

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 130009-EI

NUCLEAR COST RECOVERY CLAUSE.  
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PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER

PARTICIPATING: COMMISSIONER EDUARDO E. BALBIS  
PREHEARING OFFICER

DATE: July 12, 2013

TIME: Commenced at 9:30 a.m.  
Concluded at 10:20 a.m.

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

REPORTED BY: LINDA BOLES, CRR, RPR  
Official FPSC Reporter  
(850) 413-6734

## 1 APPEARANCES:

2 BLAISE N. GAMBA, ESQUIRE, Carlton Fields Law  
3 Firm, Post Office Box 3239, Tampa, Florida 33601-3239,  
4 appearing on behalf of Progress Energy Florida, Inc.

5 MATTHEW R. BERNIER, ESQUIRE, Duke Energy  
6 Florida, Inc., 106 E. College Avenue, Suite 800,  
7 Tallahassee, Florida 32301, appearing on behalf of Duke  
8 Energy Florida, Inc.

9 JON C. MOYLE, JR., and KAREN PUTNAL, ESQUIRES,  
10 c/o Moyle Law Firm, 118 North Gadsden Street,  
11 Tallahassee, Florida 32301, appearing on behalf of  
12 Florida Industrial Power Users Group.

13 BRYAN S. ANDERSON, JESSICA A. CANO, and  
14 KENNETH RUBIN, ESQUIRES, Florida Power & Light Company,  
15 700 Universe Boulevard, Juno Beach, Florida 33408,  
16 appearing on behalf of Florida Power & Light Company.

17 ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA,  
18 ESQUIRES, Florida Retail Federation, c/o Gardner Law  
19 Firm, 1300 Thomaswood Drive, Tallahassee, Florida 32308,  
20 appearing on behalf of Florida Retail Federation.

21 JAMES W. BREW and F. ALVIN TAYLOR, ESQUIRES,  
22 PCS Phosphate - White Springs, c/o Brickfield Law Firm,  
23 1025 Thomas Jefferson Street, NW, Eighth Floor, West  
24 Tower, Washington, DC 20007, appearing on behalf of PCS  
25 Phosphate - White Springs.

1 APPEARANCES (Continued):

2 GEORGE CAVROS, ESQUIRE, Southern Alliance for  
3 Clean Energy, 120 E. Oakland Park Boulevard, Suite 105,  
4 Fort Lauderdale, Florida 33334, appearing on behalf of  
5 Southern Alliance for Clean Energy.

6 J.R. KELLY, JOSEPH McGLOTHLIN, ERIC SAYLER,  
7 and CHARLES REHWINKEL, ESQUIRES, Office of Public  
8 Counsel, c/o The Florida Legislature, 111 West Madison  
9 Street, Room 812, Tallahassee, Florida 32393-1400,  
10 appearing on behalf of the Citizens of the State of  
11 Florida

12 MICHAEL LAWSON and KEINO YOUNG, ESQUIRES, FPSC  
13 General Counsel's Office, 2540 Shumard Oak Boulevard,  
14 Tallahassee, Florida 32399-0850, appearing on behalf of  
15 the Florida Public Service Commission Staff.

16 CURT KISER, GENERAL COUNSEL, and MARY ANNE  
17 HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service  
18 Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
19 Florida 32399-0850, Advisors to the Florida Public  
20 Service Commission.

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

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2           **COMMISSIONER BALBIS:** Good morning. I would  
3 like to call this Prehearing Conference for Docket  
4 130009-EI to order. Staff, could you please read the  
5 notice.

6           **MR. LAWSON:** Yes. By notice issued June 14th,  
7 2013, the time and place was set for this Prehearing  
8 Conference in Docket Number 130009-EI, the Nuclear Cost  
9 Recovery Clause. The purpose of this Prehearing  
10 Conference is set forth in that notice.

11           **COMMISSIONER BALBIS:** Okay. Thank you.

12           I'd now like to take appearances starting with  
13 Duke.

14           **MS. GAMBA:** Blaise Gamba with Carlton Fields  
15 for Duke Energy.

16           **MR. BERNIER:** Matt Bernier with Duke Energy.

17           **COMMISSIONER BALBIS:** We'll go to Florida  
18 Power & Light.

19           **MR. ANDERSON:** Good morning, Commissioner  
20 Balbis. I'd like to enter the appearances, please, of  
21 myself, Bryan Anderson; my colleague Kenneth Rubin, who  
22 is not here today, R-U-B-I-N; and Jessica Cano on behalf  
23 of Florida Power & Light Company.

24           **COMMISSIONER BALBIS:** Okay. Thank you. And  
25 now we'll proceed down the table.

1           **MR. WRIGHT:** Thank you, Commissioner Balbis.  
2 Robert Scheffel Wright and John T. Lavia, III, on behalf  
3 of the Florida Retail Federation.

4           **MR. MOYLE:** Good morning. Jon Moyle and Karen  
5 Putnal on behalf of the Florida Industrial Power Users  
6 Group, FIPUG.

7           **MR. SAYLER:** Erik Sayler on behalf of the  
8 Office of Public Counsel; along with J. R. Kelly, Public  
9 Counsel; Charles Rehwinkel; and Joseph A. McGlothlin.

10          **MR. CAVROS:** George Cavros on behalf of  
11 Southern Alliance for Clean Energy. Good morning.

12          **MR. TAYLOR:** Al Taylor, along with James Brew,  
13 on behalf of PCS Phosphate.

14          **COMMISSIONER BALBIS:** Okay. Thank you.  
15 And from staff.

