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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200001-EI

FUEL AND PURCHASED POWER
COST RECOVERY CLAUSE WITH
GENERATING PERFORMANCE
INCENTIVE FACTOR.

_____ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS
PARTICIPATING: COMMISSIONER ANDREW GILES FAY
 PREHEARING OFFICER

DATE: Monday, October 26, 2020

TIME: Commenced: 1:30 p.m.
 Concluded: 2:52 p.m.

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

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

PREMIER REPORTING
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1 APPEARANCES:

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7 MARIA J. MONCADA, WADE R. LITCHFIELD, and
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11 BETH KEATING, ESQUIRE, Gunster, Yoakley &
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1 APPEARANCES (CONTINUED):

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9 JON C. MOYLE, JR., and KAREN A. PUTNAL,
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20 SUZANNE BROWNLESS, ESQUIRE, FPSC General
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23 the Florida Public Service Commission Staff.

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1 APPEARANCES (CONTINUED):

2 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE
3 HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service
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5 Florida 32399-0850, Advisor to the Florida Public
6 Service Commission.

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

2 COMMISSIONER FAY: Thank you for waiting
3 patiently, Ms. Brownless. You've got the end.

4 We've already read the notice for this docket.
5 So, preliminary matters?

6 MS. BROWNLESS: Yes, sir, but not at this
7 time.

8 COMMISSIONER FAY: Okay. Similar to the other
9 dockets, we'll move through the draft prehearing
10 order. Please interject if there's something you'd
11 like to speak on.

12 We will start with the Sections I, II, and
13 III, case background, conduct of proceedings, and
14 jurisdiction.

15 Section IV, procedure for handling
16 confidential information.

17 Section V, prefiled testimony and exhibits,
18 witnesses.

19 MS. BROWNLESS: Yes, sir. At this time, a
20 time will need to be set for witness summaries.

21 COMMISSIONER FAY: And I -- it's pretty
22 standard for the Commission to set three minutes.
23 So, without any objection, we -- I would set that
24 in the hearing -- in the prehearing order.

25 MS. BROWNLESS: Thank you.

1 COMMISSIONER FAY: Order of witnesses.

2 MS. BROWNLESS: Yes, sir. We are not aware of
3 any changes in the order of witnesses.

4 COMMISSIONER FAY: Okay. Great. And can we
5 address which witnesses could be excused for this?

6 MS. BROWNLESS: Yes, sir. My understanding is
7 that parties have agreed that all Gulf and TECO
8 witnesses -- and that would be Mr. Hume, Rote for
9 Gulf, and Sizemore, Cain, Smith, and Heisey for
10 TECO, as well as staff witness Dobiac can be
11 excused, their testimony inserted into the record
12 as though read, and their exhibits entered into the
13 record. This is reflected in the draft prehearing
14 order circulated to the parties.

15 We would like to confirm with the parties at
16 this time that they agree.

17 COMMISSIONER FAY: Well, I guess, we'll start
18 with Gulf. Can you confirm the stipulated
19 witnesses -- excuse me -- those excused witnesses.

20 MS. MONCADA: Gulf is in agreement. This is
21 Maria Moncada. Thank you.

22 COMMISSIONER FAY: Great. Thank you.

23 And TECO?

24 MR. MEANS: Tampa Electric is in agreement.

25 Thank you.

1 COMMISSIONER FAY: Okay. Great.

2 MS. BROWNLESS: Also, parties (technical
3 interruption) --

4 COMMISSIONER FAY: Yeah, and just -- just to
5 clarify, additional to any -- any other intervenors
6 are -- this would be the time to object if -- if
7 the -- if you had an issue with the witness being
8 excused.

9 MS. CHRISTENSEN: Yeah, this is Patti
10 Christensen with OPC. No objection to the
11 stipulation of the witness testimony by the
12 parties. I'm willing -- willing to accommodate
13 that stipulation.

14 COMMISSIONER FAY: Okay. Great. Thank you.

15 Ms. Brownless, so that -- will that leave us
16 here with any other witnesses that could be
17 excused?

18 MS. BROWNLESS: Yes. We will, of course,
19 check with the Commissioners to make sure
20 Commissioners have no questions.

21 As to other witnesses, parties are working on
22 stipulations at this time, and may result in other
23 witnesses being excused. We think there may be
24 agreement that all FP&L witnesses, with the
25 exception of Witness Coffey, can be stipulated.

1 And that would be Witnesses Deaton, Yupp --

2 MS. HELTON: Commissioner and Ms. Brownless --
3 I'm sorry. The court reporter is asking me to
4 remind everyone to speak up a little bit. She's
5 having a hard time hearing everyone.

6 COMMISSIONER FAY: Got to lean into these new
7 mics.

8 MS. BROWNLESS: Is that better?

9 COMMISSIONER FAY: I -- we'll -- we'll verify.
10 Maybe just speak up just a little bit, Ms. --

11 MS. BROWNLESS: Okay. I'll go back.

12 COMMISSIONER FAY: -- Brownless. Thank you.

13 MS. BROWNLESS: Parties are working on
14 stipulations at this time which may result in other
15 witnesses being excused. I think there may be
16 agreement that all FP&L witnesses, with the
17 exception of Witness Coffey, can be stipulated.
18 And that would be Deaton, Yupp, Rote, Fuentes, and
19 Anderson.

20 Can the parties verify, please?

21 COMMISSIONER FAY: This would be the
22 opportunity to verify that those witnesses can be
23 stipulated for FPL.

24 MS. MONCADA: Maria Moncada for FPL. That
25 works for FPL.

1 COMMISSIONER FAY: Okay. Any objection to
2 that?

3 Okay. Ms. Brownless, anything additional?

4 MS. BROWNLESS: FPUC has provided new numbers
5 for its issues on October 21 and made a second
6 revision to its numbers on October 22nd based on
7 the Commission's approval of its stipulation and
8 settlement in Docket No. 20190156-EI. This is in
9 our issue list, Issue No. 3A.

