



1 APPEARANCES:

2 DIANNE M. TRIPLETT, ESQUIRE, 299 First Avenue  
3 North, St. Petersburg, Florida 33701; MATTHEW R.  
4 BERNIER, ESQUIRE, 106 East College Avenue, Suite 800,  
5 Tallahassee, Florida 32301-7740; and DANIEL HERNANDEZ  
6 and MELANIE SENOSIAIN, ESQUIRES, Shutts Law Firm, 4301  
7 West Boy Scout Boulevard, Suite 300, Tampa, Florida  
8 33607, appearing behalf of Duke Energy Florida, LLC  
9 (DEF).

10 J.R. KELLY, Public Counsel, and CHARLES  
11 REHWINKEL, ESQUIRES, Office of Public Counsel, c/o The  
12 Florida Legislature, 111 West Madison Street, Room 812,  
13 Tallahassee, Florida 32399-1400, appearing on behalf of  
14 the Citizens of the State of Florida (OPC).

15 JON C. MOYLE, JR., and KAREN A. PUTNAL,  
16 ESQUIRES, Moyle Law Firm, P.A., The Perkins House, 118  
17 North Gadsden Street, Tallahassee, Florida 32301,  
18 appearing on behalf of Florida Industrial Power Users  
19 Group (FIPUG).

20 JAMES W. BREW and LAURA A. WYNN, ESQUIRES,  
21 Stone Mattheis Xenopoulos & Brew, PC, 1025 Thomas  
22 Jefferson Street, NW, Eighth Floor, West Tower,  
23 Washington, DC 20007, appearing on behalf of White  
24 Springs Agricultural Chemicals, Inc., d/b/a PCS  
25 Phosphate - White Springs (PCS Phosphate).

1 APPEARANCES (CONTINUED):

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

7 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE  
8 HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service  
9 Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
10 Florida 32399-0850, advisor to the Florida Public  
11 Service Commission.

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

2 COMMISSIONER POLMANN: Good morning, everyone.  
3 This is June 30th. It is, on my clock, 9:36. I am  
4 sorry for this late delay, and I will now call this  
5 prehearing conference to order.

6 Staff, please read the notice.

7 MS. BROWNLESS: By notice issued on June 23rd,  
8 2020, this time and place has been set for a  
9 prehearing conference in Docket No. 20190140-EI.  
10 The purpose of this hearing is to set out more  
11 fully in the notice.

12 COMMISSIONER POLMANN: Thank you, Ms.  
13 Brownless.

14 We will now take appearances beginning with  
15 Duke.

16 MS. TRIPLETT: Good morning, Commissioner.  
17 Can everyone hear me?

18 MR. HETRICK: Yes.

19 MS. BROWNLESS: Yes, ma'am.

20 COMMISSIONER POLMANN: You have got a little  
21 bit of an echo, but we will proceed.

22 MS. TRIPLETT: Okay. So this is Dianne  
23 Triplett. I am appearing on behalf of Duke Energy  
24 Florida. I would also like to enter an appearance  
25 for Matt Bernier, Daniel Hernandez and Melanie

1 Senosiain, and that is on the agenda, the spelling  
2 is S-E-N-O-S-I-A-I-N.

3 Thank you.

4 COMMISSIONER POLMANN: Thank you.

5 Office of Public Counsel.

6 MR. REHWINKEL: Good morning, Commissioner  
7 Polmann. Charles Rehwinkel and J.R. Kelly with the  
8 Office of Public Counsel on behalf of Duke's  
9 customers.

10 COMMISSIONER POLMANN: Thank you, Mr.  
11 Rehwinkel.

12 Florida Industrial Power Users Group.

13 MR. MOYLE: I am sorry. This is Jon Moyle on  
14 behalf of the Florida Industrial Power Users Group.  
15 I didn't hear if you called for me or another  
16 party, but I would like to enter an appearance for  
17 myself and for Karen Putnal of our firm.

18 COMMISSIONER POLMANN: Thank you, Mr. Moyle.  
19 I will try to speak as loudly as I can.

20 PCS Phosphate.

21 MR. BREW: Yes. Good morning, Commissioner.  
22 For White Springs Agricultural Chemicals, PCS  
23 Phosphate, I am James Brew, and I would like to  
24 note an appearance for Laura Wynn.

25 COMMISSIONER POLMANN: Thank you, Mr. Brew.

1 Commission staff.

2 MS. BROWNLESS: Suzanne Brownless and Bianca  
3 Lherisson.

4 COMMISSIONER POLMANN: Thank you, Ms.  
5 Brownless.

6 My advisor.

7 MS. HELTON: Commissioner, Mary Anne Helton  
8 here, along with your General Counsel, Keith  
9 Hetrick.

10 COMMISSIONER POLMANN: Thank you, Ms. Helton.  
11 Preliminary matters. Staff, let's hear about  
12 preliminary matters please.

13 MS. BROWNLESS: Yes.

14 State buildings are currently closed to the  
15 public and other restrictions on gatherings remain  
16 in place due to COVID-19. Accordingly, this  
17 prehearing is being conducted remotely with the  
18 parties participating by communications media  
19 technology.

20 Members of the public who want to observe or  
21 listen to this prehearing may do so by accessing  
22 the live video broadcast which is available from  
23 the Commission website. Upon completion of the  
24 prehearing, the archived video will also be  
25 available.

1           Each person participating today needs to keep  
2           their phone or device muted when they are not  
3           speaking, and only unmute when they are called upon  
4           to speak. If they do not keep their phone muted or  
5           put their phone on hold, they may be disconnected  
6           from the proceeding and will need to call back in.

7           Also, telephonic participants should speak  
8           directly into their phone and not use the speaker  
9           function.

10          Staff has no other matters at this time.

11          COMMISSIONER POLMANN: Thank you, Ms.  
12          Brownless.

13          Do any of the other parties have any  
14          preliminary matters they wish to address?

15          Hearing none, I will note at this point that,  
16          as we go through, we have a number of items that  
17          will come up, I will ask the parties to offer their  
18          comments. I will identify each party as we go  
19          through as appropriate. And for those matters that  
20          call for a ruling, I may rule here during this  
21          meeting or I may take an item under advisement and  
22          make a ruling later today after I have had an  
23          opportunity to review that with counsel.

24          Okay. We will proceed through the draft  
25          prehearing order, having heard no other matters

1           come up from the parties, we will go through the  
2           order, the draft prehearing order. I will identify  
3           the sections. I will ask that the parties let me  
4           know if there are any corrections or changes  
5           that -- that need to be made. We will go fairly  
6           quickly through a lot of this.

7           Rather than my asking each of the parties by  
8           name, if there is any particular change or  
9           correction that needs to be made, I will pause for  
10          a moment on each item and simply ask that you  
11          identify yourself, and we will address anything  
12          that -- that you would like to address.

13          So if everyone has the draft prehearing order,  
14          we will start with Section I, the case background.  
15          Do any of the parties or staff wish to offer a  
16          comment, a change or a correction under Section I,  
17          case background?

18          Okay. I hear no comments. I will move to  
19          Section II, the conduct of proceedings. Any of the  
20          parties?

21          Hearing none, we will move to Section III,  
22          jurisdiction. I hear no comments from my party.

23          We will move to Section IV, procedure for  
24          handling confidential information. Ms. Brownless,  
25          I will ask you for comment, please.



1 MS. BROWNLESS: Yes, sir.

2 Materials that have been identified by parties  
3 as confidential have been so marked and are  
4 available via secure password on the Commission's  
5 website for use at the hearing.

6 COMMISSIONER POLMANN: Okay. Any questions or  
7 comments from the parties, Section IV, confidential  
8 information?

9 MR. MOYLE: Just -- I just had a question  
10 about -- about the status of that website. Is  
11 everything loaded now; or if not, when will  
12 everything be loaded to that website?

13 COMMISSIONER POLMANN: I hear Mr. Moyle.

14 MS. HELTON: This is Mary Anne Helton.

15 I am not sure if the prefilled information has  
16 yet been loaded on the website, but we will let  
17 everyone know after this. I will have to check  
18 with Mr. Teitzman, our Commission Clerk, and with  
19 Kandis May, who is handling the files for the  
20 General Counsel's Office.

21 MR. MOYLE: Okay. Thank -- thank you. So I  
22 just assume that at whatever point everything is  
23 loaded, all the confidential information, an email  
24 will be sent to the parties to say all the  
25 information is available on-line at this link; is

1           that -- is that right?

2           MS. HELTON: Yes, but I think that you will  
3           actually have to call someone to get the password  
4           because I do not believe that we can email that to  
5           you. But we will give you the instructions in the  
6           email.

7           MR. MOYLE: Okay. Thank you.

8           COMMISSIONER POLMANN: Okay. Everybody is  
9           clear on that? Any other questions or comments on  
10          confidential information, please?

11          Okay, hearing none, I am moving to Section V,  
12          prefiled testimony and exhibits, as well as  
13          witnesses, Ms. Brownless.

14          MS. BROWNLESS: Thank you.

15          Staff will call attention to the fact that the  
16          draft prehearing order states that witness  
17          summaries are limited to five minutes. And if  
18          anybody would like to comment on whether that's the  
19          appropriate time, or sufficient time, now -- now is  
20          your opportunity.

21          COMMISSIONER POLMANN: Any comments from the  
22          parties, five minutes?

23          Okay. Hearing none.

24          MS. BROWNLESS: Okay. With regard to  
25          cross-examination exhibits, confidential and

1 nonconfidential, that a party intends to use at the  
2 hearing, these must be provided to the Commission  
3 Clerk by noon July 2nd, 2020, in order to be  
4 processed and placed on the Commission's website.

5 The parties have been emailed instructions,  
6 and these are included as Attachment A to the draft  
7 prehearing order about how to electronically  
8 provide this material to the clerk.

9 And I think we have some discussion this  
10 morning about the -- about Attachment A, and I  
11 think now is your opportunity to comment on that if  
12 you wish.

13 MR. REHWINKEL: This is Charles Rehwinkel with  
14 the Public Counsel.

15 Commissioner Polmann, we have two aspects of  
16 this that we would like to -- of this section Roman  
17 numeral V that we would like to raise at this time  
18 mostly for awareness, perhaps, for a ruling by you,  
19 or agreement by the parties.

20 The first is that we are endeavoring to meet  
21 the noon deadline, and it is our intent in the  
22 office here to take whatever steps we can to meet  
23 that deadline, and we anticipate doing it, but  
24 given that these are highly unique circumstances,  
25 this is the first case where this process is being

1 implemented, and the -- the timing of everything,  
2 we would ask that -- that there be recognition that  
3 if the noon deadline, for whatever reason, cannot  
4 be met that parties -- that we would hope that the  
5 Commission would not take the position that  
6 exhibits that are placed for cross-examination  
7 would -- that there would be some sort of a hard  
8 and fast rule on that. Our intent is to comply  
9 with the deadline.

10 So I just wanted to put that out there. I  
11 don't think that requires any action on your part.  
12 We just are asking that there -- there be some  
13 level of flexibility if there are problems.  
14 Because we anticipate filing a significant number  
15 of exhibits just because that's our only  
16 opportunity. It's not like the past 30 something  
17 years that I have been practicing, and -- and  
18 perhaps more where -- where parties bring their  
19 exhibits to the hearing and -- and introduce them  
20 and offer them as -- as appropriate. In this case,  
21 the deadline is your last opportunity, so we are  
22 just something that there be flexibility, that's  
23 one thing.

24 The -- the second is that the Commission has a  
25 longstanding practice that has been sort of refined

1 in recent years to have cross-examination exhibits,  
2 or exhibits that are offered for impeachment  
3 purposes after a proper predicate has been laid to  
4 be viewed by the witness at -- at the moment of  
5 impeachment, if you will. And lately we have been  
6 facilitating that process by passing exhibits out,  
7 but turning them over and making sure that -- that  
8 parties and counsel don't look at them until, and  
9 if, the need for impeachment arises.

10 We, I think, have a -- I can't call it a  
11 gentleman's agreement, a general person's agreement  
12 that we, I think, worked out at our last technical  
13 meeting that would say that if these -- these  
14 exhibits are passed out in advance and loaded into  
15 the Commission website, that that principle will be  
16 honored.

17 And in that spirit, I proposed some language  
18 that I circulated -- I think I circulated to  
19 everyone -- that would take that agreement and --  
20 and put it in the order just for the avoidance of  
21 doubt, and it would impose upon everyone the  
22 obligation to ensure that they don't disclose the  
23 content or the essence of -- of the -- the  
24 potential cross-examination or impeachment  
25 exhibits.

1           So I circulated language to that effect. I --  
2           I would offer it for consideration or discussion  
3           here today.

4           So those are my comments on -- on Section V.

5           COMMISSIONER POLMANN: Thank you, Mr.  
6           Rehwinkel.

7           MS. BROWNLESS: Charles --

8           COMMISSIONER POLMANN: Okay, I heard a num --  
9           I heard a number of things. Ms. Brownless, you  
10          have comments -- I would like to hear from some of  
11          the other parties, but do you have any other  
12          comments, Ms. Brownless?

13          MS. BROWNLESS: Well, what I would like is for  
14          Mr. Rehwinkel to read the language that he is  
15          proposing into the record at this time.

16          MR. REHWINKEL: Okay. I can do that if -- if  
17          that's -- that's what you would like, Commissioner.

18          COMMISSIONER POLMANN: Yes, please.

19          MR. REHWINKEL: Okay. It reads: The parties  
20          have agreed, and it is so ordered, that exhibits  
21          that are prefiled and designated as  
22          cross-examination or impeachment exhibits, will not  
23          be viewed by opposing witnesses or opposing counsel  
24          or otherwise have their contents or identity  
25          communicated to such witnesses or counsel.

1           That's it.

2           MS. BROWNLESS: Thank you.

3           COMMISSIONER POLMANN: Okay. Thank you, Ms.  
4           Brownless and Mr. Rehwinkel.

5           I would like to give everyone a chance to  
6           speak on this issue briefly, and we will see about  
7           making a ruling either at this time or -- or later  
8           today. I have got some thoughts on this. And we  
9           heard from OPC, and I would like to hear from the  
10          other parties, and we will start with the utility.

11          Ms. Triplett, do you -- would you like to  
12          offer some -- some comments here?

13          MS. TRIPLETT: Yes, sir. Thank you. I was --  
14          I was waiting to be called on.

15          So with respect to the first point about the  
16          noon deadline being -- that folks intend to comply  
17          with it but needing flexibility. I do not have a  
18          problem with that, because I interpret that to mean  
19          that if things aren't loaded, it's -- it's going to  
20          be, you know, close in time to the noon deadline  
21          and not on day two of the hearing. I don't think  
22          that was the intent. So assuming that is what Mr.  
23          Rehwinkel was referring to, I have no problem with  
24          that.

25          With respect to the proposed language, I think

1           that I -- I think I raised this when we had our  
2           meeting to discuss the logistics. I am fine with  
3           that. And I, of course, would -- would never look  
4           at a document and -- and share it with witnesses,  
5           but -- but I believe that it -- we will have a mock  
6           hearing, I guess that's tomorrow, so perhaps this  
7           is a moot issue.

8                        So I just wanted to make sure that, on the  
9           technology standpoint, the -- the witnesses and the  
10          counsel have an opportunity just to confirm that  
11          the portal works and that the -- that the files  
12          that had been loaded are actual -- you are actually  
13          able to load them on your computer.

14                       And if that's not -- so I don't know if that  
15          would involve a quick opening it up just to make  
16          sure that -- that something can be actually loaded  
17          at this time, or if that's not something that we  
18          want to even try to do to test it out, then just  
19          be -- just be aware that there may be some  
20          technical difficulties.

21                       And I say this because it seems like every  
22          time I have to work on a computer or dealing with  
23          technology, if something can go wrong it will. And  
24          so as long as folks understand that if I can't have  
25          the opportunity to, again, just confirm that this



1           technology works, open and get out of it, and --  
2           and test it out, that if someone is  
3           cross-examining, for example, and there is a  
4           problem from a technology standpoint, that there  
5           will be at least some understanding that it was  
6           unavoidable if I can't test it ahead of time given  
7           this restriction.

8           Thank you.

9           COMMISSIONER POLMANN: Thank you, Ms.  
10          Triplett.

11          Let's move to Mr. Moyle.

12          MR. MOYLE: Thank you, Commissioner.

13          On the first point, I think all the parties  
14          have been communicating, and cooperating, and  
15          working in good faith on -- on being able to have  
16          this hearing in a -- in a unique time and setting,  
17          so I think the desired flexibility makes -- makes a  
18          lot of sense.