16          **MR. LAWSON:** Mike Lawson, Keino Young on  
17 behalf of staff.

18          **MS. HELTON:** Mary Anne Helton, advisor to the  
19 Commission. And also here today is the General Counsel,  
20 Curt Kiser.

21          **COMMISSIONER BALBIS:** Okay. Before we get to  
22 the draft Prehearing Order, staff, are there any  
23 preliminary matters that we need to address?

24          **MR. LAWSON:** We have several matters we'd like  
25 to raise briefly.

1 First, we would note that we have a proposed  
2 agreed order of the witnesses in which staff recommends  
3 that the -- that you approve. The order in this case  
4 would be that FPL's case will be presented in its  
5 entirety, followed by Duke Energy's case in its  
6 entirety.

7 **COMMISSIONER BALBIS:** Okay. Are there any  
8 objections to the order of the witnesses or the outline  
9 as presented by staff?

10 **MR. TAYLOR:** I have one question, sir.

11 **COMMISSIONER BALBIS:** Yes.

12 **MR. TAYLOR:** Would that mean all parties need  
13 to be at the beginning of the hearing? Because PCS  
14 Phosphate only has an interest in the Duke side of it.

15 **COMMISSIONER BALBIS:** I believe, if memory  
16 serves me correct, that we have each case in its  
17 entirety. So we have oral arguments for each case, then  
18 that would conclude, and then oral arguments for the  
19 second case. But if staff can correct me on that.

20 **MR. YOUNG:** I think generally in the past what  
21 we've done is that all the parties, all the attorneys,  
22 the representatives for the parties are present because  
23 there are some preliminary matters that the -- that we  
24 will be going through at the beginning of the hearing:  
25 For example, the exhibit list and everything else, or

1 any other pending motions.

2 **COMMISSIONER BALBIS:** Yes, that is correct.

3 And also, and we'll get into this a little later, there  
4 are also some legal issues that I would recommend --

5 **MR. TAYLOR:** All right.

6 **COMMISSIONER BALBIS:** -- that you're in  
7 attendance at the beginning as well.

8 Okay. Any other objections or concerns  
9 concerning the order of witnesses or the outline?

10 **MR. LAWSON:** No. We can move on to the next  
11 section.

12 **COMMISSIONER BALBIS:** Okay. Any other  
13 preliminary matters?

14 **MR. LAWSON:** No, although I believe you wanted  
15 to discuss the legal briefs.

16 **COMMISSIONER BALBIS:** Yes. I think it's  
17 appropriate at this time to discuss the legal issues as  
18 a direct result of Senate Bill 1472. There were three  
19 legal issues and two factual issues that were added, and  
20 I want to thank the parties for working together to  
21 agree on the language for those issues.

22 But with that, I have several options as to  
23 how to deal with the three legal issues, and we'll go  
24 over those in detail when we get to that section of the  
25 draft Prehearing Order. But I would like to hear from

1 the parties as to their suggestions concerning the  
2 options on how to deal with the legal issues. At this  
3 time I'm leaning towards allowing legal briefs to be  
4 filed, along with oral arguments, at the beginning part  
5 of the hearing. So with that, I'd like to turn it over  
6 to the parties to see what their thoughts were on how to  
7 handle those legal issues.

8 **MR. ANDERSON:** Good morning, Commissioner  
9 Balbis. May we be heard?

10 **COMMISSIONER BALBIS:** Yes. Go ahead.

11 **MR. ANDERSON:** Thank you. I think our typical  
12 process for issues like this has been to take them with  
13 the case and in the legal briefs. We believe that the  
14 issues that are presented this year as legal issues can  
15 be considered when the parties file their briefs in the  
16 main after the conclusion of the hearings this year.

17 **COMMISSIONER BALBIS:** Okay. Thank you. And  
18 from Duke.

19 **MS. GAMBA:** Yes. Thank you, Commissioner.  
20 We're in agreement with that statement. I think typical  
21 practice is to brief legal issues in a post-hearing  
22 brief, and Duke would certainly just appreciate the  
23 opportunity to be able to brief the legal issue. But if  
24 I read the prehearing statements correctly, it seems  
25 that that was what most of the parties were anticipating

1 as well. So thank you.

2 **COMMISSIONER BALBIS:** Before I go on, one of  
3 the benefits I see to having briefs prior to the hearing  
4 and having oral arguments is that instead of having to  
5 struggle to get evidence or information from the  
6 witnesses throughout the process, we would be able to  
7 question the attorneys who are taking the legal  
8 positions during that oral argument phase of it prior to  
9 the hearing rather than waiting 'til the process follows  
10 through and having post-hearing briefs. I'd like to  
11 hear your comments on those concerns and how you think  
12 it would be alleviated by having it in a post-hearing  
13 brief scenario.

14 **MR. ANDERSON:** For FPL I think that in one of  
15 our Prehearing Conference discussions concerning issues  
16 I think staff's counsel had made the point that really  
17 the right way to consider implementation of a new  
18 statute is on an issue-by-issue basis, which is really  
19 what we have before us here. And then it looks like the  
20 Commission is proceeding down a path of rulemaking as to  
21 other aspects. I think that makes sense also.

22 But the, the specific narrow issues which were  
23 involved with for, for this year's case I think really  
24 will not affect the presentation of evidence in any way.