10 At this time, are the parties willing to
11 stipulate to FPUC's numbers? These numbers are
12 correctly stated in the draft prehearing order you
13 received. And its witnesses Curtis Young and Mark
14 Cutshaw.

15 COMMISSIONER FAY: Okay. Thank you.

16 Any objections to these numbers?

17 MS. KEATING: Commissioner, this is Beth
18 Keating for FPUC. No objection from FPUC.

19 COMMISSIONER FAY: Okay. Thank you.

20 MR. REHWINKEL: Commissioner, from the Public
21 Counsel's standpoint, the language that we have
22 provided regarding accommodating Type 2
23 stipulations would apply to this language -- these
24 numbers as well.

25 COMMISSIONER FAY: Okay. Ms. Brownless, any

1 others?

2 MS. BROWNLESS: Mr. Moyle and --

3 COMMISSIONER FAY: I guess, any other parties
4 have an objection to that?

5 No? Great. Thank you.

6 MS. BROWNLESS: Finally, it's our
7 understanding that the Office of Public Counsel
8 would like to cross-examine DEF Witness Menendez,
9 but appears that the OPC does not wish to cross-
10 examine DEF Witness Lewter.

11 Is that correct, OPC?

12 MR. REHWINKEL: That is correct. And I -- I
13 believe at least one other party would want to
14 cross-examine Mr. Menendez, but we are not going to
15 be crossing any other witness than Coffey and
16 Menendez in this docket.

17 MS. BROWNLESS: Okay.

18 COMMISSIONER FAY: Okay. Can we have the
19 party who -- who does have issue with that speak
20 up?

21 MR. MOYLE: Yes, FIPUG -- FIPUG would reserve
22 its right to ask questions of the witness.

23 MS. BROWNLESS: Of Witness Lewter?

24 MR. MOYLE: The two that F- -- that OPC
25 identified.

1 MR. REHWINKEL: With respect to DEF, I was
2 referring to Menendez as who we affirmatively will
3 cross. And I believe FIPUG and PCS have similar
4 intentions.

5 COMMISSIONER FAY: Okay.

6 MS. BROWNLESS: Okay.

7 COMMISSIONER FAY: If -- if -- FIPUG is not
8 stipulating to Lewter, that's fine. Is that the
9 position?

10 MS. BROWNLESS: I guess what I'm trying to
11 figure out is does FIPUG and PCS Phosphate -- are
12 they willing to excuse Witness Lewter or do you
13 wish Witness Lewter to participate?

14 COMMISSIONER FAY: FIPUG --

15 MR. MOYLE: We -- we -- at this -- I mean, at
16 this point, we would ask that he participate. I
17 mean, most of the time, when we're stipulating to
18 witnesses, we do so shortly before the -- the
19 hearing.

20 I know we're at the prehearing today and we're
21 making these accommodations, but my understanding
22 is that the Office of Public Counsel wants to ask
23 questions of him. If that understanding is
24 correct, we would like to reserve our rights to ask
25 questions of him.

1 That doesn't mean, if things change, you know,
2 we can't agree to stipulate him, but at this time,
3 we're not prepared to do so.

4 COMMISSIONER FAY: Sure. And I don't --

5 MR. BERNIER: Hey, this is --

6 COMMISSIONER FAY: Yeah -- yeah, go ahead.

7 MR. BERNIER: Thank you, Commissioner. This
8 is Matt Bernier for Duke Energy.

9 Jon, I believe you were talking about two
10 different witnesses. OPC has indicated their
11 desire to ask questions to Chris Menendez, who
12 would be the fuel witness on, you know, recovery
13 factors.

14 The other witness, Ms. Lewter, talks to GPIF.
15 And that's the basis of her testimony. I don't
16 think anybody else has indicated they wanted to ask
17 her questions.

18 COMMISSIONER FAY: Mr. --

19 MR. MOYLE: Yeah, and I'm sorry for the
20 confusion. I -- I messed that up. So, I don't
21 need the GPIF witness.

22 COMMISSIONER FAY: Yeah, Mr. Moyle, it seems
23 like --

24 MS. BAKER: And this is --

25 COMMISSIONER FAY: -- OPC is not asking to

1 cross Lewter. And so, just for clarification, you
2 don't have an objection to that.

3 MR. MOYLE: Correct.

4 COMMISSIONER FAY: Okay.

5 MS. BROWNLESS: And does P- --

6 MS. BAKER: And Commissioner, this is Laura
7 Baker for PCS. I just wanted to confirm that we
8 will be asking -- we have questions for Menendez,
9 but we don't have an objection to Lewter being
10 excused.

11 MS. BROWNLESS: Okay. So, we're all good --

12 COMMISSIONER FAY: Yeah.

13 MS. BROWNLESS: -- with Witness Lewter being
14 excused.

15 COMMISSIONER FAY: Any objection to that?

16 Okay. With that -- and then -- so,

17 Mr. Brownless -- Ms. Brownless, we'll have the
18 witnesses left on the list and they'll just --
19 they'll move -- at the hearing, move through the
20 order of how they are on the list for the ones that
21 aren't stipulated, correct?

22 MS. BROWNLESS: Yes. And I want to take this
23 opportunity to be very clear about where we are
24 putting Public Counsel's statement with regard to
25 what "no position" means.

1 What we have done in our prehearing order --
2 and the parties have obviously (technical
3 interruption) -- is for each issue in which the
4 Public Counsel took no position, we have made the
5 following statements: OPC takes no position on
6 this issue nor does it have the burden of proof
7 related to it.

8 As such, the OPC represents that it will not
9 contest or oppose the Commission taking action
10 approving a proposed stipulation between the
11 company and another party or staff as a final
12 resolution of the issues.

13 No person is authorized to state that the OPC
14 is a participant in or a party to a stipulation on
15 this issue, either in this docket, in an order of
16 the Commission, or in a representation to a court.

17 So, our draft prehearing order has that
18 statement everywhere the Public Counsel previously
19 took no position or no position at this time. And
20 that statement is also included at the beginning of
21 the stipulation where we list Type 2 stipulations
22 that have been agreed to.

