

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

FILED 10/31/2019
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FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20190007-EI

ENVIRONMENTAL COST
RECOVERY CLAUSE.

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PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS
PARTICIPATING: COMMISSIONER GARY F. CLARK
PREHEARING OFFICER

DATE: Tuesday, October 22, 2019

TIME: Commenced: 10:18 a.m.
Concluded: 10:28 a.m.

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

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
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1 APPEARANCES:

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

6 MATTHEW R. BERNIER, ESQUIRE, 106 East College
7 Avenue, Suite 800, Tallahassee, Florida 32301-7740; and
8 DIANNE M. TRIPLETT, ESQUIRE, 299 First Avenue North, St.
9 Petersburg, Florida 33701, appearing on behalf of Duke
10 Energy Florida, LLC.

11 RUSSELL A. BADDERS, ASSOCIATE GENERAL COUNSEL,
12 One Energy Place, Pensacola, Florida 32520-0100; and
13 STEVEN R. GRIFFIN, ESQUIRE, Beggs & Lane, P.O. Box
14 12950, Pensacola, Florida 32591-2950, appearing on
15 behalf of Gulf Power Company.

16 JAMES D. BEASLEY, JEFFRY WAHLEN and MALCOLM N.
17 MEANS, ESQUIRES, Ausley & McMullen, Post Office Box 391,
18 Tallahassee, Florida 32302, appearing on behalf of Tampa
19 Electric Company.

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

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1 DIANA CSANK and BRADLEY MARSHALL, ESQUIRES, 50
2 F. Street, NW, Eight Floor, Washington, DC 20001,
3 appearing on behalf of Sierra Club.

4 LAURA A. WYNN and JAMES W. BREW, ESQUIRES,
5 Stone Matheis Xenopoulos & Brew PC, 1025 Thomas
6 Jefferson Street, NW, Eighth Floor, West Tower,
7 Washington, DC 20007, appearing on behalf of PCS
8 Phosphate - White Springs.

9 J.R. KELLY, PUBLIC COUNSEL; CHARLES REHWINKEL,
10 DEPUTY PUBLIC COUNSEL; PATRICIA A. CHRISTENSEN,
11 STEPHANIE A. MORSE and THOMAS DAVID, ESQUIRES, Office of
12 Public Counsel, c/o The Florida Legislature, 111 W.
13 Madison Street, Room 812, Tallahassee, Florida
14 32399-1400, appearing on behalf of the Citizens of the
15 State of Florida.

16 ASHLEY WEISENFELD and CHARLES MURPHY,
17 ESQUIRES, General Counsel's Office, 2540 Shumard Oak
18 Boulevard, Tallahassee, Florida 32399-0850, appearing on
19 behalf of the Florida Public Service Commission Staff.

20 KEITH 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.

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

2 COMMISSIONER CLARK: All right. Ms.
3 Weisenfeld, are there any preliminary matters?

4 MR. WISEMAN: Yes, Commissioner. It appears
5 that most if not all of the issues in the
6 comprehensive exhibit list can be stipulated to and
7 that the witnesses can be excused from this docket.

8 When we get to the proposed stipulations
9 section of the prehearing order we will need to
10 have some additional discussion.

11 COMMISSIONER CLARK: Okay. Any other -- any
12 parties have any preliminary matters?

13 All right. Let's go through the prehearing
14 order.

15 Case background.

16 Conduct of proceedings.

17 Jurisdiction.

18 Procedure for handling confidential
19 information.

20 Prefiled testimony, staff.

21 MS. WEISENFELD: Similarly to the other
22 dockets, FIPUG has objected in its prehearing
23 statement to a witness being considered an expert
24 witness unless the witness affirmatively states the
25 subject matter areas in which he or she claims

1 expertise.

2 FIPUG has not identified the witnesses that it
3 wishes to voir dire, and therefore it appears to
4 have waived the right do so since it has not
5 complied with the OEP. So at this time, we request
6 that a ruling to that effect be made.

7 COMMISSIONER CLARK: Mr. Moyle, you can ditto
8 this time.

9 MR. MOYLE: Ditto.

10 COMMISSIONER CLARK: Got it. Thank you very
11 much.

12 Order of witnesses.

13 MS. WEISENFELD: Commissioner Clark, to the
14 extent that issues are stipulated, it appears that
15 witnesses may be excused with testimony and
16 exhibits included in the record. We will check
17 with each Commissioner to see if the witnesses can
18 be excused.