25 To give you a simple example, one of the --

1 the most precise issue is the handling of computation of  
2 allowance for funds used during construction, AFUDC.  
3 And simply put, some parties' position is that a new  
4 rate should apply beginning July 1 this year. FPL and  
5 others' position is, no, it doesn't apply to this year's  
6 case. But that is a pure issue of law and really would  
7 not require interrogation of witnesses at the hearing.

8 If, if FPL's position prevails on that, our  
9 position is that there's no need for any change to the  
10 filing for the reasons stated actually in our position  
11 statement. We've briefed the issues already, as you can  
12 see. If the Commission were to disagree, those are  
13 computations we could do and submit in the course of  
14 the, of the capacity clause.

15 So our view is that while there will be much  
16 room for discussion about the effect and import of the  
17 new amendments, it's really not ripe or time for that  
18 beyond the narrow extent laid out in the Prehearing  
19 Order, and we feel that it's adequately briefed that  
20 way.

21 But hearing you express the concern makes it a  
22 concern of ours. And however the Commission wants to  
23 proceed to have the best understanding it can, you know,  
24 we, we support that. We're happy to discuss that or  
25 brief it before. But given the, the comparatively

1 narrow issues that we have here, we really think they  
2 can be handled in the briefs. But, again, we'll proceed  
3 any way as you wish.

4 **COMMISSIONER BALBIS:** Okay. Thank you.

5 Mr. Wright, do you have any comments on this  
6 issue?

7 **MR. WRIGHT:** Briefly, Commissioner. We don't  
8 have strong feelings about this. And as I always say,  
9 we will, we will pursue the case as you direct us to  
10 pursue the case.

11 I would say I agree with my colleagues to the  
12 right that I think briefing after the hearing is more  
13 normal and may make more sense. And if you want to have  
14 oral argument, I think you could have an oral argument  
15 after that. Even though the record is closed, it's  
16 still an oral argument of the legal issues. But, again,  
17 whatever the Commission's pleasure is, we will certainly  
18 comply. Thanks.

19 **COMMISSIONER BALBIS:** Okay. Thank you.

20 Mr. Moyle.

21 **MR. MOYLE:** I think FIPUG would be willing to  
22 do what you and the Commission would be most comfortable  
23 with. And I think, you know, while it is a legal issue,  
24 I think your point -- and this is not to our litigation  
25 position advantage because, you know, the record is what

1 the record is -- but, but I think your point about,  
2 well, if, if there is a question that has to be shaped  
3 with some factual testimony, if you do all this after  
4 the witnesses have taken the stand and left, you're not  
5 going to be able to get obviously factual testimony that  
6 might, might shape it.

7 And I know, you know, we've had some  
8 discussions, and I think one of the issues is is the  
9 change a substantive change or is it more of a  
10 procedural change? And that makes a difference because  
11 retroactivity is treated differently; as to whether the  
12 change is procedural, retroactivity is more allowed or  
13 substantive. So, you know, if that becomes an issue,  
14 well, is this AFUDC rate a procedural change, which I  
15 think we would probably argue it is, or a substantive  
16 change, you know, you're not going to have any witnesses  
17 that could testify to that point if you do it all, all  
18 after. You know, that may work to FIPUG's advantage  
19 because, you know, if there's no testimony saying it's  
20 substantive, then you can't assume that it is, I don't  
21 think, and it may work to, you know, to our legal  
22 advantage.

23 But we'd be willing to, you know, to do it  
24 beforehand and have the argument beforehand and frame it  
25 up. And, and, you know, I think it's incumbent to make

1 the right decision on this AFUDC issue. The Legislature  
2 spent a lot of time on it and passed it, so we're  
3 willing to do it however you think is best.

4 **COMMISSIONER BALBIS:** Thank you.

5 Mr. Rehwinkel.

6 **MR. REHWINKEL:** Thank you, Commissioner.

7 Charles Rehwinkel with the Office of Public Counsel.

8 I'm not in disagreement with anything that has  
9 been said. I would offer that -- I think the way  
10 Mr. Wright posed it is correct. I also think the staff  
11 has sent discovery that has asked for the AFUDC either  
12 way, without the statute or with the statute. So I  
13 think the facts on the amount are in a position where  
14 the parties could, could stipulate to them for use by  
15 the Commission, whichever way the legal determination  
16 goes.

17 I think it's also true that the Commission has  
18 the authority to address this issue on a true-up basis  
19 if, if there are factual determinations that cannot be  
20 made completely in this hearing based on the timing of  
21 everything. But that's just, that's just what I would  
22 offer.

23 But I, I think Mr. Wright is correct that,  
24 that briefs and then oral argument after the briefs are  
25 filed would probably be the most efficient way to handle

1 legal presentations.

2 **COMMISSIONER BALBIS:** Mr. Cavros.

3 **MR. CAVROS:** Thank you, Commissioner.

4 We don't also disagree with what's been said  
5 so far. We, you know, we're willing to pursue in the  
6 direction that you find most, most prudent.

7 We -- at first blush looking at these legal  
8 issues we almost saw them as, as sort of threshold  
9 issues that the Commission should consider and be  
10 briefed on prior to the evidentiary hearing, the, you  
11 know, the factual determinations. It seemed more  
12 appropriate to do it, to do it on the front end but --  
13 so the Commission has, at least has heard the arguments.  
14 And when they're considering the facts, they at least  
15 have an idea of how the new statute might apply to, to  
16 those facts. But we're open to doing it either before  
17 with oral argument or, or after, however you see fit.

18 **COMMISSIONER BALBIS:** Thank you.

