

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 130007-EI

ENVIRONMENTAL COST RECOVERY
CLAUSE.

_____ /

PROCEEDINGS: PREHEARING

COMMISSIONERS
PARTICIPATING: COMMISSIONER EDUARDO E. BALBIS
PREHEARING OFFICER

DATE: Thursday, October 17, 2013

TIME: Commenced at 9:55 a.m.
Concluded at 10:22 a.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:

2 JOHN T. BUTLER, WILLIAM P. COX, MARIA J.
3 MONCADA, and R. WADE LITCHFIELD, ESQUIRES, 700
4 Universe Blvd., Juno Beach, Florida 33408-0420, on
5 behalf of Florida Power and Light Company.

6 JAMES D. BEASLEY, J. JEFFRY WAHLEN, and
7 ASHLEY M. DANIELS, ESQUIRES, Ausley Law Firm, Post
8 Office Box 391, Tallahassee, Florida 32302, appearing
9 on behalf of Tampa Electric Company.

10 JEFFREY A. STONE, RUSSELL A. BADDERS and
11 STEVEN R. GRIFFIN, ESQUIRES, Beggs & Lane, Post
12 Office Box 12950, Pensacola, Florida 32591, appearing
13 on behalf of Gulf Power Company.

14 JOHN T. BURNETT, DIANE TRIPLETT, and MATT
15 VERMEER, ESQUIRES, Post Office Box 14042, St.
16 Petersburg, Florida 33733, appearing on behalf of
17 Duke Energy Florida, Inc.

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

1 APPEARANCES (Continued):

2 GARY V. PERKO, ESQUIRE, Hopping Law Firm,
3 Post Office Box 6526, Tallahassee, Florida 32314,
4 appearing on behalf of Duke Energy Florida, Inc.

5 J.R. KELLY, PUBLIC COUNSEL, CHARLES
6 REHWINKEL, JOE MCGLOTHLIN, and PATRICIA A.
7 CHRISTENSEN, ESQUIRES, Office of Public Counsel, c/o
8 The Florida Legislature, 111 West Madison Street,
9 Room 812, Tallahassee, Florida 32399-1400, appearing
10 on behalf of the Citizens of Florida.

11 JAMES W. BREW and F. ALVIN TAYLOR,
12 ESQUIRES, PCS Phosphate - White Springs, c/o
13 Brickfield Law Firm, 1025 Thomas Jefferson Street,
14 NW, Eighth Floor, West Tower, Washington, DC 20007,
15 appearing on behalf of PCS Phosphate - White Springs.

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

1 APPEARANCES (Continued):

2 CHARLES MURPHY, ESQUIRE, FPSC General
3 Counsel's Office, 2540 Shumard Oak Boulevard,
4 Tallahassee, Florida 32399-0850, appearing on behalf
5 of the Florida Public Service Commission Staff.

6 MARY ANNE HELTON, DEPUTY GENERAL COUNSEL,
7 Florida Public Service Commission, 2540 Shumard Oak
8 Boulevard, Tallahassee, Florida 32399-0850, Advisor
9 to the Florida Public Service Commission.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

1
2 **COMMISSIONER BALBIS:** Good morning. Welcome
3 to the clause prehearing conference.

4 We are going to discuss five dockets today:
5 Docket Number 130002 with the energy conservation
6 clause; 130003, the purchased gas adjustment clause;
7 130004, natural gas conservation clause; 130007,
8 environmental cost-recovery clause; and 130001, the fuel
9 and purchased power cost recovery clause.

10 So I would like to call this hearing to order,
11 and, staff, could you please read the notice.

12 **MS. TAN:** By notice issued September 27th,
13 2013, this time and place is set for a prehearing
14 conference in the following dockets: 130001-EI,
15 130002-EG, 130003-GU, 130004-GU, and 130007-EI. The
16 purpose of the prehearing conference is set out in the
17 notice.

18 **COMMISSIONER BALBIS:** Okay, thank you. And
19 now if we can take appearances.

20 **MR. BUTLER:** Shall I go?

21 **COMMISSIONER BALBIS:** Sure. But before we do
22 that, we have noted twice now that there are five
23 dockets to address today, and we are going to take all
24 the appearances at once. So you should enter your
25 appearance in which docket that you are entering an

1 appearance to. So, Mr. Butler.

2 **MR. BUTLER:** Thank you. John Butler appearing
3 on behalf of Florida Power and Light Company in the 01,
4 02, and 07 dockets. I would also like to enter an
5 appearance for Ken Rubin in the 01 and 02 dockets; and
6 for William P. Cox and Maria Moncada in the 07 docket;
7 and, finally, for Wade Litchfield in the 1, 2, and 7
8 dockets. Thank you.

