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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:
DOCKET NO. 20210007-EI
ENVIRONMENTAL COST RECOVERY
CLAUSE.

_____ /

PROCEEDINGS: PREHEARING CONFERENCE
COMMISSIONERS
PARTICIPATING: COMMISSIONER ANDREW GILES FAY
PREHEARING OFFICER
DATE: Wednesday, October 13, 2021
TIME: Commenced: 1:00 p.m.
Concluded: 2:15 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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4 Florida 33408, on behalf of FLORIDA POWER & LIGHT
5 COMPANY (FPL) and GULF POWER COMPANY (GULF).

6 RUSSELL A. BADDERS, Gulf Power Company, One
7 Energy Place, Pensacola, Florida 32520, on behalf of
8 Gulf Power Company.

9 DIANNE M. TRIPLETT, ESQUIRE, 299 First Avenue
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13 On behalf of DUKE ENERGY FLORIDA, LLC (DEF).

14 JAMES D. BEASLEY, J. JEFFRY WAHLEN, and
15 MALCOLM N. MEANS, ESQUIRES, Post Office Box 391,
16 Tallahassee, Florida 32302, on behalf of TAMPA ELECTRIC
17 COMPANY (TECO).

18 RICHARD GENTRY, THE PUBLIC COUNSEL; CHARLES
19 REHWINKEL, DEPUTY PUBLIC COUNSEL; and PATRICIA A.
20 CHRISTENSEN, STEPHANIE A. MORSE, MARY A. WESSLING,
21 ANASTACIA PIRRELLO, ESQUIRES, Office of Public Counsel,
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23 Room 812, Tallahassee, Florida 32399-1400, appearing on
24 behalf of the Citizens of the State of Florida.

25

1 APPEARANCES (Continued):

2 JON C. MOYLE, JR. and KAREN PUTNAL, ESQUIRES,
3 118 North Gadsden Street, Tallahassee, Florida 32312
4 On behalf of FLORIDA INDUSTRIAL POWER USERS GROUP
5 (FIPUG).

6 JAMES W. BREW, and LAURA WYNN BAKER, ESQUIRES,
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8 Tower, Washington, D.C. 20007, on behalf of White
9 Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate
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11 PETER J. MATTHEIS, and MICHAEL K. LAVANGA,
12 ESQUIRES, 1025 Thomas Jefferson Street, NW, Eighth
13 Floor, West Tower, Washington D.C. 20007 on behalf of
14 Nucor Steel Florida, Inc. (NUCOR).

15 CHARLES MURPHY and JACOB IMIG, ESQUIRES,
16 Florida Public Service Commission, 2540 Shumard Oak
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18 On behalf of the Florida Public Service Commission
19 (Staff).

20 KEITH C. HETRICK, GENERAL COUNSEL; MARY ANNE
21 HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service
22 Commission, 2540 Shumard Oak Boulevard, Tallahassee,
23 Florida 32399-0850, Advisor to the Florida Public
24 Service Commission.

25

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

2 COMMISSIONER FAY: All right. Mr. Murphy, any
3 preliminary matters before we go into the pre- --
4 prehearing draft order here?

5 MR. MURPHY: Yes, Commissioner. And there's
6 been sort of a -- late-breaking stipulations here.
7 And, if I get it wrong, I'm hoping that the parties
8 will interject and correct me. I think I've got it
9 the way -- where we need to be.

10 COMMISSIONER FAY: Great.

11 MR. MURPHY: The parties have all agreed to a
12 Type 2 stipulation of Issues 1 through 10 and take
13 no position on Issue 12.

14 OPC and FIPUG are contesting FPL-specific
15 Issues 11 and 13.

16 Nucor and PCS Phosphate take no position on
17 any non-Duke issues, but are in agreement with
18 stipulations otherwise.

19 Stipulation includes: The excusal of all
20 witnesses except for FPL Witnesses Sole and Deaton,
21 who -- who are providing testimony regarding
22 Issues 11 and 13; the inclusion of testimony for
23 excused witnesses in the record, and stipulation of
24 hearing exhibits.

