

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 120161-WS

ANALYSIS OF UTILITIES, INC.'S
FINANCIAL ACCOUNTING AND
CUSTOMER SERVICE COMPUTER
SYSTEM.

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PROCEEDINGS: ORAL ARGUMENT

COMMISSIONERS
PARTICIPATING: COMMISSIONER JULIE I. BROWN
PREHEARING OFFICER

DATE: Monday, August 12, 2013

TIME: Commenced at 3:00 p.m.
Concluded at 3:33 p.m.

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

1 APPEARANCES:

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2 ERIK L. SAYLER, ESQUIRE, Office of Public
3 Counsel, c/o The Florida Legislature, 111 W. Madison
4 Street, Room 812, Tallahassee, Florida 32399-1400,
5 appearing on behalf of the Citizens of The State of
6 Florida.

7 MARTIN S. FRIEDMAN, ESQUIRE, Sundstrom Law
8 Firm, 766 North Sun Drive, Suite 4030, Lake Mary,
9 Florida 32746, appearing on behalf of Utilities, Inc.

10 MARTHA BARRERA, ESQUIRE, FPSC General
11 Counsel's Office, 2540 Shumard Oak Boulevard,
12 Tallahassee, Florida 32399-0850, appearing on behalf
13 of the Florida Public Service Commission Staff.

14 MARY ANNE HELTON, Deputy General Counsel,
15 Florida Public Service Commission, 2540 Shumard Oak
16 Boulevard, Tallahassee, Florida 32399-0850, Advisor
17 to the Florida Public Service Commission.

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2 **COMMISSIONER BROWN:** Good afternoon. This
3 will commence the status conference on the motion to
4 extend the informal investigatory period in Docket
5 Number 120161-WS. I will allow each party five minutes
6 to address the motion. I know it's a joint motion. I
7 kind of wanted this couched as a status conference,
8 per se, on where the parties are with regard to the
9 Phoenix Project in this docket in this generic
10 proceeding. But instead of that, I will just have you
11 each provide me some of your comments. It doesn't have
12 to be five minutes, but I'll allocate five minutes per
13 each of you to address the reasons set forth in your
14 motion.

15 **MR. FRIEDMAN:** Thank you. It's Marty Friedman
16 on behalf of Utilities, Inc., and I doubt I will take
17 five minutes. But, you know, there's two parts to this
18 case. One is the Project Phoenix part which is pretty
19 much off and by itself and ready to go. The other was
20 the informal investigatory period to allow the Public
21 Counsel an opportunity to ask the company informally
22 questions, the company responded. And we have been
23 going through, I forget how many rounds of questions and
24 responses, but we have been moving forward ever since
25 this process started. Obviously we have more rounds of

1 questions and answers than we had originally anticipated⁰⁰⁰⁰⁰⁴
2 but, you know, the goal is to -- I think the goal is to
3 narrow the Public Counsel issues to those issues that
4 they really think are substantial enough to litigate.
5 And so I don't know if we have gotten to that process
6 yet, but I think we may even still have some responses
7 due to the Public Counsel, where they are going to ask
8 us some more questions. But it hasn't been like we're
9 sitting on our hands for the last six months. We have
10 been cooperating and moving forward to try to conclude
11 that investigatory period so that the Public Counsel can
12 frame their issues on those points.

13 Like I said, as far as we are concerned on the
14 Project Phoenix part of it, we have got our expert, our
15 expert has given us his opinion, I have just got to put
16 it in prefiled testimony format, and we are ready to go
17 on that part of it. So it's really the informal
18 investigatory period that is taking the time. And, you
19 know, as things happen it has taken more time than, I
20 think, either of us had anticipated.

21 **COMMISSIONER BROWN:** Thank you. That
22 elucidates some of my questions, too.

23 **MR. FRIEDMAN:** (Inaudible; microphone off.)

24 **COMMISSIONER BROWN:** Oh, I'll ask him. Don't
25 worry, I'll ask him.

1 Mr. Sayler.

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2 **MR. SAYLER:** Good afternoon, Commissioner
3 Brown. Erik Sayler on behalf of the Office of Public
4 Counsel. As you're aware, this docket was opened as a
5 result of a settlement between our office and Utilities,
6 Inc. in the Eagle Ridge case. Some of those big issues,
7 the Phoenix Project and the generic issues Mr. Friedman
8 has already touched upon.