19 And Mr. Taylor.

20 **MR. TAYLOR:** To perhaps sound like a broken  
21 record, I don't think I object to what I've heard before  
22 either. I think I would agree more with Mr. Wright and  
23 Mr. Rehwinkel though that it would be better to brief  
24 these after the fact given the nature of the legal  
25 issues, the limited question (phonetic), and basically

1 that the facts are going to be presented to the  
2 Commission already in terms of the different  
3 alternatives so they can make a decision based on the  
4 post-hearing briefs.

5 **COMMISSIONER BALBIS:** Okay. Thank you.

6 And I think that Issue 1, I think it's much  
7 cleaner, and I agree with Mr. Rehwinkel as far as, you  
8 know, you can have a number either way and handle it  
9 appropriately.

10 My concerns are more on Issues 2 and 3, which  
11 I think that it may be more problematic post-hearing to  
12 handle briefs and oral arguments on Issues 2 and 3 when  
13 it does deal with perhaps some factual issues that  
14 witnesses may or may not be available to discuss. And  
15 to be perfectly honest, I think the statute is fairly  
16 clear on a number of issues: One, on the AFUDC rate;  
17 and the other is what a utility can and cannot recover  
18 without additional approval from this Commission. And  
19 having this statute being signed into law, and the last  
20 line of the statute states that it's effective July 1st,  
21 2013, I'm interested to hear prior to the hearing  
22 starting what the parties' positions are on those key  
23 issues prior to the hearing.

24 I just want to give some sort of indication of  
25 where I'm leaning on this, and it's likely that I'll

1 rule on it after this Prehearing Conference. But I just  
2 wanted to hear everyone's comments and thoughts on it.  
3 Again, I would hate to lose an opportunity by doing  
4 something after the hearing when we could just as easily  
5 do it before the hearing. And I don't think there were  
6 any true objections or serious objections to that, but  
7 I'll take your comments under consideration for that.

8 So with that, are there any other preliminary  
9 matters?

10 **MR. LAWSON:** No, Commissioner. We can move on  
11 to the next section.

12 **COMMISSIONER BALBIS:** Okay. Thank you.

13 We'll go through the draft Prehearing Order  
14 now, and I'll briefly introduce each section and ask if  
15 there are any questions or comments on that as we go  
16 through it. And we may go relatively quickly, but  
17 please speak up. There's a lot of parties at the table,  
18 so just get my attention if you have any questions or  
19 comments as we go through the draft Prehearing Order.

20 So with that, we'll start with Section I, the  
21 case background. Are there any questions or comments in  
22 Section I?

23 Okay. Section II, conduct of proceedings.  
24 Section III, jurisdiction. Section IV, procedure for  
25 handling confidential information. Section V, prefiled

1 testimony and exhibits, witnesses.

2 And I'd like to make one comment at this  
3 point. I think we've done a pretty good job, at least  
4 in the past two and a half years I've been here, that  
5 we've kind of gotten away from duplicative, repetitious,  
6 and friendly cross. But I just want to remind the  
7 parties that that is not allowed, and as we go through  
8 the hearing process, if you can keep that in mind.

9 Section VI, order of witnesses.

10 **MR. LAWSON:** Commissioner, given the number of  
11 witnesses in this docket, staff recommends that each  
12 witness be given four minutes to summarize his or her  
13 testimony.

14 **COMMISSIONER BALBIS:** Okay. And are there any  
15 objections to four minutes? Okay. Hearing none, the  
16 Prehearing Order will reflect that each witness will be  
17 given four minutes.

18 **MR. LAWSON:** And moving on as to whether or  
19 not we can stipulate any witnesses, pending the consent  
20 of the Commissioners, I believe that all the parties  
21 have agreed that the staff witnesses, all staff  
22 witnesses can be stipulated to. If you could just get a  
23 confirmation on that. And, of course, this would be  
24 pending the Commissioners' approval.

25 **COMMISSIONER BALBIS:** Okay. Any objections?

1 Can everyone confirm that the staff witnesses will be  
2 stipulated?

3 **MR. SAYLER:** Yes, sir.

4 **COMMISSIONER BALBIS:** Okay.

5 **MR. LAWSON:** And I believe that's all we have  
6 for order of witnesses.

7 **COMMISSIONER BALBIS:** Okay. Any other  
8 comments on order of witnesses? Seeing and hearing  
9 none, let's move on to Section VII, basic positions.  
10 Are there any changes at this time to the basic  
11 positions?

12 Okay. Hearing none, moving on to Section  
13 VIII, issues and positions. I do want to note that  
14 several parties have taken no position or no position at  
15 this time. The Order Establishing Procedure is clear  
16 that each party must take a position by the end of this  
17 Prehearing Conference if they intend to have a position.  
18 Otherwise, it will become no position.

19 So with that, I'd like to go through each of  
20 the issues and give the parties an opportunity to change  
21 their positions. I do want to mention again, we did  
22 have some additional issues brought forth because of the  
23 Senate Bill 1472. So if that requires some additional  
24 time, I'll certainly be open to that to allow the  
25 parties additional time to change their positions on

1 those additional issues.

2 **MR. MOYLE:** I just want to be clear, on all  
3 the legal issues, I mean, if we haven't taken a position  
4 but we said we'll brief it later, those are not wiped  
5 out by the results today. We still have the right to  
6 brief the legal issues; right?