25 COMMISSIONER FAY: Great. Thank you.

1 Any other parties have any other preliminary
2 matters?

3 All right. With that, we'll move through the
4 draft prehearing order, similar to the other --

5 MS. MORSE: (Unintelligible.)

6 COMMISSIONER FAY: I'm sorry? Speak up.

7 MS. MORSE: Commissioner?

8 COMMISSIONER FAY: Oh, yes.

9 MS. MORSE: I'm sorry.

10 COMMISSIONER FAY: No problem.

11 MR. REHWINKEL: Mr. Murphy is -- is correct in
12 the statement of the stipulated nature of the
13 docket, but just for the record, we would like it
14 to be crystal clear that, when a Type 2 stipulation
15 is achieved, it is by the OPC facilitating or
16 accommodating it. We cannot, based on prior
17 events, have it said that we agreed to a
18 stipulation. So, it's -- it's one where we stand
19 aside.

20 So, just for the record, I just wanted to make
21 it clear, we are facilitating.

22 COMMISSIONER FAY: Okay.

23 MR. REHWINKEL: Thank you.

24 COMMISSIONER FAY: Thank you, Mr. Rehwinkel.

25 MR. MURPHY: Commissioner, on that point, I

1 believe that there is some language that we've used
2 in the past and a footnote, and we're -- we're
3 certainly going to include that.

4 COMMISSIONER FAY: Okay. And -- and that
5 language would be consistent with what you're
6 stating, Mr. Rehwinkel?

7 MR. REHWINKEL: (Indicating.)

8 COMMISSIONER FAY: Okay. Making sure.
9 Yeah, go ahead.

10 MS. MORSE: Thank you, Commissioner.

11 I also had a modification on Issue 9. The OPC
12 does plan to revise that position by noon tomorrow.

13 COMMISSIONER FAY: Okay. One second.

14 MR. MURPHY: Wait a second. So, that was
15 stip- -- stipulated? So, what are we -- you were
16 contesting only, I believe, 11 and 13.

17 MS. MORSE: That's true. And I'm making a
18 correction. We reviewed that and we'll likely be
19 moving that to a -- a "yes."

20 COMMISSIONER FAY: A "yes," consistent with
21 the utility's position?

22 MS. MORSE: Yes, provided that the tariffs are
23 based on costs deemed reasonable and prudent after
24 hearing.

25 COMMISSIONER FAY: Okay. Great.

1 MR. MURPHY: So, that's a --

2 COMMISSIONER FAY: Mr. Murphy?

3 MR. MURPHY: -- Type 1 stipulation for that
4 one; is that what we're talking about?

5 MS. MORSE: With the proviso, yes.

6 MR. MURPHY: Thank you.

7 COMMISSIONER FAY: Great. Sure.

8 All right. Any other --

9 MR. MOYLE: Can I --

10 COMMISSIONER FAY: Oh, Mr. Moyle, go ahead.

11 MR. MOYLE: Just to make a comment with
12 respect to Type 1, Type 2 -- Mr. Rehwinkel kind of
13 opened the door to that, but FI- -- FIPUG's
14 stipulation should be Type 2, not -- not Type 1.

15 So, to the extent that OPC says, we're gonna
16 go with the Type 1, FIPUG is okay with the issue
17 being resolved, but would want it to be a Type 2.

18 I think, at one point, somewhere back in
19 history, there may have been somebody who said,
20 well, you agreed to something by a Type -- Type 2,
21 but I think, just for clarity purposes, you know,
22 my understanding of Type 2 is you -- you're just
23 not taking a position on the issue.

24 So, if some parties want to stipulate, you're
25 saying, I'm not -- I'm not gonna get in the way of

1 that; Type 1 is an affirmative representation to
2 say, we agree with your resolution.

3 So, I just wanted to be clear on that and make
4 the point, to the extent OPC enters into a Type 1,
5 FIPUG is not going to be in the way, but it would
6 be a Type 2 stipulation.

7 COMMISSIONER FAY: Okay. That -- there's --
8 there's a lot said there, but I think the -- the
9 takeaway is that there is specific language,
10 including the footnote that Mr. Murphy stated, that
11 clarifies what that Type 2 stipulation means. I
12 think that probably would be the determining
13 language that would apply.

14 So, long as you're comfortable with that, I
15 think that -- that makes sense.

16 MR. MOYLE: That -- that's fair. Just
17 don't -- you know, the -- the concern is somebody
18 saying, you stipulated to something, when it was a
19 Type 2. And I don't think that would happen, but I
20 think that may be a remnant of Mr. Rehwinkel
21 bringing the point up.