19          And I also think that in one of the -- one of  
20          the key issues related to -- to documents, you  
21          know, even late documents, is the prejudice that it  
22          may befall the -- the party against whom it's being  
23          used. And my sense in this case is that there are  
24          a lot of documents, but I think most everybody has  
25          had access to documents, and seen the documents, so

1 particularly if documents are being put forward  
2 beyond the noon deadline, but they are documents  
3 that have been out there, there is very little  
4 chance that a strong argument can be made about  
5 prejudice resulting from that.

6 So that -- that's -- that's my comment on  
7 the -- on the first point.

8 On the second point, with respect to the  
9 cross-examination documents, I think that -- that  
10 is -- is a good thing and it makes sense.

11 As -- we talked about this internally. I am  
12 sorry I didn't bring it up when we were talking  
13 internally. But -- but thinking about it this  
14 morning, as Mr. Rehwinkel was presenting it, I  
15 am -- I am wondering whether that should apply to  
16 counsel, like Mr. Brew and myself, who don't have  
17 witnesses in the case. OPC has witnesses, and Duke  
18 has witnesses, and obviously it would apply to them  
19 because, you know, you don't want them looking at  
20 the document that's going to be used for  
21 cross-examination, telling their witness, hey, make  
22 sure you look at this document because it's going  
23 to be used for cross-examination on you. But --  
24 but I am just raising that as a question whether it  
25 should apply to people like Mr. Brew and I. And I

1 am kind of inclined to say probably not, but I did  
2 want to -- want to raise that.

3 So those -- those are the comments that I  
4 have.

5 COMMISSIONER POLMANN: Thank you, Mr. Moyle.  
6 Mr. Brew.

7 MR. BREW: Thank you, Commissioner. If I can  
8 go to the second point first.

9 I endorse the language that Mr. Rehwinkel read  
10 in terms of accessing the files that are sort of  
11 filed early.

12 As to the first point, I would just like to  
13 know that the -- the Thursday noon deadline is  
14 designed to try to make the hearing go more  
15 efficiently. There is not something intrinsically  
16 hard about that timeframe, so I would encourage  
17 some flexibility there as Mr. Rehwinkel described.

18 We are trying to conduct a hearing on some  
19 complicated issues, where multiple people from  
20 multiple locations are acting remotely, and so we  
21 are trying to figure out a way to make this process  
22 go more smoothly. So I would endorse the -- Mr.  
23 Rehwinkel's initial request, as well as the  
24 statement regarding access to documents.

25 COMMISSIONER POLMANN: Thank you, Mr. Brew.

1           Let's see, back to staff, Ms. Brownless, and  
2           then I would like to hear from Ms. Helton.

3           MS. BROWNLESS: Thank you.

4           With regard to the language proposed by Mr.  
5           Rehwinkel, if the parties agree to that, the staff  
6           certainly has no objection to that.

7           With regard to the deadline for filing the  
8           exhibits, what I would want to bring to the  
9           Commissioner's attention is that Friday, July 3rd,  
10          is a State holiday, and one of the reasons that  
11          July 2nd at noon was selected was to give much  
12          enough time here in the building, both in the  
13          Clerk's Office and the General Counsel's Office, to  
14          make sure that we got the CDs or the thumb drives  
15          from all parties, got them downloaded, got them  
16          squared up so they could be accessed for the  
17          hearing.

18          So I appreciate the timing, and I understand,  
19          but I would just hope that the parties would  
20          understand that there is a lot of work that has to  
21          be done on this end once we get their USB drives  
22          and CDs.

23          The other thing that I would like to discuss  
24          is that OPC and I have had some discussions about  
25          the language on Attachment A, and, Charles, if you

1           can respond to this. I know you had some concerns  
2           about coming up with a short title, which is what  
3           Attachment A requires. Do you still have an issue  
4           with that?

5           MR. REHWINKEL: Yes. Thank you, Suzanne. And  
6           with your permission, Commissioner, I -- I would  
7           like to address that. I -- I had not known that  
8           Attachment A was going to be discussed expressly  
9           here.

10           So we would ask that there be no requirement  
11           that a short title be given because that would  
12           undermine the language that we proposal propose  
13           here and the agreement among the parties to -- to  
14           not disclose the contents or the identity of the --  
15           the -- the exhibit.

16           Our proposal would be that we number the  
17           exhibits as -- as Attachment A requires and, you  
18           know, put the C in there for confidential. And, in  
19           fact, I was just talking to -- to staff here and  
20           saying when you design a cover sheet, put title,  
21           and then a big long blank, and then what I would  
22           say, if -- if the need arises where I need to, for  
23           example, use Exhibit 8C, I would say, let's turn to  
24           8C. And I would say, Mr. Chairman, I would like to  
25           give that exhibit a title now. And I think that's

1 the proper way to do it because the numbering  
2 allows people to access the exhibits out of the --  
3 the particular drive that it's -- that it's found  
4 in, and then if it's needed, then you can give it a  
5 title. There is no reason to -- to identify it  
6 ahead of time by title in our view. So we would  
7 ask that that restriction not be included at this  
8 time.

9 In addition, one other element of Attachment A  
10 that we just want clarification on that I think I  
11 received from staff is there are some discovery  
12 responses that are still coming in related to  
13 depositions, et cetera. The depositions themselves  
14 are -- at least two of the three are expected to be  
15 delivered tomorrow. There are going to be issues  
16 about confidentiality and covering the -- the  
17 documentation.

18 We would prefer that instead of us having to  
19 file a Notice of Intent, or work with Duke to file  
20 a Notice of Intent, or whatever confidentiality  
21 request is required, is it -- that there be an  
22 acknowledgment of -- of two circumstances.

23 One, if any of the parties other than Duke  
24 have information that's confidential from Duke,  
25 it's because they either have an NDA or it's

1 covered by a Commission order, a request for  
2 confidential classification or a Notice of Intent  
3 to Seek Confidential Classification, and so if we  
4 have that information that all we have to do is  
5 assert when we file it in the Commission that it is  
6 covered.

7 And for these lagging documents that -- that  
8 may still be coming in this week, is that we would  
9 ask that Duke be allowed to file a, I am going to  
10 call it a blanket request for confidential  
11 classification that covers any other outstanding  
12 information that's still pending that would be  
13 subject to a claim of confidentiality so that we  
14 can assert that there is a -- a pending request  
15 that covers the documentation.

16 This way Duke and I -- as long as it's a  
17 Notice of Intent, it's a really a rather skeletal  
18 claim that's based on assertions that they've made  
19 and have been acknowledged by Commission orders in  
20 this docket.

21 So that's just my suggestion with respect to  
22 Attachment A.

23 COMMISSIONER POLMANN: Okay. Ms. Brownless,  
24 do you have any response on the Attachment A -- I  
25 will deal with the short title the issue here

1           momentarily, but on the -- particularly on the  
2           confidentiality, and then I am going to ask Ms.  
3           Helton to respond to that as well. I have got a  
4           question on that, but Ms. Brownless.

5                   MS. BROWNLESS: Yes, sir.

6                   What I think would be an acceptable  
7           modification of Attachment A would be to go to the  
8           second full paragraph of Attachment A and to delete  
9           the sentence that says: In addition, each party  
10          shall provide a table listing the exhibit numbers  
11          and short titles included on each USB flash drive  
12          or CD. And then to also delete on the last  
13          paragraph -- I guess it's the second to the last  
14          sentence, to delete -- it should read: Each  
15          exhibit must also include a cover page that  
16          includes the exhibit number, and to delete and  
17          short title. And that way Exhibit A will match up  
18          with what Mr. Rehwinkel has indicated.

19                  And just so we can summarize what would be  
20          provided, it would be a cover sheet, the exhibit  
21          numbers as stated in Attachment A. And so an  
22          example of that would be OPC-1, or OPC-1C. There  
23          would be page numbers in the upper right-hand  
24          corner consecutively numbered, and they would  
25          provide two different thumb drives or CDs, one that



1           would have their confidential material and one that  
2           would have their nonconfidential material.

3           And I also would support that if Duke could  
4           see their way clear, that they file a Notice of  
5           Intent with part to the deposition exhibits of Mr.  
6           Adix and Mr. Hobbs which are yet to be delivered,  
7           as well as the exhibits associated with those  
8           deposition exhibits.

9           Otherwise, I think any material that's here  
10          will be covered by either outstanding notices of  
11          intent, confidentiality orders or request for  
12          confidential orders. So I think everything would  
13          be covered if that Notice of Intent for those  
14          documents could be provided.

15          MR. REHWINKEL: Commissioner Polmann, if I  
16          could --

17          COMMISSIONER POLMANN: Yes, sir. Go ahead.

18          MR. REHWINKEL: I think Ms. Brownless meant to  
19          say the deposition and the deposition exhibits.

20          MS. BROWNLESS: Yes. I am sorry, the  
21          transcripts and the --

22          MR. REHWINKEL: Okay, yeah. Yeah.

23          COMMISSIONER POLMANN: Okay. Ms. Helton, I  
24          had a question on the -- with regard to the  
25          confidentiality, the Notice of Intent, I thought we

1 had some discussion on this recently of whether or  
2 not the Notice of Intent is sufficient as opposed  
3 to a filing requesting confidentiality.

4 MS. HELTON: Commissioner, in our rule -- oh,  
5 I am sorry.

6 COMMISSIONER POLMANN: Go -- go ahead.

7 MS. HELTON: In our Rule 25-22.006, it sets  
8 out a process for any owner of confidential  
9 information or holder of confidential information,  
10 that they can provide that information to the  
11 Commission without immediately filing a request for  
12 confidential treatment.

13 Sometimes, depending on the extent of the  
14 confidential information, it can -- it can be -- it  
15 can be burdensome for whoever is providing the  
16 confidential information to us to -- to put that  
17 together along with the filing. So in that rule,  
18 there is a process where whoever provides the  
19 information to us, or they allow the owner of the  
20 information to provide -- to file a Notice of  
21 Intent, and that Notice of Intent protects the  
22 confidentiality of the information, and then  
23 whoever is going to file the request for  
24 confidential treatment has 21 days to file the  
25 request.

1           So the Notice of Intent is a process that we  
2           have developed that allows the Commission to  
3           protect the confidentiality or proprietary nature  
4           of the information, and gives time for the  
5           bureaucracy to catch up so that the actual request  
6           for confidential treatment can be filed.

7           So I am comfortable here with a Notice of  
8           Intent being filed. That's actually what we set  
9           out in Attachment A.

10           I also appreciate Mr. Rehwinkel's willingness  
11           to state that whenever he provides the confidential  
12           cross-examination or impeachment exhibits, that he  
13           will state that -- that they are confidential and  
14           assert that they are covered by another Notice of  
15           Intent, or a request that's already been filed, or  
16           an order that's already been issued.

17           My concern is that when the information comes  
18           to the Commission, that the Clerk has the -- the  
19           legal standing to keep that information  
20           confidential.

21           COMMISSIONER POLMANN: Thank you. That --  
22           that was my concern. Maybe I misheard, but I --  
23           but I thought there was a comment from Mr.  
24           Rehwinkel about asserting confidentiality, and that  
25           there were documents not yet submitted or, in fact,

1           there may be items that -- that are fully -- not  
2           yet fully known in terms of exhibits or -- or  
3           things that are arising out of depositions, or so  
4           forth, and that the parties may assert  
5           confidentiality at some point in the next few days,  
6           given that certain documents already filed with  
7           regard to confidentiality.

8           So I just want to be clear that whatever  
9           notices, or notices of intent that are already in  
10          our -- in our files fully cover the -- the items  
11          yet to be received. Are you comfortable with that?

12          MS. HELTON: Well, what I under -- what I  
13          understood Mr. Rehwinkel to say was, number one,  
14          that with respect to the depositions that just  
15          happened and the deposition exhibits coming out of  
16          those depositions, if there is any confidential  
17          information there, that Ms. Triplett, or whoever --  
18          whoever is the appropriate person on behalf of  
19          Duke, would file a Notice of Intent with respect to  
20          that information.

21          And then for the other confidential exhibits  
22          that will be provided by the parties, that --  
23          oftentimes, that information will have been  
24          already -- it's the same information that's already  
25          been filed with the Commission, just in a different

1 form, and so that information would already be --  
2 that exact information would already be covered by  
3 a Notice of Intent, a Request for Confidential  
4 Treatment or an order if an order has been issued.

5 And so Mr. Rehwinkel, or whoever could say,  
6 this information has already been deemed  
7 confidential by order whatever, or has already been  
8 requested to be treated as proprietary confidential  
9 information by the request dated whatever.

10 So that's how I understood --

11 MR. REHWINKEL: Mr. Chair --

12 MS. HELTON: I'm sorry, go ahead.

13 MR. REHWINKEL: Thank you --

14 COMMISSIONER POLMANN: Go ahead -- go ahead,  
15 Charles.

16 MR. REHWINKEL: Okay. Thank you,  
17 Commissioner.

18 Just to be clear, my concern is what I am just  
19 going to refer to, and I don't mean this in a  
20 disparaging way, but to the logistical bottleneck  
21 of -- of noon on Thursday. And let me just  
22 contrast it to the way things go when you are not  
23 in a COVID-19 environment.

24 You will have re -- you, a party will have  
25 received confidential documents. You prepare

1 exhibits, some confidential, some not. You bring  
2 them to the hearing room. The confidential ones,  
3 you go through the process of making sure that  
4 people don't vocalize, et cetera. But you bring  
5 the exhibit. You cross-examine the witness. It's  
6 introduced into evidence. And then if it's  
7 introduced into evidence, but it's been subject to  
8 a Notice of Intent, there is a process where the  
9 owner of that information files the RCC and the  
10 Commission ultimately rules on it. But before you  
11 walk into the hearing room, you don't have to  
12 coordinate about a Notice of Intent or anything  
13 like this.

14 What we have now, this situation, which is the  
15 first of its kind, and it comes at a time when the  
16 parties are preparing for a hearing, is that we  
17 have to take a thumb drive with confidential  
18 information, and it might have 15 exhibits, 10 of  
19 them confidential, you got to give them to the  
20 Clerk.

21 Well, some of the information is covered by  
22 orders because it's so old, the Commission has had  
23 time to rule on it, and some of them may have a  
24 pending RCC, and some of it may just have a Notice  
25 of Intent because it's come in rather recently.

1           It's not going to be possible for us to map all of  
2           those exhibits to whatever the source of the  
3           confidentiality protection is, whether it's an  
4           order, an RCC or an NOI. That's one thing.

5           The other is you are going to have information  
6           that is still uncovered. It's been -- it -- and --  
7           well, I would assume that if we get it, that the  
8           company would have had to have filed a Notice of  
9           Intent. So it's going to be -- there is  
10          information, like the depositions and exhibits,  
11          that are, at this point in time, uncovered.

12          So I just want to make sure that -- that we  
13          don't have to go through extra steps to coordinate  
14          why the information is covered before we take in  
15          and give it to the Clerk. And that's -- that's my  
16          big concern.

17          COMMISSIONER POLMANN: I understand.

18          What -- what I am trying to do is -- just a  
19          second, Ms. Helton. What I am trying to do is make  
20          sure that our -- our extraordinary procedures for  
21          hearing, notwithstanding that we are following and  
22          complying with the appropriate and necessary rules  
23          for confidentiality, so that everything is  
24          appropriately covered and legal.

25          Now, I -- I recognize the need for

1 flexibility, but I don't want the flexibility to be  
2 such that we are outside of the bounds. That's --  
3 that's my only requirement. So provided that --  
4 that my legal advisor is -- is satisfied with that,  
5 we can proceed. That's all I am trying to do.

6 I don't -- I don't mean to impose anything  
7 that's -- that's unnecessarily burdensome. I don't  
8 want to do any more than necessary. So that's --  
9 that's my only comment.

10 Ms. Helton, did you have something else?

11 MS. HELTON: Commissioner Polmann, I -- I  
12 think I understand a little bit better now what Mr.  
13 Rehwinkel was saying.

14 My -- I appreciate the need for flexibility.  
15 My concern is that if someone makes a Public  
16 Records Request to the Commission concerning these  
17 exhibits, that we have the legal authority to say  
18 that the information is confidential and we cannot  
19 hand it over.

