: Thank you, again.

9           Section 13, post-hearing procedures.

10          MS. BROWNLESS: We recommend that the post-  
11          hearing briefs be limited to 40 pages.

12          COMMISSIONER BROWN: But that is -- I would  
13          like staff to clarify. That is for both the  
14          initial briefs as well as the response briefs. So,  
15          80 pages, correct?

16          MR. MOYLE: Split it -- split as we see fit?

17          COMMISSIONER BROWN: No.

18          MR. MOYLE: No.

19          COMMISSIONER BROWN: No, 40 and 40.

20          (Laughter.)

21          MR. MOYLE: Oh, okay.

22          COMMISSIONER BROWN: Is that correct, Ms. --  
23          Ms. Brownless?

24          MS. BROWNLESS: Yes, ma'am, that's my  
25          understanding.

1           COMMISSIONER BROWN: I think that's ample.  
2           Everybody -- I see nods, except for Mr. Moyle.  
3           Everyone is okay.

4           MR. MOYLE: Yeah, I'm good.

5           COMMISSIONER BROWN: All right. If you can  
6           continue with the recommendations.

7           MS. BROWNLESS: Yes, ma'am. We recommend that  
8           a summary of each position set off with asterisks  
9           should be included in each post-hearing statement,  
10          and the number of words in that summary is up to  
11          you. That's not set here.

12          The initial briefs, as we've stated, would be  
13          due on February 22nd, and the reply briefs would be  
14          due on March 8th.

15          COMMISSIONER BROWN: Okay. Any questions on  
16          any of that? Yes.

17          MR. REHWINKEL: So, the -- as I understand it,  
18          assuming that we're going to bring Issues 1 through  
19          18, 17, in for a landing, the briefs and the  
20          positions that we just talked about will just  
21          address Issues B and C.

22          MS. BROWNLESS: Yes, sir.

23          COMMISSIONER BROWN: That's my --

24          MR. REHWINKEL: That's -- that's -- okay. So,  
25          we won't be putting in our 40 pages a regurgitation

1 of the other issues and our positions on that.

2 That's --

3 COMMISSIONER BROWN: The -- that -- those  
4 issues, 1 through 17, 18, whatever --

5 MR. REHWINKEL: Already.

6 COMMISSIONER BROWN: -- will be decided on  
7 February 5th, and the briefs will be decided on the  
8 contested issues.

9 MR. REHWINKEL: Thank you.

10 MS. BROWNLESS: Yes, ma'am, and that is  
11 contingent, of course, upon y'all being able to  
12 work out stipulated language that can be voted on,  
13 on February 5th.

14 COMMISSIONER BROWN: Okay. So, we --

15 MR. REHWINKEL: Understood.

16 COMMISSIONER BROWN: Thank you.

17 Any other questions?

18 We're moving on to Section 14, the rulings --

19 MS. BROWNLESS: Yes.

20 COMMISSIONER BROWN: -- which addresses  
21 opening statements -- and again, opening statements  
22 just for the hearing, February 5th hearing.

23 Ms. Brownless.

24 MS. BROWNLESS: Yes, ma'am --

25 MS. MONCADA: I am -- I'm sorry. Before



1 moving on to rulings, Ms. Brownless indicated that  
2 there was going to be a word limit for the -- for  
3 what is set off in asterisks.

4 MS. BROWNLESS: No. No, there is no word --

5 MS. MONCADA: Oh, there is no --

6 MS. BROWNLESS: -- limit for what is set off  
7 in the asterisks.

8 COMMISSIONER BROWN: You can use whatever --  
9 the 40 pages however you'd like each time -- but  
10 not what Mr. Moyle suggested, combining them.

11 MS. MONCADA: Thank you.

12 MS. BROWNLESS: Yes, ma'am.

13 COMMISSIONER BROWN: All right. So, the  
14 rulings -- so, again, opening statements, just for  
15 clarity, February 5th, opening statements will  
16 be -- we're -- you know, we're not addressing the  
17 contested issues, which will be set for oral  
18 argument at that hearing.

19 MS. BROWNLESS: Right. Right.

20 COMMISSIONER BROWN: So, Ms. Brownless.

21 MS. BROWNLESS: So, we would ask that those  
22 opening statements be limited to five minutes per  
23 party, unless the party chooses to waive opening  
24 statements, and I only say five minutes because you  
25 would just be dealing with the cost issues.

1           COMMISSIONER BROWN: Is everybody okay with  
2           the five minutes on --

3           MS. CHRISTENSEN: Yes.

4           COMMISSIONER BROWN: Yeah.

5           MS. CHRISTENSEN: For the cost issues? Yes, I  
6           think we can --

7           COMMISSIONER BROWN: Okay. Everyone okay with  
8           that? And we'll address -- again, at the  
9           prehearing -- I mean, at the hearing, we'll talk  
10          about the oral argument and allow, again, adequate  
11          time for you all to address those contested issues.

12          Okay. Anything else, under rulings?

13          MS. BROWNLESS: No, ma'am.

14          COMMISSIONER BROWN: Okay. We're going to go  
15          to other matters.

16          MS. BROWNLESS: We are aware of no other  
17          matters at this time.

18          COMMISSIONER BROWN: Are any of the parties  
19          aware of any other matters?

20          Seeing none, I do believe we are adjourned at  
21          this time. Thank you so much for your -- your  
22          participation here. See you guys soon.

23          (Whereupon, proceedings concluded at 2:28

24          p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, ANDREA KOMARIDIS, Court Reporter, do hereby  
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DATED THIS 31st day of January, 2019.



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