22 COMMISSIONER FAY: That's fair.

23 MR. MURPHY: Commissioner?

24 COMMISSIONER FAY: I'm not sure it's fair you
25 blamed Mr. Rehwinkel for bringing up that point,

1 but under- -- understand. Thank you.

2 (Laughter.)

3 MR. MURPHY: Commissioner, just to clarify --

4 COMMISSIONER FAY: Yeah.

5 MR. MURPHY: I believe that Nucor and PCS
6 Phosphate are mirroring Public Counsel. So, if
7 they go Type 1 on something, those will, but FIPUG
8 will be Type 2 on Issue 9, if OPC determines that
9 they're going Type 1 on Issue 9.

10 COMMISSIONER FAY: Yeah, we'll get
11 clarification just from the -- those parties to
12 make sure that's clear that you -- your position
13 would move with OPC's position on that.

14 MR. BREW: And just to be clear on that, PCS's
15 position is that they should all be Type 2 --

16 COMMISSIONER FAY: Okay.

17 MR. BREW: -- from our understanding.

18 MR. MURPHY: Okay. And is Nucor similarly
19 situated?

20 MR. LAVANGA: Yes, Type 2.

21 COMMISSIONER FAY: Thank you. Got it. Great.
22 All right. Any other preliminary matters?

23 So, we've left off -- we'll be on -- we have
24 Section V here?

25 MS. HELTON: I'm not sure we got to Section 1.

1 COMMISSIONER FAY: Back down to --

2 MS. HELTON: I think we kind of --

3 COMMISSIONER FAY: -- Conduct of Proceedings?

4 MS. HELTON: -- jumped the gun a little bit.

5 COMMISSIONER FAY: Okay. I'm -- I -- I'm

6 trying to get us out of here early. My apologies.

7 So, Section I, Case Background.

8 II, Conduct of Proceedings.

9 And III, Jurisdiction.

10 Section IV, Procedure for Handling

11 Confidential Information.

12 And then, Section V, Prefiled Testimony and

13 Exhibits and Witnesses.

14 Staff?

15 MR. MURPHY: Commissioner, unless there are

16 questions by Commissioners, all witnesses except

17 FPL Witnesses Sole and Deaton, may be excused, is

18 my understanding.

19 COMMISSIONER FAY: Okay. Parties, is that

20 correct?

21 Okay. Section VI, Order of Witnesses.

22 MR. MURPHY: Commissioner, staff will confirm

23 with each Commissioner whether witnesses can be

24 excused. If no Commissioner has a question of a

25 stipulated witness, the witness may be excused from

1 the hearing and his or her testimony entered into
2 the record, as though read.

3 COMMISSIONER FAY: Okay. Great.

4 Consistent with the parties?

5 Okay. Section VII, Basic Positions.

6 Section VIII, Issues and Positions?

7 Staff.

8 MR. MURPHY: Commissioner, I will conform the
9 order to the stipulations.

10 COMMISSIONER FAY: Okay.

11 MR. MURPHY: And "no position" on an issue
12 prohibits any party from cross-examining the
13 witness with regard to those issues or briefing on
14 those issues.

15 COMMISSIONER FAY: Okay. And I know we've had
16 some changes stated in the preliminary matters,
17 but, parties, any other changes here?

18 All right. Section IX, Exhibit List.

19 MR. MURPHY: Staff has prepared a
20 comprehensive exhibit list that includes all
21 prefiled exhibits and also includes those exhibits
22 staff wishes to include in the record.

23 Staff's understand- -- staff's understanding
24 is that the exhibits have been stipulated into the
25 hearing record.

1 COMMISSIONER FAY: Great. Thank you.
2 Section X, Proposed Stipulations.

3 MR. MURPHY: Again, staff will redraft the
4 prehearing order to reflect the stipulations, and
5 it will be circulated to the parties before it's
6 issued.

7 COMMISSIONER FAY: Okay. Great.
8 Section XI, Pending Motions.

9 MR. MURPHY: There are none.

10 COMMISSIONER FAY: XII, Pending
11 Confidentiality Motions?

12 MR. MURPHY: There are none.

13 COMMISSIONER FAY: And Section XIII, Post-
14 hearing Procedures?

15 MR. MURPHY: If needed, staff recommends that
16 briefs be no longer than 40 pages. And, if needed,
17 briefs are due on November 9th.