20 Perhaps Ms. Triplett could file a Notice of  
21 Intent on Thursday that would cover any  
22 confidential information that the parties are  
23 asserting to be confidential with respect to their  
24 cross-examination exhibits, and that would -- I  
25 think -- I had a sidebar with Mr. Teitzman, I think



1           that would protect that information. And then at  
2           the conclusion of the hearing, we can work with Ms.  
3           Triplett and the parties to determine whether that  
4           information that's been filed on Thursday is  
5           already covered by a request or an order, or if Ms.  
6           Triplett needs to file an additional request for  
7           confidential treatment.

8                        So I am -- I am comforted if Ms. Triplett can  
9           agree to file a Notice of Intent on Thursday. I  
10          just want to make sure the information is  
11          protected.

12                       COMMISSIONER POLMANN: Okay. Do we have any  
13          other comments from the parties? Go ahead.

14                       MS. TRIPLETT: Yes, Commissioner, sorry, since  
15          I was asked for -- this is Ms. Triplett. Since I  
16          was asked to provide a Notice of Intent. I mean,  
17          this certainly is my information, my counterpart's  
18          information, so I have an interest in obviously in  
19          protecting it.

20                       I think that where we stand is that I have --  
21          I am putting together today a Notice of Intent to  
22          cover the forthcoming deposition transcripts and  
23          late filed deposition exhibits to the extent those  
24          contain confidential information.

25                       I think with that filing, that the parties are

1           only -- I am only asserting, you know, I am only  
2           protecting my information, so if a party has  
3           information from another transaction that's  
4           confidential, or, you know, from their expert,  
5           obviously that's not going to be covered, and  
6           that's not my concern since it's not my  
7           confidential information.

8           I think I am covered. But if Ms. Helton is  
9           thinking that there is other information and she  
10          gets a Public Records Request and she needs yet  
11          another Notice of Intent, I am happy to file that.  
12          I certainly do not want to be in a position where  
13          the Commission is disclosing confidential  
14          information.

15          So I can file -- I have one coming today. I  
16          think with that, we should be completely covered.  
17          But if you want me to file another one that can  
18          then be perhaps withdrawn at the conclusion of the  
19          hearing, I am happy to do that as well.

20          MR. REHWINKEL: Commissioner Polmann, I -- I  
21          think I agree with what Ms. Triplett says. I won't  
22          possess the depositions or the deposition exhibits  
23          unless she has filed a Notice of Intent; because  
24          until that document is in the be boughs of the  
25          Commission I can't possess the information. So I

1 think that would be the last piece that would be --  
2 that would need to be covered.

3 And -- and -- and our -- we will not be filing  
4 any information from our side that is confidential  
5 to anything in our witness or -- or otherwise not  
6 Duke information. So I -- I think that will --  
7 will cover it. I don't think the belt-and-  
8 suspenders approach of another one would be  
9 necessary because we wouldn't have the information  
10 unless there was one of those three documents on  
11 file with the Commission, an order, an RCC or an  
12 NOI.

13 MS. HELTON: Commissioner.

14 COMMISSIONER POLMANN: Okay. Yes, ma'am.

15 MS. HELTON: Just in an abundance of caution,  
16 so that we make sure everything is covered, it  
17 would give me a great deal of comfort if Ms.  
18 Triplett could file on Thursday a global Notice of  
19 Intent that just said that any information that's  
20 not yet already covered, they will -- asking us to  
21 treat the information confidential so that, if  
22 necessary, they can follow up -- follow up with a  
23 request for confidential treatment.

24 I realize that that is an extra step, but I  
25 don't think preparing a Notice of Intent is all

1           that burdensome, and then I think that we would  
2           have the protections that we need in an abundance  
3           of caution to be able to go forward and treat all  
4           information that the parties assert is confidential  
5           as confidential information.

6           COMMISSIONER POLMANN: Ms. Triplett, would you  
7           like to respond to that?

8           MS. TRIPLETT: No -- no, sir. I will move on.  
9           I will file the Notice of Intent on Thursday. I am  
10          happy to do it. No problem.

11          COMMISSIONER POLMANN: Thank you.

12          Okay. So we are in Section V, prefiled  
13          testimony and exhibits.

14          Let me see -- we have addressed the five  
15          minutes for witness summaries. We have talked ad  
16          nauseam about the confidential and nonconfidential.  
17          Let me -- let me talk for a second about the July  
18          2nd noon.

19          I have heard the request for flexibility on  
20          the noon. I am a little bit concerned about the  
21          internal process that the -- the Agency that --  
22          that staff needs in light of the July 3rd holiday  
23          observation. I am not quite sure what we are going  
24          to be able to do in the Clerk's Office to load up  
25          documents that are not received, given that

1           whatever is not completed on -- on Thursday carries  
2           over to Monday and then the hearing is on Tuesday.

3           So I think we are going -- we are going to  
4           need to leave in the order the July 2nd noon  
5           deadline, and whatever is not received in the  
6           context of flexibility may have some unintended  
7           consequences. I -- I don't know exactly what that  
8           means.

9           I heard support from the parties with regard  
10          to flexibility. Flexibility is flexibility.  
11          Without -- without modifying noon to some other  
12          time certain, I -- I am uncomfortable both with the  
13          term of flexibility, but I am -- I am more  
14          uncomfortable modifying the noon date.

15          So that's -- that poses some imposition on the  
16          parties to -- to make best efforts, recognizing  
17          that I don't know what -- what the consequence will  
18          be.

19          MR. REHWINKEL: Commissioner, what you said  
20          is --

21          COMMISSIONER POLMANN: Yes, sir.

22          MR. REHWINKEL: -- fine with us. I wasn't  
23          asking, to be clear, that the noon on Thursday be  
24          changed. We intend to meet that. There are  
25          just -- this is the first time we've ever done

1           this. We have to drive the disk out -- out to the  
2           Commission. Just -- I just don't want to be out  
3           of -- completely out of luck if it's 1:30, you  
4           know, because somebody has had a car problem or  
5           something. I just don't know. This is not like a  
6           5:00 p.m. deadline that you have known about for,  
7           you know, for years or months, so that's all I am  
8           asking.

9           COMMISSIONER POLMANN: I know. I am -- I am  
10          just responding and making it clear to all the  
11          parties that I don't know what the consequence will  
12          be, you know, because we -- it will be whatever it  
13          is. And -- and then what the impact to the hearing  
14          will be, it's an unknown. I understand what your  
15          intent is, and I -- and I am just stating on the  
16          record that -- that it leaves -- it leaves a window  
17          a little bit open.

18          I don't know what else to say. I am not -- I  
19          am not going to change the time. You are -- you  
20          are going to make the best effort, and everybody  
21          understands that.

22          So moving on from there. Let me see what --  
23          what --

24          MS. BROWNLESS: Commissioner.

25          COMMISSIONER POLMANN: I think we heard -- go

1 ahead, Suzanne.

2 MS. BROWNLESS: Yes, sir.

3 With regard to the modification of Attachment  
4 A, are you comfortable making the modifications  
5 that we discussed?

6 COMMISSIONER POLMANN: Yeah, I -- I am  
7 comfortable changing the language, but I am going  
8 to come back -- I am going to make a statement here  
9 in just a second. Let me see what --

10 I am okay with -- with your recommended  
11 deletions, Ms. Brownless, in Attachment A, but I  
12 want -- let me say what my thinking is, and then --  
13 and then let's talk for just a second about whether  
14 I will make this as a ruling now, take it under  
15 advisement, or discuss it further with the parties  
16 to change Section A with some addition of -- of  
17 some language and that is:

18 Mr. Rehwinkel, I understand the language --  
19 the short paragraph that you verbalized as -- as  
20 relates to protecting the identity. This is --  
21 first of all, I understand protecting the  
22 confidence. Protecting the identity with regard to  
23 this -- to the short title, and that is the  
24 language that was proposed for deletion in  
25 Attachment A.

1           You are aware at hearing the notion that the  
2           -- the process of assigning a short title can be  
3           cumbersome as a matter of -- of process. What  
4           happens in my experience, is when we try to assign  
5           a short title, it can be confusing. We end up  
6           with -- with, on occasion at least, several people  
7           talking at once, people not -- not hearing, people  
8           backing up and saying, now, what was that title and  
9           so forth.

10           I personally like to refer to the exhibit by  
11           number, and I think you have said that. For  
12           whatever reason, we need the short title. And here  
13           is my -- here is my suggestion.

14           I would like, in advance of the hearing -- and  
15           I think you have alluded to this -- that OPC create  
16           the short title. And by some mechanism, rather  
17           than you holding that unto yourself until hearing  
18           and then vocalizing that at hearing, that you  
19           prepare a key, a table that has your number system  
20           that you provide under Attachment A, according  
21           Attachment A, and the corresponding short title;  
22           and that at a minimum, that be provided to the --  
23           to the Chairman at the beginning of the hearing by  
24           some -- by some means, or before the hearing so  
25           that the Chairman has that -- you and the Chairman



1 will have that, so that he can -- he can identify  
2 it, he can speak to that so that we have a record  
3 of it so that it's clear what that short title is  
4 going to be. So it's not a question of you -- you  
5 speaking the short title and we get it right.

6 Now, I would -- I would like to somehow  
7 document that. That's my proposal. I am happy to  
8 hear your response, Mr. Rehwinkel.

9 MR. REHWINKEL: Well, I am a little bit -- I  
10 understand your -- your point, and it is a good one  
11 about kind of the confusion that can ensue and  
12 people selecting a short title.

13 My concern would be that I -- I don't want to  
14 be drawn into an ex parte communication with one  
15 member of the panel to the exclusion of the others.  
16 To give such a document to the Chairman would still  
17 mean it would probably have to be uploaded  
18 somewhere, and I -- I just -- my -- my request is  
19 that -- that we are in a -- that we are in a  
20 first-of-a-kind situation. We are doing the best  
21 we can with this. And this probably is something I  
22 would ask that the Commission, with all due  
23 respect, consider for the next time, when there is  
24 less stress and less sort of -- of a logistical  
25 kind of potential logjam.

1           I -- I think we are going to undoubtedly have  
2           technical problems with this because we are doing  
3           this for the first time. We hope it goes well, but  
4           something is going to go wrong. And I just -- I  
5           feel a lot of angst and concern about, you know,  
6           creating another process, and one that could have  
7           unintended consequences about a document that just  
8           goes to one -- one -- one person on the panel.

9           I am happy to -- to try to make that work, but  
10          I -- do have some trepidation about it, so...

11          COMMISSIONER POLMANN: No, I accept that. I  
12          had not thought about the ex parte nature that --  
13          that could arise. I appreciate you raising it.  
14          And given that, what I will do on this, and -- and  
15          as I mentioned earlier, this -- this is an item  
16          that I am concerned about with -- with timing and  
17          so forth. I am going to need to take -- take this  
18          particular issue of the short title -- I am fine  
19          with changing Exhibit A, but I am -- I am -- I  
20          haven't come to closure on the requirement on how  
21          we are going to did this.

22          It may be acceptable that you just provide the  
23          title as you suggested, that you vocalize the  
24          title. I may decide that -- that you have too  
25          provide the corresponding key at hearing. I -- I

1 don't know. I need to review this today and will  
2 make a decision on this today. I appreciate your  
3 understanding.

4 My job here at prehearing is to establish a  
5 process for hearing that's efficient. We will find  
6 some way to -- to make this work.

7 MS. HELTON: Commissioner.

8 COMMISSIONER POLMANN: As you said, Charles,  
9 this is -- you know, doing this as telework is  
10 burdensome in itself, so -- so we are trying to  
11 make that flow of work as efficient and easy as we  
12 can, and I just need to -- to think through this  
13 and talk to counsel.

14 Ms. Helton, what -- what did -- what did you  
15 have?

16 MS. HELTON: I appreciate Mr. Rehwinkel's ex  
17 parte concerns, but I do think having a list of the  
18 cross-examination exhibits with the short title  
19 while the hearing is going on would be helpful to  
20 expediting the exhibit process.

21 What if Mr. Rehwinkel and the other parties  
22 were to email that list to Mr. Hetrick and myself  
23 the morning of the hearing so we would have the  
24 list in the hearing room, because both Mr. Hetrick  
25 and myself plan to be here. I think we might have

1           some of the efficiencies without having the ex  
2           parte concerns. And that's just a suggestion.

3           MR. REHWINKEL: Well, I will -- I will commit  
4           to the -- to the prehearing officer that I will  
5           have a list so I am not thinking off the top of my  
6           head, and I will have -- like, for example, I am  
7           going to, without a doubt, identify more exhibits  
8           than I need. That happens in every hearing. I  
9           bring -- I bring paper copies, and I -- I don't use  
10          them and they go in a recycle bin, but you have to  
11          have them just in case.

12          I am not going to use every exhibit, but if I  
13          do, that's -- that's why it just seems that it may  
14          not be worth the squeeze, but I will have a list  
15          prepared that corresponds to every number.

16          And I -- I just don't want to, in light of --  
17          if we've got the agreement then we are not going  
18          to, you know, say, give the name of the document so  
19          that -- well, I just -- I think we -- we -- to be  
20          consistent with the agreement that we have, that  
21          putting the short title on in advance is -- is --  
22          would undermine that.

23          But I am happy to facilitate the -- the -- the  
24          swift consideration of the exhibit at the time,  
25          with a -- with a mechanism that works. I just

1 don't want to have to do it in advance on the  
2 doc -- on the exhibit itself.

3 COMMISSIONER POLMANN: Okay. I -- I think  
4 we've covered in advance on the exhibit with a  
5 modification to a Attachment A, do you agree with  
6 that, Mr. Rehwinkel?

7 MR. REHWINKEL: Yes. I apologize. I thought  
8 that was still up in the air and was taken under  
9 advisement on the short title.

10 COMMISSIONER POLMANN: No.

11 MR. REHWINKEL: Okay.

12 COMMISSIONER POLMANN: The change -- the  
13 change in Attachment A that Ms. Brownless proposed  
14 with the deletion of the -- the sentence in the  
15 second paragraph, and then -- then the deletion of  
16 words in the last paragraph, I -- I am okay with  
17 that.

18 What -- what we are discussing now is -- is a  
19 procedure at hearing, and you agreed to bring the  
20 list of exhibit numbers and the letter and number  
21 designation, and then you will create, in advance,  
22 the short title.

23 The issue at hand is -- is whether anybody  
24 other than yourself has that key.

25 MR. REHWINKEL: Yes. Okay. And -- and I

1 will -- I guess we will decide that on the morning  
2 of the hearing how that's going to be done, but it  
3 will be -- it will be ready to be emailed to who  
4 you say.

5 COMMISSIONER POLMANN: We are either going to  
6 decide that this afternoon and will tell you the  
7 answer, or we will let you know that -- that it  
8 will be determined the day of the hearing, and it  
9 will be distributed either by email to someone, or  
10 you will have it yourself.

11 I have got to discuss this with -- with Ms.  
12 Helton after we hang up. So I am taking this under  
13 advisement on the issue of who will have the list  
14 on the date of hearing. Are you okay with that?

15 MR. REHWINKEL: Yes, sir. Thank you.

16 COMMISSIONER POLMANN: Thank you.

17 All right. So that was Section V of -- unless  
18 I am confused, which is entirely possible.

19 Ms. Brownless, was that Section V?

20 MS. BROWNLESS: Yes, sir. And just so I make  
21 sure --

22 COMMISSIONER POLMANN: Do we have anything  
23 else?

24 MS. BROWNLESS: I just want to make sure --

25 COMMISSIONER POLMANN: Go -- go ahead.

1 MS. BROWNLESS: -- I understand what we've  
2 done here.

3 We've modified Attachment A as was suggested.  
4 You will have taken under advisement the  
5 preparation of a table, when it's given out,  
6 what -- what happens with the table, which has the  
7 exhibit numbers and a short title. That you have  
8 reserved ruling on, is that correct?

9 COMMISSIONER POLMANN: Yes, ma'am. That's  
10 correct.

11 MS. BROWNLESS: Okay. And that with regard to  
12 the language, the parties have agreed language. As  
13 I understand it, since everybody has indicated  
14 that's acceptable to them, that we will put that in  
15 the ruling section of the order; is that correct?

16 COMMISSIONER POLMANN: Yes.

17 MS. BROWNLESS: Okay. Thank you.

18 COMMISSIONER POLMANN: Okay. Any other  
19 comment -- well, forget that. No other comments on  
20 Section V. Moving down.

21 Section VI, order of witnesses. Any comments  
22 from any party?

23 Are there any witnesses that can be  
24 stipulated?

25 MS. TRIPLETT: Commissioner Polmann, this is

1 Dianne, actually I was going to ask if we could  
2 actually talk about that.

3 I -- I am not in a position to -- to stipulate  
4 to the only witness that I could stipulate to, but  
5 I would like to see if others concede to that, and  
6 given where all the prehearing -- with the  
7 positions, it seems like there is a couple of  
8 witnesses that perhaps folks could -- would not  
9 have questions for.