7 **COMMISSIONER BALBIS:** Well, we're going to go  
8 through that starting with Issue 1. I believe that's  
9 the first legal issue where I did note that in Issue  
10 1 several of the parties have taken a position that I  
11 feel is not sufficient and doesn't comply with the Order  
12 Establishing Procedure. So I just want to remind  
13 everyone of that, that what has been provided thus far  
14 is not sufficient, that, you know, OPC will brief the  
15 legal issues, et cetera.

16 But if you can provide a brief summary of your  
17 position, I think it helps this Commission through the  
18 process and also complies with the Order Establishing  
19 Procedure. So I believe -- Mr. Moyle, does that answer  
20 your question?

21 **MR. MOYLE:** Yes.

22 **COMMISSIONER BALBIS:** Okay.

23 **MR. MOYLE:** Yeah, it does. So, so if, if I  
24 run the risk of having my potential to brief the issue  
25 and take a position after the case, which I understand

1 has historically been the case, and I've got to take a  
2 position today in order to not have that right go away,  
3 then I'll just change the position from, you know, FIPUG  
4 reserves the right to address the issue to -- Does the  
5 recently enacted law change the AFUDC rate, I'll just  
6 say yes.

7 **COMMISSIONER BALBIS:** Okay. I think that's  
8 fine. I just think that just stating that you're going  
9 to take an action is not a, not a true position. But  
10 something brief like that I believe is adequate.

11 **MR. WRIGHT:** Commissioner?

12 **COMMISSIONER BALBIS:** Yes.

13 **MR. WRIGHT:** Just procedurally how is this  
14 going to work? Are we going to have until the end of  
15 the day to communicate to staff our positions on these  
16 issues?

17 **COMMISSIONER BALBIS:** I think the end of the  
18 day is fine.

19 **MR. WRIGHT:** Okay.

20 **COMMISSIONER BALBIS:** And if you need  
21 additional time. But that should be sufficient.  
22 We're not asking for a ten-page dissertation, just  
23 something to --

24 **MR. WRIGHT:** Sure. No. I understand. And I  
25 can do what my colleague Mr. Moyle suggests he might do,

1 if necessary. But if we have 'til the end of the day  
2 and we can maybe give it a little more thought. Thank  
3 you.

4 **COMMISSIONER BALBIS:** Okay. And I believe  
5 that applies to Issues 1, 2, 3, 5A, 5B, 19A, and 19B as  
6 well. So if you can just provide additional information  
7 on the positions for the parties that did not provide  
8 that initially.

9 Thank you.

10 **MR. SAYLER:** Commissioner Balbis.

11 **COMMISSIONER BALBIS:** Mr. Sayler.

12 **MR. SAYLER:** Erik Sayler, OPC.

13 With regard to Issues 1, 2, and 3, the legal  
14 issues, we will certainly work to get something more  
15 than what we had initially put in our prehearing  
16 statement either by the end of today or at the latest on  
17 Monday.

18 With regard to the legal issues, potential  
19 briefing ahead of time before the Prehearing Conference  
20 which you had discussed or, excuse me, before the  
21 hearing that you had discussed, however you rule on  
22 that, we will probably then more fully brief those  
23 issues if that's the will of the Commission, just, just  
24 to let you know. But we will provide something more  
25 substantive for the prehearing statement.

1                   **COMMISSIONER BALBIS:** Okay. Thank you.

2                   Okay. So Issue 1, other than the discussion  
3 about the parties' positions, are there any questions or  
4 comments or other changes to the parties' positions?

5                   Okay. Hearing none, moving on to Issue 2.

6                   **MR. MOYLE:** FIPUG would just change its  
7 position to yes.

8                   **COMMISSIONER BALBIS:** Any other changes to the  
9 parties' positions on Issue 2?

10                  **MR. SAYLER:** We'll provide those later.

11                  **COMMISSIONER BALBIS:** Okay. Issue 3.

12                  **MR. MOYLE:** Same change; we would just say  
13 yes.

14                  **MR. CAVROS:** SACE would also change its -- add  
15 to its position and say yes.

16                  **COMMISSIONER BALBIS:** Okay. Issue 4. Issue  
17 5. Issue 5A.

18                  **MR. MOYLE:** FIPUG would just change its  
19 position to 18.5 billion or more.

20                  **COMMISSIONER BALBIS:** Okay. Thank you. Any  
21 other changes?

22                                Issue 5B.

23                  **MR. MOYLE:** FIPUG would just change its  
24 position to later than 2022 and 2023.

25                  **COMMISSIONER BALBIS:** Thank you. Any other

1 changes?

2 Okay. Issue 6. Now Issue 6 is one of the  
3 ones that was added in direct response to Senate Bill  
4 1472. So I'll give the parties additional time, if  
5 needed, to add or change their position on that.

6 Okay. Moving on to Issue 7. Issue 8.  
7 Issue 9. Issue 10. Issue 11. Now Issues 11A, 11B, and  
8 11C, it's my understanding that those have been  
9 withdrawn by the Office of Public Counsel. Could you  
10 please confirm that?

11 **MR. McGLOTHLIN:** Yes.

12 **COMMISSIONER BALBIS:** Okay. Thank you. And  
13 also Issue 12?

14 **MR. McGLOTHLIN:** Yes.

15 **COMMISSIONER BALBIS:** Okay. Let the record  
16 show that they've confirmed it's been withdrawn.

17 Issue 13. Issue 14. Issue 15. Issue 16.  
18 Issue 17.

19 **MR. LAWSON:** One moment. Can we go back to  
20 Issue 16 for a moment, please?

21 **COMMISSIONER BALBIS:** Sure.