9 **MR. BADDERS:** Good morning. I'm Russell
10 Badders on behalf of Gulf Power entering an appearance
11 in the 01, 02, and 07 dockets for myself, Jeffrey A.
12 Stone, and Steven Griffin.

13 **MS. TRIPLETT:** Good morning. Dianne Triplett
14 on behalf of Duke Energy Florida appearing in the 01,
15 02, and 07 dockets. In those dockets I would also like
16 to enter an appearance for John Burnett and Matt Vermeer
17 (phonetic), and in the 07 docket for Gary Perko with the
18 Hopping Green firm. Thank you.

19 **MR. BEASLEY:** Good morning, Commissioner. Jim
20 Beasley along with Jeff Wahlen and Ashley Daniels of the
21 law firm of Ausley and McMullen appearing on behalf of
22 Tampa Electric Company in the 01, 07, and 02 dockets.

23 **MR. JACOBS:** Good morning, Commissioner. My
24 name is Leon Jacobs. I'm appearing on behalf of
25 Southern Alliance for Clean Energy along with George

1 Cavros, and that's in the 02 docket.

2 **MR. REHWINKEL:** Good morning, Commissioner.
3 Charles Rehwinkel and Joe McGlothlin with the Office of
4 Public Counsel, and Patty Christensen. Patty
5 Christensen and I are making an appearance in all
6 dockets, and Mr. McGlothlin is in the 01 and 07 dockets.

7 **MR. WRIGHT:** Good morning, Commissioner.
8 Robert Scheffel Wright and John T. LaVia, III, appearing
9 in the 0001 docket on behalf of the Florida Retail
10 Federation. We are also appearing in the 0007 docket on
11 behalf of DeSoto County Generating Company.

12 **MR. BREW:** Good morning, Commissioner. James
13 Brew and F. Alvin Taylor for White Springs Agricultural
14 Chemicals, PCS Phosphate. And we are appearing in the
15 01, 02, and 07 dockets.

16 **MR. MOYLE:** Good morning. Jon Moyle with the
17 Moyle law firm on behalf of the Florida Industrial Power
18 Users Group, FIPUG. I would also like to enter an
19 appearance for Karen Putnal with our firm, and we are in
20 the 01, 02, and 07 dockets.

21 **MR. KEATING:** Good morning, Commissioner.
22 Beth Keating with the Gunster law firm. I'm here today
23 for FPUC in the 01 and 02 dockets, for FPUC and Florida
24 City Gas in the 03 docket, and for FPUC, Indiantown,
25 Florida Division of Chesapeake Utilities, and Florida

1 City Gas in the 04 docket.

2 **MR. HORTON:** Commissioner, Norman H. Horton,
3 Jr., appearing in the 04 docket for Sebring Gas.

4 **MS. TAN:** And Lee Eng Tan for the 02 docket.

5 **MR. LAWSON:** Mike Lawson for the 03 docket.

6 **MS. CORBARI:** Kelley Corbari, the 04 docket.

7 **MR. MURPHY:** Charles Murphy for the 07 docket.

8 **MS. BARRERA:** Martha Barrera and Julie Gilcher
9 for the 01 docket.

10 **MS. HELTON:** And Mary Anne Helton advising you
11 in all the dockets.

12 **COMMISSIONER BALBIS:** Okay, thank you. And
13 I'm just curious as to why Ms. Keating has been banished
14 to the --

15 **MR. KEATING:** I know, right?

16 **COMMISSIONER BALBIS:** -- witness stand.

17 (Audience laughter.)

18 * * * * *

19 **COMMISSIONER BALBIS:** Okay. We will now move
20 on to the 130007 docket, which is the environmental
21 cost-recovery clause docket.

22 And, Mr. Murphy, there you are. Are there any
23 preliminary parties that we need to address?

24 **MR. MURPHY:** Only that the parties have been
25 able to resolve all issues that will be heard by the

1 Commission in November, and the ones that remain will be
2 heard by the Commission in December.

3 **COMMISSIONER BALBIS:** Okay. And if any of the
4 parties object to that, now would be the time. Okay.
5 We are going to proceed through the draft prehearing
6 order. We are going start with Section X, proposed
7 stipulations, at this time, which I believe Mr. Murphy
8 already handled with the preliminary matters, but if you
9 just want to --

10 **MR. MURPHY:** Can we just take them in order
11 from the beginning, at this point?

12 **COMMISSIONER BALBIS:** Okay. I was just
13 following the script that you provided me, Mr. Murphy.

14 **MR. MURPHY:** That's an earlier version of it.