9 But, you know, one thing, the reason that we
10 settled that case was to be able to open this docket to
11 be able to resolve those issues informally or formally
12 through a hearing should that be necessary. The generic
13 issues that we have, the Phoenix Project, those are very
14 important issues. And one benefit of settling that last
15 docket is that we got out of the eight-month statutory
16 time frame that was required to kind of get things from
17 A to B, whereas this now we are not in a statutory time
18 frame, but these issues are very important to both
19 sides, but they are not urgent in the sense that there
20 is a requirement by a statute to be concluded.

21 That being said, neither side is really --
22 we're not sitting on our laurels. We're not wasting
23 time. We have circulated our first response back --
24 first set of questions last summer. Utilities, Inc. had
25 some things going on on their side. Their first

1 response was served to us in December. And a lot of 000006
2 this is laid forth in our joint motion requesting
3 additional time advanced at the end of next month.

4 Just as Mr. Friedman pointed out, right here
5 I've got a copy of all three sets of questions and all
6 three sets of responses. I didn't attach the schedules
7 or print off the voluminous schedules or things like
8 that. And I have copies that I have for the utility,
9 for staff, and for you and Ms. Fleming, should you like
10 it, or we can file it into the docket file just so you
11 can kind of see where we have been and where we are
12 going in this process.

13 **COMMISSIONER BROWN:** I prefer to file it in
14 the docket file.

15 **MR. SAYLER:** Okay. Certainly. What I can do
16 is after this concludes today, I will hand walk over a
17 copy to the Clerk's Office, and I will leave copies here
18 with staff and they can distribute as needed internally
19 or to you.

20 **COMMISSIONER BROWN:** Thank you.

21 **MR. SAYLER:** And in advance of meeting here
22 today, Mr. Friedman and I conferred with each other just
23 kind of looking at our own respective schedules, our own
24 respective personnel and person power requirements, what
25 we've got going on, and also with an eye to the

1 Commission calendar. And we think that if it is the 000007
2 pleasure of the Commission, you know, after taking, you
3 know, just the Commission's jam packed schedule, our
4 limited work space because our office -- and I was able
5 to get my two analysts here today, and they are in the
6 midst of two different big rate cases right now. And
7 so, we were thinking if it's the will of the -- the
8 Commission's pleasure to bring this to full resolution
9 through a hearing, hopefully maybe late March, if that's
10 the will of the Commission. I don't know what the
11 schedule is in February --

12 **COMMISSIONER BROWN:** I'm sorry, can you repeat
13 that? Late --

14 **MR. SAYLER:** Late March. And what that would
15 do is that would allow the parties adequate time for
16 prefiled direct testimony, any additional formal
17 discovery that needs to take place on the hearing issues
18 that we decide, or the ones that we're going to go to
19 trial on, and then hopefully that will avoid the
20 compress around the holidays; Thanksgiving, Christmas,
21 and things of that nature. And also all the big rate
22 cases that the Commission has processing now will be
23 completed.

24 And so by granting this joint motion through
25 the end of September, that will allow -- if we seek a

1 fourth set of informal questions that we have the 000008
2 opportunity to do that. And we are evaluating that
3 right now.

4 The third set of responses came in just last
5 week. And then after that, you know, if the hearing is
6 in March, then we can work backwards to whatever those
7 controlling dates are.

8 **COMMISSIONER BROWN:** Okay.

9 **MR. SAYLER:** And if you have any other
10 questions, please.

11 **COMMISSIONER BROWN:** I do have some questions.

12 **MR. SAYLER:** Certainly.

13 **COMMISSIONER BROWN:** And I thank you both for
14 submitting this joint motion for consideration, and I
15 understand that there is no set statutory time frame to
16 address these issues. But this docket has been going on
17 for over a year. And we have had a handful of PAA rate
18 cases that have been approved by the Commission which
19 have addressed the substance and have deferred the
20 substance of this issue to the docket before us.