23 And I want to make sure that that treatment
24 satisfies Public Counsel with regards to their
25 position.

1 COMMISSIONER FAY: Could OPC just address that
2 and just make sure it's properly stated?

3 MR. REHWINKEL: Yes, Commissioner,
4 Ms. Brownless has correctly represented the
5 conversations that we've had about how we would
6 like this to be presented and -- and that is
7 correct.

8 I believe on the language that would go with
9 the -- in Section X, it's slightly modified to
10 acknowledge that there are pending stipulations as
11 in -- and it's tweaked to be in the plural, but she
12 is -- has correctly stated our request and our
13 position in this.

14 COMMISSIONER FAY: Okay. Great. And just for
15 clarity, FIPUG does take the same position as OPC
16 on certain issues, to be consistent with the
17 lang- --

18 MR. MOYLE: That -- that's right. And we
19 don't feel a need to restate that again, but if we
20 take the position of OPC, then we would -- we would
21 take that position. And I think that largely has
22 been a common position throughout, whether it's
23 stated or not, you know, we all work together to
24 try to get these Type 2 stipulations, but you know,
25 rarely has it been represented that that's an

1 affirmative agreement to something, so --

2 COMMISSIONER FAY: Okay. Just wanted to make
3 sure --

4 MR. MOYLE: -- we agree with it, but don't
5 feel a need to -- to restate it.

6 COMMISSIONER FAY: Yeah, I appreciate that. I
7 just want to make sure your position is consistent
8 with what they stated.

9 MS. BAKER: And -- and Commissioner --

10 MR. MOYLE: Yeah, no, I appreciate you
11 checking.

12 MS. BAKER: Sorry. Commissioner, we've also
13 adopted the position of OPC several times, and the
14 same thing would apply for us.

15 COMMISSIONER FAY: I'm sorry --

16 MS. BAKER: Laura Baker on behalf of --

17 COMMISSIONER FAY: Is that Ms. Weisenfeld?

18 MS. BAKER: Sorry. No, this is Laura Baker on
19 behalf of PCS Phosphate.

20 COMMISSIONER FAY: Oh, and can you speak up
21 just a little bit, Ms. Baker?

22 MS. BAKER: Oh, sorry. Yes. Can you hear me
23 better now?

24 COMMISSIONER FAY: A little bit better.

25 MS. BAKER: Okay. And I was saying that we

1 have also adopted the position of OPC on several
2 issues and the same thing that FIPUG just said --
3 Jon Moyle just said would apply to us as well.

4 COMMISSIONER FAY: Okay. Great. So, there's
5 specific issues that you have the "no position
6 taken" and then others where you've adopted OPC's
7 position, just stating that you're consistent with
8 FIPUG on it.

9 MS. BAKER: Correct.

10 We also have a few edits on a couple of
11 positions. Let me know when -- when is the
12 appropriate time to -- to raise those to you.

13 COMMISSIONER FAY: Okay. We're going to go
14 through the issues now.

15 Ms. Brownless, do you have anything else?

16 MS. BROWNLESS: No, sir. I just would like to
17 speak to the basic positions.

18 COMMISSIONER FAY: Let's go ahead and do that
19 and then, when we get to positions, we can have --
20 Ms. Baker, we can have you speak to the issues that
21 you'd like to.

22 Go ahead, Ms. Brownless.

23 MS. BROWNLESS: With regard to the basic
24 positions, PCS Phosphate has given changes to its
25 basic positions, to Issues 11, 20, 22, and

1 contested Issue A. And those will be reflected in
2 the pin- -- in the final prehearing order.

3 And I apologize to Ms. Baker for having
4 overlooked them.

5 COMMISSIONER FAY: Great.

6 MS. BAKER: Commissioner, that -- those are
7 the edits that I was referring to and -- and
8 Ms. Brownless already has the edits, and will
9 incorporate them, so...

10 COMMISSIONER FAY: Okay. Great. And we have
11 until close of business tomorrow to make sure
12 that's right, so please get with her.

13 MS. BAKER: Sounds good. Thank you.

14 COMMISSIONER FAY: Great.

15 Ms. Brownless, (unintelligible).

16 MS. BROWNLESS: With regard to the issues and
17 positions?

18 COMMISSIONER FAY: Yes.

19 MS. BROWNLESS: The OEP requires that each
20 party take a position at the prehearing conference
21 unless good cause can be shown why they can't do
22 so. If a party's position in the draft prehearing
23 order is listed as "no position at this time," that
24 party must change it today or show good cause why
25 it can't take a position.

1 Absent a showing of good cause, the prehearing
2 order will reflect "no position" for that party on
3 that issue. If parties have not taken a position
4 or wish to change a position, staff suggests they
5 be allowed to do so by close of business, Tuesday,
6 October 27th.

7 A "no position" on an issue prohibits any
8 party from cross-examining witnesses with regard to
9 those issues or briefing on those issues. That is
10 the order establishing procedure, Section VI.

11 COMMISSIONER FAY: Great. Then, we'll take up
12 Issue A, which is the contested issue here.
13 Ms. Brownless, you want to give us some background
14 on that?

15 MS. BROWNLESS: Yes. This issue has to do
16 with Bartow Unit 4. And the order has come out --
17 the Bartow order has been issued,
18 PSC-2020-0386-FOF-EI, on (unintelligible), 2020.

19 With regard to that order, time for appeal has
20 not run until November (unintelligible), time for
21 reconsideration runs on November (unintelligible).
22 So, there's a couple of things that we need to talk
23 about with regard to this issue.

24 The first is whether the issue should be
25 included or not; and the second is, if it is

1 included, should it be slightly reworded. And we
2 do have a proposal for rewording this issue from
3 the Office of Public Counsel, intervenors.