10 COMMISSIONER POLMANN: All right. Does any  
11 party wish to propose or accept stipulation of  
12 witnesses?

13 MR. REHWINKEL: From the Public Counsel's  
14 standpoint, I have indicated that I don't have  
15 questions for Mr. Palasek.

16 COMMISSIONER POLMANN: Mr. Moyle, do you have  
17 questions for Mr. Palasek?

18 MR. BREW: This is Jay Brew.

19 COMMISSIONER POLMANN: Yes, Mr. Brew.

20 MR. BREW: PCS does not have questions for Mr.  
21 Palasek.

22 MR. MOYLE: Nor -- nor does FIPUG. So we  
23 could -- we could stipulate to that witness.

24 COMMISSIONER POLMANN: Staff?

25 MS. BROWNLESS: No, sir. We are happy to



1 stipulate to Mr. Palasek.

2 COMMISSIONER POLMANN: Ms. Triplett?

3 MS. TRIPLETT: Thank you very much. I am not  
4 going to object to that. Thank you. I appreciate  
5 that.

6 My question is, can -- do we still need --  
7 what's the process -- maybe it's a question for Ms.  
8 Brownless for -- concerning that none of the  
9 Commissioners have questions so that he can  
10 officially be excused, and when do you think that  
11 could -- we will find that out?

12 MS. BROWNLESS: I will work on that this  
13 afternoon and be able to get back with you tomorrow  
14 morning.

15 MS. TRIPLETT: Perfect. Thank you.

16 COMMISSIONER POLMANN: Are there any other --  
17 any other witnesses on direct that the parties will  
18 consider stipulation? I don't hear anything.

19 MR. REHWINKEL: Commissioner, from the Public  
20 Counsel's standpoint, I don't contemplate that we  
21 will stipulate to any other witnesses.

22 COMMISSIONER POLMANN: All right. So that  
23 puts that to rest.

24 On the expertise witnesses, Ms. Brownless, do  
25 you -- do you just want to go to the end here, and

1 I think we can expedite this.

2 MS. BROWNLESS: Yes, sir.

3 COMMISSIONER POLMANN: Go ahead.

4 MS. BROWNLESS: Okay. Thank you.

5 At this time, it's noted that FIPUG has stated  
6 that it objects to the qualifications of a witness  
7 being considered an expert witness unless the  
8 witness affirmatively states the subject matter  
9 area in which he or she claims expertise.

10 We will note that if FIPUG wishes to move to  
11 strike the testimony of any witness, it must comply  
12 with the requirements of the OEP Order No. PSC  
13 2019-0320 Section V.A.(8), that it identify in its  
14 prehearing statement each witness to whom it  
15 objects and states with specificity the portions of  
16 this testimony by page and line number to which the  
17 party objects.

18 FIPUG has not complied with these requirements  
19 and should be denied the ability to object to the  
20 expertise of any witness at the July 7th final  
21 hearing.

22 This ruling is consistent with past Commission  
23 rulings and the Florida Supreme Court case Florida  
24 Industrial Users Group V Brown, 273 So.3d. 926,  
25 Florida 2019.

1           DEF has also stated that it objects to Richard  
2 Polich's qualifications to testify as an expert  
3 regarding the financial condition of NorthStar,  
4 ADP, ADP CR3 or ADP SF1.

5           It does not appear that DEF is asking that any  
6 testimony be stricken. And like FIPUG, DEF has not  
7 complied with the requirements of Section V.A.(8),  
8 and would not be able to strike the testimony of  
9 Mr. Polich. However, any party can ask questions  
10 of a witness that go to the weight to be given to  
11 their testimony.

12           So we believe that professional qualifications  
13 of any witness are relevant to the weight to be  
14 given to their testimony in the subject areas about  
15 which they testify.

16           COMMISSIONER POLMANN: Okay. Thank you, Ms.  
17 Brownless.

18           I want to make sure that I understand the  
19 parties' positions on this, and I am hoping that  
20 once -- once I hear from the parties that I will be  
21 able to make a ruling on this, some possibility  
22 that I may need to take this under advisement and  
23 review this with -- with counsel, but let me hear  
24 from the parties on this.

25           Mr. Moyle, I would like to hear your comments

1 just to make sure that I have got a full picture.

2 MR. MOYLE: Sure. And -- and thank you for  
3 giving us the opportunity.

4 As Ms. Brownless pointed out, this -- this is  
5 not a new issue. We have made this point and  
6 believed that the better way to handle all of these  
7 witnesses as they do, in -- in my experience, most  
8 other tribunals, is if you have an expert, for that  
9 expert to identify the areas in which he or she  
10 professes expertise. So you have, you know,  
11 witness A comes up and witness A says I am here to  
12 talk about -- about spent nuclear fuel rods. I  
13 have an expertise in spent nuclear fuel rods  
14 because I work for the NRC. I got a nuclear  
15 engineering degree from Georgia Tech, and -- and  
16 the record is real clear that the person taking the  
17 stand is being offered as an expert in spent  
18 nuclear fuel rods -- this -- I am making this up.  
19 This is a hypothetical.

20 The -- the way it works at the Commission is  
21 that level of specificity and detail is not  
22 provided. So if someone gets up and -- and says, I  
23 am here to talk about -- about this project, and --  
24 and they talk about their background. But there is  
25 never -- never a question to say, well, what areas

1 do you consider yourself to have expertise with an  
2 answer A, B and C.

3 And we just take exception to that, because  
4 there are two kinds of fact witnesses in  
5 adjudicatory proceedings, as -- as you know. One  
6 is a fact witness to say the traffic light was red  
7 and the traffic light was green, and another is an  
8 expert witness who would come in and say, you know,  
9 based on the skid marks that I measured and all of  
10 my background with accident reconstruction, in my  
11 expert opinion, the vehicle was going over the  
12 speed limit, 55 miles an hour in a 35-mile an hour  
13 zone.

14 So the fact of the expert distinction is  
15 significant and material. And we think the better  
16 practice is for witnesses to make that  
17 identification when -- when they are testifying.

18 I don't think you will find it here, you know,  
19 and for example, we took the deposition last week  
20 of a -- of a witness who is the chief financial  
21 officer for NorthStar, and he had background in  
22 financial matters, but, you know, there was  
23 never -- never anything that I am aware of that  
24 said -- and Ms. Triplett can correct me if I am  
25 wrong, but I am an expert in financial forecasting

1 or CPA accounting rules and regulations. He just  
2 said, here's-- here's the plan. Here's the  
3 financial abilities, here is our balance sheet of  
4 NorthStar, and goes into the facts.

5 So the -- the mixing of those, we don't -- we  
6 don't think is -- is the right way of doing it  
7 because there is a distinction between fact and  
8 expert, and we simply think that when someone is  
9 proffered to the Commission, that they should  
10 indicate clearly what -- what we are testifying to  
11 as an expert, and then what areas they are  
12 professing to have, you know, expertise.

13 And like I said, in -- in other tribunals,  
14 it's typically common for a lawyer to put an expert  
15 up, walk them through their background, all of the  
16 things they have done, and then say, Your Honor, I  
17 would like to tender this expert -- this witness as  
18 an expert in the field of hydrology, or whatever  
19 the area of expertise is.

20 So that is probably more than you bargained  
21 for in terms of an explanation, but I wanted to  
22 give you the rationale behind my thinking.

23 COMMISSIONER POLMANN: I -- I rather expected  
24 it, Mr. Moyle.

25 And as you said, I am quite familiar with the

1 difference between a fact and expert witness, I  
2 have been qualified as an expert --

3 MS. TRIPLETT: Commissioner?

4 COMMISSIONER POLMANN: -- witness in other  
5 tribunals, but, yes, go ahead.

6 MS. TRIPLETT: Thank you. This is Ms.  
7 Triplett with Duke Energy. Let me just briefly  
8 respond.

9 I think that as Mr. Moyle pointed out, that  
10 this -- you know, we have lots of different  
11 procedures with our commission, and it's worked for  
12 an awfully long time. And what he is apparently  
13 advocating for is something that perhaps could be  
14 considered and should be considered in some kind of  
15 proceeding so that everyone is understanding that  
16 this is the world the Commission sets, that it  
17 needs, that the Commission starts, you operate as  
18 other tribunals do, but there is several areas.

19 We all know, given the technical nature of the  
20 issues that this Commission considers that would  
21 not lend itself easily to, there was a traffic  
22 accident, and I thought the light was red and  
23 someone else thought it was green, and I have had a  
24 witness to talk about tire tracks. That's often  
25 you have testimony that is fact an expert, and I

1 think the Commission is well equipped to decide and  
2 parse through various sets of testimony, that's why  
3 we have prefiled testimony and -- because it's so  
4 technical. So I don't think there is any change  
5 that's necessary along those lines.

6 And then let me just respond and explain why I  
7 raised the clarification in my prehearing  
8 statement, just so everyone is clear.

9 I am aware that I did not, and do not intend  
10 to move to strike any of Mr. Polich's testimony.  
11 The intent of raising the issue is that I believe I  
12 sat in previous hearings where I have heard -- and  
13 I can't give you examples, but it's stuck in my  
14 mind, so I am quite certain it's happened -- where  
15 someone was trying to question a witness on their  
16 qualifications, and when an objection was raised,  
17 hey, wait a minute, you didn't actually tell us  
18 that you were going to question your  
19 qualifications, that person -- that line of  
20 questioning stopped, and I just wanted to make  
21 sure --

22 COMMISSIONER POLMANN: Go ahead.

23 MS. TRIPLETT: Can you hear me? Thank you.

24 COMMISSIONER POLMANN: Yes.

25 MS. TRIPLETT: I just -- I just wanted to make



1           sure that no one would say, hey, you can't -- you  
2           can't question this witness about their, you know,  
3           whether or not they have an accounting degree or  
4           what have because -- simply because I have said,  
5           hey, I want to raise those issues.

6           I think Ms. Brownless, as she asserted, or  
7           explained, those question will be allowed, and I  
8           and the Commission, therefore, can give the weight  
9           that it desires to give to the various testimony.

10          That was my only purpose of raising it. I do  
11          not intend to move to strike. So as long as  
12          everyone is clear and no one is going to object to  
13          that line of questioning, then I am all set.

14          Thank you.

15          COMMISSIONER POLMANN: Okay. Well, thank you  
16          for your comments, Mr. Moyle and Ms. Triplett.

17          Do any of the other parties have any comments  
18          or thoughts on the matter? And I -- I think Mr.  
19          Moyle's recitation speaks for itself. I think Ms.  
20          Triplett's comments with regard to giving testimony  
21          or the evidence the weight that it's due is  
22          typically the kind of approach that the Commission  
23          takes.

24          Any of the other parties wish to offer any  
25          comments briefly? I -- I am open to hearing that.

1 MR. REHWINKEL: This is Charles Rehwinkel.

2 Commissioner, I -- I generally have no  
3 objection to what Ms. Triplett laid out. I think  
4 that's appropriate, and I would not object, nor  
5 would I expect objections for cross-examination  
6 that is limited, but is aimed toward testing the  
7 probative value but testimony that you hear that is  
8 useful for the Commission to give the testimony the  
9 weight it deserves.

10 So I have no further comments on that. I  
11 think that's appropriate.

12 COMMISSIONER POLMANN: Thank you, Mr.  
13 Rehwinkel.

14 Mr. Brew?

15 MR. BREW: Commissioner, I don't have anything  
16 to add to this debate.

17 COMMISSIONER POLMANN: Thank you, sir.

18 Ms. Brownless, do you have anything else?

19 MS. BROWNLESS: No, sir. Thank you.

20 COMMISSIONER POLMANN: Okay. Let me think  
21 here just one second.

22 I think it's clear that -- well, Duke is -- is  
23 not asking to strike any testimony. There is  
24 comments and discussion here about the types of  
25 questions. As I mentioned, questions regarding

1 background, general qualifications, I think are  
2 reasonable and acceptable, as long as it's not  
3 repetitive, can be relevant to the testimony, and  
4 we don't need a separate ruling on that  
5 specifically.

6 With regard to the other request from Mr.  
7 Moyle. As has been the case in the past, we have  
8 outlined the process in the Order Establishing  
9 Procedure, the OEP, for striking testimony based on  
10 the expertise of a witness. Mr. Moyle has not met  
11 the procedure that was outlined, and my ruling on  
12 that is consistent with the OEP, and I find  
13 procedurally that Mr. Moyle, representing FIPUG,  
14 did not follow that procedure.

15 I recognize his objection, but given that we  
16 have a process, that process has not been met. So  
17 my finding is that we are not able to rule  
18 favorably on his request, and that the testimony  
19 will -- will stand as it is.

20 Is that understood? Are we clear on that, Ms.  
21 Brownless?

22 MS. BROWNLESS: Yes, sir. I believe so.

23 COMMISSIONER POLMANN: Okay. Any -- any  
24 questions from the parties? We are going to move  
25 forward to the next item.

1           Section VII, the basic positions.

2           Okay. We are going to see if the parties have  
3 any changes to their basic positions. And if -- if  
4 changes are announced, or you -- you have changes  
5 that you want to make, those should be received by  
6 close of business today. We will either identify  
7 them here. If you identify that changes to be  
8 made, we request that Ms. Brownless receive those  
9 in writing even if we identify them verbally here.  
10 If you would please submit them in writing to Ms.  
11 Brownless.

12           So we will go through your issues individually  
13 1 through 8.

14           Staff, do we have any contested issues?

15           MS. BROWNLESS: Are you going to go through  
16 the individual Issues 1 through 8 and give the  
17 parties an opportunity to tell you if there are any  
18 changes?

19           COMMISSIONER POLMANN: We can -- well, we can  
20 do this in either order. We can go 1 through 8 and  
21 address the contested issues, or we can deal with  
22 the contested issue first. What -- what's your  
23 pleasure?

24           MS. BROWNLESS: My preference would be to go  
25 through Issues 1 through 8 and make sure we

1 understand what issues the parties wish to change  
2 their position on, if there are any changes.

3 COMMISSIONER POLMANN: Okay. Okay. All  
4 right. So basic positions -- let me see what we  
5 got. I got too many -- too many screens open.

6 I guess I should start with Issue 1. Okay,  
7 that would be a good place to start.

8 Issue 1.

9 MR. REHWINKEL: No changes.

10 COMMISSIONER POLMANN: Okay. Ms. Triplett --

11 MS. TRIPLETT: No changes. I mean, I don't  
12 have any changes for any of my positions. If you  
13 want me to stay that, that's fine.

14 COMMISSIONER POLMANN: Okay. That's going to  
15 be easy.

16 MS. TRIPLETT: Thank you.

17 COMMISSIONER POLMANN: So issue -- let's do it  
18 that way, we are going to go Issue 1, anybody who  
19 has a change, just yell. Issue 1.

20 MR. MOYLE: Yeah, similar to Duke, FIPUG has  
21 no change on Issue 1 or any of the other issues, or  
22 its basic position.

23 COMMISSIONER POLMANN: Okay.

24 MR. REHWINKEL: Commissioner, I can tell you,  
25 I only have one change in all of the issues, and

1           that would be on Issue 3, which would be to go to  
2           no instead of no position at this time. Otherwise,  
3           all my issues stand as stated in the draft  
4           prehearing order.

5           COMMISSIONER POLMANN: Mr. Brew, do you have  
6           any --

7           MR. BREW: Commissioner --

8           COMMISSIONER POLMANN: Go ahead.

9           MR. BREW: This is Jay Brew. PCS has no  
10          changes, and it -- following position to OPC on  
11          Issue No. 3 stands.

12          COMMISSIONER POLMANN: Okay.

13          MR. MOYLE: Yeah, as does FIPUG.

14          COMMISSIONER POLMANN: Okay. So let's go to  
15          Issue 3, just so I am clear.

16          What I have heard is there is a minor change  
17          on Issue 3. Are there any changes to any other  
18          issue at all?

19          MR. MOYLE: Yeah, just -- just to be clear,  
20          from FIPUG's standpoint, no change on any other  
21          issue. I understand OPC is changing their position  
22          on Issue 3 from no position at this time to a  
23          simple no. And FIPUG's position was adopt the  
24          position of the Office of Public Counsel, which is  
25          still a correct position, but we will similarly

1 just take a position of no with respect to that  
2 issue.