21 So my concern is that further delays are going
22 to impact any future case -- any current cases that we
23 have. We have a couple of pending cases. We have the
24 Utilities, Inc. of Florida, and we have Cypress Lake
25 Utilities. So I would like to have resolution. My

1 understanding from this joint motion and Paragraph 9 was 000009
2 of the joint motion, it talked about the possibility of
3 a stipulation and settlement as opposed to contested
4 administrative litigation. So I am very flexible in
5 granting time, but I'd like to see some just and speedy
6 progress on this open generic docket which seems to just
7 keep getting extended. I have concerns about granting
8 future -- any further additional discovery periods.

9 I'd like to ask some questions to get some
10 understanding of the depth of discovery that OPC is
11 asking Utilities, Inc. to respond to, so that I
12 understand the depth. But I thought that there may have
13 been some stipulation or settlement discussions based on
14 this motion, that I would be inclined to grant
15 additional time even past September 30th if there were
16 ongoing discussions. So that was my understanding,
17 based on that paragraph that I cited. But irrespective
18 of that, I want to get through the process to see if
19 it's needed, if the time period is needed, because I
20 think you have had a lot of time.

21 I know you have propounded a lot of discovery
22 on Utilities, Inc. They have had to respond. That's
23 okay. That's part of the process, but I have got to
24 understand how much it is that you are asking of them
25 and how extensive this investigatory period is needed.

1 So to date, Mr. Saylor, how many questions so far have⁰⁰⁰⁰¹⁰
2 you propounded on Utilities, Inc.?

3 **MR. SAYLER:** One moment. And I have
4 Ms. Vandiver here who can probably answer more of the
5 technical questions than I can.

6 We have served 45 different questions
7 directly. Yes, 45 different questions, and some of them
8 have many, many subparts to them. And we have also
9 submitted some kind of ancillary questions based upon,
10 you know, current pending dockets that are issues that
11 we have seen that relate to the generic side that relate
12 to the accounting, you know, the booking of Commission
13 ordered adjustments, when they are done, how they are
14 done, things of that nature.

15 So in some respects having those other PAA
16 rate cases come before the Commission provides us
17 information that we can use in the generic hearing that
18 is a relevant example that -- that is still fresh in the
19 Commission's memory so we can say, well, here is how the
20 utility is doing. We disagree that it should be done
21 this way. Commission, how do you want to go forward
22 here.

23 **COMMISSIONER BROWN:** So you are waiting to see
24 how the Commission proceeds in these current dockets?

25 **MR. SAYLER:** No, ma'am. No, ma'am. It was

1 the PAA rate case that you referred to that I have 000011
2 recently gone through, and there may be one pending now
3 that we're asking questions of, but I believe it is
4 Pembroke and Sandalhaven and things of that nature where
5 we have looked at those filings and they have raised
6 questions.

7 And, Ms. Vandiver, do you have anything to add
8 on that?

9 **MR. VANDIVER:** Yes. We're not waiting on the
10 Commission to do anything. But as the Commission has
11 made action in cases and we have had concerns or
12 questions about how -- what the utility has answered in
13 our questions is implemented in the cases, they don't
14 seem to mesh in our mind, and we have asked further
15 clarifying questions along those lines. We're not
16 trying to prolong it by waiting to see what happens,
17 it's just that we are seeing things in the cases that
18 don't appear to us to match up with what the answers
19 have been, so it raises some questions in our mind.

20 **COMMISSIONER BROWN:** Okay. Mr. Friedman,
21 would you like to respond?

22 **MR. FRIEDMAN:** I think everybody is moving
23 forward in good faith. I do believe that the questions
24 they asked, many of them, and I have articulated this to
25 them, were beyond the scope of their original objection.

1 But was it worth arguing about? No. And that probably⁰⁰⁰¹²
2 added some of the delay in getting responses back to
3 them. Because, I mean, it was broad. I mean their
4 questions were broad. And we're trying to do our best.
5 Because I believe that the more we narrow the issues,
6 the better, more succinct the final hearing is going to
7 be.

8 And we are not going to be able to avoid a
9 final hearing. This Project Phoenix issue that we
10 raised, there's not going to be a stipulation in that.
11 It's going to have to be heard and ruled on. So really
12 what we are trying to do is to try to provide OPC with
13 as much information as we can so that they can say,
14 look, here are the real issues that we've got, and
15 hopefully narrow it to some narrow issues. Because
16 right now they've got just basically anything to do with
17 everything in their questioning. And so we really
18 wanted to narrow that so that we can have a trial on
19 something that is tangible that we can touch, feel, and
20 taste.