19 COMMISSIONER CLARK: Very good.

20 All right. Basic positions, any changes?

21 Okay, let's move to issues and positions.

22 MS. WEISENFELD: The order establishing
23 procedure requires that a party take a position at
24 the prehearing conference unless good cause is
25 shown as to why that party cannot take a position

1 at this time.

2 Accordingly, if a party's position in the
3 draft prehearing order is currently no position at
4 this time, that party must change its position or
5 show good cause why it cannot take a position,
6 otherwise, the prehearing order will reflect no
7 position for that party on that issue.

8 The parties who have not yet taken a position,
9 or who wish to change their position, will be
10 allowed to submit their position in writing no
11 later than the close of business tomorrow,
12 Wednesday, October 23rd. We will not take a
13 position on the issues until the post-hearing
14 recommendation.

15 COMMISSIONER CLARK: All right. I don't see a
16 need to go through these individually. Do any of
17 the parties have any statements regarding the
18 issues and positions?

19 Mr. Rehwinkel.

20 MR. REHWINKEL: Yes, Commissioner. On all the
21 issues where we have no position at this time, our
22 position will revert to no position.

23 COMMISSIONER CLARK: Okay.

24 MS. WYNN: Commissioner, on issues, I believe,
25 1 through 8 and 10 through 12, we have agreed with

1 OPC, and OPC has taken no position, so our position
2 would change to no position.

3 COMMISSIONER CLARK: Okay. Thank you.

4 All right. Anybody else?

5 All right. Very good. Let's move to exhibit
6 list.

7 MR. REHWINKEL: Oh, commissioner --

8 COMMISSIONER CLARK: I am sorry, Mr.
9 Rehwinkel.

10 MR. REHWINKEL: Yeah, I don't know if staff
11 was going to raise this.

12 We had cir -- there was an issue stipulation
13 language circulated by staff yesterday.

14 COMMISSIONER CLARK: When we get to that in
15 proposed stipulations, that will be an issue --

16 MR. REHWINKEL: Okay, on Issue 14?

17 COMMISSIONER CLARK: Yes, sir.

18 MR. REHWINKEL: Okay. Thank you.

19 COMMISSIONER CLARK: All right. Move to
20 exhibit list.

21 MS. WEISENFELD: We have prepared and
22 circulated a comprehensive exhibit list for the
23 purpose of numbering and identifying the exhibits
24 at hearing. We will check with the parties prior
25 to the hearing to determine if exhibits can be

1 stipulated into the record, or if there are any
2 objections to the comprehensive exhibit list.

3 COMMISSIONER CLARK: All right. Now we move
4 to proposed stipulations.

5 MS. WEISENFELD: The fallout numbers provided
6 by Gulf resulting from the stipulation of Issue 14
7 have been included in the most recent draft
8 prehearing order. I believe that the parties have
9 reached stipulations on all issues, including
10 stipulating the record and excusing witnesses.

11 Typically, intervenors take no position on the
12 stipulations and the companies agree to the
13 language. Is that the intent today?

14 COMMISSIONER CLARK: All right. Have we
15 stipulated all issues? We will start with you, Mr.
16 Rehwinkel.

17 MR. REHWINKEL: Yes. Commissioner, on the
18 stipulation for Issue 14, we -- we indicated
19 yesterday that we agreed to the language that the
20 staff has. It's different from the language that's
21 in the draft order, of course, and I assume they
22 will include that language in the order.

23 But I wanted to make it clear, Gulf has
24 proposed to defer the issue while they explore a
25 lower cost option for dealing with the CCR related

1 issues at Plant Daniel in Mississippi.

2 Just to be crystal clear, they have also
3 agreed that the dollars that they requested in
4 their initial proposal for that environmental
5 compliance solution are going to travel into next
6 year. They will not be included for recovery in
7 2020.

8 We want to make a statement -- and I will be
9 saying this again in the fuel docket for another
10 issue that's going to be deferred -- is that the
11 deferral means that there is -- it's a complete
12 even playing field next year when we get there. No
13 party is advantaged by the fact that it was
14 deferred. There is nothing to be read into the
15 deferral that someone got an advantage, or that the
16 Commission gave some sort of wink or nod, or some
17 preliminary approval. It's just moved off that
18 year, and it's a total clean slate. And in this
19 case, there are no dollars to be trued up because
20 Gulf is withdrawing them, and we think that's the
21 right thing to do while we are deferring the issue.

22 So we are in total accord with that. I have a
23 little bit different position when we get to 01,
24 but that's what I want to state for the record
25 here.