3 COMMISSIONER POLMANN: Okay. And, Mr. Brew,  
4 you -- you will also take the position no?

5 MR. BREW: That is correct. We are --  
6 (Multiple speakers.)

7 MR. BREW: -- position of OPC.

8 COMMISSIONER POLMANN: Okay. So on Issue 3,  
9 the positions of OPC, FIPUG and PCS are no?

10 MR. BREW: Correct.

11 COMMISSIONER POLMANN: All right. So for  
12 Issues 1 through 8, we've made a change to Issue 3.  
13 There are no -- there are no other changes to  
14 Issues 1 through 8.

15 Any other comments from the parties on Issues  
16 1 through 8? Hearing none.

17 Okay, and I heard no comment or changes on the  
18 basic position, so, Ms. Brownless, are -- are we  
19 now at the contested issue?

20 MS. BROWNLESS: Yes, sir.

21 COMMISSIONER POLMANN: All right.

22 MS. BROWNLESS: The FIPUG -- FIPUG has  
23 raised --

24 COMMISSIONER POLMANN: Go ahead.

25 MS. BROWNLESS: -- one contested issue, which

1 is identified as Issue A, what monetary benefits,  
2 if any, should be provided to customers presently  
3 related to this matter.

4 COMMISSIONER POLMANN: Okay. What I see here,  
5 and we need to address this, is the utility has no  
6 positions given. OPC had no position at this time.  
7 PCS Phosphate, if permitted by law, they were  
8 supporting FIPUG's.

9 So let's hear -- I want to make sure we hear  
10 from everybody. So let's start with Mr. Moyle, and  
11 then we will come back around to the utility.

12 MR. MOYLE: Thank you, Commissioner Polmann.

13 Let me -- let me start just by having an -- an  
14 overview of -- of this case and what it's about. I  
15 know you have a good handle on that, but it's  
16 unique in -- in a few ways.

17 One is is we are trying the case in a, you  
18 know, in a time of the COVID-19, which is causing  
19 us to be flexible on our process, but also it  
20 involves something that has not happened much in  
21 this country, which is how we handle radiological  
22 waste, including spent nuclear fuel rods. And the  
23 proposal before you by -- by Duke essentially says,  
24 we have an idea that we want you to accept to have  
25 a third party come in and take a lot of this low



1 level waste and put it out in -- in Texas, and we  
2 will keep the spent nuclear fuel rods on the -- on  
3 the site.

4 And the Crystal River 3 project has a -- has  
5 an interesting history that you will probably hear  
6 about during the hearing. The ratepayers have --  
7 have paid a lot over the years for things related  
8 to Crystal River 3. The plant was shut down  
9 prematurely. And there is a fund that has quite a  
10 bit of money in it now as we sit here today.

11 And the amount of money in the fund is  
12 something that you will hear testimony about. Duke  
13 is suggesting that the ratepayers, if you adopt  
14 their proposal, will save \$100 million, but -- but  
15 Duke is saying, rather than have any of that money  
16 be distributed now -- now, we -- we want to wait  
17 30 -- 35, 36 years before any of that money would  
18 be distributed.

19 And -- and we are simply saying that because  
20 of -- of this case, where Duke is looking to reduce  
21 its risk and reduce its monetary spend on handling  
22 this material, that to the extent that there are  
23 savings associated with that, which the testimony I  
24 think you will hear is, yes, it's expected that  
25 there will be these savings, why wait 36 years?

1           Why not look at -- at that.

2           And, you know, you will have people who are  
3           smart financial engineering types, and you have  
4           staff that could look at this and say, well, if the  
5           savings are projected to be 100 million, how much  
6           of that could we flow back to ratepayers now in  
7           realtime dollars, and perform the calculation.

8           And if you are convinced with the testimony  
9           that these savings will materialize and realize,  
10          and this shunning of risk, because the way this is  
11          set up is the is spent nuclear fuel rods are being  
12          sold to a third party for \$1,000, and so that risk  
13          is coming off of Duke's books, and then by linkage  
14          with the ratepayers, coming off the ratepayers'  
15          books, then there will be potentially less exposure  
16          to having to deal with spent nuclear fuel rod  
17          issues and risk as -- as we go down the road.

18          So given -- given the trying economic times,  
19          we think that this issue should be a live issue for  
20          the Commission to consider, particularly because  
21          it's -- it's been put at issue by -- by the  
22          testimony and the pleadings of Duke. You know,  
23          they talk about saving 100 million, and so, you  
24          know, it's a fair question, we argue to say, okay,  
25          out of that hundred million, how much of it, if

1 any, should go to ratepayers now?

2 And I think as a commission, you should have  
3 the latitude to look at that and hear testimony on  
4 it, hear argument about it, be briefed on it. And  
5 you could say, we think 20 percent, 50 percent,  
6 70 percent or nothing should go back.

7 So, you know, we think it's a live issue. We  
8 think that the due process of an administrative --  
9 contested administrative proceeding under Chapter  
10 120 would support this issue being included and  
11 considered, and would ask that you rule to allow  
12 that issue to remain a live issue in this -- in  
13 this proceeding.

14 COMMISSIONER POLMANN: Thank you, Mr. Moyle.

15 MS. TRIPLETT: May I respond?

16 COMMISSIONER POLMANN: Yeah, let's hear from  
17 Ms. Triplett.

18 MS. TRIPLETT: Thank you. Thank you,  
19 Commissioner Polmann.

20 So the issue here -- and by the way, just to  
21 be clear, I did not give a position on it because I  
22 do not have one, but because the practice typically  
23 is when there is a contested issue, I, for  
24 efficiency purposes, am not going to spend the time  
25 to provide a position until I am told that, yes,

1           it's going to be an issue in the case.

2           So I would just ask -- I think that this is  
3           typical -- by the end of today if this issue is  
4           included, that I be allowed to provide a written  
5           position. So I just wanted to make that clear.

6           And -- and because -- and again, this --  
7           this -- the limited matter before you is whether  
8           this should be included as an issue. And, Mr.  
9           Moyle has given a lot of background and explanation  
10          about his issue on the position, and I am going to  
11          have to briefly, you know, respond to that, but --  
12          so let me do that, and then I will get to the real  
13          crux of the issue that you are deciding, which is  
14          this is an appropriate issue for inclusion as a  
15          separately worded issue?

16          So as to the merits, I think you will find  
17          that the testimony speaks for itself in terms of  
18          the value of -- of this deal and the protections it  
19          includes for customers. And I think that -- that  
20          the testimony that you have already seen and that  
21          we have already provided, that you will hear at the  
22          hearing, supports that this is a good transaction  
23          for customers in terms of accelerating the  
24          decommissioning and doing it at a fixed cost.

25          Yes, we have identified that there is a

1 potential for -- for savings that could be returned  
2 more quickly than the alternative, which is to  
3 continue to have the site stay in safe store, but  
4 the key there is that it's just a potential.

5 And I would say that that is not why we did  
6 this deal. We did not bring this because we  
7 thought, oh, we are going -- just because there are  
8 more savings that could be returned to customers  
9 sooner. I look at that as just an additional  
10 benefit, perhaps gravy or whip cream on an ice  
11 cream Sunday, but that is not the crux of the  
12 issue, because the fundamental that -- is that you  
13 have to decide -- you know, balance all of the risk  
14 and decide is there going to be sufficient funds?  
15 We think there will be, but there is no guarantee  
16 that that occurs.

17 And so to do just as Mr. Moyle would suggest,  
18 is -- is kind of like taking money out of your  
19 retirement account early, and just thinking, oh,  
20 the funds are good so I can take it out now and we  
21 will just see how -- how things go in the future.

22 But more importantly is if we were to do what  
23 Mr. Moyle suggests, we would jeopardize and lose  
24 the qualified status under IRS rules. It would  
25 have a tremendous negative impact to the tax

1 situation of the fund, and in addition, NRC does  
2 not permit withdrawals that are not associated with  
3 decommissioning the plant. There is a reason why  
4 the fund are there, and it's to ensure that there  
5 will be sufficient funds for decommissioning when  
6 that happens in the future.

7 So -- but -- but let me get to the real point  
8 here, which is do we need to have a separate issue?  
9 And the practice before this commission has been  
10 you -- you want to have issues that are meaningful  
11 in terms of -- of -- you don't want to have so many  
12 issues that you are deciding 100 issues. We also  
13 often talk about, when we are setting issues, is an  
14 issue subsumed in another issue?

15 And so, for example, if what Mr. Moyle is  
16 advocating is subsumed in the Issue No. 1, and then  
17 the party is able to advocate for a position with  
18 respect to Issue 1, just like the parties,  
19 including OPC and their witness have suggested,  
20 that, no, the Commission should not approve this  
21 transaction unless it imposes the conditions that  
22 Mr. Polich has suggested in his testimony.

23 To have to go down the path of Mr. Moyle  
24 suggesting, by having a separate issue, we should  
25 then have issues of, No. 1, should the Commission

1 impose an independent monitor on this transaction?  
2 No. 2, should the Commission impose certain monthly  
3 recording requirements? On and on and on. And  
4 that's just not necessary, and that's not what this  
5 commission has done.

6 So, again, I would ask that you reject this  
7 issue as being separately worded, and indicate that  
8 parties can argue this position if they so choose  
9 in connection with Issue 1.

10 Thank you.

11 COMMISSIONER POLMANN: Thank you, Ms.  
12 Triplett.

13 So, Mr. Rehwinkel.

14 MR. REHWINKEL: Yes, just briefly.

15 We have taken the position that -- well, you  
16 see our position in this here. We think the issue  
17 is a useful device for the Commission to evaluate,  
18 kind of as an analytical tool, to evaluate the  
19 merits of the overall proposal and the layers of  
20 guarantee, or pseudo guarantee that you will see in  
21 the proposal.

22 So I think Mr. Moyle's issue puts before the  
23 Commission a -- a proposal that allows the  
24 Commission to kind of compare the overall proposal  
25 with what might be a reasonable proposition if it's

1           allowed by law.

2                   And we haven't taken a position about the  
3           legal status of -- of what is proposed, or what is  
4           potentially proposed perhaps by -- by FIPUG's  
5           position. We understand that there may be  
6           restrictions, and they may be substantial and  
7           material. It would not hurt, I think, for the  
8           Commission to hear about what those are, just so  
9           they can understand the entire scope of -- of what  
10          their authority might be, or not be.

11                   So that's just our position on it. We don't  
12          think it's a harmful issue to have in, or the  
13          parties to at least brief and inform the Commission  
14          about.

15                   Thank you.

16                   COMMISSIONER POLMANN: Thank you, Mr.  
17          Rehwinkel.

18                   Mr. Brew, do you have anything?

19                   MR. BREW: Yes.

20                   First, we support FIPUG in terms of this being  
21          identified as a separate issue. I think it's a --  
22          it's a distinct and concisely worded issue for the  
23          parties to review.

24                   Second, if you look at this purely as a  
25          rate-making question for a minute, FIPUG's proposal



1 largely flows from, if you believe Duke's case,  
2 they have shifted the risk on the high level waste,  
3 which is a far more problematic issue, to a third  
4 party, and they are looking to accelerate the --  
5 the decommission costs using a fixed contract, and  
6 the -- the assessment is essentially that the  
7 nuclear decommissioning fund has over-accrued over  
8 time.

9 And if you compare that to, say, depreciation,  
10 if you -- if the utility substantially over-accrues  
11 depreciation and its reserve gets out of whack, you  
12 routinely make rate adjustments.

13 So -- so it's a valid issue to address. The  
14 question is is what Ms. Triplett said regarding  
15 affecting tax treatment for running afoul of NRC  
16 rules a valid consideration?

17 So to my mind, the issue should stay in as a  
18 rate-making matter, unless there is an impairment  
19 that indicates it shouldn't be.

20 So I think if it's legally permitted, it's an  
21 issue that should properly be raised -- be raised  
22 to the Commission.

23 COMMISSIONER POLMANN: Thank you, Mr. Brew.

24 Ms. Brownless, do you have anything to add?

25 MS. BROWNLESS: Yes, sir.

1           With regard to whether this is an appropriate  
2           issue, I think it is an appropriate issue.

3           With regard to Ms. Triplett's point about the  
4           Commission's past history of combining issues  
5           rather than having separate issues, I think she has  
6           some merit there.

7           I think Mr. Moyle is free to discuss this, and  
8           can discuss this in his discussion of Issue No. 1,  
9           because I would agree that it's very similar to  
10          OPC's position, which is you should approve this if  
11          you make the following changes. And it appears to  
12          me that Mr. Moyle's position is you should approve  
13          this transaction if you make this change as well.  
14          So I would suggest that it be stricken as an issue.

15          MR. MOYLE: Mr. Polmann, if I could have the  
16          last word since it's my issue --

17          COMMISSIONER POLMANN: Yes, sir.

18          MR. MOYLE: -- and motion, I would appreciate  
19          it. So --

20          COMMISSIONER POLMANN: Go ahead.

21          MR. MOYLE: Thank you for that, and -- and  
22          just -- just a couple of points.

23          In a rate case, you know, we could have one  
24          issue, should the rates, as filed, be approved?  
25          But -- but we don't do it that way. We usually

1           have over 100 issues because you get down and it's  
2           beneficial to everyone to take a closer look at  
3           issues. So, you know, the idea of, oh, this could  
4           be subsumed, we think in this case is not -- should  
5           not carry the day.

6                     It's not like the, you know, the record or the  
7           issues are being burdened. We have eight issues  
8           presently, and FIPUG's proposed issue would --  
9           would bring -- bring us to a grand total of nine on  
10          a case that is complex, involves a very significant  
11          issue about how to handle nuclear waste, and it  
12          involves a lot of money.

13                    And so we think that it's best to frame it  
14          if -- if -- you know, I have heard some discussion  
15          about, well, can we do this legally? Well, that's  
16          a position. That's a defense to somebody to say,  
17          well, you can't do this legally, but -- but also,  
18          you know, one of the other issues is should a rule  
19          be waived?

20                    So we do have a discussion about -- about  
21          positions, and arguments, and, you know, we think  
22          given the facts of this case, as Mr. Brew pointed  
23          out, you know, if you accept Duke's argument in  
24          their case, this is -- this is going to be good.  
25          It's going to get risk off of Duke and the

1 ratepayers, and it's going to, you know, save  
2 money, you know, we can delve into potentially.  
3 But we would ask that the issue be left in, and  
4 thank you for the chance to make a couple of those  
5 rebuttal points.

6 COMMISSIONER POLMANN: Thank you, Mr. Moyle.

7 I -- I am struggling with this a little bit  
8 with this because I have -- I have a job here on  
9 behalf of the Commission, again, trying to  
10 facilitate hearing in an efficient way and  
11 consolidate some items to try to move this -- the  
12 hearing forward and make sure that we are covering  
13 all the topics, and so forth. I also have some  
14 views as an individual commissioner not -- not  
15 prejudging anything.

16 I do support the notion of issues and subject  
17 matter being subsumed within others. There is a  
18 question of testimony on -- on the subject matter  
19 being covered in the record. Part of me certainly  
20 have opportunities to broadly examine issues and  
21 question appropriate witnesses.

22 My inclination is not to add additional  
23 issues. I am a little bit concerned about the way  
24 the question is posed in Issue A, and my -- my  
25 reaction is -- the nature of -- of the trust fund

1 and the issues that -- that Ms. Triplett raised in  
2 terms of its structure, the IRS implications,  
3 other -- other matters I think way beyond our  
4 jurisdiction for which we -- we have no, to my  
5 understanding, have no control or influence are  
6 important.

7 To the extent that we, as a commission, want  
8 to take a position in an order what do with those  
9 dollars, I think that can be addressed in the order  
10 without a separate issue.

11 To the extent that the Commission determines  
12 that some portion of dollars should flow back to  
13 customers at a particular point in time, I think  
14 that can be addressed -- discussed among other  
15 issues. Particularly Issue 1 is -- is a place in  
16 which a variety of things can be -- can be  
17 addressed.

18 I am disinclined generally to add this issue.  
19 I -- I -- I will determine at this point, having  
20 heard all the comments, and I appreciate the -- the  
21 arguments in favor of this. My determination,  
22 however, at this -- at this juncture is I do not  
23 believe that Issue A should be added. I am going  
24 to decline to add Issue A. So that will be my  
25 ruling on that.