22 **MR. YOUNG:** Commissioner, SACE's position is  
23 no position at this time as reflected in the draft  
24 Prehearing Order, and they need to change -- to take a  
25 position.

1                   **COMMISSIONER BALBIS:** Okay. So, SACE, this  
2 will be your opportunity to change that position, or it  
3 will be changed to no position.

4                   **MR. CAVROS:** Could I have until the end of the  
5 day to get back to staff on that?

6                   **COMMISSIONER BALBIS:** Sure. Okay. I believe  
7 we're on Issue 18. Issue 19. Issue 19A.

8                   **MR. MOYLE:** FIPUG would change its position to  
9 24.2 billion or more.

10                   **COMMISSIONER BALBIS:** Okay. Any other changes  
11 to 19A? 19B?

12                   **MR. MOYLE:** FIPUG would change its position to  
13 the commercial operation, commercial operation date will  
14 be later than 2024 and 2025. I think it should be  
15 dates, plural.

16                   **COMMISSIONER BALBIS:** Okay. Any other changes  
17 for 19B?

18                   **MR. LAWSON:** We would notice again for SACE on  
19 Issues 19A and 19B they're listed as no position at this  
20 time.

21                   **COMMISSIONER BALBIS:** Mr. Cavros, do you need  
22 additional time to look at that?

23                   **MR. CAVROS:** We would adopt FIPUG's position.

24                   **COMMISSIONER BALBIS:** Okay. Okay. Issue 20.  
25 Again, this is another factual issue as a direct result

1 of Senate Bill 1472. Do the parties have any changes to  
2 their positions on that issue?

3 **MR. LAWSON:** Again, we'd ask -- SACE will need  
4 to take a position.

5 **MR. CAVROS:** Can we elect until the end of the  
6 day to get back with staff?

7 **COMMISSIONER BALBIS:** Yes. Okay. Issue 21.  
8 Issue 22.

9 **MR. LAWSON:** Again, just need to get with SACE  
10 to get a position.

11 **COMMISSIONER BALBIS:** Now, that -- that's not  
12 a new issue, Mr. Cavros. Do you need additional time  
13 for that, or switch it to no position?

14 **MR. CAVROS:** I apologize. Are we on Issue 22?  
15 21?

16 **COMMISSIONER BALBIS:** 21.

17 **MR. CAVROS:** I'd like 'til the end of the day  
18 with that one as well. Thank you, Commissioner.

19 **COMMISSIONER BALBIS:** Okay. Issue 22. Issue  
20 23. Issue 24. Issue 25.

21 **MR. LAWSON:** On Issue 25 we'd like again to  
22 ask SACE on their no position at this time.

23 **MR. CAVROS:** I'd like to file a position by  
24 the end of the day on that, Commissioner.

25 **COMMISSIONER BALBIS:** Okay.

1           **MR. LAWSON:** I'm sorry. Go ahead.

2           **COMMISSIONER BALBIS:** Issue 26.

3           **MR. LAWSON:** Issue 26. Two points: One,  
4 we'll need to get a position from SACE on Issue 26; and  
5 also we believe that we are in position to do a  
6 potential stipulation on Issue 26 since none of the  
7 parties have -- since all of the parties' position  
8 statements essentially mirror each other.

9           **COMMISSIONER BALBIS:** Okay. Well, we can  
10 handle that in the potential stipulations section.

11          **MR. LAWSON:** Okay.

12          **COMMISSIONER BALBIS:** Would you like -- do you  
13 have a list of all of the other issues that SACE needs  
14 to provide a position on, just to make sure nothing  
15 slips through?

16          **MR. LAWSON:** Yes. We'll need, including what  
17 was just discussed, 26, 27, 27A, 28, 29, and 30.

18          **COMMISSIONER BALBIS:** So just those?

19          **MR. LAWSON:** And we'd just suggest if SACE can  
20 just get those to us by the end of the day, that will be  
21 the most expeditious way to get that handled.

22          **COMMISSIONER BALBIS:** Okay. So moving on to  
23 Issue 27, 27A, 28, 29, 30, 31. Okay. Those are all of  
24 the issues. I just want to take a moment to make sure  
25 that I've given all the parties enough time to change

1 their position.

2 **MR. TAYLOR:** Commissioner Balbis, just to be  
3 clear, PCS will give an answer on Issues 1, 2, and 3 by  
4 the end of the day.

5 **COMMISSIONER BALBIS:** Okay. Okay. Moving on  
6 to Section XIV, exhibit list. Are there any changes or  
7 corrections to the exhibit list as it appears in the  
8 draft Prehearing Order?

9 Okay. Moving on to Section X, proposed  
10 stipulations. I understand we may have a potential  
11 stipulation on Issue 26.

12 **MR. LAWSON:** Yes. Like I said, in reviewing  
13 the prehearing statements it looks like everyone is in  
14 agreement with Issue 26. If we could just confirm that  
15 with the parties, and then we'll be in a position to go  
16 ahead and draft some, some language to, to make that  
17 happen.

18 **MR. MOYLE:** Just so I'm clear, then that  
19 effect of a stipulation would be not to decide anything  
20 on the issue but to have it decided in another docket;  
21 is that right?

22 **MR. LAWSON:** I'm sorry. I wasn't paying  
23 attention.

24 **MR. MOYLE:** I'm just trying to understand  
25 what -- the stipulation, everyone seems to be saying

1 that, you know, this issue should be decided in Docket  
2 100437 and no Commission action is necessary in this  
3 docket. I guess that's what the stipulation will say;  
4 right?