4 So, with regard to --

5 MS. HELTON: Mr. Chairman --

6 MS. BROWNLESS: -- whether it should --

7 MS. HELTON: I'm so sorry, but the court
8 reporter has let me know that Ms. Brownless is
9 cutting out again.

10 COMMISSIONER FAY: Is --

11 MS. HELTON: So, we want to make sure that
12 the -- part of the issue, as I understand it --

13 MR. MOYLE: Yeah, I can't hear her either.
14 I'm not able to hear what she's saying fully
15 either.

16 MS. HELTON: These new microphones -- used to
17 be you could kind of go sway around a little bit
18 and everyone could hear you, but these new
19 microphones, you have to speak directly straight on
20 into the microphone to be heard.

21 COMMISSIONER FAY: Great. And let's see --
22 Ms. Brownless --

23 MS. BROWNLESS: I'm --

24 COMMISSIONER FAY: Have we got -- and she's
25 not cutting out; it's just we're having trouble

1 hearing her correctly? Okay.

2 MS. BROWNLESS: Okay.

3 MR. REHWINKEL: Actually, Commissioner, from
4 the Public Counsel, Charles. She -- on our end,
5 she is cutting out a lot, and -- and your
6 microphone, in fact, has starting cutting out a
7 little bit as well.

8 COMMISSIONER FAY: Okay. I -- the reason I'm
9 asking --

10 MR. REHWINKEL: I'm able to follow, but I
11 just -- it seems to be getting a little worse at
12 this stage of the process.

13 COMMISSIONER FAY: Gotcha. Okay. Well, I
14 just want to make sure, Ms. Brownless, that it's
15 not your mic and we don't need to switch you over
16 to a chair -- essentially they can hear you, so --

17 MS. BROWNLESS: I mean, is this better?

18 COMMISSIONER FAY: Yeah.

19 MS. BROWNLESS: Can you hear me better now?

20 COMMISSIONER FAY: Yeah, can we get

21 clarification from -- that --

22 MS. BROWNLESS: Okay.

23 COMMISSIONER FAY: Okay.

24 MS. BROWNLESS: All right.

25 COMMISSIONER FAY: Ms. Brownless, I don't know

1 if anyone has ever complained about you or me not
2 being loud enough. It's an interesting scenario.
3 So, go -- go ahead. We'll give it another try.

4 And I appreciate the -- the parties speaking
5 up. If you're unable to hear any of us for any
6 reason, do not hesitate to speak up so we can get
7 that resolved. Thank you.

8 MS. BROWNLESS: All right. Is that better?
9 Can the parties hear me now?

10 COMMISSIONER FAY: Yeah, that's better.

11 MS. BROWNLESS: Okay.

12 COMMISSIONER FAY: Great. Thank you.

13 MS. BROWNLESS: With regard to this contested
14 issue, it has to do with Duke Energy's Bartow
15 Unit 4, and the refund of certain replacement power
16 costs pursuant to Commission's order,
17 PSC-2020-0368-FOF-EI, which was issued on
18 October 15th of 2020.

19 So, there's two pieces to this. The first
20 piece is, should the issue be included in this
21 docket; and, if you determine that it should be
22 included in this docket, exactly what the wording
23 of the issue should be because we've received
24 wording from the Office of Public Counsel and other
25 intervenors that they would like substituted,

1 should the issue stay in the docket.

2 For background, I just want to say that, if a
3 motion for reconsideration is filed, it must be
4 filed by November 2nd, which is the first day of
5 our hearing. And if an appeal is filed, the
6 parties have until November 16th to do so.

7 And with that, I think it would be appropriate
8 to hear from the parties as to their positions on
9 whether the issue should be included.

10 COMMISSIONER FAY: Okay. I -- I would agree
11 with that.

12 Just to keep things in order, we'll -- why
13 don't we have Duke speak first, then Office of
14 Public Counsel, FIPUG, PCS Phosphate, and then
15 staff can address it.

16 Duke, go -- go ahead.

17 MR. BERNIER: Thank you, Commissioner Fay.
18 Matt Bernier for Duke Energy.

19 I -- I'll get to the issue in one second, but
20 first I wanted to ask a clarification question to
21 Ms. Brownless, if I could. You indicated a second
22 ago, I think, that the -- that the order was issued
23 on the 15th of October. And I agree that that is
24 the date that is on the order, but I don't think it
25 was issued to us until the 16th of October because

1 it had to get through whatever process the clerk's
2 office had to do.

3 So, I'm just trying to make sure that I have
4 got all the dates right and I don't miss a -- a
5 filing date somehow on that disparity. So, can you
6 confirm for me the dates, please?

7 MS. BROWNLESS: Mr. Bernier, the date that I
8 was going by was the date in which the order was
9 recorded on the docket sheet, and that is
10 October 15th.

11 I do understand what you're saying; because
12 this was a confidential order, you were not able to
13 be provided with that order, nor were the other
14 parties until the next day, is my understanding.

15 Does that --

16 MR. BERNIER: That's correct.

17 MS. BROWNLESS: -- match with what you
18 believe?

19 MR. BERNIER: That's correct for us.

20 COMMISSIONER FAY: Yeah, and -- and
21 Mr. Bernier, just to be clear, just -- just, as
22 we're taking up this issue, you're just trying to
23 get clarification on -- on the time period for an
24 appeal?

25 MR. BERNIER: That's -- that's correct, sir.

1 I just don't want to miss a filing date
2 inadvertently.

3 COMMISSIONER FAY: Okay. And can maybe you,
4 Ms. Helton, just clarify, make sure -- I want to
5 make sure we get that date right for you. That's
6 important.

7 MS. HELTON: I'm going to need to --

8 MR. MOYLE: And I want to be heard on that as
9 well, please, if I could.

10 MS. HELTON: I think I'm going to need to get
11 with Mr. Teitzman and Ms. Cibula on that. What --
12 what is important from everyone's perspective is
13 the date that the court considers the order to be
14 rendered because that is the date from which the
15 Court will decide its 30 days for when it would
16 have jurisdiction to hear an appeal.

17 And so, I'm not sure that the court would
18 consider the day that it took to get to the parties
19 as giving them an extra day, so --

20 COMMISSIONER FAY: Yeah, I --

21 MS. HELTON: -- I want to talk to Mr. Teitzman
22 and Ms. Cibula, and we will, I promise, get back to
23 everyone to confirm the that date the order was
24 rendered.