1 Ms. Brownless --

2 MR. MOYLE: Thank you for entertaining --  
3 entertaining the argument. I appreciate it.

4 COMMISSIONER POLMANN: Yes. Thank you, sir.

5 Ms. Brownless, anything else on --

6 MS. BROWNLESS: Yes, sir.

7 COMMISSIONER POLMANN: -- this particular  
8 matter?

9 MS. BROWNLESS: Not on this matter. No, sir.

10 COMMISSIONER POLMANN: On that matter, okay.  
11 Well, let's -- let's move on to Section IX, exhibit  
12 list.

13 MS. BROWNLESS: Yes, sir.

14 Staff has prepared a comprehensive exhibit  
15 list which lists all prefiled exhibits and those  
16 exhibits staff wishes to include in the record.  
17 The draft list was given to parties to see if there  
18 were any changes or objections to the CEL or to the  
19 introduction of any of staff exhibits being entered  
20 into the record.

21 At this time, we would like to see if there  
22 are any changes that need to be made to the  
23 exhibits -- parties' exhibits, and if there are any  
24 objections to the entry of staff's proposed  
25 exhibits into the record.

1           COMMISSIONER POLMANN: Okay. I will just make  
2 a call to all the parties. Anybody who wishes to  
3 comment, please do so.

4           MS. TRIPLETT: Yeah, this is -- Commissioner  
5 Polmann, this is Ms. Triplett. I just have a  
6 question, and really, I don't really want to create  
7 busy work unnecessarily, but I think, because I --

8           COMMISSIONER POLMANN: Yeah, go ahead. Go  
9 ahead, make busy work.

10          MS. TRIPLETT: Okay. If you look at the --  
11 the order of witnesses is correct up above, but  
12 then the exhibit list, and I know this was my fault  
13 when I did my prehearing, I think I had a different  
14 order.

15          I am just wondering do we need -- does it  
16 matter? Do we need to have the witnesses -- I  
17 mean, I am sorry, the exhibits both in the  
18 prehearing and then in the CEL be in the order of  
19 their appearance? It doesn't matter to me, but I  
20 wanted to make sure to flag it now if it does  
21 matter to the Clerk, or if it's going to be  
22 confusing.

23          MS. BROWNLESS: Ms. Triplett, I discussed that  
24 with the gal that puts our exhibits together, and  
25 as you know, not every witness has exhibits, and

1 the only thing, the only folks who are listed on  
2 here are witnesses with exhibits. So her feeling  
3 was that because she's already put all the books  
4 together, and there is an awful lot of copying and  
5 collating that goes into that, that because  
6 everybody is clearly identified here, and we don't  
7 have that many direct exhibits, which is the only  
8 thing that would be affected, that it's not  
9 necessary to change it at this time.

10 MS. TRIPLETT: Thank you, Ms. Brownless.

11 And Commissioner Polmann, I am totally fine  
12 with that, so thanks with letting me raise the  
13 question.

14 And with that, I have no other changes, and  
15 accept the CEL, nothing else to add to that.

16 Thank you.

17 COMMISSIONER POLMANN: Thank you. Any other  
18 party -- I heard someone. Go ahead.

19 MR. BREW: Thank you.

20 Due to other pressing matters, I got the CEL  
21 just around close of business yesterday. I haven't  
22 had a chance to review it yesterday. I will get  
23 back to Ms. Brownless if I have any concerns  
24 regarding any of the listed items.

25 COMMISSIONER POLMANN: Thank you.



1 MR. MOYLE: Same with FIPUG.

2 COMMISSIONER POLMANN: Thank you.

3 MR. REHWINKEL: Commissioner, I have a  
4 proposal to make about the CEL, which is given that  
5 we are in a position of having to make our call  
6 about what is available for use at hearing, I -- I  
7 want to ask -- I am kind of in the same boat. I  
8 haven't focused on the CEL until now, but I -- it  
9 occurs to me that all of the discovery ought to be  
10 added to the CEL, all the discovery responses.

11 MS. BROWNLESS: So are you asking, Charles,  
12 that the cross-examination exhibits also be added?  
13 Because we do not normally do that. As you know --

14 MR. REHWINKEL: I am not. I am just asking  
15 that the discovery responses that aren't in the CEL  
16 be added.

17 MS. BROWNLESS: That is -- and here's --

18 MR. REHWINKEL: Go ahead, I am sorry.

19 MS. BROWNLESS: As you know, there are --

20 COMMISSIONER POLMANN: Go ahead.

21 MS. BROWNLESS: -- let me see, I can tell you  
22 how many. There are 11 interrogatories for the  
23 staff. There are eight productions of documents  
24 for the staff. I think that DEF has a set of  
25 interrogatories and a set of production of

1 documents. And I am trying to see -- that OPC, you  
2 have two interrogatories -- well, one set of  
3 interrogatories and one set of PODs -- but the  
4 number of documents in all of these requests are  
5 voluminous, which is why we developed the CEL to  
6 start with, is to identify those things  
7 specifically so we wouldn't be putting thousands of  
8 pages together.

9 And honestly, being able to get that together  
10 and get it on the appropriate drive at this time  
11 would be a tremendous burden, and I don't even know  
12 if we could accomplish it.

13 MR. REHWINKEL: Well, this goes to having --

14 COMMISSIONER POLMANN: Go -- go ahead,  
15 Charles, what was your -- what was your --

16 MR. REHWINKEL: It kind of goes to the  
17 position that I think the parties find themselves  
18 in. We are located around the country. We have  
19 technical limitations about how we can participate  
20 at the hearing. There are potentially issues that  
21 might come up in the hearing that we are foreclosed  
22 if we don't, you know, five days in advance of the  
23 hearing identify our exhibits, or make sure that  
24 documents are in the -- in the CEL.

25 And -- and I -- I feel like this is a

1           construct of the remote hearings versus the way  
2           things would be otherwise.  And I think -- I think  
3           that the assumption in the remote hearing AMT rule  
4           is that -- that the hearing ought to be able to be  
5           conducted as close as possible to what it would be  
6           like if everyone was in the same room.

7           So I understand what Ms. Brownless is saying,  
8           sort of the process of how we were going to have to  
9           conduct this hearing has been evolving rapidly over  
10          the last couple of weeks, and, you know, this is  
11          just where -- where we find ourselves.

12          So I have a concern about it, and, you know,  
13          for -- for me to make sure that I have the  
14          materials that I need to go to hearing, I now have  
15          to take significant amount of time and add  
16          exhibits -- cross-exam exhibits just so I have  
17          them, because I can't -- I can't adjust on the fly  
18          to the hearing that I am going to find myself in  
19          next week.

20          So I don't know what the solution to it is,  
21          but it's a concern.

22          MR. BREW:  Commissioner, this is Jay Brew.

23          COMMISSIONER POLMANN:  Yes, sir.  Go ahead.

24          MR. BREW:  Along the lines of what Mr.

25          Rehwinkel just said, it's customary in Commission

1 proceedings following cross-examination for  
2 attorneys to move to admit the exhibits they want  
3 into the record. To the extent that the  
4 comprehensive exhibit list has expanded to include  
5 most or all of the discovery that Charles  
6 recommends would get us started on getting  
7 everything in the portal -- portal for parties to  
8 utilize.

9 If following the hearing, as we go along,  
10 exhibits are moved into the record, we could then  
11 put together a post-hearing of what are the actual  
12 exhibits as opposed to what was tentatively listed  
13 on the CEL. It would give us more time to make the  
14 information available without clogging up the final  
15 record.

16 COMMISSIONER POLMANN: I believe I understand,  
17 you know, the expediency at hearing and -- and  
18 having the materials available through the portal,  
19 as you said, available to all the parties, and so  
20 forth. I heard Ms. Brownless comment at the  
21 beginning of this discussion in terms of the  
22 logistical effort of putting all the materials into  
23 place electronically, you know, and in the  
24 appropriate manner, so --

25 MS. BROWNLESS: And, Your Honor --

1           MR. BREW: Your Honor, they are facing the  
2           same issue on Thursday once they get the  
3           information on USBs or CDs to compile and post.

4           COMMISSIONER POLMANN: Yeah, so now we are,  
5           you know, doubling and tripling that work. I am  
6           not saying it's not -- it's not an unreasonable,  
7           you know, it's unreasonable --

8           (Multiple speakers.)

9           MR. BREW: A two-day head start on getting  
10          that information so it can be available to you.

11          MS. BROWNLESS: Commissioner, if we could have  
12          a short break at this time?

13          COMMISSIONER POLMANN: Yeah. Yeah. We have  
14          been doing this for, what, two hours? Let's take a  
15          break here. I am going to set the timer, and -- so  
16          what do we need? 10 minutes or so?

17          MS. BROWNLESS: Yes, sir. That would be  
18          lovely. Thank you.

19          COMMISSIONER POLMANN: All right. We are  
20          going to do a 10-minute break, and when the bell  
21          goes off, we should be back, okay?

22          MS. BROWNLESS: Thank you, sir.

23          COMMISSIONER POLMANN: Okay. All right. Very  
24          good.

25          (Brief recess.)

1           COMMISSIONER POLMANN: Okay. First let me say  
2           thank you, really, to everyone. We have had a  
3           number of issues come up for discussion, and  
4           comments, and I wholeheartedly agree with you  
5           regarding the very real challenges that our  
6           remoteness poses for us. I would like to  
7           acknowledge that and honor that, and I think the  
8           parties are rising to that challenge.

9           I anticipate -- I anticipate, but I am  
10          optimistic about our hearing, and I thank you in  
11          advance. I will simply say that. I want to hope  
12          for the best. I am optimistic that this is going  
13          to work out. I know, as others have commented,  
14          that we will be challenged --

15          MS. BROWNLESS: I can't hear.

16          COMMISSIONER POLMANN: -- nonetheless, I think  
17          we will have the outcome that we desire, again,  
18          simply thank you very much for all of your  
19          extraordinary patience as we try do that --

20          MS. HELTON: Commissioner, I am so sorry to  
21          interrupt. We are having a really hard time  
22          hearing you post break.

23          COMMISSIONER POLMANN: Well, that's because I  
24          forgot to be yelling at you.

25          MS. HELTON: Please yell away.

1                   COMMISSIONER POLMANN: Yeah, can everybody  
2 else on the phone hear me, or is it just a problem  
3 in that room?

4                   MR. BREW: This is Jay. I hear you fine, Your  
5 Honor.

6                   COMMISSIONER POLMANN: Everybody, thank you.

7                   MR. BREW: Loud and clear now. You are good.

8                   COMMISSIONER POLMANN: Okay. Yeah, I think  
9 the issue may be in the -- in the hearing room, but  
10 I am sorry, Mary Anne.

11                   Okay. Well, I was just thanking everybody,  
12 and I think I have said enough there. But we -- we  
13 took a break requested from staff. We have an  
14 issue at the request from Mr. Rehwinkel regarding  
15 documents with the exhibit list. I want to hear  
16 back from staff.

17                   Ms. Brownless, can you give us your review on  
18 that, please?

19                   MS. BROWNLESS: I think at this time it would  
20 be extremely difficult for the staff to add all of  
21 the discovery responses that have been produced in  
22 this case. One reason is because for some of the  
23 responses we don't have them, because they were  
24 confidential and they were provided to OPC and the  
25 other parties, but not to staff, because staff was

1 going to go to DEF's offices and review those  
2 materials.

3 So we couldn't -- it would be very difficult  
4 at this time for us do what I understand has been  
5 requested, which is put all of the discovery  
6 responses on -- on the T drive available to the  
7 parties.

8 Now, the responses that are listed in the CEL,  
9 those have been placed on the T drive, so those  
10 will be available to everyone, and the confidential  
11 portions will be available as well on a separate  
12 subfolder of the T drive. But I don't -- I don't  
13 see how we can do that, because the volume is just  
14 so -- so large, this late in the process.

15 And maybe this is an issue that we should be  
16 addressing in a different way in the future, but  
17 right now, I think it's really an impossibility for  
18 us to do.

19 COMMISSIONER POLMANN: Well, let me ask, if I  
20 understand -- perhaps there is two aspect to this,  
21 one is we don't believe -- in fact, we know we  
22 don't have certain of these documents, but we don't  
23 believe, generally speaking, we know that we don't  
24 have all of them. We haven't done the -- the  
25 complete enumeration of those that we don't have,



1 but nonetheless, we know we don't have everything.

2 And then secondly, it's a little bit  
3 speculative as to how long it would take to do this  
4 work, but we are confidential that it would be a  
5 significant effort. We don't know how long it  
6 would take to complete the effort. We are pretty  
7 sure, given other responsibilities already in the  
8 hopper, that we are not going to get it done by --  
9 by hearing at all. It would be a partial --  
10 partial effort, is that your expectation?

11 MS. BROWNLESS: I think it would be very  
12 difficult. And I would remind you not only is  
13 Friday a holiday, but there is an Agenda on next  
14 Tuesday, the morning that we are going to start  
15 this hearing. So there is an awful lot going on.

16 COMMISSIONER POLMANN: Well, I kind of forgot  
17 about that. So we have other Commission  
18 deadlines --

19 MS. BROWNLESS: Yes, sir.

20 COMMISSIONER POLMANN: -- that we are  
21 simultaneously preparing for?

22 MS. BROWNLESS: Yes.

23 COMMISSIONER POLMANN: Which doesn't cause a  
24 lot of -- a lot of documents to put on our website  
25 in an entirely different meeting that staff is

1 preparing for and Commission Clerk is preparing.

2 MS. BROWNLESS: Yes, sir.

3 COMMISSIONER POLMANN: Okay. Mr. Rehwinkel,  
4 I -- I believe your -- your request is entirely  
5 reasonable. I think we are in a position where  
6 simply given the constraint of time, simply  
7 something that's not manageable for -- for the  
8 staff that we -- that we have here. I am not quite  
9 sure what else to say.

10 MR. REHWINKEL: Well, I am not going to --  
11 thank you, Commissioner. I am not going to kind of  
12 pound my fist about due process and things like  
13 that. I -- I will consult with Mr. Kelly, and  
14 perhaps the other intervenors, and see if we have a  
15 proposal to make on that point.

16 It may be that we ask if we could prepare a  
17 consolidated exhibit that has all of the discovery,  
18 as I will call it a contingent exhibit, such that  
19 it's available if needed given the circumstances  
20 that we find ourselves in. Because I don't think  
21 the customers should be in a position that because  
22 of the logistics of the Commission's hearing  
23 schedule, and other things, that they cannot  
24 conduct their hearing in a way that vindicates  
25 their right to participate and defend their

1 interest.

2 I fully understand that there are -- there are  
3 human limits to what we can do between now and the  
4 hearing, what we can ask the Commission staff to  
5 do, but I -- I -- I am serious, this is a -- this  
6 is a problem that is not of our making. The  
7 schedule is the schedule. The COVID situation we  
8 find ourself in is nobody's fault in terms of this  
9 process.

10 So I just would commend to you, Commissioner,  
11 that we will -- we will try to find a reasonable  
12 solution and we will work toward that as we had --  
13 we head forward.

14 I am not sure that, say, a filing on Monday  
15 that was available in the portal would do any harm,  
16 other than -- as long as it could be uploaded,  
17 because it would just be a contingent document  
18 that's there.

19 I am not saying that's going to be our  
20 proposal, but it's just something I am spit-balling  
21 right here.

22 COMMISSIONER POLMANN: I understand, Mr.  
23 Rehwinkel. I -- I appreciate your -- your  
24 willingness, your offer to work with the parties  
25 trying to come up with something useful. And I

1 understand what you have said. It's not at all  
2 anyone's intention to impose a restriction under  
3 the current circumstances against what would  
4 normally be afforded to the parties as to due  
5 process and access to all the information that --  
6 that should be normally provided.

7 So I understand there are extraordinary  
8 circumstances, but nonetheless, they should not be  
9 limiting circumstances. I absolutely agree with  
10 you, recognizing that everyone is doing the best we  
11 can, that may be a reason, but I recognize that  
12 should not be an excuse for limiting your rights.

13 I would ask staff to continue exploring  
14 opportunities for improvement to -- to achieve for  
15 this hearing the best outcome that we possibly can,  
16 working with you and the other parties to make  
17 everything available absolutely to the extent that  
18 is feasible, whatever effort that you can make to  
19 assist, expediting access we would be grateful.

20 So thank you for your efforts. Thank you for  
21 raising this issue. We -- we will be examining  
22 improvements going forward that will be appropriate  
23 schedules that -- for submission for accommodation  
24 of -- of how things get loaded up, and so forth, in  
25 the future that may be appropriate, we will

1 continue with our IT folks and with the Clerk's  
2 Office to look at that.

3 I recognize over -- over the coming week that  
4 we will simply have to do what --

5 Any other comments from the parties on that?  
6 I -- I would simply expect and believe that  
7 everyone will work with Public Counsel try to  
8 figure out the most efficient thing that we can.

