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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20220001-EI

In re: Fuel and purchased power
cost recovery clause with generating
performance incentive factor.

_____ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS
PARTICIPATING: COMMISSIONER MIKE LA ROSA

DATE: Wednesday, November 2, 2022

TIME: Commenced: 9:30 a.m.
Concluded: 11:49 a.m.

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

REPORTED BY: DEBRA R. KRICK
Court Reporter

PREMIER REPORTING
112 W. 5TH AVENUE
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5 Energy Florida, LLC (DEF).

6 MARIA JOSE MONCADA and DAVID LEE, ESQUIRES,
7 Florida Power & Light Company, 700 Universe Boulevard,
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9 Florida Power & Light Company (FPL).

10 BETH KEATING, ESQUIRE, Gunster Law Firm, 215
11 South Monroe Street, Suite 601, Tallahassee, Florida
12 32301; appearing on behalf of Florida Public Utilities
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14 MALCOLM N. MEANS, J. JEFFREY WAHLEN and
15 VIRGINIA PONDER, ESQUIRES, Ausley Law Firm, Post Office
16 Box 391, Tallahassee, Florida 32302; appearing on behalf
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18 RICHARD GENTRY, PUBLIC COUNSEL; CHARLES J.
19 REHWINKEL, DEPUTY PUBLIC COUNSEL; PATRICIA A.
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1 APPEARANCES CONTINUED:

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6 ROBERT SHEFFEL WRIGHT and JOHN T. LAVIA, III,
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11 JAMES W. BREW and LAURA W. BAKER, Stone Law
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16 PETER J. MATTHEIS, MICHAEL K. LAVANGA and
17 JOSEPH R. BRISCAR, ESQUIRES, 1025 Thomas Jefferson
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21 SUZANNE BROWNLESS and RYAN SANDY, ESQUIRES,
22 FPSC General Counsel's Office, 2540 Shumard Oak
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1 APPEARANCES CONTINUED:

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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 LA ROSA: Let's move on to 01.
3 Maybe it's we will role just as easy through it,
4 maybe. I will let everyone kind of get settled as
5 we are changing some chairs around.

6 All right. Excellent, it looks like we are
7 ready to go.

8 Ms. Brownless, you are now in the hot seat.
9 Are there any other preliminary matters that need
10 to be addressed before we review the draft
11 prehearing order?

12 MS. BROWNLESS: Yes, sir.

13 Issues 2G through 2J and OPC's contested Issue
14 E deal with FPL nuclear plant outages at Turkey
15 Point Units 3 and 4, and St. Lucie Units 1 and 2.
16 OPC and FPL have filed both direct and rebuttal
17 testimony on these outages. FPL has filed a motion
18 to strike portions of OPC's witness testimony, as
19 well as a motion for extension of time to file
20 rebuttal should its motion to strike be denied.
21 OPC has filed a response in opposition to these
22 motions.

23 OPC also withdrew portions of Mr. Pollock's
24 testimony on October 4th, 2022. However, as
25 discovery has progressed, it has become apparent to

1 staff and the parties that more time is needed to
2 determine the best type of proceeding in which to
3 litigate these issues. Therefore, it is my
4 understanding that the parties have agreed that
5 these issues will be deferred and taken up in an
6 appropriate type of proceeding as chosen by the
7 Prehearing Officer or the full Commission.

8 Additionally, OPC has dropped its Contested
9 Issue C without prejudice to raise it again in
10 whatever type of proceeding is ultimately chosen to
11 litigate these issues. Rulings on the associated
12 motions will also be deferred until that time.

13 The testimony and exhibits of OPC's Witness
14 Pollock and FPL's Witness Yupp's rebuttal testimony
15 will not be placed into the record at this time.
16 The April 1st, July 27th and September 27th
17 testimony of FPL Witness Curtland will also not be
18 placed into the record.

19 Witness Curtland's September 2nd testimony,
20 pages one through three, line 16, continues to be
21 relevant since it deals with the calculation of
22 nuclear cost issues unrelated to replacement power.
23 This portion of Curtland's September 2nd testimony
24 will be inserted into the record. The cost related
25 to these nuclear outages has either been previously

1 recovered or will be recovered this year through
2 the 2023 fuel factors, and all will be subject to
3 refund in the event of a future determination of
4 imprudence.

5 Finally, the parties have agreed that Witness
6 Pollock can be excused from the November 17th final
7 hearing.

8 It is my understanding that the parties do not
9 wish to question Witness Curtland about his
10 September 2nd testimony dealing with the nuclear
11 cost issues unrelated to replacement power, and
12 that he can also be excused.

13 Obviously, there are a lot of parts to this
14 agreement, and I would like to ask all of the
15 parties if I have stated their understanding
16 correctly. And additionally, do the parties know
17 at this time if Witness Curtland can be excused?

18 COMMISSIONER LA ROSA: I will pose that
19 question to the parties.

20 OPC, you are recognized.

21 MR. REHWINKEL: Thank you, Mr. Chairman.

22 That -- Ms. Brownless has accurately stated
23 our understanding of the agreement, and we also
24 would agree to excuse the witness, Curtland.

25 COMMISSIONER LA ROSA: Okay. Excellent.

1 Thank you.

2 Anybody else?

3 Okay. So the summaries is agreed to by seeing
4 no other objections, and the witness can be
5 excused. I think we are -- we are good on that.

6 So that's, just for clarification, Issue 2G
7 through 2J and OPC Contested Issue E are deferred.
8 Witness Pollock is excused, and Witness Curtland's
9 September 2nd testimony, page one through three,
10 line 16, will be placed into the record.

11 MS. BROWNLESS: Yes, sir.

12 COMMISSIONER LA ROSA: Correct. Okay.
13 Excellent.

14 Well, that was -- that was easy enough. I
15 appreciable everyone's hard work on getting to that
16 point. That was -- that's very good.

17 Does any other parties have any other
18 preliminary matters?

19 MR. REHWINKEL: Yes, Commissioner. We have
20 been meeting with the intervenors, and I apologize
21 for this being at the last minute, but I circulated
22 two new issues to the parties through an email not
23 long ago that we would like to raise related to
24 carrying costs associated with the 2022 estimated
25 actual under-recovery balances, and I just wanted

1 to put folks on notice that I put those out there.
2 We can deal with it later, but I just, as a
3 preliminary matter, wanted you to know that we have
4 put that out there.

5 We also have revised positions on Issues 1B,
6 21A through C that I don't think I have put the
7 folks on notice, and we also have some revisions to
8 issues as well. So I can go through these at the
9 appropriate time on the issues, but I wanted you to
10 know that -- and the revisions -- the revisions on
11 Issues 1B and 21A through C will facilitate Type 2
12 stipulations, and certain of the issue positions on
13 9, 10, 16 and 18 will as well.

14 COMMISSIONER LA ROSA: Okay. And we can go
15 into it in more detail if we need to when those
16 come up later on.

17 MR. REHWINKEL: Okay.

18 COMMISSIONER LA ROSA: Excellent. So let's
19 then move through each section, if everyone is
20 okay.

21 I will start with Section I, Case Background.
22 Section II, Conduct in Proceedings.
23 Section III, Jurisdiction.
24 Section IV, Procedures in Handling
25 Confidential Information.

1 Section V, Prefiled Testimony and Exhibits and
2 Witnesses.

3 MS. BROWNLESS: We will need to set a time for
4 witness summaries, and our suggestion is that they
5 be limited to three minutes.

6 COMMISSIONER LA ROSA: That sounds fair.
7 Seeing no objections.

8 MR. REHWINKEL: No objections.

9 Commissioner, also we are working with the
10 parties to identify a minimum number of witnesses
11 that we would ask to appear for cross-examination.
12 At this point, we think it is one witness for Tampa
13 Electric, one witness for Duke, and possibly two
14 witnesses for FPL. But I am in conversations with
15 counsel for those -- for those parties. Otherwise,
16 we would -- we would not have questions for any of
17 the other witnesses.

18 COMMISSIONER LA ROSA: Okay. Excellent.

19 Any other thoughts from any of the parties?

20 MS. BROWNLESS: Mr. Rehwinkel, can you give us
21 an idea of who are the folks for TECO, Duke and FPL
22 you are interested in speaking with?