18 COMMISSIONER FAY: Okay. Great.
19 Any issues of that on from the parties?
20 Section XIV, Rulings.

21 MR. MURPHY: Staff recommends that the
22 prehearing officer make a ruling that opening
23 statements and testimony summaries should not
24 exceed three minutes.

25 COMMISSIONER FAY: Okay. All parties in

1 agreement?

2 All right. Thank you.

3 Any other matters to be addressed here?

4 Mr. Murphy?

5 MR. MURPHY: Give me a second --

6 COMMISSIONER FAY: Sure.

7 MR. MURPHY: -- please.

8 Charles, are you good? Is that --

9 MS. MONCADA: Mr. Murphy, I've just been
10 advised by OPC that Witness Renae Deaton will not
11 be necessary for the hearing. If she could also be
12 included in the list of witnesses to be excused.

13 MR. MURPHY: Thank you.

14 MS. MONCADA: Thank you. And thank you, OPC.

15 COMMISSIONER FAY: Great. Thank you for that,
16 Mr. Rehwinkel.

17 MR. MURPHY: Commissioner, there's a reminder
18 here that we've heard in all the dockets about the
19 electronic filing and -- and how it's -- whether
20 it's for impeachment or any other purpose of cross-
21 examination exhibits. And I just would remind the
22 parties to comply with that.

23 COMMISSIONER FAY: Okay. Any issues from the
24 parties of this -- this language has that has been
25 stated four times, now?

1 MR. BREW: (Indicating.)

2 COMMISSIONER FAY: Mr. Brew.

3 MR. BREW: Your Honor, I was going to wait
4 until fuel docket, so we don't repeat ourselves,
5 but we are opposed to the requirement for the
6 prefiling of cross-examination and impeachment
7 exhibits.

8 I -- this was an extraordinary procedure that
9 was adopted during the pandemic when it was
10 necessary, in conducting hearings, to conduct them
11 remotely. With the movement from remote meetings
12 to in-person meetings, this requirement is
13 completely unnecessary.

14 To the extent that parties are preparing
15 cross-examination or impea- -- impeachment
16 witness -- exhibits -- oftentimes, you don't use
17 them. I mean, you -- you conduct impeachment
18 depending sometimes on the answers that you get.
19 So, the requirement to prefile cross-examination
20 exhibits is a procedure that really we -- we should
21 have moved past.

22 And so, I -- I would recommend that the
23 Commission go back to its long-established process
24 for introducing hearing exhibits. We discussed
25 this in the SPPCRC docket several months ago.

1 And, in my mind, circulating documents at the
2 day of the hearing, in advance, to be
3 administratively efficient is fine, but requiring
4 that they be prefiled in advance is unnecessary.

5 COMMISSIONER FAY: Okay. Noted. Thank you,
6 Mr. Brew.

7 MR. MOYLE: Mr. -- Mr. -- Mr. Chair, I would
8 echo Mr. Brew's points. There doesn't seem to be a
9 plethora of disputed issues in this environmental
10 docket, but just because we've agreed, in the
11 dockets for which there don't appear to be
12 stipulated issues, should not be perceived as
13 agreement that, in a hot, contested case that you
14 give all your cross-examination exhibits to the
15 other party.

16 You know, if that had been the practice in
17 other jurisdictions, I was thinking -- I'm dating
18 myself with this comment -- but you know, the Perry
19 Mason show would have been a lot different if -- if
20 he had to provide cross-examination exhibits in
21 advance of a -- of a hearing.

22 I mean, part of it's the element of surprise.
23 And all the lawyers are ethical, but I think the
24 better practice is, on cross-examination exhibits,
25 allow the parties to, as we've done in the past,

1 put them in red folders; say, here is a red folder;
2 isn't it true this exhibit is -- something, and,
3 you know, go about the impeachment process without
4 lawyers having a chance to look at it, think about
5 it, and think of all their rehab questions and
6 things like that.

7 So, that's a long way of saying "ditto" to
8 what Mr. Brew said.

9 COMMISSIONER FAY: Great. Noted and -- you
10 have to know your audience. Perry Mason -- that
11 hit home here, but I'm sure it -- sure it means
12 something.