21 **COMMISSIONER BROWN:** Okay. And then I guess
22 this question is for Mr. Sayler and Mr. Friedman. With
23 regard to that paragraph that I cited in the joint
24 motion regarding the stipulation and possible
25 settlement, that's just with regard to narrowing the

1 scope of the issues, is that what that referenced, 000013
2 regarding the settlement stipulation? Either one.

3 **MR. FRIEDMAN:** Actually, Erik wrote it, so --
4 but, I mean, not that I don't agree with it, but I think
5 that what we are talking about is, you know, obviously
6 we would love to reach a stipulation on all of OPC's
7 issues, and we may be able to. Once they identify these
8 are really the problems that we've got, we can talk
9 about the solutions to those problems, and maybe we can
10 reach agreement on some of those, or all of those. So
11 I'm always optimistic we can reach some agreement. We
12 just don't know yet because we haven't narrowed them
13 down to where -- we started with 45 issues with
14 subparts, and we hopefully want to narrow it down to
15 something that is more manageable.

16 **COMMISSIONER BROWN:** Mr. Sayler, do you want
17 to respond?

18 **MR. SAYLER:** Yes, ma'am. And as Ms. Vandiver
19 was reminding me, a lot of our questions were drafted in
20 such a way that hopefully we could receive some sort of
21 agreement that if it kind of was answered in the way
22 that we thought it would be, it would be something that
23 we could either reach a stipulation on either formally
24 or just not be an issue that would be something that
25 would be litigated. So for lack of a better word, an

1 informal stipulation, meaning that it doesn't come 000014
2 before this Commission as something that is needing to
3 be litigated.

4 **COMMISSIONER BROWN:** Okay. I guess I misread
5 the motion. I was thinking that the reason for the
6 delay was that there were possible ongoing discussions
7 regarding potential stipulation or settlement, which
8 obviously is not the intent.

9 **MR. FRIEDMAN:** Well, it's all in how you
10 define the word stipulation. I mean, like Mr. Sayler
11 said, what we're really trying to do is to -- if they
12 have an issue that they raised and we have provided them
13 with satisfactory information, they go, oh, yes, we
14 understand why you do it that way; it's okay.

15 You probably won't see a formal stipulation on
16 that, but they are not going to put that issue in their
17 hearing, so effectively -- it's effectively a
18 stipulation. So maybe, you know, your lawyer brain was
19 reading stipulation in a legal sense, and I think that
20 it was drafted in more of a generic sense.

21 **COMMISSIONER BROWN:** We see stipulation or
22 settlement, there's red bells everywhere. There's lots
23 of red signs and bells everywhere. So that was my
24 understanding. I understand your clarification, and I
25 guess I want to get a grasp of why September 30th would

1 be a suitable extension. I don't want to have to come 000015
2 back here again in October or November for an additional
3 request for further time of this investigatory period.

4 So how many -- and I understand and
5 acknowledge that there is no statutory time frame, but
6 we have got cases right now, okay. And this is an
7 important -- and I know that the parties have been
8 working towards the investigatory period, but, I mean,
9 we have had over a year. Even seven weeks ago you filed
10 this joint motion. I'm sure that progress must have
11 been made during that time period with regard to this
12 docket. So how many current pending questions are
13 outstanding from Utilities, Inc. that you have -- I
14 guess they sent some responses back?

15 **MR. SAYLER:** Let me defer to Ms. Vandiver and
16 Ms. Merchant. But the last set of responses that we
17 received, we sent them out on June 24th, we received
18 them on August 6th. And we haven't had -- we are still
19 going through them at this time, but let me defer to the
20 accountants.

21 **MR. VANDIVER:** Yes. I don't think we have any
22 outstanding questions that haven't been responded to. I
23 think what we have done is we have gone through their
24 responses and we are trying to come up with a plan of
25 which issues have we narrowed down, which issues --

1 there were a few questions that we had asked that said 000016
2 do you agree that this is what you said, and we didn't
3 get the responses back that we might have expected, so
4 we're trying to understand what the company said and
5 then try to work toward what we can either dismiss or
6 get the company to agree to. There's a few things that
7 we think the company might agree with, that they might
8 do something differently that would make us happy --
9 well, that would --

10 **COMMISSIONER BROWN:** Right.