23 MR. REHWINKEL: Yes. For Duke, I believe it
24 will be Gary Dean. For Tampa Electric, I believe
25 it will be Penelope Rusk. And for FPL, it will at

1 least be Mr. Bores. But Ms. Moncada and I are in
2 ongoing dialogue about whether a second witness
3 would be correct, and who it would be. So I can't
4 -- that fourth mystery witness I don't know yet.

5 MS. BROWNLESS: And if I may just hazard a
6 guess for my purposes, is it possibly Mr. Yupp
7 or --

8 MR. REHWINKEL: That I don't know. Ms.
9 Moncada might be able to shed light.

10 MS. MONCADA: Mr. Yupp is who I believe the
11 correct witness would be.

12 MS. BROWNLESS: Okay.

13 MS. MONCADA: And I will confirm that with Mr.
14 Rehwinkel.

15 MS. BROWNLESS: And perhaps Ms. Deaton,
16 perhaps.

17 MR. REHWINKEL: And I am just --

18 MS. MONCADA: Hopeful little not Ms. Deaton as
19 well, but we will confirm that.

20 MS. BROWNLESS: Thank you.

21 MR. REHWINKEL: And I am just speaking for
22 Public Counsel in terms of all the other witnesses,
23 but we don't have questions for anyone else.

24 COMMISSIONER LA ROSA: Thank you. And the
25 suspense is now left as we know who they might be,

1 so --

2 Okay. Thank you. And I appreciate you guys
3 continuing to have that conversation. And of
4 course, notify us as soon as there is a thought and
5 agreement to that.

6 Then let's move on to the order of witnesses.
7 It sounds like there may be a few.

8 MS. BROWNLESS: We are not aware of any
9 changes to the orders of witnesses at this time as
10 stated in the prehearing order.

11 MS. MONCADA: Commissioner, I do have a couple
12 of changes. Sorry about that.

13 COMMISSIONER LA ROSA: Not a problem.

14 MS. MONCADA: I would like to switch the order
15 of Mr. Bores and Ms. Deaton. And again, hopefully
16 Ms. Deaton won't have to be called up, but in the
17 event that she is, we would like to switch the
18 order. And -- go ahead.

19 MS. BROWNLESS: So, Maria, can you just go
20 down and tell me how you want them ordered?

21 MS. MONCADA: Dean Curtland, Gerard Yupp,
22 Renae Deaton and then Scott Bores. I forgot to
23 mention Charles Rote up front before Curtland. I
24 apologize.

25 MS. BROWNLESS: Okay. So Rote is one,

1 Curtland is two, Yupp is three, Renae is four, and
2 Mr. Bores is five?

3 MS. MONCADA: Correct.

4 MS. BROWNLESS: Okay.

5 MS. MONCADA: For Ms. Deaton, we would like to
6 remove Issue 22A. FPL has withdrawn that issue.

7 MS. BROWNLESS: Thank you.

8 MR. MEANS: And -- I am sorry, Commissioner.

9 COMMISSIONER LA ROSA: Go ahead. You are
10 recognized.

11 MR. MEANS: We had a few small changes to the
12 witness list as well.

13 COMMISSIONER LA ROSA: Go ahead.

14 MR. MEANS: First, we would like to add Issue
15 4C for witness John Heisey. That's our replacement
16 power issue. And depending on the topics of
17 cross-examination, he may answer some questions, so
18 we didn't want anybody to be surprised by that.

19 And our other change is to add witness
20 Penelope Rusk. She can just go at the end of the
21 list after Mr. Heisey. As Mr. Rehwinkel just
22 indicated, he would like to cross-examine her, so
23 we would like to have her on the list. And she
24 filed testimony on September 2nd.

25 Thank you.

1 COMMISSIONER LA ROSA: Noted.

2 MS. BROWNLESS: And what issue would she be,
3 Mr. Means, what issue number?

4 MR. MEANS: It would be the under-recovery for
5 2022. I will have to see which issue that is.

6 MS. BROWNLESS: Okay. Thank you.

7 COMMISSIONER LA ROSA: Okay. Seeing nothing
8 else on the order of witnesses, I still want to
9 ask, are there any witnesses that may be excused
10 just so we can get this officially? I will wait
11 for him to come back.

12 So, Mr. Rehwinkel, I am asking, for the
13 record, are there any witnesses that can be
14 excused?

15 MR. REHWINKEL: Yes. Other than the four that
16 we've discussed, we would agree to the excusal,
17 from the Public Counsel's standpoint, of all
18 remaining witnesses.

19 COMMISSIONER LA ROSA: All right. Thank you.
20 Noted.

21 Any other witnesses that can be stipulated?
22 Okay. Seeing none, then let's move on to basic
23 positions.

24 Seeing nothing there, let's move --

25 MR. WRIGHT: Commissioner.

1 COMMISSIONER LA ROSA: You are recognized.

2 Sorry.

3 MR. WRIGHT: Thanks. We are going to change a
4 statement in our basic position, and also some
5 changes to various issues as all this is moving
6 along, but we have until five o'clock tomorrow --

7 COMMISSIONER LA ROSA: Yes. I'm sorry.
8 Absolutely. Yeah. So if things are going to
9 change, at five o'clock tomorrow if that can be
10 turned into us in writing.

11 MR. WRIGHT: Got it. Thanks very much.

12 COMMISSIONER LA ROSA: No problem.

13 Anybody else? Nothing then, let's move on to
14 issues and positions.

15 MS. BROWNLESS: The OEP requires that each
16 party take a position at the prehearing conference
17 unless good cause can be shown why they can't do
18 so. If a party's position in the draft prehearing
19 order is listed as no position at this time, that
20 party must change it today or show good cause why
21 it can't take a position. Absent a showing of good
22 cause, the prehearing order will reflect no
23 position for that party on that issue.

24 If parties have not taken a position, or wish
25 to change a position, we suggest that they be

1 allowed to do so by tomorrow at 5:00 p.m. A no
2 position on an issue prohibits any party from
3 cross-examining witnesses with regard to those
4 issues or briefing on those issues.

5 COMMISSIONER LA ROSA: Okay. Then let's go
6 into the issues if we can. So let's start with
7 Issues 1A through 4C, company specific fuel
8 adjustment issues.

9 MS. BROWNLESS: As we have previously
10 discussed, Issues 2G through 2J have been deferred.
11 We wish at this time to add Issue 3A, should the
12 Commission approve FPUC's request to apply its
13 parent company, Chesapeake Utility Corporation's,
14 projected short-term cost rate to its deferred 2022
15 fuel cost balance? And I believe that Ms. Keating
16 can address --

17 COMMISSIONER LA ROSA: You are recognized if
18 you are ready.

19 MS. KEATING: Thank you, Commissioner.
20 We have of provided a written statement of
21 FPUC's position on that new added Issue 3A, and we
22 are happy to email it to the parties immediately
23 after the prehearing conference.

24 COMMISSIONER LA ROSA: Okay. Excellent.
25 You are recognized.

1 MR. REHWINKEL: Commissioner, the Public
2 Counsel is changing our position on 1B to no
3 position, and we are doing that to facilitate a
4 Type 2 stipulation.

5 COMMISSIONER LA ROSA: Noted.

6 MS. BROWNLESS: You are changing what,
7 Charles, please?

8 MR. REHWINKEL: Our position on 1B.

9 MS. BROWNLESS: Okay.

10 MR. REHWINKEL: That should be no position.

11 COMMISSIONER LA ROSA: And just for clarity,
12 did you say 1D as in David or --

13 MR. REHWINKEL: B as in Brian.

14 COMMISSIONER LA ROSA: Okay. Any other
15 changes?

16 MS. BAKER: Mr. Commissioner, there are
17 several issues within -- within one that PCS has
18 noted and agree with OPC, those would change to no
19 position where OPC has not taken a position.

20 COMMISSIONER LA ROSA: Okay. Noted. Thank
21 you.

22 Okay. Seeing nothing else in this group,
23 let's move to Issues 5 through 10, which are the
24 generic fuel adjustment issues.

25 MS. BROWNLESS: For Issues 7 through 10, OPC

1 has stated that they don't think the companies have
2 met their burden of proof to demonstrate that costs
3 are reasonable and prudent. This statement has
4 also been made for Issues 24 through 28 and Issue
5 30.

6 As we've stated in the past, merely stating
7 that a company has not met its burden of proof is
8 not a position. In addition, these position have a
9 statement that the Commission has not held the
10 contested proceeding where testimony from witnesses
11 was heard and discussed in open hearing.