25 COMMISSIONER FAY: And Ms. Helton, will we be

1 able to get that confirmation by today or tomorrow?

2 MS. HELTON: To my knowledge, we should be
3 able to do that by today or tomorrow.

4 COMMISSIONER FAY: Okay. Great.

5 MS. HELTON: Def- -- definitely by tomorrow.

6 COMMISSIONER FAY: Okay. Great. Thank you.

7 Mr. Bernier, I -- I think your -- you -- you
8 raised that point and the question. I think that's
9 valid. With that said, the Commission will get you
10 the appropriate confirmation on -- on when that
11 date is.

12 I actually -- I was thinking October has got
13 31 in it and it was released the 15th, but
14 you'll -- not due until the 16th. It almost
15 sounded like you had a few extra days in there, but
16 we'll make sure we get that date confirmed for you
17 going forward so you recognize that -- that
18 appellate time line.

19 With that said, the -- the issue in front of
20 you should still be able to be addressed and taken
21 up. I appreciate that point of clarification.

22 MR. BERNIER: Sure. I very much appreciate
23 that. Thank you, Ms. Helton, for -- for following
24 up on that.

25 Regarding the actual issue, I don't think I

1 have seen the modification that's being proposed by
2 OPC. So, with the caveat that we may want to --
3 you know, to re- -- reword it a little bit after we
4 see that, Duke does not object to having the issue,
5 itself, in the docket.

6 Any -- any issues we have regarding timing and
7 all that, we can use as a substantive issue and --
8 but we won't object to the actual issue.

9 COMMISSIONER FAY: Okay. Great.

10 Is -- is there a -- a party that does object
11 to this issue?

12 MR. MOYLE: Yes. FI- -- FIPUG would like to
13 be heard on it -- on this issue.

14 COMMISSIONER FAY: Do you have an object- --
15 objection, Mr. Moyle, or do you just want to be
16 heard?

17 MR. MOYLE: We've talked about this quite --
18 quite a bit, and I have a bit of a different view
19 on -- on this as well as the -- the timing issue.
20 So, maybe I could just state the position on -- on
21 the record so it's preserved.

22 COMMISSIONER FAY: Okay. Just, if you could,
23 try to be clear if there is an objection or not.

24 Thank you.

25 MR. MOYLE: Okay. So, we would say, yes,

1 there is an objection, for this reason: that the
2 whole Bartow issue is -- is a separate stand-alone
3 case and it has been decided. And it's governed by
4 whatever the law is with respect to what Duke opts
5 to do with this. And so, that would include, you
6 know, the issue about the timing of the appeal.

7 I mean, you know, the Commission has already
8 taken action with respect to rendering the order,
9 and there's law on how that gets calculated and
10 counted and, you know, I'm not sure that even a
11 corrective action, you know, would -- would carry
12 the day. I mean, it seems the safer course of
13 action is file it on day 29 as compared to day 30
14 if there's doubt about that.

15 But -- but the whole, you know, approach as
16 to -- as to what the fallout of the order is -- you
17 know, there's process and procedures for how that
18 should be done. And we just -- we just have a view
19 and a belief that whatever that process is
20 should -- should be followed.

21 It doesn't need to be immersed and interwoven
22 into a Fuel Clause docket at this point, in our
23 view, and you know, and Duke can take whatever
24 action they -- they view as appropriate, given the
25 final order that has, you know, apparently been

1 entered on the 15th of October.

2 COMMISSIONER FAY: Okay. And PCS Phosphate,
3 you also want to comment?

4 MS. BAKER: Yes. Yes, Commissioner. Thank
5 you.

6 I -- I would agree with FIPUG that we -- we
7 fail to see a need for the separate issue. I think
8 we've addressed the issues in the other issues that
9 are in the docket. And, as Mr. Moyle said, this --
10 the Commission has already rendered a decision.
11 And that decision should enter into, you know,
12 fallout issues within the body of the normal issues
13 that are in the docket.

14 COMMISSIONER FAY: Okay. And anybody from
15 staff?

16 MS. BROWNLESS: Yes. We have no problem
17 keeping this issue in at this time. The reason
18 that I mentioned the time for appeal and motions
19 for reconsideration are because we have a rule that
20 states, if an appeal is taken and the subject of
21 the appeal would result in a refund on the part by
22 the company, that if the company requests an
23 automatic stay, they would get it.

24 Our real- -- rule is not discretionary in that
25 instance; it is mandatory. And that's the reason

1 that I bring it up; however, at this time, since we
2 do not have an appeal, nor a motion for
3 reconsideration, I think it's appropriate to keep
4 the issue in so that we can track -- basically
5 track the results of the Bartow decision.

6 Now, with regard to the language that OPC
7 proposed, it's very brief and I will read it to
8 you. The issue, as they would like to frame it --
9 and we have no problem with that -- is: What
10 action should be taken in response to the
11 Commission Order No. PSC-2020-0368-FOF-EI regarding
12 the Bartow Unit 4 February 2017 outage?

13 COMMISSIONER FAY: Okay. And -- and what
14 I -- what I would like to do, without getting into
15 too much wordsmith-ing -- so, I appreciate what
16 staff has done, put forward.

17 I do think, just to be clear, that's word-for-
18 word OPC's recommendation of the (unintelligible),
19 correct? Because it sounds like not every party
20 will have OPC's recommendation.

21 MS. BROWNLESS: Well, actually, the parties
22 were provided OPC's language when they reviewed --
23 when they got OPC's revisions to their draft
24 prehearing order. They may not have realized.