5 **MR. LAWSON:** Essentially. I mean, what we'd  
6 like to do is just get confirmation. Then we can  
7 circulate some, nominate someone or have staff prepare  
8 just a brief stipulation essentially to that effect.

9 **MR. MOYLE:** Okay.

10 **COMMISSIONER BALBIS:** But that would still  
11 have to be approved by the Commission.

12 **MR. LAWSON:** Yes.

13 **COMMISSIONER BALBIS:** Okay. Are there any  
14 other proposed stipulations?

15 **MR. LAWSON:** Not at this time.

16 **COMMISSIONER BALBIS:** Okay. Section XI,  
17 pending motions. Are there any pending motions that  
18 aren't related to confidentiality?

19 **MR. MCGLOTHLIN:** Commissioner, if I may be  
20 heard for a second. I don't have a pending motion, but  
21 this might be the appropriate point to apprise you of  
22 one item.

23 In FPL's rebuttal testimony of Mr. Jones, FPL  
24 contends that our witness Dr. Jacobs' testimony contains  
25 certain quantitative errors. And I've told counsel for

1 FPL that we are unable to agree or disagree with that  
2 contention until we have a better understanding of the  
3 basis for, for the assertion that errors were made. To  
4 that end, I'd suggested to FPL that we, by agreement,  
5 work out some sort of expedited discovery vehicle. And  
6 they've said they will take that to their company and  
7 discuss it and get back to me.

8 I bring this up now only to advise you that in  
9 the event there's no work out by agreement, I may file a  
10 motion for a very limited discovery opportunity. The  
11 discovery cutoff has come and gone. Typically in a case  
12 of this magnitude there's some meaningful opportunity  
13 for discovery or rebuttal testimony. And I hope that  
14 formal request isn't necessary, but I thought I'd bring  
15 that to your attention.

16 **COMMISSIONER BALBIS:** Okay. And FPL, would  
17 you like to comment on that?

18 **MR. ANDERSON:** We would, Commissioner Balbis.  
19 OPC's testimony this year makes a very serious  
20 charge of intentionally misleading the Commission, which  
21 was never true. OPC had possession of documents and  
22 took our witness's deposition and never asked about the  
23 subject of their contentions. They ignored documents in  
24 their possession. Now their errors have been very  
25 clearly documented in our rebuttal testimony, and it

1 seems that Public Counsel is close to being prepared to  
2 acknowledge their mistakes. And these are very serious  
3 mistakes due to the gravity of the allegations they  
4 make.

5 I have consulted. We are, we are not prepared  
6 to agree to open up to more discovery at this point.  
7 We're always willing to talk and perhaps it's something  
8 we can work out informally in terms of provision of  
9 information. But, you know, our, our position is what  
10 has been stated in Mr. Jones' testimony, and, you know,  
11 my personal view is Public Counsel would do well to  
12 withdraw their testimony.

13 **COMMISSIONER BALBIS:** Okay. Thank you.

14 **MR. MCGLOTHLIN:** Let me just correct that  
15 characterization. Mr. Anderson said we were close to  
16 acknowledging a mistake. We will acknowledge that we  
17 don't want errors in our testimony. We're not persuaded  
18 that the errors are as, as contended by FPL, but we're  
19 willing to talk to them and see if, if some closure can  
20 be accomplished.

21 **COMMISSIONER BALBIS:** Okay. Thank you. And,  
22 as always, my office will respond to any timely and  
23 proper motions.

24 Are there any other pending motions or  
25 anticipated motions? If not, we'll move on to Section

1 XII, pending confidentiality motions.

2 **MR. LAWSON:** We would note that there are  
3 several confidentiality requests, and we will be  
4 recommending we address those in separate written  
5 orders.

6 **COMMISSIONER BALBIS:** Okay. Thank you.

7 Next section, post-hearing procedures.

8 **MR. LAWSON:** We would note that last year we  
9 had limited the post-hearing positions to 120 words and  
10 that the post-hearing briefs be -- were limited to 50  
11 pages.

12 **COMMISSIONER BALBIS:** Okay. Any objections to  
13 120 words and 50 pages?

14 **MR. MOYLE:** So that'll be a change?

15 **COMMISSIONER BALBIS:** Yes, from what's on the  
16 script.

17 Section XIV, rulings.

18 **MR. LAWSON:** We would suggest that you make a  
19 ruling that the opening statements, if there are any,  
20 should not exceed five minutes per party per case.

21 **COMMISSIONER BALBIS:** Any objections to that?

22 **MR. ANDERSON:** Would that be instead of what's  
23 stated here of ten minutes per party?

24 **MR. LAWSON:** We would note that there is a  
25 discrepancy between what was in the draft prehearing

1 order and this. We just suggested five minutes, but  
2 we're certainly open to ten.

3 **MR. ANDERSON:** Just recognizing the number of  
4 other parties making statements, it's hard to cover all  
5 our positions in just five, so we'd request ten minutes  
6 for FPL.

7 **MR. LAWSON:** We have no objection to that.

8 **COMMISSIONER BALBIS:** Okay. I'll take that  
9 under advisement. Any other comments on five or ten  
10 minutes?

11 **MR. MOYLE:** We, we have no objection to the  
12 utilities having ten. But, you know, we wouldn't  
13 anticipate using five but five would be appropriate.  
14 It's hard to do it in two or three minutes. Sometimes  
15 you can barely introduce yourself.

16 **MR. ANDERSON:** FPL thought the combined total  
17 of 20 stated in the Prehearing Order made sense.