12 And honestly, I need a little help
13 understanding OPC's position on these issues.

14 COMMISSIONER LA ROSA: OPC, can I get you to
15 comment on that? Maybe help direct staff a little
16 bit.

17 MR. REHWINKEL: Well, the statement that we
18 make, where it says, the OPC does not agree that
19 the costs proposed for final true-up can
20 necessarily be deemed prudent, that's a position
21 that we don't agree. That's a no. So I could put
22 a no in front of the phrase "the OPC", but I think
23 we do take a position there.

24 MS. BROWNLESS: Well, that's fine, Charles.
25 Thank you for clarifying that.

1 MR. REHWINKEL: Yeah.

2 MS. BROWNLESS: I will go ahead for all of
3 those statements, where you have this type of
4 language, and simply put no, is that --

5 MR. REHWINKEL: It would say, no, comma.

6 MS. BROWNLESS: And the other stuff in
7 addition to the other --

8 MR. REHWINKEL: Yeah, make that a little T,
9 and that would work.

10 MS. BROWNLESS: Oakie-doke. I can do that.

11 COMMISSIONER LA ROSA: Okay.

12 MR. WRIGHT: Commissioner, if I could just
13 interject.

14 COMMISSIONER LA ROSA: Sure.

15 MR. WRIGHT: We are wrestling with the call of
16 the questions presented here. My intention,
17 sitting here right now, is to take the most
18 definitive positions I can in relation to these
19 issues. As I said earlier, we are working on it.

20 Thank you.

21 COMMISSIONER LA ROSA: Awesome. Thank you.

22 MR. REHWINKEL: On Issues 9 and 10, I would
23 like to add for FPUC our position would be no
24 position. So we would facilitate a Type 2
25 stipulation for FPUC on Issues 9 and 10, as well as

1 16 and 18; but since we are in this group, just
2 nine and 10, that would need to be added.

3 COMMISSIONER LA ROSA: Okay. Excellent.
4 Noted.

5 MS. BROWNLESS: Again, Charles, let me make
6 sure I have got this straight. So for Issues 9 and
7 10 for FPUC, you are no position.

8 MR. REHWINKEL: That's correct. Also.

9 MS. BROWNLESS: And what other issues did you
10 mention, sir?

11 MR. REHWINKEL: 16 and 18, we'll do the same.

12 COMMISSIONER LA ROSA: Yeah, we will get there
13 because we're going to -- we're going to --

14 MS. BROWNLESS: You are going to get there,
15 okay.

16 COMMISSIONER LA ROSA: Yeah.

17 MS. BAKER: Commissioner, for PCS, our
18 position on Nos. 9 and 10 would change from no
19 position to agree with OPC.

20 COMMISSIONER LA ROSA: Okay. Excellent.
21 Thank you. Noted.

22 MS. BAKER: Thank you.

23 MS. MONCADA: Commissioner, one change from
24 Florida Power & Light on Issue 10.

25 COMMISSIONER LA ROSA: Okay.

1 MS. MONCADA: Would like to add Witness Yupp
2 on that issue, please.

3 COMMISSIONER LA ROSA: Noted.

4 Staff, are you okay? Anything further needed?

5 MS. BROWNLESS: That's fine.

6 COMMISSIONER LA ROSA: Okay.

7 MS. BROWNLESS: Okay.

8 COMMISSIONER LA ROSA: I think we are good in
9 this section, in this group of issues. FPL, you
10 are good? Okay.

11 Let's move on to the company specific
12 generating performance incentive factor issues. I
13 believe there are no issues, correct?

14 Let's then go to Issues 14 through 15, generic
15 generating performance incentive factor Issues 14
16 through 15. I'm not seeing anything.

17 I know there is some here in the fuel factor
18 calculation issues, which are 16 through 20. OPC I
19 will recognize you. I know you have something
20 here.

21 MR. REHWINKEL: Are you -- okay. So for issue
22 16 that -- we would say that, for FPUC, OPC takes
23 no position.

24 We have a revision to our position on 18. In
25 the first line, where it says, the cost recovery

1 amounts. We intended to add a phrase that says,
2 comma, and thus the factors, comma. And I can
3 supply that to staff. That would be on 18. And we
4 would also add that, for FPUC, the OPC takes no
5 position.

6 And the same edit, and thus the factors, with
7 the commas around it, would go for 20. And I think
8 we would also need to add there the no position for
9 FPUC as well.

10 COMMISSIONER LA ROSA: Okay.

11 MS. BROWNLESS: So the cost recovery -- so
12 your position on Issue No. 20 would also say, the
13 cost recovery amounts, and thus the factors?

14 MR. REHWINKEL: Yes, ma'am.

15 COMMISSIONER LA ROSA: I think that that is
16 noted.

17 You are recognized.

18 MS. BAKER: Yes, Commissioner.

19 On Issues No. 16, 18 and 20, PCS's position
20 will change from no position to agree with OPC.

21 COMMISSIONER LA ROSA: Okay. Thank you.

22 MS. BAKER: Thank you.

23 COMMISSIONER LA ROSA: Anybody else on that
24 group of issues?

25 Staff, are we good? We are clear?

1 MS. BROWNLESS: Yes. Thank you, sir.

2 COMMISSIONER LA ROSA: Okay. Excellent.

3 MR. WRIGHT: Commissioner, just to chime in
4 again.

5 COMMISSIONER LA ROSA: Sure.

6 MR. WRIGHT: We will be providing positions.

7 Our position is not going to be no position.

8 Thank you.

9 COMMISSIONER LA ROSA: Thank you. Noted.

10 Let's move on to Issues 21A through 21C, which
11 are the company specific capacity cost recovery
12 factors.

13 MS. BROWNLESS: Yes. We want to mention that
14 FPL raised an Issue 22A for the first time in its
15 prehearing statement, and I will read the issue for
16 you.

17 Should the Commission approve a one-time
18 reduction to the CCR factors for the month of
19 January 2023 to allow the implementation of a \$25
20 million refund to customers which address the
21 application of the tax provision contained in FPL's
22 rate settlement agreement?

23 The adjustment referred to in FPL's proposed
24 Issue 22A is incorporated in Issue 30. There, in
25 Issue 30, FPL has provided two factors. One for

1 January 2023, which incorporates the tax refund,
2 and a second to be used from February through
3 December of 2023.

4 Because it can be addressed in Issue 30, FPL
5 has now agreed to separate -- that a separate Issue
6 22A is not needed and can be dropped. We agree
7 with that, and we would like to confirm that there
8 is no objection to addressing the IRA issue in
9 Issue 30.

10 MR. REHWINKEL: No objection.

11 COMMISSIONER LA ROSA: Okay. Seeing no
12 objection, parties, are we all in agreement, no
13 objections? Okay.

14 MR. REHWINKEL: Commissioner, for Issues 21A,
15 B and C, the Public Counsel's position will go to
16 no position to facilitate a Type 2 stipulation.

17 COMMISSIONER LA ROSA: Thank you.

18 MR. WRIGHT: So will Retail's, thanks, on
19 those three issues.

20 COMMISSIONER LA ROSA: Got it.

21 MS. BAKER: Commissioner, as our position has
22 agreed with OPC, it will change to no position.

23 COMMISSIONER LA ROSA: Excellent. Thank you.

24 Noted.

25 MS. BAKER: Thank you.

1 COMMISSIONER LA ROSA: Anything else in this
2 group of issues?

3 MS. BROWNLESS: Hold on a sec while I get my
4 notes.

5 COMMISSIONER LA ROSA: I am sorry. I know I
6 am moving. So yes.

7 MS. BROWNLESS: Let me make sure I got this
8 straight.

9 COMMISSIONER LA ROSA: Any clarification, feel
10 free. The floor is yours.

11 MS. BROWNLESS: Okay. So for 21A, OPC is
12 taking no position, FRF is taking no position, and
13 I am sorry?

14 MS. BAKER: PCS.

15 MS. BROWNLESS: Okay. You are agreeing with
16 OPC or taking no position?

17 MS. BAKER: We are taking no position.

18 MS. BROWNLESS: Okay. And that's true for 21B
19 and 21C as well?

20 MS. BAKER: Correct.

21 MS. BROWNLESS: Thank you.

22 COMMISSIONER LA ROSA: Excellent.

23 Okay. Let's move on to Issues 24 through 30,
24 the generic capacity cost recovery factor issues.

25 MS. BROWNLESS: Okay. And, Mr. Rehwinkel, I

1 assume that for Issues 24 through 26, where you
2 have the same language, we can make that match what
3 you told us previously?