15 **COMMISSIONER BALBIS:** Okay.

16 (Audience laughter.)

17 **MR. MURPHY:** That was when there was some
18 uncertainty.

19 **COMMISSIONER BALBIS:** Are there any other
20 changes that I might need to know about?

21 **MR. MURPHY:** Just roll with it, it will be
22 fun.

23 (Audience laughter.)

24 **COMMISSIONER BALBIS:** All right. Let's try
25 this again.

1 Section I, case background. Are there any
2 questions or comments?

3 Hearing none, Section II, conduct of
4 proceedings.

5 Section III, jurisdiction.

6 Section IV, procedure for handling
7 confidential information.

8 Section V, prefiled testimony and exhibits;
9 witnesses.

10 Section VI, order of witnesses.

11 **MR. MURPHY:** Commissioner, witnesses can be
12 excused from the hearing. If a witness who has
13 testified about FPL's NO2 Project is excused from the
14 November hearing, the prehearing order will reflect
15 their participation in the December hearing. Staff will
16 work to confirm with each Commissioner whether they want
17 to cross-examine any of the witnesses before they are
18 excused by the Prehearing Officer, and prefiled
19 testimony and exhibits of excused witnesses will be
20 identified and admitted into the record.

21 **MR. BUTLER:** Commissioner Balbis, I have one
22 small change on the issues that are identified for
23 rebuttal of the FPL witnesses on Page 5.

24 For Mr. LaBauve, Issue 9 shouldn't appear as a
25 rebuttal issue. That's only an issue for his direct

1 testimony.

2 **COMMISSIONER BALBIS:** I didn't hear that last
3 part, I'm sorry.

4 **MR. BUTLER:** Issue 9 for FPL Witness LaBauve
5 on Page 5, rebuttal, should be deleted. He only
6 testifies on Issue 9 with his direct testimony.

7 Thank you.

8 **COMMISSIONER BALBIS:** Okay. And I probably
9 should have started with this. Obviously, I signed an
10 order yesterday. I mean, we had requests for
11 surrebuttal testimony to be provided, and in order to
12 allow the parties to respond to that, prepare the
13 surrebuttal testimony and respond to surrebuttal
14 testimony, I have scheduled a continuance of the hearing
15 just limited to the testimony, the surrebuttal testimony
16 that's provided.

17 So I should have started with that, and I
18 appreciate the parties working together and coming up
19 with a resolution, because I certainly want to make sure
20 that everyone has their due process rights preserved.
21 So I assume that no one has any objections to that
22 ruling. And, again, I just wanted to thank everyone for
23 working together on that.

24 Okay. So I believe we are on Section VI.

25 **MR. MOYLE:** Can I ask a clarifying question on

1 that?

2 **COMMISSIONER BALBIS:** Sure.

3 **MR. MOYLE:** We had talked informally about
4 working with each other on witnesses for the issues that
5 remain in dispute that I think are now going to be heard
6 in December. And am I correct in assuming that this
7 prehearing order will likewise govern the proceeding in
8 December, or will there be another way of handling that?

9 **COMMISSIONER BALBIS:** It's my understanding,
10 and staff can correct me if I'm wrong, that this
11 prehearing order will apply to both.

12 **MR. MURPHY:** Yes, sir. This is the only
13 prehearing that we'll have, and this order would govern
14 both. I anticipate that with the issues that the
15 stipulations would move up to the issues section except
16 for the issues that are in December, and then those
17 would be set for there in the issues section.

18 **MR. MOYLE:** Okay.

19 **COMMISSIONER BALBIS:** Okay. And I think we
20 are on Section VI, order of witnesses.

21 **MR. MOYLE:** Yes. I guess the only point I
22 would make is that we had worked, and we have all worked
23 well with each other on scheduling witnesses to the
24 extent there are expert witnesses having to come in from
25 out of town. FIPUG has a witness that we may seek that

1 accommodation from the parties, but we'll just work
2 informally to try to make sure that can take place
3 without a problem.

4 **COMMISSIONER BALBIS:** And would this be for
5 the November or the December?

6 **MR. MOYLE:** December.

7 **COMMISSIONER BALBIS:** Okay. But you're not
8 proposing to go outside of the 19th or 20th dates?

9 **MR. MOYLE:** No.

10 **COMMISSIONER BALBIS:** Just the order of that?

11 **MR. MOYLE:** Right.

12 **COMMISSIONER BALBIS:** Okay.

13 **MR. WRIGHT:** Commissioner, DeSoto is in the
14 same boat. One of our witnesses is only available on
15 December 19th. But we have always worked this out;
16 we'll do it this time.