11 **MR. VANDIVER:** -- that would meet our
12 concerns. And so we're trying to get that together and
13 then figure out a way to work with the company, and then
14 I punt it back to the legal people to decide how we're
15 going to handle that then.

16 **COMMISSIONER BROWN:** Okay. And you have an
17 estimated time frame of a hearing on any unresolved
18 issues, or you said something about March 2014?

19 **MR. FRIEDMAN:** We sat down with the calendar,
20 Mr. Sayler and I last week. He was down in my area for
21 a customer service hearing, and we met with the
22 calendars. And Mr. Sayler had y'all's calendar, as
23 well, looking at some big rate cases that y'all
24 apparently have that don't affect me, but affect you and
25 Mr. Sayler and his office. So it looked like to us that

1 the end of March would be a safe time to not cram 000017
2 everything into having to jam up Christmas, as we did
3 last year with that other hearing that you were involved
4 in.

5 And, you know, if we work backwards from the
6 end of March, I think that it would meet OPC and
7 Mr. Saylor's schedule, and I think it would meet yours,
8 and meeting yours basically means the staff's, as well.

9 **COMMISSIONER BROWN:** Any comments, Staff?

10 **MS. BARRERA:** I'm just interested in knowing
11 how far along are you all in writing the actual list of
12 issues and when do you anticipate having that ready?

13 **MR. FRIEDMAN:** I've only got one -- as you
14 know, Ms. Barrera, I've only got one issue, so mine is
15 the easy part. But I'll defer to Mr. Saylor.

16 **MR. SAYLER:** We can certainly have our draft
17 list of issues by the end of next month, maybe sooner.
18 We just have to determine whether we are going to send
19 out a fourth set of informal questions or not.

20 **COMMISSIONER BROWN:** Now, if you send out a
21 fourth set of questions is that going to extend the
22 investigatory period even further than the requested
23 September 30th date?

24 **MR. SAYLER:** No, I don't think so. I think it
25 would potentially depend upon how extensive they are and

1 how much time the utility needed to respond to it. B000018
2 even then, if it came in after that investigatory
3 period, if something completely out of the ordinary came
4 back in the response, we might be, but I think we could
5 safely go forward at that time. And then as far as, you
6 know, the vehicle for getting their responses to date,
7 we would just do a request for admission and just say
8 has anything changed, and then begin any formal
9 discovery from there going forward.

10 **MR. FRIEDMAN:** Because I would think, I mean,
11 if we did set it for the end of March, if you backed up
12 the normal hearing time for prefiled testimony and
13 discovery, I think it would still give us past that date
14 just informally. I mean, before we start to have to
15 formally file prefiled testimony, I think that will give
16 us plenty time, probably through October and the end of
17 the year maybe.

18 **COMMISSIONER BROWN:** Well, and I appreciate
19 the parties giving us just an estimated potential date.
20 Even though we are not in that posture at this moment,
21 it's nice to kind of hear where you are at. Again, it
22 definitely clarifies the motion. I interpreted it a
23 little bit differently, so I appreciate you coming
24 forth. I am very generous with granting additional
25 time, but I do want -- as I mentioned in the last order

1 for your third motion, I'm going to be very -- I am 000019
2 scrutinizing this time frame here, because we are over a
3 year here. And we do have current dockets right now
4 that deal with, touch on issues of this generic docket,
5 so I am sensitive to it, and I just would like this to
6 be resolved swiftly and sooner rather than later.

7 So I will be flexible. I will prepare an
8 order. If September 30th is the date that the parties
9 believe that there are no other -- and you assert in
10 this motion, and I know you're talking about a fourth
11 set of questions potentially, but if you believe that
12 September 30th is the last request for additional time,
13 I am amenable to granting that. But I want you to be
14 cognizant and aware that this met your investigatory
15 period, and be sensitive to the fact that this may be
16 your final request for extension, okay. I'm not saying
17 it's definitive, but I'm just very sensitive to the time
18 frame and the generosity and time I have already given
19 you all. So I think September 30th is a few weeks away,
20 and I think that --

21 **MR. FRIEDMAN:** Why don't we do October 30th?