9 MS. BROWNLESS: Commissioner, if I may just --  
10 and I apologize for being confused here.

11 We had discussed a procedure for filing late  
12 filed exhibits. Mr. Rehwinkel had indicated that  
13 he is going to do his very best to do that by noon  
14 on July 2nd. Are you still going to do that, Mr.  
15 Rehwinkel?

16 MR. REHWINKEL: Oh, yes. This -- this kind  
17 of -- I am going to call it an omnibus discovery  
18 exhibit isn't really -- it's kind of a third  
19 category. It's not -- you don't want to put it in  
20 the CEL, and it's not a cross-examination exhibit.  
21 I am just telling you it -- I can't predict how  
22 everything is going to go. And I am thinking about  
23 if I was in a two-day hearing at the Commission and  
24 somebody, a line of questioning came up, and I  
25 said, oh, I need to address that with an

1           impeachment or cross-examination exhibit, I could  
2           go and print that discovery out, slap on an exhibit  
3           list and confront that witness.

4           I don't have that ability, because noon on  
5           Thursday is the deadline for putting anything out  
6           there that I am going to be able to use that I  
7           could use in the normal course of business. I am  
8           going to meet -- for what I anticipate and  
9           understand to be my cross-examination needs, I am  
10          going to meet that deadline on Thursday. This is a  
11          totally different animal.

12          MS. BROWNLESS: And this is a -- a proposal so  
13          that you could have documents available in an  
14          electronic format ahead of time so that you could  
15          use them at the remote hearing; am I hearing that  
16          right?

17          MR. REHWINKEL: Yes, you understand.  
18          That's -- that's what I am looking -- that's what I  
19          am concerned about is -- is not being up that creek  
20          without a paddle. I am looking for a paddle, and  
21          that's this comprehensive exhibit just in case.

22          I wouldn't move it in if I didn't use it, but  
23          I just have to have something that I can access,  
24          that everyone else can access.

25          MS. BROWNLESS: Okay. And your suggestion is

1           that include all of the discovery, all the staff  
2           discovery, all the OPC discovery, all Duke's  
3           discovery?

4                   MR. REHWINKEL: That's what I am  
5           contemplating, is -- is, you know, if we have all  
6           that, we will do -- it may be some duplication, but  
7           I -- nobody has time between now and the hearing to  
8           go through and pick, well, this is already in the  
9           CEL so we won't put that in there. We will just  
10          take it, put in it in chronological order and Bates  
11          it, call it contingency exhibit, and file it. And  
12          then, you know, if you only want to upload it, we  
13          would deal with that.

14                   But I am just -- again, I am thinking off the  
15          top of my head just to make sure we have the  
16          materials we need to go to hearing, because this is  
17          the first time we are doing this, and there is a  
18          fear of the unknown here that I am trying to deal  
19          with, and I am trying to do it in a rational way.

20                   MS. BROWNLESS: Okay. And you would --  
21          because a lot of this discovery that was produced  
22          is confidential, you would mark the confidential  
23          parts confidential, or -- and then this composite  
24          exhibit --

25                   MR. REHWINKEL: It would be confidential --

1 MS. BROWNLESS: This composite exhibit would  
2 be confidential, I assume --

3 MR. REHWINKEL: Yes.

4 MS. BROWNLESS: -- because you are not going  
5 to have time to go through and redact it, and all  
6 that stuff.

7 MR. REHWINKEL: No. No. It would just all be  
8 confidential.

9 MS. BROWNLESS: Okay. And so your idea is  
10 this would then allow you, if you needed to access  
11 to those documents, to be able to have the  
12 Commissioners and all the parties access the  
13 documents during the trial?

14 MR. REHWINKEL: Yes. Yes. You understand.

15 MS. BROWNLESS: Okay. Thank you so much.

16 MR. REHWINKEL: Thank -- thank you,  
17 Commissioner, for allowing that dialogue.

18 COMMISSIONER POLMANN: Oh, absolutely. Yeah.

19 MS. BROWNLESS: And before --

20 COMMISSIONER POLMANN: Thank you for your  
21 effort.

22 MS. BROWNLESS: Before we leave the CEL, do  
23 you object to the admission of any of the staff's  
24 identified exhibits?

25 MR. REHWINKEL: And that's -- no, that was the



1 original question, and we don't.

2 MS. BROWNLESS: So you are okay with those --  
3 with admitting those exhibits? And I am just going  
4 to go down the line --

5 MR. REHWINKEL: Yes.

6 MS. BROWNLESS: -- DEF, are you okay with  
7 admitting the exhibits?

8 MS. TRIPLETT: I'm sorry, I had to get off  
9 mute. Yeah, I think I already said that, and I'm  
10 good. Thanks.

11 MS. BROWNLESS: Okay. FIPUG, are you okay, or  
12 do you need more time?

13 MR. MOYLE: The latter.

14 MS. BROWNLESS: And, Mr. Brew, do you need  
15 more time?

16 MR. BREW: I would like some additional time.  
17 Thank you.

18 MS. BROWNLESS: Okay. And if y'all could get  
19 with me by tomorrow, that would be great.

20 MR. MOYLE: I think we are scheduled to meet  
21 and talk tomorrow anyway.

22 MS. BROWNLESS: I believe so. Can you hold on  
23 a minute, please.

24 COMMISSIONER POLMANN: Yes.

25 MS. BROWNLESS: Thank you, sir. We are -- we

1 are done with that section.

2 COMMISSIONER POLMANN: Okay. So moving on,  
3 you are done with the exhibit list. The next  
4 section.

5 Do we have any other stipulations? We  
6 stipulated one witness, and that's pending release  
7 of the witness by the Commission offices. Do we  
8 have any approved or proposed stipulations, Ms.  
9 Brownless?

10 MS. BROWNLESS: I don't think there are any at  
11 this time, sir.

12 MR. REHWINKEL: Commissioner, I -- this -- I  
13 have at least one issue to raise for the -- it --  
14 it sort of orbits in this stipulation area. And I  
15 am not asking for a response today, because right  
16 now but, just to alert you, we are contemplating  
17 asking for official recognition of some documents  
18 that Duke files regularly with the Commission, and  
19 they are -- these have to do with the -- the  
20 payment of nuclear asset recovery charges for the  
21 CR3 stranded asset that's securitized.

22 It's a conversation we just started this  
23 morning with the company. We expect to have  
24 further discussions about it, but there is a  
25 possibility we would ask for a stipulation on

1 official recognition, but I just wanted to put you  
2 on notice. I don't think it needs to be debated or  
3 discussed here at this time, but that's a  
4 possibility.

5 COMMISSIONER POLMANN: Okay. Thank you.

6 Ms. Brownless, any comments there?

7 MS. BROWNLESS: No, sir. We will wait --  
8 await their proposal.

9 COMMISSIONER POLMANN: Okay. We will be -- we  
10 will be waiting to hear from you, Mr. Rehwinkel.

11 Okay. Pending motions or pending  
12 confidentiality items.

13 MS. BROWNLESS: We don't have any pending  
14 motions at this time, sir.

15 And with regard to the confidentiality, we  
16 have -- DEF has two documents for which they have  
17 pending requests for confidential classification,  
18 and four documents for which they have filed  
19 notices of intent.

20 Due to the expedited nature of these  
21 proceedings, most of the outstanding requests have  
22 been filed in the last two weeks, and are notices  
23 of intents, not confidentiality requests.

24 We must have a complete request for  
25 confidentiality before we can issue an order. And

1           what we are -- and I believe there will be, as we  
2           have discussed today, another Notice of Intent with  
3           regard to deposition transcripts and exhibits.

4           So we are going to take care of what we can  
5           prior to the hearing. And then after the hearing,  
6           if the materials are admitted into evidence, we  
7           will write an order for the affected documents.

8           COMMISSIONER POLMANN: Okay. I think that  
9           covers pending motions. Then we move on to  
10          post-hearing procedures.

11          MS. BROWNLESS: Yes. Post-hearing briefs will  
12          be limited to 40 pages, should any briefs be  
13          necessary.

14          COMMISSIONER POLMANN: 40 pages.

15          Do I have any comments from the parties on  
16          that?

17          MR. REHWINKEL: Commissioner, Public Counsel  
18          doesn't have a problem with 40 pages. We are  
19          concerned about having six days or seven days to  
20          file the brief. This case is -- is a significant  
21          one, and I -- I don't know what the constraint is  
22          about why it has to be that short of time, but I  
23          think even the transcript isn't even due until,  
24          like, the day before the briefs are due, which it  
25          just seems untenable.

1           We had two weeks in the original schedule, and  
2           now it's whittled down to this. I would ask that  
3           there be some consideration given to expanding it  
4           at least to two weeks.

5           MR. MOYLE: FIPUG would join in that -- in  
6           that request. It's not -- not sufficient time  
7           given the nature of the proceeding and the lack of  
8           a transcript. We -- we concur with Mr. Rehwinkel's  
9           comments.

10          MR. BREW: PCS does as well.

11          COMMISSIONER POLMANN: Okay. We have the  
12          intervenors on that page.

13          Ms. Triplett, comments?

14          MS. TRIPLETT: As long as I -- we still have  
15          this item up for consideration at the same Agenda,  
16          I do not have an objection.

17          COMMISSIONER POLMANN: Okay. When is this  
18          scheduled to be heard by the Commission, Ms.  
19          Brownless?

20          MS. BROWNLESS: Hold on a minute, I will let  
21          you know.

22          First of all, with regard to the transcript,  
23          we can get an expedited transcript, so that will  
24          assist.

25          And I think they had an original closing date

1 of October 1, and that is why we worked out the  
2 schedule the way we did.

3 MS. TRIPLETT: This is Dianne, Commissioner,  
4 if I may.

5 I think that what -- the closing date of  
6 October 1 is based on the assumption that I  
7 believe, if I have it right in my mind, this will  
8 be considered at the August Agenda. There is a  
9 written order, 30 days passes, so I can get past  
10 the appeal period, and then I can actually close.  
11 That's assuming that the deal is approved, and we  
12 can -- we can close.

13 So my point is just that it really, I think it  
14 depends -- my position is, I would defer to the  
15 time that the staff needs for whatever  
16 recommendation so that the Commission could  
17 consider it in -- in August.

18 And basically, I don't know when the August  
19 Agenda is but I believe that's the schedule that I  
20 had in my mind. And Ms. Brownless, I don't know  
21 that you can confirm that it's the August Agenda?

22 MS. BROWNLESS: As I say, what we originally  
23 worked out here was that we would try to make the  
24 August Agenda. Now, we can expedite the  
25 transcripts, and do that.

1           The August Agenda has the recommendation due  
2           July 23rd, which is why we came up with briefs on  
3           July 14th.

4           COMMISSIONER POLMANN:   Okay.  What is -- what  
5           is the schedule for an expedited transcript?

6           MS. BROWNLESS:  There is a 24-hour turnaround  
7           and a 48-hour turnaround.

8           MR. REHWINKEL:  Commissioner, to be clear,  
9           my -- my -- I made an observation about the  
10          transcript.  I think I saw a schedule that it would  
11          be received the day before the briefs were due.  
12          That, in and of itself, isn't a real problem.  I  
13          have been practicing before the Commission for 30  
14          something years and never seen a week turnaround on  
15          a transcript for a case of this magnitude.

16          Just as a way of observation, there was a  
17          non-controversial Seminole Electric transmission  
18          line with no contested issues, really, got a month  
19          to do -- to do the brief.  And I am pointing out an  
20          accumulation of -- of issues that are really  
21          troubling to the Public Counsel who represent all  
22          the customers, and you have other significant  
23          customer representatives on here just spending lot  
24          of time, as their right to do, to litigate this  
25          case and being given that kind of turnaround.

1           You have got a situation where we are working  
2           days and nights and weekends and holidays to get  
3           ready for this hearing in a first-of-a-kind case,  
4           in a first-of-a-kind COVID situation, the first  
5           time the Commission is doing this, and being put  
6           onerous conditions to have documents filed in  
7           advance, go to a -- a -- a very congested  
8           day-and-a-half hearing and then being told you got  
9           to then work the next six days to write a brief on  
10          a significant issue is, in our opinion, not fair.

11           And to say that we have to do this to meet an  
12          October 1 deadline presupposes the outcome of this  
13          case. And I think it's a bad image for the  
14          Commission.

15           COMMISSIONER POLMANN: I am trying to give you  
16          more time. I just need to figure out what -- how  
17          much time? Where? When? What date? Okay. I  
18          heard you. I am looking at the calendar right now.

19           I don't have the authority sitting here -- I  
20          don't feel like I do, sitting here right now, to  
21          move this off of the August Agenda, okay. I am --  
22          I am hesitant to do that.

23           MS. BROWNLESS: Commissioner, if I may make  
24          this suggestion?

25           COMMISSIONER POLMANN: Yes, please.



1 MS. BROWNLESS: First of all, I want to say  
2 that this hearing was established, and the dates  
3 for all of these events were established  
4 April 15th, all right. We never heard any  
5 complaints from anybody about this schedule from  
6 now until today, I had no idea that this schedule  
7 was not going to be okay. So that's point number  
8 one.

9 COMMISSIONER POLMANN: I don't -- I don't want  
10 to celebrate too much, so --

11 MS. BROWNLESS: No, sir, I am just --

12 COMMISSIONER POLMANN: Go ahead for one -- one  
13 more minute.

14 MS. BROWNLESS: All I am trying to share is  
15 that these dates have been out there an awfully  
16 long time. And in April, the COVID issue was  
17 brewing.

18 But let me make this suggestion. We tried --  
19 the staff tried to work this schedule out with the  
20 existing scheduled Agenda Conferences. There might  
21 be ability to have a special Agenda Conference. If  
22 it's all right with the parties, I would ask if  
23 they could give us some time to go over these  
24 concerns and come up with a different schedule that  
25 will allow them to have more time to do the brief.

1           COMMISSIONER POLMANN:  There is some  
2           possibility, and -- and I am just saying this.  
3           Okay, this is not a commitment in any way, shape or  
4           form.  There are a couple of other scheduled  
5           meetings in August.  Now, I understand there are  
6           various constraints further in -- in the future  
7           schedule for the utility.

8           The August 4th date could potentially be moved  
9           a week or two.  We -- I don't know that.  I think  
10          Ms. Brownless identified just a moment ago that  
11          possibility.  I can't make that decision here right  
12          now.

13          And I understand, Mr. Rehwinkel, your point,  
14          that expediting the transcript from, you know, a  
15          week to one or two days is -- is not the whole  
16          answer.  I think we will commit now to --

17          Now, staff needs a certain amount of time,  
18          given the briefs from all the parties, to  
19          consolidate that in a recommendation within the --  
20          the -- if this is going on a regular agenda, the  
21          Commission and the public needs to be able to see  
22          that in advance of the meeting -- (inaudible) --  
23          certain due dates.

24          So I think where we are in -- in post-hearing  
25          procedures right now is 40 pages, summary at 75

1 words. Let's see what we can agree on. We've got  
2 40 pages. I didn't hear any opposition to that.  
3 Is 75 words for the summary acceptable to all the  
4 parties?

5 MR. REHWINKEL: Yes.

6 MS. TRIPLETT: Yes.

7 COMMISSIONER POLMANN: Okay. I hear no  
8 objection to that.

9 I hear some -- some significant angst over --  
10 (inaudible) -- working. Let's leave that for the  
11 moment.

12 Ms. Brownless, can we -- can this help -- when  
13 can we decide that? Later today, or what? Is that  
14 tomorrow?

15 MS. BROWNLESS: With regard to a proposed  
16 schedule that would possibly give OPC more time?

17 COMMISSIONER POLMANN: Yes. What -- by what  
18 date and time can we make a determination on -- on  
19 the due date for briefs? And this -- this concerns  
20 on what agenda, or on what date would the  
21 Commission hear the item?

22 MS. HELTON: Commissioner, I am not  
23 comfortable giving a date and time at this point in  
24 time. That would require people not in this room  
25 with respect to making a decision about what other

1 available dates there are, if any.

2 COMMISSIONER POLMANN: Yes.

3 MS. HELTON: What would be helpful for all of  
4 us, I think, to know is by what date must Ms.  
5 Triplett have a final order rendered by the Clerk  
6 to meet her timing requirements with respect to  
7 what she has to do for the NRC?

8 MS. TRIPLETT: So this is Dianne. I don't --  
9 I want to be very clear. This is not an NRC  
10 requirement. This is a closing condition. And so  
11 to -- to that extent, I can't -- so I am not going  
12 to misrepresent the -- the facts here.