17 **COMMISSIONER BALBIS:** Okay.

18 **MR. WRIGHT:** Thank you.

19 **MR. BUTLER:** And FPL may jump into that boat,
20 as well, but we'll be happy to work with the other
21 parties to be sure that we can accommodate all of the
22 witnesses' schedules.

23 **COMMISSIONER BALBIS:** Okay. Well, I'm sure
24 the parties understand the 19th and 20th were very
25 difficult to obtain, so as long as we stay within those

1 two days it shouldn't be an issue.

2 **MR. BUTLER:** That's what we are planning to
3 do. It's just the order of the witnesses within those
4 days that might shift around.

5 **COMMISSIONER BALBIS:** Okay. All right. Any
6 other questions or comments on order of witnesses?

7 We will move on to Section VII, basic
8 positions. Any questions, comments, or changes to the
9 parties' basic positions?

10 **MR. MOYLE:** FIPUG would have some supplemental
11 information to put for its basic position and would ask
12 that we be given until, say, noon tomorrow to provide
13 that to staff.

14 **COMMISSIONER BALBIS:** Yes, I don't have a
15 problem with that.

16 **MR. MOYLE:** Okay.

17 **COMMISSIONER BALBIS:** Any other comments?
18 Section VIII, issues and positions.

19 **MR. MURPHY:** Commissioner, Issues 10, 10A
20 through C, and 11 will be addressed during the December
21 hearing. The status of Proposed Issue 10D will need to
22 be decided.

23 **COMMISSIONER BALBIS:** And my question for the
24 parties for those issues that will be addressed in the
25 December hearing, do you need additional time to look at

1 your positions on those and possibly change them, or is
2 everyone comfortable with what they are at this time?

3 **MR. BUTLER:** We may end up needing to address
4 our issues after the surrebuttal testimony has been
5 filed, our positions on the issues. I believe that was
6 anticipated by your order issued yesterday, so we will
7 do it by the deadline that is set in that order.

8 **COMMISSIONER BALBIS:** Okay. Any other
9 comments on issues and positions?

10 **MR. MURPHY:** I would reiterate that the
11 stipulations would move up there for the November part
12 of this, and then the December ones would remain still
13 in contention, or still at issue.

14 **MR. BUTLER:** FPL has not yet provided a
15 position. It doesn't look like much of anybody has
16 other than FIPUG on their Proposed Issue 10D. We can do
17 that by the end of the day.

18 **COMMISSIONER BALBIS:** Okay. And I will rule
19 on that today, so it will give you enough time.

20 **MR. BUTLER:** Okay.

21 **MR. MOYLE:** The rule on the --

22 **COMMISSIONER BALBIS:** Whether or not the
23 Proposed Issue 10D is to be included or not. It's my
24 understanding that's in dispute, or no?

25 **MR. MOYLE:** Well, I thought maybe we would

1 talk about it today.

2 **COMMISSIONER BALBIS:** Yes. When I get to the
3 rulings section I was going to get to that.

4 **MR. MOYLE:** Okay. So we will be heard on that
5 later today. I just want to be clear. We will have a
6 chance to talk about the Issue 10D --

7 **COMMISSIONER BALBIS:** Yes.

8 **MR. MOYLE:** -- we'll just do it later.

9 **COMMISSIONER BALBIS:** Yes.

10 **MR. MOYLE:** Okay.

11 **COMMISSIONER BALBIS:** In about two minutes, I
12 think.

13 **MR. MOYLE:** Okay.

14 **MR. REHWINKEL:** Commissioner, as far as the
15 position on this, the Office of Public Counsel would not
16 be prepared to provide a position until noon tomorrow --

17 **COMMISSIONER BALBIS:** Okay.

18 **MR. REHWINKEL:** -- regardless if the issue
19 stays in.

20 **COMMISSIONER BALBIS:** Okay, thank you. Okay.
21 Now let's move on to Section IX, the exhibit list.

22 **MR. MURPHY:** Staff will prepare a
23 comprehensive exhibit list for the purpose of numbering
24 and identifying the exhibits at hearing. Staff will
25 provide the exhibit list to the parties as soon as

1 possible.

2 **COMMISSIONER BALBIS:** Okay, thank you.

3 Section X, proposed stipulations.

4 **MR. MURPHY:** All issues that will be before
5 the Commission in November have been resolved. Those
6 are Issues 1 through 9 and 12 through 17.

7 **MR. BUTLER:** Sorry, Commissioner Balbis. I'm
8 struggling to keep up with your rapid pace.