4 COMMISSIONER LA ROSA: OPC?

5 MR. REHWINKEL: Are you talking about where we
6 put the no in there?

7 MS. BROWNLESS: Yes, sir.

8 MR. REHWINKEL: Yes, ma'am. Yes.

9 MS. MONCADA: Commissioner, Florida Power &
10 Light has -- is going to have a revised position
11 for Issue 30. As Ms. Brownless just explained in
12 some detail, the January capacity factor for FPL
13 reflects a refund to customers of \$25 million. In
14 the tax refund docket, 202200165, FPL will be
15 submitting a revised calculation of that refund
16 which will then flow through to the factors, and we
17 will be providing a position that reflects that. I
18 will do that by 5:00 p.m. tomorrow.

19 COMMISSIONER LA ROSA: Okay. Thank you.

20 MS. MONCADA: Thank you.

21 MS. BROWNLESS: And we are going to -- if I
22 can -- I will talk about that a bit more in a
23 minute. I just want to make sure I get the changes
24 from OPC first.

25 So that's going to be a no added to your issue

1 on 25, Charles, is that correct?

2 MR. REHWINKEL: Yes.

3 MS. BROWNLESS: And is FPUC going to be --
4 FPUC is not affected by 24, 25 and 26, or are you
5 taking no position on them?

6 MR. REHWINKEL: I would have to look and see.
7 I don't know if they are. I just didn't think they
8 were, so I didn't --

9 MS. BROWNLESS: Oh, okay.

10 MR. REHWINKEL: Yeah.

11 MS. BROWNLESS: Ms. Keating, is that --

12 MS. KEATING: Those issues don't impact FPUC.

13 MS. BROWNLESS: Cool beans. Thank you.

14 MS. BAKER: Mr. Commissioner, on Issues No.
15 24, 25, 26, 28 and 30, our position would change to
16 agree with OPC. And I will email all of these to
17 Suzanne so that she's got them all.

18 Thank you.

19 COMMISSIONER LA ROSA: Excellent. Thank you.

20 MS. BAKER: Thank you.

21 MR. REHWINKEL: Commissioner, I would also
22 state that just to -- just to put the posture of
23 the case with respect to all these issues in a
24 little bit sharper focus, we have issues, I want to
25 say it's with eight -- with Issue 8, 9 and 10, and

1 then 16, 18 and 20, that would be the focus of our
2 cross-examination of witnesses and any briefing
3 that we would do.

4 The other issues where we have the position
5 that we've just gone through, where we would add
6 the no, et cetera, we are amenable to talking to
7 the parties about facilitating a Type 2 stipulation
8 on those issues despite the language here.

9 So I just wanted to, you know, to let folks
10 know we are not intending to cross-examine really
11 on those other issues. So we will work with the
12 parties on our side and the utilities to, and the
13 staff, to facilitate a Type 2 stipulation where
14 it's all -- at all possible to narrow the issues.

15 COMMISSIONER LA ROSA: Excellent. Thank you.
16 And I appreciate that. That will help us move
17 through things a little quicker, so thank you.

18 MR. REHWINKEL: Yes.

19 MS. BROWNLESS: And, Charles, if I can just
20 make sure I understand the issues you are focusing
21 on and may brief. That's issues 8, 9, 10, 16, 18
22 and 20?

23 MR. REHWINKEL: Yes.

24 MS. BROWNLESS: Thank you.

25 If I can come back to Issue No. 30.

1 COMMISSIONER LA ROSA: Yes.

2 MS. BROWNLESS: As Ms. Moncada has mentioned,
3 FPL has discovered that its calculation of the
4 January CCR factor stated in its prehearing
5 statement, which address the IRA refund, is
6 incorrect. FPL's petition to implement that factor
7 is addressed in Docket 202200165-EI, and it was
8 going to be voted on at the November 1st Agenda,
9 but due to the fact that they needed to make a
10 correction, it's now going to be considered at our
11 December 6th Agenda.

12 Since there will not be a vote on the
13 underlying IRA refund amount by our November 17th
14 final hearing, I think we need to discuss how we
15 are going to deal with that fact, with the idea of
16 our goal to have a number that can be placed in
17 effect on January 1st. I will throw out a few
18 options, and I would like to ask Chair for comments
19 from the parties affected.

20 One thing we could do is we could draft a
21 stipulation with contingent options. In other
22 words, if on -- whatever is ultimately approved at
23 the subsequent Agenda would be put in place subject
24 to being trued up, or we could continue the
25 hearing, this hearing, until after the December 6th

1 Agenda when the IRA will be voted on and work it
2 that way, because then we would have a decision.
3 And that will work as long as parties don't want to
4 file briefs on this issue, or other clause issues,
5 because briefs are tentatively due November 29th,
6 with a Special Agenda to follow.

7 My understanding, from having discussions with
8 Mr. Rehwinkel, is that they intend to file a
9 protest of the FPL IRA calculation. In which case,
10 again, we are back to coming up with a number that
11 has some type of ability to make sure everybody
12 understand it can be readdressed when Docket 165
13 gets worked out.

14 So at this time, Commissioner, I would like to
15 see what the folks --

16 COMMISSIONER LA ROSA: Sure.

17 MS. BROWNLESS: -- what ideas they have.

18 COMMISSIONER LA ROSA: Sure. Let's open it
19 up, parties. Thoughts on the process. OPC,
20 yeah --

21 MR. REHWINKEL: Yeah, I have -- I have some
22 thoughts.

23 First of all, the -- we have engaged an expert
24 to look at all three utilities with solar
25 facilities and the IRA impact. FPL was ahead of

1 the game and was heading for a decision until the
2 deferral that happened, I guess it was yesterday.
3 It seems like a year ago, but anyway.

4 The only reason we would have asked for a
5 hearing on that tariff was to buy some time to look
6 at these issues contemporaneously with the three
7 companies. Given the fact that it's -- it's going
8 back to the shop to be reworked a little bit with
9 the numbers, we won't need to do that. I have
10 talked to counsel for FPL about that. I think we
11 are in good shape.

12 My thought would be, since we are in fuel, and
13 the targets have moved rapidly in the last few
14 days, rather than kind of rush to try to cram
15 things in at the end of the year, I am very
16 comfortable letting the numbers that they have go
17 in with the understanding that if we have any
18 adjustments down the road, either through their
19 calculations or something that we come up with, or
20 parties come up with, it can always be adjusted
21 with credits for any historical amount, and then
22 adjustments going forward.

23 So I would prefer an option that's less
24 end-of-year intensive and more look at it
25 retroactively, but that's just my view.

1 COMMISSIONER LA ROSA: FPL?

2 MS. MONCADA: Thank you.

3 I appreciate Mr. Rehwinkel's flexibility and
4 his willingness to make this not such an
5 end-of-the-year issue. I think that FPL is going
6 to be in a position -- our intent is to file the
7 revised calculation in the 165 docket by the end of
8 next week, and therefore, we would have the numbers
9 prior to the hearing, and we would file a
10 corresponding capacity factor change in this
11 docket, and they would have an opportunity to view
12 that prior to the hearing on November 16th.

13 And at that time, I agree with -- FPL agrees
14 with Ms. Brownless' first option, which is to have
15 a contingent position, or a contingent stipulation
16 for capacity that would say something along the
17 lines of, that the factors that were submitted on
18 November 11th should be approved if the Commission
19 approves them in Docket 165, and that would be
20 taken up on December 6th.

21 And both of those issues could be decided -- I
22 am sorry, the 165 docket would be decided on
23 December 6th, but on -- we could stipulate before
24 then that the capacity factors would be approved
25 according to the result in 165.

1 COMMISSIONER LA ROSA: Okay. OPC?

2 MR. REHWINKEL: Yes, I am -- I am happy to
3 agree to, really, whatever number they come up with
4 subject to a true-up. You know, if we have an
5 issue with the 165 number, and we want to have a
6 hearing about that, just theoretically, and it
7 yielded a different number down the road, I think
8 that could be adjusted.

9 I think we are going to be comfortable doing
10 some kind of stipulation to whatever number they
11 file at the end of next week, that number just
12 going in without -- I don't even think it has to be
13 dependent upon a final decision by the Commission.
14 I think you can put the number in there. We can
15 look at it. We can talk about it at the December
16 6th Agenda. We can talk about it in a protest if
17 one has to happen. I don't think it's going to
18 happen.