13 What I will say is that we filed last year.  
14 We were trying to get approval at the same time as  
15 a request of the -- of the Commission staff and, of  
16 course, the agreement of the parties, we agreed to  
17 abate the schedule to allow the NRC to decide, even  
18 though it really wasn't necessary because this  
19 commission could have been considering it at the  
20 same time, but we agreed to abate the schedule, but  
21 with the understanding that once the NRC approved,  
22 this would -- we would resume the hearing very  
23 quickly so that we could, again, upon approval, if  
24 we get approval, we can move to closing.

25 So the schedule that has laid out, has been

1           laid out, allows us to meet an October 1 closing  
2           date, so -- but that's not an NRC requirement, but  
3           what I would say is that I need a written order no  
4           later than the end of August so that the end of  
5           September, the 30-day appellate period would run,  
6           and that would still allow me to close.

7                     For employment reasons and some other reasons  
8           related to the transaction, it is -- we close -- we  
9           need to close at the end of the month, or they are  
10          going to -- (inaudible) -- So that's the  
11          significance of that -- of that date.

12                    So that's what I would ask request, is that at  
13          least an Agenda -- so whatever -- and I have seen,  
14          I think that it's possible for the Commission to  
15          issue a written order the next day after an agenda.  
16          I have seen -- I think I have seen that turnaround  
17          before. So really, I -- I think we could have a  
18          special agenda as late as a day or two before the  
19          end of August.

20                    MS. HELTON: Thank you. It was my  
21          misunderstanding with respect to the NRC. I think  
22          I misunderstood something that was said earlier  
23          today.

24                    What we can do, Commissioner, is commit to get  
25          with the Chairman's office and see what other

1 options there are, but I don't know how long that  
2 process will take.

3 COMMISSIONER POLMANN: Okay. All right.  
4 Where we stand right now is we are going to  
5 expedite the transcript, and we will be looking for  
6 a date other than August 4th. And the purpose of  
7 that is to provide the parties with a due date for  
8 briefs beyond July 14th.

9 We will be searching for a date for the  
10 Commission to hear this case in August. I am  
11 thinking probably -- well, I don't know. I am  
12 going to guess potentially the week of the 17th.  
13 We are going to confirm schedules with the  
14 Chairman's office. I am hoping that that date will  
15 be determined in the next day or so, and the  
16 parties will be notified here as quickly as we can.  
17 In which case, we will then assign the due date for  
18 the briefs. I am -- I am expecting that there will  
19 be a two-week period, rather than one week. There  
20 may be more than two weeks.

21 So, Mr. Rehwinkel, we are going to do the best  
22 we can.

23 MR. REHWINKEL: Thank you. I am grateful for  
24 you -- your consideration, and I appreciate -- I  
25 appreciate your efforts.

1 Thank you, Commissioner.

2 COMMISSIONER POLMANN: Yes, sir.

3 All right. So we have -- right now with  
4 regard to -- to all the dates here, we will figure  
5 out what we are doing, and take this -- this whole  
6 timing thing under advisement. We will put this in  
7 the prehearing order in the appropriate fashion.  
8 The parties will be informed as timely as we can,  
9 and right now we are moving on.

10 So let's see, that Section XIII in terms of  
11 procedures.

12 Rulings, Ms. Brownless, what -- what have we  
13 done hear today, anything --

14 MS. BROWNLESS: We're --

15 COMMISSIONER POLMANN: I hope.

16 MS. BROWNLESS: The opening statements are  
17 limited to five minutes per party unless a party  
18 chooses to waive its opening statement. We just  
19 need to know if the parties are agreeable to that.

20 MS. TRIPLETT: Commissioner Polmann.

21 COMMISSIONER POLMANN: Yes.

22 MS. TRIPLETT: This is Dianne. May I -- may I  
23 be heard on this issue?

24 COMMISSIONER POLMANN: Yeah. I will -- I am  
25 happy to entertain brief comments from the parties.

1 Ms. Triplett.

2 MS. TRIPLETT: Thank you, Commissioner.

3 So we would request that, you know, we have  
4 the burden of proof in this case, and there are  
5 three parties on the other side. I don't imagine  
6 that the Commission staff will give an opening  
7 statement, so I would request that Duke Energy be  
8 afforded the same amount as staff has afforded the  
9 intervenors. So if each of them is given five  
10 minutes, then we -- I would have 15 minutes.

11 Thank you.

12 COMMISSIONER POLMANN: Oh, you are welcome.  
13 It doesn't mean you get 15, but you are welcome  
14 for --

15 MS. TRIPLETT: Well, I am just letting you  
16 know my position.

17 COMMISSIONER POLMANN: Sure.

18 MR. REHWINKEL: Commissioner, I would like to  
19 be heard on this.

20 COMMISSIONER POLMANN: Go ahead.

21 MR. REHWINKEL: My intent was to ask for --  
22 for 10 minutes. This is a significant issue, and  
23 we -- we would like 10 minutes -- we would like at  
24 least seven. Five minutes is inadequate to make an  
25 opening, in our view.



1           COMMISSIONER POLMANN: Mr. Moyle, what would  
2 you like to offer here?

3           MR. MOYLE: Well, I -- I -- I think, you know,  
4 deferring to Mr. Rehwinkel's request, you know,  
5 seven, seven-and-a-half probably makes sense.  
6 Yeah, I -- I think the practitioners that are  
7 before you are seasoned, and, you know, the purpose  
8 of the opening statement is to lay out how you see  
9 the case. And I think we would all be, make  
10 judicious use of that time, whether there was a  
11 time limit on it or not, but, you know, and not a  
12 or abuse it.

13           But I don't have -- you know, if -- if however  
14 much Dianne Triplett wants and Duke, I -- I don't  
15 have any objection to that, but I would -- I would  
16 surely grant OPC the amount of time that they feel  
17 they need to make their case.

18           MR. BREW: Your Honor, I feel similar to Mr.  
19 Moyle. I have no objection to giving either Duke  
20 or OPC having the time required, knowing that all  
21 the sides are experienced and know how to get to  
22 the point, whether it's five, seven or 10 minutes  
23 for me, I will work within, you know, whatever --  
24 (inaudible) --

25           COMMISSIONER POLMANN: Thank you.

1 I am -- I am amused by Mr. Moyle's comment  
2 whether there is a time limit or not. I don't know  
3 that my colleagues would be as amused if we had no  
4 time limits on the opening remarks.

5 MR. MOYLE: Yeah, I -- I think we've seen that  
6 recently at DOAH, I think. We've had some cases  
7 over there. Duke has participated, and, you know,  
8 the administrative law judges say, you have an  
9 opening, please provide it, and there is no kind of  
10 time limit. It all kind of works out okay, but  
11 anyway --

12 COMMISSIONER POLMANN: Yeah.

13 MR. MOYLE: -- I -- I would understand it  
14 would be not in accord with the practice, but I  
15 don't think it would -- it would end things, you  
16 know, end things as we know it.

17 COMMISSIONER POLMANN: Yeah.

18 MS. HELTON: Commissioner.

19 COMMISSIONER POLMANN: Let's see -- Ms.  
20 Helton.

21 MS. HELTON: I have -- while you are  
22 contemplating the time for opening statements, I  
23 have some news through the magic of technology.

24 The Chairman's office has told me that August  
25 18th is available for a special agenda. So it

1 sounds like that Ms. Brownless and the staff can  
2 work in more time for -- for briefs, and also for  
3 the staff to prepare its recommendation for  
4 consideration.

5 COMMISSIONER POLMANN: Very good. We will  
6 come back to that in a moment.

7 I -- I am hesitant, given good advice, that 30  
8 minutes for -- for opening statements is -- is  
9 probably beyond the -- the norm. And I recognize,  
10 I don't -- I don't mean to dismiss the significance  
11 in any regard of this case.

12 Ms. Triplett, did -- and I understand you are  
13 asking for 15 minutes. Is -- could you live with  
14 10 minutes? And -- and I know you could live with  
15 it. I know are you asked for, but are you going to  
16 go home sad, disappointed and never speak to me  
17 again if I give you 10 minutes?

18 MS. TRIPLETT: I think I can pick up the  
19 pieces of my shattered life and -- and figure out a  
20 way forward. So 10 minutes would be fine. Thank  
21 you.

22 COMMISSIONER POLMANN: Okay. Well, good, you  
23 said fine. You didn't even say I could live with  
24 all right, fine.

25 All right. So we are going to give -- we are

1 going to give Duke 10 minutes.

2 Now, given that that was so easy, Mr.  
3 Rehwinkel, you said you would like 10, of course  
4 you would like more than that, but you would take  
5 seven, so -- and, Charles, I -- I hear you. I know  
6 how often important this is. And you already  
7 conceded a whole variety of things. So let's work  
8 from there.

9 So -- so if that were seven, and then -- and  
10 then the other intervenors were five -- hum --

11 MR. REHWINKEL: Commissioner, I will make work  
12 whatever you allocate to us, whether you give us a  
13 pot of time for intervenors or you give us a time.  
14 I won't belabor the point. You have been very --  
15 very conscientious and thorough, so I -- I commend  
16 it to you, whatever your judgment is. I will also  
17 not go home unhappy.

18 COMMISSIONER POLMANN: Well, you are very  
19 kind.

20 MS. BROWNLESS: Commissioner --

21 COMMISSIONER POLMANN: You know, I -- I would  
22 expect that -- that the Commission would like to  
23 hear 10 minutes from the utility and 10 minutes  
24 from the parties collectively. And Ms. Triplett  
25 asked for as much time as -- as the intervenors

1           were given collectively, and I don't know, you  
2           know, I --

3           MR. MOYLE: I think -- I think that's going  
4           to --

5           (Multiple speakers.)

6           MR. MOYLE: That would press --

7           COMMISSIONER POLMANN: I don't know.

8           MR. MOYLE: -- me in an uncomfortable way  
9           that, you know, we are intervening with full party  
10          status. I don't need 10, but, you know, if you are  
11          at the end of that and somebody goes long, and you  
12          got two minutes, you know, I want to present the  
13          case about the hundred million, and that's going to  
14          take, you know, take some time. So I would ask  
15          that we get at least -- at least five, you know,  
16          preferably seven-and-a-half.

17          COMMISSIONER POLMANN: Yeah. Well, let me --  
18          Ms. Triplett, what I am going to do is give five  
19          minutes -- give 15 minutes to the parties, and ask  
20          that you -- you try to limit yourself to 10  
21          minutes, and then I am going to duck and just let  
22          it be that.

23          We are trying to accommodate the additional  
24          time in the calendar and -- and do some other  
25          things here. This is very, very difficult, I

1 think, that we are trying to work through, so let's  
2 try to make the hearing go as smoothly as we can.

3 MS. TRIPLETT: Thank you, Commissioner. And  
4 that's perfectly fine. I completely accept, I can  
5 work within that.

6 And I did want to say, though, I think that we  
7 should be positive about the hearing. I know it  
8 will be challenging, but I think --

9 COMMISSIONER POLMANN: Oh, no, it -- it --  
10 it's -- it's very important. I am -- I am  
11 positive. We have had Commission Agenda meetings  
12 with this technology have gone very well. As has  
13 been pointed out, this is going to be a challenge  
14 with exhibits, and so forth, but we are very  
15 capable.

16 I anticipate this is going to, I don't want to  
17 say run smoothly, but it's going -- it's going to  
18 run well. So it's going to turn out. So let's  
19 just leave it at that.

20 The utility will have 10 minutes. The parties  
21 will have 15 collectively. You guys work it out.  
22 I would anticipate Mr. Rehwinkel will have a few  
23 extra minutes, and will trust that -- that between  
24 Mr. Rehwinkel and Mr. Brew, you will keep Mr. Moyle  
25 under control. No offense, Jon.

1 MR. MOYLE: That's -- that's a high order.

2 MR. BREW: I can't guarantee that, Your Honor.

3 COMMISSIONER POLMANN: I am sorry, Mr. Brew?

4 MR. BREW: I can't guarantee we can keep Mr.  
5 Moyle under control.

6 COMMISSIONER POLMANN: Well, the Chairman  
7 will.

8 MR. MOYLE: And they -- they won't be there in  
9 person, so I -- I have an advantage on them.

10 COMMISSIONER POLMANN: Well, you -- you were  
11 made aware in the -- in the notice for the meeting  
12 that we can cut you off, too, disconnect.

13 MR. MOYLE: I understand. I understand, so...

14 COMMISSIONER POLMANN: All right.

15 MR. MOYLE: We will be fine. I think to the  
16 point Ms. Triplett made, you know, I think, you  
17 know, we've all had good conversations. We will  
18 sort through this, and I think -- I think it will  
19 all fall into place.

20 COMMISSIONER POLMANN: Excellent, all the  
21 jocularities aside.

22 Okay. So let's back up a minute. Post  
23 hearing -- well, the hearing, I would like to say  
24 that we are moving the Commission taking up this  
25 matter to August 18th. I understand the company is

1           accepting of that date, so let's quickly -- and I  
2           am sorry this is taking so long today, but I think  
3           it's all with good purpose.

4           Our hearing is on the 7th. So then we've got  
5           one, two, three, four, five, six weeks to  
6           August 18th.

7           MS. BROWNLESS: Commissioner, if --

8           COMMISSIONER POLMANN: So we would like to  
9           have -- go ahead. I would expect that we would  
10          like to have staff recommendation completed by the  
11          6th, is that correct? Or am I missing something?

12          MS. BROWNLESS: Your Honor, if you could  
13          reserve ruling on this until we had time to work  
14          out the actual dates --

15          COMMISSIONER POLMANN: All right.

16          MS. BROWNLESS: -- which we will do bunny  
17          quick.

18          COMMISSIONER POLMANN: Okay. All right. Very  
19          good. So leave it at that. Let's leave that. But  
20          I am optimistic we will -- we will have some  
21          additional time for briefs.

22          MS. BROWNLESS: Yes, sir.

23          COMMISSIONER POLMANN: Very good.

24          I think we made an adjustment on the opening  
25          statements. And let's see, are there any other



1 matters to address?

2 MS. BROWNLESS: There are no other matters of  
3 which the staff is aware.

4 COMMISSIONER POLMANN: Any other matters --

5 MR. MOYLE: Just one point that I wanted to --  
6 I wanted to bring up.

7 This is in the ruling -- in the ruling  
8 sections about -- about the provision of the  
9 cross-examination exhibits, including impeachment  
10 exhibits. And I talked to some of the parties  
11 informally about this, and it -- I think for the  
12 intervenors, we have commonality, I believe, on --  
13 on some of these exhibits, the cross-examination  
14 exhibits and others.

15 So I just want to be clear, and we all don't  
16 have to file the cross-examination exhibits. We  
17 can coordinate and -- and, you know, if OPC says,  
18 here, we are going to file all these documents, we  
19 are, as intervenors, free to pick them up and use  
20 them for cross-examination. So I just wanted to  
21 make sure there was no disagreement in that  
22 respect.

23 Plus, it would be burdensome to file, you  
24 know, three -- three copies of the same thing. So  
25 I just -- that was just something I wanted to raise

1 to make sure everybody was on the same page.

2 MS. BROWNLESS: Yes, sir. And we understand  
3 that as long as the document has been identified  
4 and given an appropriate number by -- by somebody  
5 so that it can be recorded in the --  
6 electronically, then it's fine, anybody can use any  
7 document that's out there.

8 MR. MOYLE: Okay. Thank you.

9 COMMISSIONER POLMANN: Okay. Ms. Triplett,  
10 did you have anything else for -- for today?

11 MS. TRIPLETT: Thankfully, no, sir.

12 COMMISSIONER POLMANN: All right. Very good.  
13 Mr. Rehwinkel, I assume you are good?

14 MR. REHWINKEL: Yes, I have exhausted my  
15 troublesomeness, so I will -- I will be quiet.

16 COMMISSIONER POLMANN: You are very kind.  
17 Mr. Brew?

18 MR. BREW: Nothing further, Your Honor.  
19 Thank you.

20 COMMISSIONER POLMANN: Thank you, sir.  
21 Staff, did you have any concluding remarks?

22 MS. BROWNLESS: No, sir.

23 COMMISSIONER POLMANN: All right. Very good.

24 I think we've covered everything. I hear no  
25 other comments, no other matters before us, in

1           which case I will call this prehearing conference  
2           to a close, and we are now adjourned.

3                     Thank you for your patience, and have a good  
4           afternoon.

5                     (Proceedings concluded at 12:50 p.m.)

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STATE OF FLORIDA )  
COUNTY OF LEON )

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