13 And -- and point noted on that. I know -- the
14 Commission is really trying to take an effort to
15 make sure, as we -- as we have a transition --
16 which is a constant transition. I mean, there's
17 recognition that -- that, during the pandemic, as
18 we moved back towards more in-person things, there
19 were still some -- some inconsistencies as to who
20 could be where and what -- and what the safety
21 protocols and all those things were. And so, I
22 think we're -- we're still a little bit in that --
23 that process.

24 I think concept is that, under the
25 confidential dockets -- the confidential documents

1 that are submitted, we have that process to ensure
2 there's proper protections there and they're
3 submitted.

4 That does put ease to some parties to not have
5 to provide those hard copies consistently, but it
6 also means that under the non-confidential dockets
7 that our -- our legal folks, then, place on that
8 website are not reviewable until the day before.

9 It does seem to limit that time to a certain
10 extent, but recognize that the parties feel that
11 might create some sort of advantage for purposes of
12 reviewing that document beforehand, but we're just
13 really trying to operate for efficiency and
14 efficiently.

15 And I know the prehearing officers could vary
16 maybe in how they take this approach, but I think,
17 holistically, as a Commission, we're really trying
18 to ensure that we adopt some technology in how we
19 move forward and how we practice, like many of
20 the -- the courts have done.

21 And so, this is something I think you're going
22 to continue to see forward, but noted that there
23 are objections, but -- thank you.

24 MS. MORSE: Mr. Chair?

25 COMMISSIONER FAY: Yes.

1 MS. MORSE: For OPC, we just want to, for the
2 record, note that we echo Mr. Brew's position on
3 the prefiled cross-examination exhibits.

4 COMMISSIONER FAY: Okay. Thank you.

5 All right. Any other issues from the parties?
6 With that, we will adjourn 07 and move on to
7 01.

8 And Mr. -- Mr. Brew, we -- we have a lot on
9 01, so I do appreciate your bringing that up on 07
10 for us. Thank you.

11 MR. BREW: Commissioner, I was just a little
12 confused as to exactly what -- what we're requiring
13 now.

14 The documents need to be provided a day in
15 advance or -- did I hear you wrong?

16 COMMISSIONER FAY: The -- the 25th was the
17 date that -- that we stated for these to be
18 submitted.

19 MR. BREW: Okay. All right.

20 MS. HELTON: And if I could --

21 COMMISSIONER FAY: Go ahead, Ms. Helton.

22 MS. HELTON: If I could add, then they will be
23 released to everyone. The T-drive will be opened
24 up the day before the hearing so that you can
25 download them to your computers, if you want.

1 COMMISSIONER FAY: So, they won't be
2 accessible -- although submitted on the 25th to the
3 Commission, they won't be accessible until the day
4 before.

5 MR. REHWINKEL: And Mr. --

6 COMMISSIONER FAY: Mr. Rehwinkel, go ahead.

7 MR. REHWINKEL: I think Ms. Helton was getting
8 to a point that, even if the documents aren't
9 physically accessed, the requirement that
10 attorneys, witnesses, et cetera, still not look at
11 them until they're authorized to by Counsel on
12 cross-examination -- that's still there. They
13 can't be reviewed.

14 I know, in the past, I worked with Duke, for
15 example, in a complicated docket, where I said,
16 it's okay for their IT person or some clerical
17 person to download the documents and make sure they
18 all printed out, were ready to disseminate, but the
19 commitment or the requirement that witnesses,
20 attorneys, others, not communicate the -- view or
21 communicate the essence of the documents still
22 maintains.

23 Are we --

24 COMMISSIONER FAY: Yeah, that --

25 MR. REHWINKEL: That's still the case, right?

1 COMMISSIONER FAY: That's consistent. And
2 it's a good distinction to your point that -- that
3 they will be made available that day before so, to
4 your point, that can be downloaded and accessed,
5 just in case there's some technical issue the day
6 of the hearing, but it doesn't mean that they're
7 supposed to be reviewed at that time. Yeah, thank
8 you.

9 (Docket concluded.)

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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 27th day of October, 2021.



ANDREA KOMARIDIS WRAY
NOTARY PUBLIC
COMMISSION #HH 089181
EXPIRES February 9, 2025