19 So I feel very comfortable that whatever
20 number they file with their revision will be good
21 for purposes of including the number into the final
22 factor, if that makes sense.

23 MS. MONCADA: And, Commissioner, FPL agrees
24 that it would be subject to whatever process
25 happens in 165. If OPC chooses, or any other party

1 chooses to file a protest, we understand that
2 that's part of the process. So there would be a
3 true-up if there was a change to the final order.

4 COMMISSIONER LA ROSA: Okay.

5 MR. REHWINKEL: Yes. I think we are saying
6 the same thing. I don't think that we need to get
7 wrapped around the axle about this number. I think
8 whatever they file, it can go in, and we will work
9 on a stipulation on that.

10 COMMISSIONER LA ROSA: Okay.

11 MS. BROWNLESS: And I assume that whatever
12 number is filed on or about the 11th we'll be
13 identified as an exhibit on the Comprehensive
14 Exhibit List and get it in the record by
15 stipulating to it in that way?

16 MR. REHWINKEL: Yes. I am willing to do that.
17 I mean, we are too -- we are not at the point where
18 we need to get into due process and the ability to
19 cross-examine people on it, because I think that's
20 going to be in another process. So we are happy to
21 facilitate that.

22 MS. BROWNLESS: Ms. Moncada, is that
23 acceptable?

24 MS. MONCADA: Absolutely. Yes. We would love
25 to have it entered in by stipulation.

1 COMMISSIONER LA ROSA: Perfect.

2 MR. MOYLE: I -- can I be heard on this?

3 COMMISSIONER LA ROSA: Sure. I saw you are
4 sitting over there.

5 MR. MOYLE: I appreciate OPC and FPL working
6 through this. I know you had asked for views of
7 all parties on that, but I am not exactly clear as
8 to what is being referenced with respect to an
9 upcoming filing. I mean, because there is two
10 dockets that we are talking about, and I am not
11 sure if you are saying, oh, we are going to make a
12 new filing in a fuel docket with a new number, or
13 we are going to make a new filing notice IRA, you
14 know, tax relief docket with a new number, and so I
15 am a little unclear.

16 I appreciate you all working through it. I
17 don't know that we would have an issue, but I am
18 not tracking a lot with respect to the new number
19 filing. I mean, you know, we have a process here
20 that usually you get the evidence and you know what
21 it is, and, you know, you aren't doing live
22 testimony, like, oh, well, this has changed, but I
23 just need clarity on that, if I could.

24 COMMISSIONER LA ROSA: Sure. Let's get
25 clarity from staff, and we will kind of recap the

1 scenario and get everybody on the right page, and
2 then we will go back and reopen it if I need to.

3 MS. BROWNLESS: Yes. What I have in mind,
4 Jon, is that, obviously, there is going to be an
5 amendment to 165 that FPL files. And they are
6 going to file an amended position, I assume with an
7 amended calculation of the new -- the new number.
8 And then, in this docket, there would be an exhibit
9 filed that would contain that new calculation so
10 that there would be something in this record that
11 referenced the new numbers. And if everybody
12 stipulated to it, we wouldn't have to put a witness
13 on to sponsor it. That would get it in this record
14 with the understanding, of course, that whatever
15 happened in the 165 docket subsequently could be
16 corrected, or that modifications could be made in
17 the fuel clause next year to take care of it.

18 MR. MOYLE: Okay. That's helpful. We are not
19 talking about any new numbers in a fuel docket?
20 Just this number in the -- in the 165 docket that
21 would be import into this docket?

22 MS. BROWNLESS: It would be imported into this
23 docket. Yes, sir. Same number.

24 MR. MOYLE: Thank you, Mr. Chair.

25 MR. REHWINKEL: Just subject to true-up and

1 adjustment correct?

2 MS. BROWNLESS: Yes, sir. Of course.

3 MR. REHWINKEL: And it's -- I think it's in
4 the neighborhood of 25 million, or maybe a little
5 bit more. It's not something that's going to move
6 the needle, but it needs to be done, and it's to
7 the customers' benefit --

8 MS. BROWNLESS: Right.

9 MR. REHWINKEL: -- so we are willing to take
10 that credit now, and then if the credit gets a
11 little bigger, or changes, we are willing to deal
12 with that down the road.

13 COMMISSIONER LA ROSA: Okay. Excellent. I
14 think we are all on the same page with this. So
15 any -- no further thoughts?

16 MS. BROWNLESS: No. I think we are in pretty
17 good shape about how we are going to handle this,
18 and I appreciate the parties willing to work that
19 out.

20 MR. REHWINKEL: Commissioner, I think we've
21 passed Issue 30 with that conversation.

22 COMMISSIONER LA ROSA: Uh-huh.

23 MR. REHWINKEL: Would this be a time to read
24 into the record our proposed new issues?

25 MS. BROWNLESS: Well, can we do the contested

1 issues? Get things --

2 MR. REHWINKEL: Oh, I apologize. Okay, yeah,
3 after that, then I just -- I thought we were there,
4 I am sorry.

5 COMMISSIONER LA ROSA: Yeah. We will --
6 correct. We will get to that.

7 So just real quick, Issue 31, effective date,
8 we are fine, issue -- or tariff approval.

9 MS. MONCADA: Commissioner, I am sorry.

10 COMMISSIONER LA ROSA: No. No problem.

11 MS. MONCADA: On Issue 31, the effective date
12 for FPL reads January 1, 2022, and should be 2023.

13 MS. BROWNLESS: In your position?

14 MS. MONCADA: In my position, yes, in FPL's
15 position.

16 MS. BROWNLESS: Okay. Got it.

17 COMMISSIONER LA ROSA: Thank you. Let's let
18 the record reflect that. That will work.

19 Let's move, then, to tariff approvals in
20 Issues 32. Nothing?

21 Close the docket for Issue 33.

22 Then let's go to the contested issue.

23 MS. BROWNLESS: Commissioner, with regard

24 to --

25 COMMISSIONER LA ROSA: Real quick.

1 Phosphate.

2 MS. BAKER: Commissioner, I apologize. On
3 Issue 32, our position would change from no
4 position to agree with OPC.

5 COMMISSIONER LA ROSA: Okay. So Phosphate to
6 agree with OPC.

7 MS. BAKER: Thank you.

8 COMMISSIONER LA ROSA: Got it.

9 And nothing on 33?

10 Then let's to go the contested issues.

11 MS. BROWNLESS: Okay. As we've previously
12 discussed, OPC Issue No. C has been withdrawn
13 contingent upon OPC's ability to raise it again
14 when the proceeding is open to litigate Issues 2G
15 through 2J.

16 With regard to OPC Issue E, I believe he has
17 deferred that issue to be taken up with the other
18 nuclear replacement power issues.

19 And with regard to OPC Issue No. F, my
20 understanding is that OPC and FPL have agreed to
21 defer that to the next fuel clause.

22 COMMISSIONER LA ROSA: OPC, is that correct on
23 issue --

24 MR. REHWINKEL: That is correct. Yes.

25 MS. MONCADA: And for FPL as well.

1 MR. REHWINKEL: I will say this, between now
2 and the next fuel clause, we will sit down with FPL
3 and decide whether this issue needs to exist in the
4 next fuel clause.

5 COMMISSIONER LA ROSA: Okay.

6 MR. REHWINKEL: It doesn't need to be in this
7 docket today.

8 MS. BROWNLESS: And that's Issue F, correct?

9 MR. REHWINKEL: F, yes.

10 COMMISSIONER LA ROSA: Okay. So obviously a
11 lot of position have changed. So just another
12 disclosure, 5:00 p.m. tomorrow for any changes, and
13 there's quite a bit there, so just throwing that
14 out there.

15 Let's move on to Section IX.

16 MR. REHWINKEL: Would be the time to
17 discuss --

18 COMMISSIONER LA ROSA: Yes, let's talk about
19 that. I noted it, but I skipped right over it.

20 Go ahead. You are recognized, OPC.

21 MR. REHWINKEL: Thank you.

22 So, Commissioner, the Public Counsel, in light
23 of the fact that there are 22 estimated actual
24 amounts that are not being sought for recovery by
25 FPL, Duke and Tampa Electric at this point in the

1 full amount, we have raised two issues.