25 COMMISSIONER FAY: Okay. Great. And what you

1 read is the -- the word-for-word --

2 MS. BROWNLESS: Word-for-word, yes.

3 COMMISSIONER FAY: -- word language. Okay.
4 Great. And --

5 MR. REHWINKEL: Commissioner Fay --
6 Commissioner Fay?

7 COMMISSIONER FAY: Just so I'm clear -- one
8 second. So, the -- the rule you're speaking of is
9 a specific rule related to a -- a refund, which
10 makes the stay --

11 MS. BROWNLESS: Yes.

12 COMMISSIONER FAY: -- automatic --

13 MS. BROWNLESS: Makes the stay mandatory.

14 COMMISSIONER FAY: Okay. Which is a deviation
15 for what normally -- okay.

16 MS. BROWNLESS: Yes.

17 COMMISSIONER FAY: Gotcha.

18 Okay. Go ahead. Mr. Rehwinkel, is that -- is
19 that you speaking up?

20 MR. REHWINKEL: Yes. Yes, Commissioner. Just
21 to be -- be clear, we submitted the language with
22 the order number instead of the reference to the
23 ALJ recommended order. As -- if the or- -- if the
24 issue is going to stay in, we at least wanted the
25 reference to be to the order and not to the judge's

1 recommended order.

2 COMMISSIONER FAY: Okay.

3 MR. REHWINKEL: And we provided a position as
4 well, if that issue stays in.

5 I can say we are fairly agnostic to that issue
6 staying in. We feel like we can address the refund
7 issue -- I think it's in Issue 11; however, that's
8 really -- I -- I'm kind of indifferent about it.
9 I -- I certainly -- I understand and am largely in
10 agreement with my co-counsel on the intervenor's
11 side as far as whether it's truly needed.

12 But we really wanted to make sure the wording
13 was -- was correct, if anything.

14 COMMISSIONER FAY: Okay. Great. Well -- so,
15 hearing from all the parties on this, I'm inclined
16 to leave to it in. I think Ms. Brownless makes a
17 good point. We can't really predict the future on
18 this. So, at this point in time, I -- I'd prefer
19 to leave it in.

20 I don't have any issue with the
21 recommendation -- the recommended language from the
22 Office of Public Counsel that speaks specifically
23 to the order number instead of the DOAH judge's
24 reference. And so, if we could just, as we leave
25 it in, make that correction, Ms. Brownless, to make

1 sure, when it goes out tomorrow, that that
2 correction is made.

3 With that, do we have any other issues,
4 Ms. Brownless?

5 MS. BROWNLESS: Yes, sir.

6 COMMISSIONER FAY: Go ahead.

7 MS. BROWNLESS: Because you ruled that the
8 issue stays in, DEF will have to provide a position
9 on that issue by close of business tomorrow.

10 COMMISSIONER FAY: Okay. And Duke, can you
11 confirm you -- you've heard that instruction?

12 MR. BERNIER: I did. We will do so. Thank
13 you very much.

14 COMMISSIONER FAY: Okay. Great. Thank you,
15 Ms. Brownless.

16 Anything else?

17 MS. BROWNLESS: No, sir.

18 COMMISSIONER FAY: With that, we'll move on to
19 the exhibit list.

20 MS. BROWNLESS: Staff has prepared a
21 comprehensive exhibit list which includes all
22 prefiled exhibits and also includes exhibits staff
23 wishes to introduce into the record. Staff will
24 work with the parties to determine if there are any
25 objections to the comprehensive exhibit list or any

1 of staff's exhibits being entered in -- being
2 entered into the record.

3 COMMISSIONER FAY: Okay. Section X, proposed
4 stipulations.

5 MS. BROWNLESS: The proposed stipulations for
6 Gulf and TECO are listed in Section VII of the
7 draft prehearing -- Section X, I'm sorry -- of the
8 draft prehearing order. And, as we discussed
9 before, they're subject to OPC's statement defining
10 a Type 2 stipulation.

11 Staff will continue to work with all parties
12 to reach stipulations on the outstanding issues. A
13 list of stipulations entered into after the
14 prehearing order is issued will be provided to all
15 parties and the Commissioners prior to the hearing.

16 COMMISSIONER FAY: Thank you.

17 Section XI, pending motions, and Section XII,
18 confidentiality orders.

19 MS. BROWNLESS: There are no pending mission
20 motions at this time. There are no outstanding
21 confidentiality motions at this time. Orders have
22 been written and are in the process of being issued
23 by (technical interruption).

24 COMMISSIONER FAY: Thank you for your work on
25 this.

1 Section XIII, the post-hearing procedures.

2 MS. BROWNLESS: Parties agree to waive briefs.
3 The Commission may make a bench decision for this
4 portion of the docket. If briefs are necessary,
5 staff recommends that briefs be no longer than 40
6 pages.

7 COMMISSIONER FAY: Section XIV, rulings.

8 MS. BROWNLESS: Staff recommends that the
9 prehearing officer make a ruling that opening
10 statements, if any, should not exceed five minutes
11 per party unless any party chooses to waive its
12 opening statement.

13 COMMISSIONER FAY: I would confirm that
14 recommendation.

15 Anything else?

16 MS. BROWNLESS: Lastly, all cross-examination
17 exhibits that a party intends to use at the hearing
18 must be provided to the Commission clerk by close
19 of business on October 27th, 2020, in order to be
20 processed and made available digital- -- digitally.

21 Attachment A to the draft prehearing order
22 explains the process for the parties to follow when
23 providing cross-examination exhibits to the clerk.
24 The exhibits that are prefiled and designated as
25 cross-examination or impeachment exhibits shall not

1 be viewed by opposing witnesses or opposing counsel
2 or otherwise have their contents or identity
3 communicated to such witness or counsel.

4 COMMISSIONER FAY: Thank you.

5 And any -- any parties have any objections to
6 those two rulings?

7 MR. REHWINKEL: No -- Commissioner Fay, I have
8 one.

9 COMMISSIONER FAY: Yes, Mr. Rehwinkel. Go
10 ahead.

11 MR. REHWINKEL: Really more of a question
12 to -- to the Commission and staff. For Witness
13 Menendez, I think our only exhibit, cross-
14 examination exhibit, is going to be the Bartow
15 order. And I think right now it has not been
16 redacted, but I could be wrong.