22 **COMMISSIONER BROWN:** I'm giving you a
23 chance --

24 **MR. FRIEDMAN:** Because I'm kind of gleaning
25 what you're saying -- because we are filing a rate case

1 by the end of September, and obviously that is taking 000020
2 some of the UI staff people. They have only got four
3 people in that section to do rate cases. And so if we
4 are going to file the Cypress Lakes at the end of
5 September, my guess is that if we don't get questions
6 real quickly that we will be spending time on that. And
7 we could go to the end of October, and even that, I
8 don't think -- you know, I would hope that we would --

9 **COMMISSIONER BROWN:** I'll have to think about
10 that October date.

11 **MR. FRIEDMAN:** I would think that we would
12 continue to be able to, just like any case, to
13 informally discuss anything we want to discuss as long
14 as we meet y'all's schedule.

15 **COMMISSIONER BROWN:** Right.

16 **MR. FRIEDMAN:** And so as long as -- and you
17 may look at your schedule and say, oh, no, we can cram
18 this in between these two electric rate cases. I would
19 be surprised, but --

20 **COMMISSIONER BROWN:** That's not my expertise.

21 **MR. FRIEDMAN:** Okay.

22 **COMMISSIONER BROWN:** I don't try to do that.

23 **MR. FRIEDMAN:** Well, Mr. Sayler knows more
24 about it. You know, because we don't deal with electric
25 cases. So, you know, when we looked at the calendar, it

1 looked like the end of March would be a safe time to 000021
2 back up the time frames, and we would continue even
3 after the informal period ended, that didn't mean that
4 until we start doing formal discovery -- actually until
5 we get to the trial we can informally do whatever we
6 want to do.

7 **COMMISSIONER BROWN:** Of course.

8 **MR. FRIEDMAN:** So, you know, this just -- I
9 think ending the discovery period just all of sudden
10 says, okay, we are going to put it into the hearing
11 schedule.

12 **COMMISSIONER BROWN:** And let's come up with
13 some issues for this case.

14 **MR. FRIEDMAN:** Well, that's why I think if we
15 use the end of March if that fits the staff's schedule,
16 as well, that --

17 **COMMISSIONER BROWN:** Martha.

18 **MR. FRIEDMAN:** -- if we back up from there,
19 that it should be -- and, you know, Mr. Sayler said that
20 he thought that would avoid those two electric cases
21 that y'all have.

22 **MR. SAYLER:** And if it's your pleasure, I
23 wasn't sure if you were asking us to orally modify our
24 motion to maybe mid-October or late October, if that is
25 your pleasure we are amenable to that, as well, because

1 it's still informal.

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2 **COMMISSIONER BROWN:** And I'm giving you that
3 opportunity under the mindset that this may be your last
4 extension request. So make sure that it is accurate and
5 based on your needs. And I know you're driving a lot of
6 this right now, Mr. Sayler, so I'd like you to really
7 make sure that the date is an accurate reflection of
8 what you need.

9 **MR. SAYLER:** Commissioner Brown, that date,
10 September 30th was something Mr. Friedman and I had
11 discussed when we filed the motion. I guess it was six
12 weeks ago. I wasn't aware that they were filing a rate
13 case at the end of September.

14 **MR. FRIEDMAN:** Neither was I, surprisingly.

15 **COMMISSIONER BROWN:** We learn a lot here.

16 **MR. SAYLER:** So with that being the case, if
17 counsel for UI is okay with orally amending our motion
18 to give us additional time, then we can. We would still
19 effort to kind of have an internal goal of
20 September 30th being our internal drop dead. But with
21 the actual Commission order, should you be willing to
22 grant our motion to extend being October 30th or 31st,
23 if counsel for Utilities, Inc. is amenable to that, and
24 even then with that we still may be able to make the
25 late March period unless -- I don't have privy to that

1 part of the Commission calendar, and maybe something ~~is~~ 000023
2 coming up there, and the Commission wishes to push it
3 back further or something of that nature.

4 **COMMISSIONER BROWN:** Martha, do you want to
5 add anything to that?