2 One is: What is the appropriate carrying
3 cost, if any, for the 2022 under-recovery amount
4 voluntarily deferred for recovery for the duration
5 of the voluntary deferral period?

6 That's an issue -- and I guess it should have
7 a question mark on it. I submitted it without a
8 question mark.

9 And the second issue is: Over what period
10 should 2022 under-recoveries be collected, and at
11 what carrying cost?

12 These issues -- and I will wait. I want to
13 explain why, but if I need to read them again, or
14 if anybody has questions before I explain why, I
15 will stop.

16 COMMISSIONER LA ROSA: Thoughts, and anyone
17 need any more clarity on the issues?

18 MS. BROWNLESS: If you can go back and repeat
19 that first one, Charles, that would be great.

20 MR. REHWINKEL: Okay. And I have emailed
21 these out.

22 What is the appropriate carrying cost, if any,
23 for the 2022 under-recovery amount voluntarily
24 deferred for recovery, for the duration of the
25 voluntary deferral period?

1 And that obviously would apply to FPL, Duke
2 and Tampa Electric Company separately.

3 MS. BROWNLESS: Uh-huh.

4 MR. REHWINKEL: So did you get that?

5 MS. BROWNLESS: Sort of.

6 MR. REHWINKEL: Okay.

7 MS. BROWNLESS: You are going to email these
8 to me?

9 MR. REHWINKEL: I have emailed them out. I
10 sent them --

11 MS. BROWNLESS: This morning?

12 MR. REHWINKEL: Yeah. I hope I did. I did a
13 reply all to the last group.

14 MS. BROWNLESS: Well, I didn't get them, so --

15 MR. REHWINKEL: Okay. All right. And I will
16 send them again, or somebody on our side can flip
17 it to you.

18 MS. BROWNLESS: Okay. Thank you.

19 MR. REHWINKEL: So, Commissioner and parties,
20 the basis for this is that in April and May
21 timeframe, the utilities filed letters saying that
22 they had identified a greater than 10 percent
23 under-recovery, but they were still monitoring it,
24 and we are not seeking a midcourse correction. And
25 then on July 27th, the contingent midcourse

1 correction was subsumed in an estimated actual
2 true-up filing that each of the companies made and
3 identified their amounts.

4 And in the September 2nd projected filing, the
5 companies -- these three companies largely demurred
6 on collecting, or seeking collection of those
7 amounts and offered some rationale for that.

8 At some point, whether it's in the hearing
9 that we're -- that's coming up, or in a separate
10 filing, we are going to hear from the parties, from
11 the utilities, about how and how much they want to
12 recover for these dollars.

13 The problem that I think the Public Counsel
14 has, and maybe you will hear from some the other
15 utilities -- the other intervenor parties, is that
16 we are in the annual fuel filing, the fuel cost and
17 factor determination hearing. Many people, small
18 businesses, regular residential customers and large
19 industrial customers rely on this hearing to
20 understand what their fuel budget needs to be for
21 their household, there businesses, their industrial
22 -- and even maybe whether they are going to operate
23 their mills or their factories based on these
24 numbers. So everybody relies on them.

25 The numbers, at this point, are unknown in

1 terms of what the factors are going to be. The
2 deferral of these costs raises the issue for us
3 about who should bear the cost of the deferral,
4 because ordinarily you would come in with a
5 midcourse and you would start collect being the
6 under-recovery sooner, rather than later. And
7 normally, the Commission's policy has been a
8 12-month recovery period.

9 Were these recoveries to have come in sooner
10 in '22, the commercial paper rate would ordinarily
11 or presumptively apply. The companies have
12 absorbed these costs for this period of time. We
13 are going to hear at some point in the future when
14 they want to start recovering these costs.

15 So we are suggesting the customers shouldn't
16 pay the freight, if you will, or the carrying costs
17 on the deferral period, so we want to raise that
18 issue, because we are in this hearing but we are in
19 the dark about a big piece of the number that's
20 still outstanding.

21 Once the number comes forward, there is going
22 to be a recovery period that is presumptively
23 proposed by the companies. We think that that
24 period ought to be the subject of discussion,
25 briefing, some understanding now, not at the time

1 we hear from this -- the companies about the number
2 down the road. And when that information comes in,
3 we -- some of us may want to propose a longer than
4 12-month period, but we won't know whether to do
5 that unless we understand what the carrying cost is
6 going to be.

7 We've already seen from FPUC, who did come in
8 and file their number, and they asked for a
9 three-year period and not a commercial paper rate,
10 but a short-term debit rate. And we think the
11 customers are entitled to know at this point in
12 time, so they can plan their business in '23, what
13 they are facing and at what cost, the carrying
14 costs they are facing.

15 So this is a very unusual fuel docket.
16 Normally, pursuant to the OEP, the Commission says
17 to the companies, file your prior year true-ups
18 around April, May; file your -- in the middle -- in
19 the summertime, file your estimated actual figures
20 trueing up your last year's projection, and then in
21 September, file your projections.

22 Well, right now, we've got kind of a big
23 doughnut hole of the middle -- the middle piece,
24 and we think that the customers are entitled to
25 know, and we think -- we apologize for the lateness

1 of raising these issues, but we think these issues
2 ought to be discussed and litigated in this case so
3 that customers know what they are facing.

4 COMMISSIONER LA ROSA: Okay. FPL?

5 MS. MONCADA: Thank you, Commissioner.

6 I have been sitting here pretty much all
7 morning, except for the few minutes when Mr. Wright
8 was handling the 10 docket, and I sort of went old
9 school. I have no computer, no laptop, no phone
10 with me while I have been sitting here. So this is
11 very fresh to me, and if the other parties agree, I
12 would like to at least take a few minutes to talk
13 to my client about it.

14 COMMISSIONER LA ROSA: I think that's fair.
15 Before we do that, is there any other discussion
16 points or anything that needs to get thrown out
17 there before we take a break?

18 MR. MOYLE: I may have an opportunity to kill
19 two birds with one stone --

20 COMMISSIONER LA ROSA: Okay. Go ahead.

21 MR. MOYLE: -- on that, and I apologize, but
22 FIPUG's issue, we had a slight correction on the
23 basic position, and let me just read it into the
24 record and make the correction and then comment on
25 the point, if I could.

1 FIPUG's basic position in the second
2 paragraph, the last sentence, says, quote:
3 However, for planning purposes, FIPUG members and
4 other electric utility customers should be provided
5 a full and complete understanding as soon as
6 possible how the under-recovery of natural gas fuel
7 costs for calendar year 2022 will be handled in
8 2023, and the -- it says extend. That should be
9 corrected to extent. So the D should be a T, as in
10 Tom -- of those under recovered sums.

11 So that's the correction. But the point, I
12 think, goes to the one that OPC is raising, which
13 is FIPUG members, and others candidly, should
14 understand what the future looks like. Here we are
15 early November, people are already starting to talk
16 about, you know, end of the year stuff, budgeting
17 for businesses, for families around the kitchen
18 table, energy costs are a big consideration of
19 that. And having information sooner rather than
20 later, we would argue is the better -- the better
21 way to go on that. And my understanding of the OPC
22 issue is, is that the position, as corrected and
23 stated by FIPUG, lines up with that. And really
24 it's a transparency issue to understand, you know,
25 what's coming down the road.

1 We agree with the idea of, you know, the
2 carrying costs. Utilities have -- have control
3 over when they file and what they file. And I
4 guess we would probably argue if the issue is
5 accepted and you take a position, that the carrying
6 costs should be moderated as much as they can so
7 you are not adding interest on top of fuel charges.

8 So I just wanted to share those comments on
9 the point raised by OPC.

10 COMMISSIONER LA ROSA: Understanding those
11 issues, anybody else?

12 Phosphate, you are recognized?

13 MS. BAKER: Yes, I think we would like to echo
14 some of those same sentiments. I think we support
15 these -- including these two issues in this
16 proceeding. I think it's important to deal with
17 the carrying costs on these unrecovered amounts at
18 this point. And, you know, we can develop our
19 position and we will work with the parties, but I
20 think it's important to include those issues in
21 this proceeding, because they are issues that are
22 addressing amounts that are happening now and that
23 would be recovered in 2023, and potentially beyond,
24 so thank you.

25 COMMISSIONER LA ROSA: Thank you.

1 Any other parties -- and we are going to take
2 a break. Any other parties? Okay.

3 Let's do this, let's take -- let's take 10
4 minutes, because I know five minutes is not going
5 to be enough. Let's take 10 minutes. If we need
6 too take longer, we will, but let's come back
7 together, at least check back in at 11:25, and I
8 will be consulting with staff in the meantime.