17 MS. BROWNLESS: No, sir.

18 MR. REHWINKEL: And my -- my question is: Is
19 there a preference as to whether we actually
20 provide that as a -- as an exhibit in the "C" side
21 of the cross-examination file or, because the
22 Commission takes note -- or official recognition of
23 its own orders, would you prefer us not to do that?

24 I'm happy to do it either way. It may be
25 easier if people just have the document and can

1 access it and reference it, unless there are some
2 other issues with respect to the dissemination of
3 confidential orders to the broader 01 community
4 here.

5 COMMISSIONER FAY: Yeah, it's -- it's a good
6 question, Mr. Rehwinkel. I -- as the Commission
7 typically operates, those orders can be included,
8 but because of confidentiality, I want to make sure
9 with our general counsel's office that we get that
10 correct because it's -- it's important to get it
11 done by -- make sure that that is available by
12 October 27th, so the -- have that process, but as
13 far as --

14 MR. REHWINKEL: I can say this -- if it would
15 facilitate -- I can prepare the exhibit and I -- I
16 can just wait -- you don't necessarily have to
17 answer it on the fly here today. I put that issue
18 out there. We'll be prepared to file it by the end
19 of the day tomorrow or change course as we are
20 advised by the general counsel's office, if that
21 would help.

22 COMMISSIONER FAY: No, that -- that's fine.
23 And I do think it is an issue -- I mean -- an issue
24 that needs to get resolved because we want to make
25 sure it's done in a timely manner.

1 So, let me just check with our general
2 counsel's office as to process, ensuring that
3 confidentiality is done properly before just
4 (technical interruption).

5 MS. HELTON: Mr. Chairman, normally, our
6 orders -- we have gone on record saying that we
7 will officially recognize all of our orders, but
8 this order, because we are all dealing with this
9 hearing remotely and because a good portion of the
10 order will be redacted and is confidential -- I
11 think, in my mind, the easiest way to go about it
12 would be to have it included as an exhibit and --
13 and made part of the confidential filing -- I can't
14 remember what we're exactly calling that, but part
15 of the confidential record that everyone will be
16 able to access remotely.

17 I think there should probably be a redacted
18 version and a highlighted version.

19 COMMISSIONER FAY: Yeah. And, Ms. Brownless,
20 if -- if you could just add to this because I want
21 to make sure that, from my perspective, we don't
22 need to initiate any (technical interruption).

23 MS. BROWNLESS: I think Ms. Helton is correct
24 about having the Office of Public Counsel file it
25 as an exhibit tomorrow and label is as "C" so that

1 the clerk's office knows it goes in "C", in the
2 confidential portion.

3 With regard to having a redacted version, the
4 way this has worked in the past is that it is
5 Duke's order. The information that is sought to be
6 confidential belongs to Duke and Duke's third-party
7 contractor. So, Duke has 21 days from the date
8 that the order was entered to file a request for
9 confidentiality and provide a redacted version.

10 That being the case, I doubt we will have a
11 redacted version by the date of the hearing.

12 MS. HELTON: Can we ask Mr. Bernier,
13 Mr. Chairman, if they can expedite that redaction?
14 Because I think it would help this hearing
15 tremendously to know exactly what it confidential
16 and what is not confidential.

17 COMMISSIONER FAY: Yeah, that's -- that's a
18 fair question. I think, for purposes of ensuring
19 that -- you know, erring on the side that we're --
20 we're appreciating the proprietary nature and
21 confidentiality of some of that information and
22 that the portions of it do meet the exemptions that
23 are allowed out there.

24 Mr. Bernier, what -- what sort of turnaround
25 would you be able to provide that -- that redacted

1 order to ensure that the information that's
2 distributed is not unintentionally putting
3 proprietary -- and I know that includes you -- both
4 you and third-party information. So, I want to
5 make sure we get this right.

6 MR. BERNIER: I will work to get it turned
7 around as soon as I can. I know we have already
8 gone through the ALJ's order, which is appended to
9 the Commission's order, and highlighted that and
10 filed for confidentiality previously.

11 I wasn't thinking really that, we needed to do
12 that again -- but if we do, we will go through it.
13 And then I'll take another look through the
14 Commission's actual order as well and make sure
15 that there's nothing there.

16 As far as timing goes, tough turnaround by the
17 end of the day tomorrow. Could I have an
18 additional day on top of that to get that done?

19 COMMISSIONER FAY: Yeah. And, Mr. Bernier,
20 just to be clear, I think what Office of Public
21 Counsel has stated with -- with some clarity is
22 that they would be referencing the order
23 specifically out of the Commission and not the DOAH
24 judge's order. And so, I think the significance
25 would be that we would need to make sure the

1 Commission order has been redacted.

2 MR. BERNIER: Yes, sir, will do.

3 COMMISSIONER FAY: Great. Thank you.

4 MR. REHWINKEL: Commissioner, if I could offer
5 this, we're happy -- I'm not sure exactly how
6 the -- the -- the partitioning of that file goes,
7 but assumedly, only staff, Duke, OPC, FIPUG, and
8 PCS should be able to access that order if we
9 upload the unredacted version.

10 I don't know if others could get to it, but to
11 avoid any possibility that there's a problem there,
12 I would be happy to -- if it's okay with you --
13 because I don't -- I don't think we're going to
14 have a significant -- well, that's the only exhibit
15 we're going to have there. We might have two
16 others for FPL. We're going to have a very small
17 number of exhibits to upload, and there have been
18 no glitches that I'm aware of in that.

19 If it could be accommodated that we can wait
20 for the Duke order -- I'm happy to file the FPL
21 stuff tomorrow, as planned. If we can wait until
22 we get a redacted order, I would be happy to file
23 the redacted order and not have to put
24 confidentiality at issue at all, if --

25 COMMISSIONER FAY: Okay. Yeah, and I think

1 that would be the -- be the goal here for the other
2 two that you're speaking of. You're stating you'll
3 file those by close of business tomorrow for the
4 cross exhibits?