6 **MS. BARRERA:** This is on another topic,
7 Commissioner. Mr. Sayler suggested to submit into the
8 record certain e-mails, and I am concerned because
9 certain of those e-mails have actual questions and
10 responses, and I don't believe they're appropriate for
11 the record.

12 **COMMISSIONER BROWN:** And this is with regard
13 to the investigatory -- what OPC has propounded on
14 Utilities, Inc.?

15 **MS. BARRERA:** Right.

16 **COMMISSIONER BROWN:** Okay. Let's address that
17 in a second. Okay.

18 **MR. FRIEDMAN:** I tend to agree with her.

19 **COMMISSIONER BROWN:** Okay. We'll address that
20 in a second. Let's finish this up, okay, because I want
21 to get to finishing up this deadline. I want to make
22 sure it's accurate.

23 Does staff have any issue with the modified
24 deadline of October 31st?

25 **MS. BARRERA:** No; none.

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COMMISSIONER BROWN: Okay. I'm going to grant it, and we'll -- I'll memorialize it with a written order after this, but it will be granted. And, again, parties, please be aware of my previous comments and use that time diligently. Okay.

MR. SAYLER: Yes, ma'am. Thank you.

COMMISSIONER BROWN: Thank you. Ms. Barrera, let's address the issue of written e-mails with the discovery, informal discovery.

MS. BARRERA: Yes. My only concern is that the e-mails are not just copies, you know, saying attached is a copy of the discovery. There are some that do have questions and answers and responses to the questions, and I'm just wondering, you know, whether or not that is appropriate to place on the record.

COMMISSIONER BROWN: Do you have a copy, a sample for me to look at? Do you have something I can look at?

MS. BARRERA: He has. Mr. Sayler has a copy.

COMMISSIONER BROWN: So I can get a better understanding, I'd like to see it, if you don't mind. And while you're doing that, I'd like our Assistant General Counsel, or I don't know what the appropriate title is, to think about your comments on it, if you have had a chance to look at it, or in just general.

1 **MS. HELTON:** I have not had a chance to look⁰⁰⁰⁰²⁵
2 at the specific documents.

3 **MR. SAYLER:** Commissioner Brown.

4 **COMMISSIONER BROWN:** Hold on a second. Sorry,
5 Mr. Sayler.

6 You can continue.

7 **MS. HELTON:** I am a record purist. And our
8 practice typically at the Commission is to not include
9 discovery type information in the record. One, it just
10 junks up the record. And, two, from a computer space --
11 and I'm probably not saying that correctly -- but from a
12 computer space perspective, we just don't have enough
13 space either, I think, to include all discovery in a
14 docket file.

15 That being said, it has been our practice to
16 avoid ex parte concerns, that if there is a particular
17 Commissioner that has expressed an interest in seeing
18 particular discovery, then before we give that to the
19 Commissioner our practice has been to include that in
20 the docket file. So that is the only reason in my
21 opinion that we would include discovery type information
22 in the docket file.

23 **COMMISSIONER BROWN:** Okay. Thank you.

24 Mr. Sayler.

25 **MR. SAYLER:** A few things. The record of this

1 case is not embodied by the docket file. The record of 000026
2 this case, should we go to hearing, will be established
3 by everything that gets entered into the record through
4 testimony or exhibits, and then at the end of that
5 hearing is closed. And that will be the record upon
6 which this Commission will base its decision.

7 As far as the docket file, I do note that in
8 the PAA rate cases, staff data request questions go into
9 the docket file, the staff data request responses go
10 into the docket file, questions that any parties or
11 persons have that are filed with the Commission, our
12 office will routinely send a letter saying we have
13 questions, and sometimes the utility will respond to
14 those questions directly, sometimes the Commission staff
15 will look at our questions and then cherry-pick from
16 that list, or just say you two please answer OPC's
17 questions. And those all go into the docket file and
18 are eventually part of the PAA, you know, are the basis
19 for the PAA recommendation.

20 However, the reason why I suggested doing
21 this, one, we're a public agency. We are sort of in a
22 quasi-hearing mode, sort of not right now while we are
23 in abeyance. Every e-mail that we received from the
24 utility or from staff is public record and the same
25 thing for the Commission staff.