9 So let's take a short recess.

10 (Brief recess.)

11 COMMISSIONER LA ROSA: I think we can come
12 back. I think everyone has had a little bit of
13 time to discuss this.

14 I will start back up by doing this. I will go
15 to the utilities, the companies, and just kind of
16 get your thoughts after you guys have had a little
17 bit of time to discuss. We will go down the line,
18 and then I will see what we do next from there.

19 So let's start with FPL.

20 MS. MONCADA: Thank you, Commissioner.

21 For Florida Power & Light, the top line here
22 is that we think these issues are premature and not
23 appropriate for this docket.

24 Going back as far as July 27th, and again on
25 September 2nd, when we made our filings in this

1 docket, we indicated that we would be making an
2 appropriate filing, we will -- and we still intend
3 to do that in January of 2023, to address our plan
4 for the 2022 under-recovery.

5 In addition to that, we have submitted the
6 testimony of Mr. Scott Bores, who will be prepared
7 on November 16th to address the updated
8 under-recovery number.

9 As far as the issues that OPC has presented
10 today, they are premature because we will not
11 necessarily have our plan on that day. And the
12 time period for recovery, and the carrying costs
13 for recovery are more appropriately addressed when
14 we do file our plan in January.

15 COMMISSIONER LA ROSA: Okay. Mr. Bernier.

16 MR. BERNIER: I completely agree with what Ms.
17 Moncada said. Nothing more to add.

18 Thank you.

19 MR. MEANS: And, yes, I agree with what my
20 colleagues here for Duke and FPL have said, so we
21 are in the same position.

22 COMMISSIONER LA ROSA: Okay.

23 MS. KEATING: FPUC has no position.

24 MS. BAKER: And as I stated earlier, PCS
25 Phosphate supports these two issues.

1 MR. BRISCAR: Nucor also supports inclusion of
2 the OPC issues.

3 MR. WRIGHT: We support the issues as well for
4 the same reasons articulated mainly by Mr.
5 Rehwinkel and Mr. Moyle. The customers need to
6 know what's going on here. These are billions of
7 dollars, and we need to know what's going on in
8 terms of rates next year.

9 Thank you.

10 COMMISSIONER LA ROSA: Understood.

11 Let me jump who over to --

12 MR. REHWINKEL: I was going to say I support
13 my own issues.

14 COMMISSIONER LA ROSA: I figured you would.

15 MR. MOYLE: Yeah. We made -- we made some
16 comments that suggest we support the OPC issues and
17 inclusion of those and getting the information so
18 you can plan your -- plan your economic future is
19 important.

20 COMMISSIONER LA ROSA: Any further thoughts,
21 OPC?

22 MS. MONCADA: I just want to comment that we,
23 in no way, intend to not provide the customers
24 notice of what our plan is for the 2022
25 under-recovery. We plan to make that filing in

1 January. However, the appropriate amount of time
2 will lapse between then and the time that the
3 Commission takes its vote, and we will, of course,
4 provide an appropriate amount of notice for the
5 customers.

6 COMMISSIONER LA ROSA: Thank you. I will kick
7 it over 20 staff.

8 Staff any thoughts?

9 MS. BROWNLESS: At this time, the staff
10 believes that these issues are premature, and that
11 they are more appropriately considered with the
12 filings that the IOUs make for cost recovery of the
13 2022 fuel charges that were under-recovered.

14 COMMISSIONER LA ROSA: I think my best
15 position is to take this under advisement and talk
16 with my staff a little further today. This was a
17 lot. This was quick, as we literally, sort of as
18 we were sitting up here. So give myself and give
19 our staff a little bit of time. Let me convene,
20 and let me talk and get some more advisement, and
21 then I will make a decision, or at least express my
22 thoughts from there, so I will take it under
23 advisement.

24 I think we are okay to move on to the next
25 section, which is Section IX, the exhibit list.

1 MS. BROWNLESS: Yes, sir.

2 We have prepared a Comprehensive Exhibit List
3 which includes all prefiled exhibits, and also
4 includes exhibits staff wishes to introduce into
5 the record. Staff will work with the parties to
6 determine if there are any objections to the
7 Comprehensive Exhibit List, or any of staff's
8 exhibits being entered into the record.

9 I do want to point out that for Exhibits 59
10 through 60, 63, 64 through 67, the CEL does not
11 identify any sponsoring company witnesses. And I
12 would appreciate it if, by the close of business
13 tomorrow, you folks could give me the names of some
14 sponsoring witnesses.

15 MR. MEANS: Commissioner, we are prepared to
16 do that today. So I will catch up with you after
17 the hearing, if that's okay.

18 MS. BROWNLESS: Great. Thank you so much.

19 COMMISSIONER LA ROSA: Excellent. Anybody
20 else? Perfect.

21 All right. Let's move on to the proposed
22 stipulations.

23 MS. BROWNLESS: There are no proposed
24 stipulations at this time. All parties are, I am
25 sure, based on their statements today, working to

1 reach stipulations on the outstanding issues.

2 A list of stipulations entered into after the
3 prehearing order is issued will be provided to all
4 parties and the Commissioners prior to the hearing.

5 COMMISSIONER LA ROSA: How about pending
6 motions?

7 MS. BROWNLESS: We have already discussed
8 FPL's pending motion to strike and provisional
9 motion for extension of time to file additional
10 rebuttal testimony. So those are all the motions
11 that we are aware of at this time.

12 COMMISSIONER LA ROSA: Okay. Confidentiality
13 orders?

14 MS. BROWNLESS: There are pending
15 confidentiality orders at this time, and the orders
16 for confidentiality request are in the process of
17 being written and reviewed.

18 COMMISSIONER LA ROSA: Okay. Post-hearing
19 procedures.

20 MS. BROWNLESS: With regard to prehearing
21 briefs, if the parties agree to waive briefs, the
22 Commission may make a bench decision for this
23 portion of the docket. And I just wonder if at
24 this time the parties know whether they are going
25 to brief or not?

1 COMMISSIONER LA ROSA: I will throw that back
2 to the parties.

3 OPC?

4 MR. REHWINKEL: Thank you. Commissioner, at
5 this point in time, the -- it would be our position
6 that we will file a brief. However, as we have
7 discussed in other dockets today, we are willing to
8 -- we are willing to consider making oral argument
9 or closing argument in lieu of briefs at the
10 conclusion of this docket, assuming two things.
11 One is that we have a reasonable amount of time to
12 recess and collect our thoughts. And, two, have a
13 reasonable amount of time to make closing argument.
14 Otherwise, the default would be that we would brief
15 the issue. So the same status as we offered in the
16 other dockets.

17 COMMISSIONER LA ROSA: Excellent. Noted.
18 Thank you for including it in this docket.

19 MR. REHWINKEL: Thank you.

20 COMMISSIONER LA ROSA: Anybody else?

21 FIPUG, you are recognized.

22 MR. MOYLE: Yeah, just kind of following along
23 on that, and to the point made by staff. FIPUG is
24 still in some conversations with a certain utility
25 to see if a stipulation can be reached on a

1 particular issue. We hope that it can. If it
2 can't, I just want to make clear that the
3 discussion about witnesses coming, I mean, we are
4 not waiving any of right to call a witness if we
5 are not able to come to a stipulation.

6 OPC was very gracious and said, who I want to
7 cross, and there is no obligation to affirmatively
8 do that, but I just wanted to make sure the record
9 is clear, that we are still in certain discussions.
10 And if they work out, great. If they don't work
11 out, we will be -- we will be calling and crossing
12 witnesses, not waiving the right to do so, and we
13 will probably also file a brief. So I just wanted
14 to make that point clear.

15 COMMISSIONER LA ROSA: All right. Thank you.
16 Noted.

17 MS. BROWNLESS: And, Mr. Moyle, I just want to
18 understand where you are coming from.

19 All right. Do you have a particular witness
20 that you believe you will need to talk to if you
21 cannot reach a stipulation? If you can share that
22 with us --

23 MR. MOYLE: It may be several. I am still
24 trying to sorting through it. I haven't completely
25 developed the litigation strategy, but it would be

1 Duke witnesses.

2 MS. BROWNLESS: Okay.

3 MR. MOYLE: And here's a related point, Mr.
4 Chair, if I could. I mean, I -- just in terms of
5 understanding the way this order is set up is for
6 witnesses, it has Duke going first, then FPL and
7 then Florida Public Utilities and then TECO. I
8 assume that's the order that the cases will be
9 presented. I mean, that's by implementation, but I
10 waste just hoping to get clarification as to, yes,
11 that's how it's going to go.