5 MR. REHWINKEL: Yes.

6 COMMISSIONER FAY: Okay. Great. And so, then
7 specifically to the Duke redacted, you're -- to
8 your point, it's a resolution, if they're able to
9 provide that information by the close of business
10 tomorrow, to have it filed?

11 MR. REHWINKEL: I'll -- whenever they redact
12 it, I'll file it as an exhibit if we can get some
13 leeway to file it after your -- your deadline. I
14 don't think it's a logistical problem --

15 COMMISSIONER FAY: Okay.

16 MR. REHWINKEL: -- with this one document
17 if -- if we have to wait a day or two extra.

18 COMMISSIONER FAY: No, I -- I understand. I
19 just --

20 MR. REHWINKEL: But I -- I don't want to
21 presume that.

22 COMMISSIONER FAY: Yeah, Mr. Rehwinkel, I want
23 to make sure we stick on that time line.

24 So, Ms. Brownless, what would be -- as far as
25 presenting that redacted document to the

1 Commission, what would be the alternative to that,
2 to make sure (technical interruption)?

3 MS. BROWNLESS: What we would like, in order
4 to get the exhibits together for the hearing, we
5 would like OPC to file the -- our order
6 confidentially tomorrow, and then --

7 MR. REHWINKEL: Okay. Will do.

8 MS. BROWNLESS: That works best procedurally
9 for us processing the materials.

10 COMMISSIONER FAY: Okay. Which would only be
11 accessible to the current parties.

12 MS. BROWNLESS: Exactly.

13 COMMISSIONER FAY: Right. Okay.

14 MR. REHWINKEL: Okay.

15 COMMISSIONER FAY: That -- that's fine with
16 me, Mr. Rehwinkel. Is that okay with you?

17 MR. REHWINKEL: Yes, sir. And I apologize for
18 the diversion on this, but I just wanted to be
19 clear on it. And I'm happy.

20 COMMISSIONER FAY: No, I appreciate that. I
21 have all these -- these clause dockets and -- and
22 there would be accusations that it went way too
23 smoothly. So, I appreciate you throwing in a
24 little -- a little wrinkle there at the end, but I
25 think we have it resolved.

1 Mr. Bernier, is that sufficient for you?

2 MR. BERNIER: Yes, sir, we will get it done.

3 COMMISSIONER FAY: Great. Thank you.

4 MS. BAKER: And Commissioner Fay, this is
5 Laura Baker for PCS. I just wanted to echo and
6 say, you know, if we use the exhibit, we could use
7 the redacted version. So, we wouldn't need the
8 confidential version if -- you know, if you can
9 take it out and have it not be an issue, then we
10 wouldn't have any objections to that. We -- we
11 would be fine with the redacted version to work
12 from.

13 COMMISSIONER FAY: Okay. Great. Thank you.

14 Any other matters from the parties?

15 MR. MOYLE: I -- I have one -- just kind of a
16 process question, along the lines of what has been
17 discussed, but it seems to me that -- that we're
18 positioned now to have an issue that relates to the
19 Bartow docket and the refund being decided in the
20 Fuel Clause docket.

21 So, for the purposes of making sure that the
22 record in the Bartow docket is clear, I was
23 wondering whether staff has given thought as to
24 what, you know, will be dual -- dual filings in
25 the -- in the Bartow docket to reflect, you know,

1 what's happening with respect to this issue because
2 the issue is now going to be, you know, decided in
3 the fuel docket, it sounds to me.

4 So, I just want to -- was curious about how
5 that record will be preserved. And it seems, just
6 upon initial thought, that maybe also filing
7 actions that are taken with respect to this refund
8 issue probably makes sense to put them in the
9 Bartow docket as -- as well.

10 COMMISSIONER FAY: Yeah, Mr. Moyle, I'll get
11 clarification from -- from our staff on that to
12 make sure we're -- we're in the right posture.
13 That seems like a separate operation (technical
14 interruption) issues if you don't know exactly what
15 the future will hold on that, but let me --
16 Ms. Brownless, do you have any comments on that
17 before we close --

18 MS. BROWNLESS: Yes. Mr. Moyle, this -- this
19 fuel docket is not deciding anything with regard to
20 the Bartow case. The Bartow docket is one that was
21 conducted by Judge Stevenson, is complete, and
22 there is a final order for that decision. Okay.
23 So, that's marching along in its own procedural
24 posture.

25 The only thing we are doing here in the Fuel

1 Clause is talking about the timing of the refund.
2 Okay. Will the refund be done this year or the --
3 will the refund be done next year.

4 If there is an appeal filed and the appeal is
5 pending, then, obviously, we have to wait and
6 decide whether a refund will be made based upon the
7 outcome of the appeal.

8 So, we're not combining the docket. All we're
9 talking about here is where the 16-million bucks
10 gets refunded or not refunded. It has nothing to
11 do with the underlying merits (technical
12 interruption).

13 COMMISSIONER FAY: Mr. Moyle, your -- your
14 point is taken. For the record, I appreciate it.
15 I do think this can be moved forward without
16 concerns for that. I -- I see where you're coming
17 from, but I think, from a clause perspective and
18 (unintelligible) perspective, we're --

19 MR. MOYLE: No, I appreciate it. I mean,
20 we -- we take the view that the 16 million is
21 material. We would rather have it sooner than
22 later and -- so, anyway, but I think -- I think we
23 understand --

24 COMMISSIONER FAY: Okay.

25 MR. MOYLE: -- that so -- so, thank you for

1 letting me make that point.

2 COMMISSIONER FAY: Sure. No problem.

3 Any other matters, I guess, Ms. Brownless,
4 that we need to address?

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

6 COMMISSIONER FAY: Okay. With that, we will
7 conclude the 01 docket, which also concludes this
8 prehearing conference.

9 Thank you. We're adjourned.

10 (Whereupon, the proceedings concluded at 2:52
11 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

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

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

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

DATED THIS 6th day of November, 2020.



ANDREA KOMARIDIS WRAY
NOTARY PUBLIC
COMMISSION #GG365545
EXPIRES February 9, 2021