18 **COMMISSIONER BALBIS:** Okay. Any other  
19 comments?

20 **MR. MOYLE:** I would just say five minutes is  
21 not, not -- if you do the math, it's slightly more, and  
22 it avoids us all having to kind of coordinate together  
23 and do things. So I think if you just put five per  
24 party, everybody can manage their time accordingly.  
25 Less, less cumbersome.

1                   **COMMISSIONER BALBIS:** Okay. So let's move on  
2 to other matters. I'll take your comments under  
3 advisement and issue the prehearing order accordingly.

4                   Are there any other matters to address in this  
5 Prehearing Conference?

6                   **MR. LAWSON:** Yes. We would request that to  
7 the extent that the parties' positions change or are  
8 added due to discussions at the Prehearing Conference,  
9 that they should provide any such changes to staff soon.  
10 We know that several of the parties have committed to  
11 revise their position statements by the close of  
12 business today. To the extent that there are any other  
13 changes that might come up based on the discussions  
14 today, we'd suggest that they get those changes in by  
15 close of business July 16th, Tuesday, 2013. That'll  
16 give everyone two business days plus the weekend to make  
17 any changes and get them in.

18                   **COMMISSIONER BALBIS:** Are there any objections  
19 to that?

20                   Okay. So now I want to discuss some other  
21 issues, and we have an opportunity here to kind of  
22 streamline the process during the hearing.

23                   The first idea that -- it's been discussed in  
24 the past, but the use of cover sheets for exhibits at  
25 the hearing. The Chairman is going to ask for a short

1 title. So put that on the cover page and just be  
2 prepared so that the logistics of getting exhibits  
3 prepared and handed out, et cetera, goes smoother. And,  
4 of course, having the appropriate number of copies would  
5 be helpful. We're going to need copies for  
6 Commissioners, staff, and one for each party. I have  
7 here that 25 is appropriate. That seems a little high,  
8 but, again, I don't want to have the situation where  
9 we're having staff run around trying to make additional  
10 copies.

11 And I also would like to make, you know, a  
12 general comment concerning late-filed exhibits, and it  
13 really doesn't pertain to a certain party or names,  
14 Mr. Moyle, but sometimes -- (laughter) -- I would like  
15 to remind everyone that during the hearing process  
16 Commissioners may have questions and may request  
17 additional information. And, you know, as cumbersome as  
18 it is, and I know, and I'm not saying that you would not  
19 be able to object to late-filed exhibits, but it does  
20 come up, and I just want to remind everyone about that,  
21 and hopefully it won't, it won't be an issue.

22 And if you need help passing out these  
23 exhibits during the hearing, not just late-filed ones  
24 but in general, I'm going to be working with staff to  
25 see what we could do to make it go more quickly. One of

1 the options is perhaps having a staff member behind the  
2 parties, you know, and if we can shave a few seconds off  
3 walking back and forth, it may make it easier. So staff  
4 may be working with you all as well. And if you have  
5 any ideas, please let them know on how we can make this  
6 as efficient as possible.

7 The next section I'd like to discuss is  
8 availability of witnesses. We have a couple of days  
9 that are scheduled for this mering. Please do your best  
10 to have them available. In the past for other cases  
11 we've gone late, so perhaps we've had witnesses come up  
12 sooner than expected. So as long as you keep on top of  
13 that so that we don't have to wait for witnesses. And  
14 if there is a conflict, I believe we had one last year  
15 because of scheduling availability and I believe there  
16 was a storm approaching, please notify us as soon as  
17 possible so we can work with you on that.

18 And the last section is confidentiality.  
19 Review the requirements for working with confidential  
20 data if you plan to use it for cross-examination. If  
21 you have any questions about that, please deal with  
22 legal staff on that issue.

23 So with that, are there any other additional  
24 matters that you would like to discuss?

25 **MR. LAWSON:** Staff has just two minor

1 administrative issues -- I'll have Theresa distribute  
2 it -- but we have a draft exhibit sheet, cover sheet  
3 that can be used for exhibits at the hearing. And it's  
4 the same format as last year. If we could just pass  
5 that around. We sent out an electronic version earlier,  
6 and we just ask everyone to use that coversheet on all  
7 their exhibits. It helps us keep track of everything.  
8 And given the number, it's very, very useful.

9 Also just a reminder or request that if they  
10 intend to sponsor any confidential exhibits, that the  
11 parties have a responsibility to prepare a sufficient  
12 number of copies in the red folders for distribution at  
13 the hearing. That will help ensure that the  
14 confidential information is clearly highlighted and  
15 remains confidential.

16 **COMMISSIONER BALBIS:** Okay. Thank you. Are  
17 there any other additional matters?

18 Okay. I want to, I want to thank the parties  
19 through this year's process. I know we had the unique  
20 situation of having the statute change and come into  
21 effect July 1st. So I appreciate the parties working  
22 together, getting additional issues in that clearly  
23 comply with the statutes, and I want to thank you for  
24 that. And with that, this meeting is adjourned.

25 (Proceeding adjourned at 10:20 a.m.)

1 STATE OF FLORIDA )  
2 : CERTIFICATE OF REPORTER  
3 COUNTY OF LEON )

4 I, LINDA BOLES, CRR, RPR, Official Commission  
5 Reporter, do hereby certify that the foregoing  
6 proceeding was heard at the time and place herein  
7 stated.

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

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

18 DATED THIS 17<sup>th</sup> day of July,  
19 2013.

20 Linda Boles

21 LINDA BOLES, CRR, RPR  
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