12 MS. BROWNLESS: Yes. That is our intention.

13 MR. MOYLE: That's helpful. Thank you.

14 COMMISSIONER LA ROSA: Excellent. Thank you.
15 You are recognized.

16 MR. WRIGHT: Thank you, Commissioner. Just so
17 everybody knows, I will not, Retail Federation will
18 not be the only party to file a brief if briefs are
19 filed. You won't have to hold out briefs for us.
20 If other parties file briefs, we probably would
21 join in. I would like to say I support Mr.
22 Rehwinkel's alternative suggestion of ample time to
23 prepare some number of, you know, an hour or
24 something like that to prepare oral argument and
25 some reasonable amount of time to present oral

1 closing argument, if that's how this goes.

2 Thank you.

3 COMMISSIONER LA ROSA: Excellent. Thank you.
4 I appreciate that. That's helpful.

5 MS. BROWNLESS: And just so I am clear about
6 what's being proposed with regard to the oral
7 argument, the idea would be that the hearing would
8 close, that an amount of time would be given for
9 everyone to organize their thoughts, 30 minutes, an
10 hour, something like that, and that people would
11 come back and make their closing arguments, and
12 then the record would close and the Commissioners
13 would be able to vote on the issues. Is that where
14 we are at?

15 MR. REHWINKEL: That's the concept that I put
16 out there.

17 MS. BROWNLESS: Okay. Thank you for the
18 explanation.

19 MR. MOYLE: And that's not where I am.

20 MS. BROWNLESS: And where are you, Mr. Moyle?

21 MR. MOYLE: I am reserving the right to file a
22 brief if I don't get my issue worked out.

23 MS. BROWNLESS: In lieu of presenting an oral
24 argument, you would want to file a brief?

25 MR. MOYLE: That's right.

1 MS. BROWNLESS: Got it. Well, thank you.
2 That's helpful.

3 MS. MONCADA: If I could ask a clarifying
4 question.

5 COMMISSIONER LA ROSA: Sure. You are
6 recognized.

7 MS. MONCADA: Thank you.

8 I understood Mr. Moyle to identify issues that
9 he has with Duke, not specific issues, but you
10 mentioned the Duke witnesses would be the ones you
11 are crossing, so your reservation of rights to file
12 a brief would not impact the other utilities, is
13 that right?

14 MR. MOYLE: That's fair.

15 MS. MONCADA: Thank you.

16 MS. HELTON: Mr. Chairman?

17 COMMISSIONER LA ROSA: Yes.

18 MS. HELTON: May I inquire of Mr. Rehwinkel
19 how long his expectation is for being able to how
20 -- long he needs for a closing argument just so we
21 can be thinking about that and --

22 COMMISSIONER LA ROSA: Yeah. And I -- yes.
23 Yes, I have been thinking about that as well, but I
24 will let you going first.

25 MR. REHWINKEL: Well, that's one of those I

1 will know it when I see it when I get to the end of
2 the hearing. I would hope it wouldn't be like a
3 three-minute thing. The -- and that's the default
4 is that we would file the brief.

5 What I would like to do -- and I can't imagine
6 it would be longer than 10 minutes, okay. But what
7 I would like to do is get through the
8 cross-examination, collect, you know, and then
9 before, say, we adjourn to, you know, collect our
10 thoughts is to state I need so much time and see.
11 And if the Commission can't give me or any of the
12 others so much time, we would just say, we will
13 just file a brief.

14 So I would kind of like to leave it in that
15 posture, not trying -- not trying to put anything
16 to anybody's head. It's just I don't know exactly
17 how it's going to play out. But I want to preserve
18 the option to let the Commission have a bench
19 decision, and we can all move on with the end of
20 the year.

21 MS. BAKER: And, Commissioner.

22 COMMISSIONER LA ROSA: Phosphate.

23 MS. BAKER: Thank you. I apologize. I don't
24 want to be the fly in the ointment, but I don't
25 know we can commit today either to waiving our

1 briefing rights either, so I can't -- I don't want
2 to just put that out there that we will be able
3 to -- we will know at hearing, but we -- I can't
4 commit today that we wouldn't want to file briefs.

5 COMMISSIONER LA ROSA: Okay.

6 MS. BROWNLESS: And then we are going to share
7 with the parties that we are not asking anybody to
8 commit today. We are just trying to figure out --
9 kind of flesh out what the options are so we all
10 understand where we are all coming from.

11 MS. BAKER: Yeah. If we all agree at the
12 hearing to Mr. Rehwinkel's proposed, you know,
13 closing arguments, then we would be, obviously, at
14 that time we could support it, but we just, as of
15 today, I don't know. We will see how the hearing
16 goes, I guess.

17 Thanks.

18 COMMISSIONER LA ROSA: Absolutely.
19 Understood. And I think for us, our biggest thing
20 is for planning purposes. So we will certainly
21 have -- we will have options, but we want to make
22 sure that we are all on the same page, and we will
23 do our work behind the scenes, because we've got a
24 lot going on as, of course, we are trying to close
25 out the year as well, so --

1 Okay. I think we are all on the same page to
2 an extent on that. So let's move on, then, to
3 rulings.

4 MS. BROWNLESS: We would suggest that opening
5 statements, if any, should not exceed five minutes
6 per party unless a party chooses to waive its
7 opening statement.

8 COMMISSIONER LA ROSA: Okay. Any other
9 matters?

10 MS. BROWNLESS: Briefs will be limited to 40
11 pages, and briefs will be due on November 29th,
12 2022, if briefs are, in fact, filed.

13 COMMISSIONER LA ROSA: Okay. Noted and
14 agreed.

15 Any other matters that need to be discussed at
16 this prehearing conference?

17 MR. REHWINKEL: I have one final.

18 COMMISSIONER LA ROSA: Yep. OPC, you are
19 recognized.

20 MR. REHWINKEL: Yes, Mr. Chairman, in lieu of
21 raising a third issue, Public Counsel would just
22 like to state for the record that we want to raise
23 a legal objection to the hearing.

24 The Administrative Procedures Act normally
25 imposes an obligation on an agency to undertake

1 rule-making. The Commission has an exemption from
2 that mandate for the fuel clause, and it means that
3 the fuel clause does not have to operate pursuant
4 to a rule.

5 However, the Commission has a very
6 longstanding practice that I alluded to in an
7 earlier argument about how the fuel clause is to be
8 conducted. And I have not completed the research
9 in this, but I know that when the Commission used
10 to -- it used to calculate fuel, maybe even
11 monthly, and then they went to six -- every six
12 months, and now they do it every year. And in the
13 process of doing that, they established a policy
14 about the fuel factor is determined. And it's
15 determined by taking the prior year's projection --
16 the prior year's number and doing a final true-up,
17 refining the prior year's projection for the
18 current year, and projecting the current year -- I
19 mean, the next year.

20 That order -- that policy is manifested in the
21 OEP that's filed in this docket, and in the prior
22 dockets, and we object that the Commission is in a
23 posture to depart from this practice in the absence
24 of having a rule. So I don't think the Commission
25 can have -- not have a rule, but have a practice,

1 and then depart from the practice. It's got to be
2 one or the other.

3 So we will brief this, or argue it to the
4 Commission at the appropriate time as we end up
5 deciding, but I wanted to put folks on notice that
6 we intend to raise this objection, that the
7 Commission is operating outside of its longstanding
8 practice of how the fuel factor is developed.

9 And I just do that in the spirit that folks
10 know what we are going to argue as we go forward.
11 I don't think I need to raise a separate issue. I
12 just need to put the Commission on notice that
13 that's a concern that we have.

14 COMMISSIONER LA ROSA: Okay. I would say
15 noted. And I don't think there is anything we need
16 to talk about on that unless someone has any other
17 issues.

18 All right. Seeing no additional matters, that
19 concludes the prehearing for the 01 docket, and
20 that will also conclude the prehearing conference,
21 and I believe we are adjourned.

22 Thank you everyone for your time.

23 (Proceedings concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

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

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

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

DATED this 16th day of November, 2022.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024