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Now, what I have done is this actually here
all the e-mails going back and -- not actually all of
them, but the vast majority of them that contain the
information from the inception of this case, many of
which the Commission staff were copied upon. What I
have done in the excerpt there is just taken our actual
set of questions and their actual set of responses and
kind of condensed that down into that to kind of get rid
of the clutter from all the, hey, can we meet next week?
No, our schedule is busy type e-mails that are just part
and parcel of any rate case or any kind of proceeding.
You just have a lot of back and forth is your schedule
available e-mails. And all I have done is distilled it
down to this.

And I was just making it available should it
be your desire that it go into the docket file so that
you or any Commissioner who is eventually assigned to
this case would have the opportunity to kind of have a
heads-up to see where we are going so that you can see
that we are not wasting the Commission's time.

But that's what I was trying to make. And I'm
not trying to shove stuff into the record or clutter it
up or anything of that nature. It was just purely I was
thinking it might be helpful.

COMMISSIONER BROWN: I understand it comprises

1 this packet here. And you were planning on filing that 000028
2 with the Clerk's Office today?

3 **MR. SAYLER:** I can do it today or whenever. I
4 don't have to do it. It was just --

5 **COMMISSIONER BROWN:** I'd like some time to
6 think it over with our staff. I see potential -- there
7 could be some potential concerns there with a lot of the
8 other fluff in the e-mails.

9 **MR. SAYLER:** I have taken all that out. All
10 that you have are our questions, their responses. I
11 didn't attach the Excel spreadsheets, or the --

12 **COMMISSIONER BROWN:** So you modified
13 something. You modified it.

14 **MR. SAYLER:** If you would desire to have all
15 the Excel spreadsheets attached with this, I'll put it
16 on a disk and have it filed with the Clerk's Office.
17 All I tried to do is do the substance of the questions
18 and the answers, and not necessarily all the backup
19 detail for it.

20 **COMMISSIONER BROWN:** Okay. I get it.

21 Mr. Friedman.

22 **MR. FRIEDMAN:** I mean, I don't think it needs
23 to be in. I don't think it has any probative value.
24 What I thought Mr. Saylor was producing it to you for
25 was so that you would see that all of these extensions

1 of time we are asking for, it's not like we are asking 000029
2 for an extension of time and not doing anything. I
3 thought the purpose of this was to show you, look, you
4 know, we've spent this last nine months or a year --

5 **COMMISSIONER BROWN:** That's what he originally
6 said at the beginning.

7 **MR. FRIEDMAN:** That's what I thought it was
8 for, just so you could see, look, we haven't been
9 sitting around. We have got a lot of information going
10 back and forth over this time. This is all in good
11 faith. We are not -- you know, we are really moving
12 this thing along.

13 **COMMISSIONER BROWN:** I'm granting the motion.

14 **MR. FRIEDMAN:** I know, but that's all I
15 thought the purpose of this was. And that's why when I
16 see all of a sudden we're going to put it in the record,
17 I'm trying to figure out why. Why? We can't rely --
18 like he said, we can't rely on it for any finding or
19 conclusion.

20 **COMMISSIONER BROWN:** I agree.

21 Mr. Saylor.

22 **MR. SAYLER:** That was my purpose, to put it in
23 there so that the Commission knew that we are doing it.
24 I'm not offering it for the matter of the truth thereof.

25 **COMMISSIONER BROWN:** Well, then there is no

1 need for it. I'm granting the motion, and I think that 000030
2 that would be futile at this juncture, if that was the
3 purpose.

4 **MR. SAYLER:** Thank you.

5 **COMMISSIONER BROWN:** Okay. We don't need to
6 address that issue, then. Are there any other issues
7 that need to be addressed today?

8 **MR. FRIEDMAN:** We don't have any. Thank you.

9 **COMMISSIONER BROWN:** Well, Godspeed. Work
10 hard. Best of luck.

11 **MR. FRIEDMAN:** Eventually we'll get there.

12 **COMMISSIONER BROWN:** Best of luck to you. I'm
13 watching you all. Thank you.

14 **MR. SAYLER:** Thank you, Commissioner.

15 **COMMISSIONER BROWN:** This concludes this
16 meeting.

17 (The oral argument concluded at 3:33 p.m.)
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STATE OF FLORIDA)
 :
COUNTY OF LEON)

000031

CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, 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 23rd day of August, 2013.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732