1 COMMISSIONER CLARK: Okay.

2 MR. REHWINKEL: And we are in agreement with
3 the language that we had agreed to in the --

4 COMMISSIONER CLARK: In the 17.

5 MR. REHWINKEL: -- in the prior docket for 17.

6 COMMISSIONER CLARK: Got it. Same?

7 MS. WYNN: Yes. Commissioner, I just wanted
8 to raise the 17, and clarify that that language
9 will change in the stipulation.

10 COMMISSIONER CLARK: Correct. We are in
11 agreement, okay.

12 Sierra.

13 MR. MARSHALL: Sierra Club would just like to
14 echo Mr. Rehwinkel's remarks regarding Issue 14,
15 and maintains that if Gulf Power comes back next
16 year, it will still be their burden to show that
17 such costs are prudently incurred --

18 COMMISSIONER CLARK: Okay.

19 MR. MARSHALL: -- and, therefore, takes no
20 position on the stipulations.

21 Thank you.

22 COMMISSIONER CLARK: Okay. Mr. Badders, any
23 rebuttal?

24 MR. BADDERS: Again, we agree with the
25 language that staff circulated. And obviously,

1 when this is brought back next year, we are
2 preserving everyone's options here as far as
3 arguments.

4 COMMISSIONER CLARK: Great. All right. That
5 should -- Mr. Moyle.

6 MR. MOYLE: Just for clarification, and with
7 respect to the stipulations, we are not
8 affirmatively stipulating to anything. We are just
9 taking no position --

10 COMMISSIONER CLARK: No position.

11 MR. MOYLE: -- allowing a, you know, Type 2
12 stipulation to occur.

13 COMMISSIONER CLARK: Understood.

14 All right. Is that understood, Ms.
15 Weisenfeld?

16 MS. WEISENFELD: Yes, Commissioner.

17 COMMISSIONER CLARK: All right. So that
18 resolves all our proposed stipulations, correct?

19 Okay. Pending motions, we have resolved
20 pending motion. That should no longer be an issue.
21 Are there any others?

22 MS. WEISENFELD: No others?

23 COMMISSIONER CLARK: Okay. Pending
24 confidentiality motions.

25 MS. WEISENFELD: There are none.

1 COMMISSIONER CLARK: Post-hearing procedures.

2 MS. WEISENFELD: Since the issues are
3 stipulated, a bench decision may be possible for
4 all or some of the issues. If briefs are
5 necessary, they will be due on November 12th, 2019.
6 Staff recommends that briefs be no longer than 40
7 pages.

8 COMMISSIONER CLARK: All right. Sounds good.
9 So rulings, same ruling, five, three, 40.
10 Everybody got it? Five, three, 40. Five minutes
11 opening statements, three minutes witnesses, and 40
12 pages.

13 All right. Other matters?

14 MR. REHWINKEL: Yes.

15 COMMISSIONER CLARK: Mr. Rehwinkel.

16 MR. REHWINKEL: Commissioner, with regard to
17 the stipulation on Issue 14, I just wanted to state
18 for the record, it's something that we haven't
19 discussed with Mr. Badders, but we will, is that
20 all of -- there has been a fair amount of discovery
21 done on the Plant Daniel issue, 14 issue. There
22 has been testimony filed.

23 We would -- we are going to ask so we don't
24 have to kind of litigate this in the next clause,
25 is that all of that documentation be carried

1 forward into the next year. The docket number
2 changes, but not necessarily the record.

3 So we are going to work with your staff, and
4 Mr. Badders, and the other parties to identify what
5 care -- what documents carry forward into the next
6 docket. So just putting that on the record here,
7 but there is nothing for you to adjudicate.

8 COMMISSIONER CLARK: Okay. You are just
9 saying everything that's been prefiled, you would
10 want carried over into the next docket?

11 MR. REHWINKEL: Yes, including the discovery.
12 I think we would have no trouble working out with
13 the parties and your staff about how that will be
14 handled.

15 COMMISSIONER CLARK: Okay. Very good.

16 Any response, Mr. Badders?

17 MR. BADDERS: We will work with OPC and staff
18 on that.

19 COMMISSIONER CLARK: Okay. Great. Thank you.

20 All right. Any other matters?

21 MS. WEISENFELD: The stipulations will be
22 reflected in the final prehearing order which will
23 be circulated to the parties before it is issued.

24 COMMISSIONER CLARK: Very good.

25 That concludes the 07 docket, and we will move

1 into, last but not least, the 01 docket.

2 (Proceedings concluded at 10:28 a.m.)

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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 31st day of October, 2019.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #GG015952
EXPIRES JULY 27, 2020