9 On Page 35 of the exhibit list, Mr. Enjamio's
10 Exhibit JEE-6 appears as one of the direct testimony
11 exhibits. It should be deleted there because it appears
12 properly over on Page 38 as a rebuttal exhibit.

13 **COMMISSIONER BALBIS:** Okay.

14 **MR. WRIGHT:** Commissioner, I don't think this
15 is material, but since we, DeSoto County Generating
16 Company, will be filing surrebuttal testimony, we almost
17 certainly will be filing some surrebuttal exhibits. I
18 don't know if you want to include a placeholder sentence
19 in the prehearing order that says DeSoto plans to file
20 surrebuttal exhibits on October 23. If you do, that's
21 fine. If you don't, as long as it's understood that we
22 will be doing so, that's fine also.

23 **COMMISSIONER BALBIS:** Yes, I could note that
24 in the prehearing order.

25 **MR. WRIGHT:** Thank you.

1 **COMMISSIONER BALBIS:** Okay. Any other changes
2 to the exhibit list?

3 Okay. And I believe we covered Section X,
4 proposed stipulations. Any questions or comments on
5 that?

6 Section XI, pending motions.

7 **MR. MURPHY:** There are no pending motions.

8 **COMMISSIONER BALBIS:** Okay. Section XII,
9 pending confidentiality motions.

10 **MR. MURPHY:** There are three pending
11 confidentiality motions which staff will address before
12 the November hearing.

13 **MR. BUTLER:** May I ask, Mr. Murphy, are you
14 including on your list of three the notice of intent
15 that FPL filed yesterday in connection with late-filed
16 exhibits from the depositions?

17 **MR. MURPHY:** I'm not.

18 **MR. BUTLER:** Okay. This will make it four. I
19 can provide you the information. We filed a notice of
20 intent to request confidential classification for
21 Mr. Yaeger's Late-filed Exhibit 3/4 that was filed on
22 October 15, and I can provide you the information.

23 **MR. MURPHY:** Okay. Thank you.

24 **MR. WRIGHT:** And, Commissioner, DeSoto will be
25 filing or submitting and serving today some discovery

1 responses. I believe that some of the information
2 contained in those responses will be confidential, and
3 accordingly we will be filing a notice to request
4 confidential classification, as well.

5 **COMMISSIONER BALBIS:** Okay.

6 **MR. WRIGHT:** Thank you.

7 **MR. MOYLE:** And just taking a review, I'm not
8 sure -- Mr. Pollock is filing testimony on the disputed
9 issues that will be heard in December, and it appears
10 that his exhibits that he filed with his prefiled
11 testimony are not picked up in the exhibits. But I will
12 get with staff and make sure those are properly
13 reflected in the exhibit section.

14 **COMMISSIONER BALBIS:** Okay.

15 We will move on to Section XIII, post-hearing
16 procedures. Note for the December hearing, briefs will
17 be due on January 13th. Hopefully the parties are okay
18 with that.

19 Section -- I'm sorry, did someone --

20 **MR. REHWINKEL:** Commissioner, before we leave
21 on the positions on the issues, the Public Counsel had
22 some no position at this time in here, and by default
23 those would revert to no position under the rules. And
24 we're happy with that except for Issue 16. To the
25 extent that issue remains, we would have to say no on

1 that one. So Issue 16 our position would be no. And
2 then everything else, all the other issues where we are
3 no position at this time, it would default to no
4 position.

5 **MR. MURPHY:** Commissioner, just for
6 clarification, you are still not opposed to the
7 stipulation of 16?

8 **MR. McGLOTHLIN:** Well, I think we need some --
9 this is Joe McGlothlin. I think we need some
10 clarification from Gulf on that. Because I think the
11 parties are aware, upon our motion the three dockets
12 have been consolidated with the rate case, and yet in
13 this position statement there are references to the
14 transmission upgrade projects that have been rolled into
15 that consolidated matter.

16 **MR. MURPHY:** Commissioner, with your
17 permission. My understanding is that if we're talking
18 about the transmission, that is in the rate case now.
19 That is no longer in the -- that those numbers are not
20 included in this at this time. At least that's what
21 staff has told me. Can Gulf confirm that those
22 numbers --

23 **MR. BADDERS:** That is correct. And this is
24 not intended to do any damage to the process that we
25 have set up as far as the consolidation or anything that

1 will be handled either in the rate case or in the 92
2 docket.

3 **MR. MCGLOTHLIN:** I think in terms of the
4 clarity of the prehearing order, if we can have that
5 reflected in some way, I think that would be an
6 improvement.

7 **COMMISSIONER BALBIS:** I agree. I think it
8 should be stricken, and if you want to reword it and get
9 it to staff and the parties it would be clearer.

10 **MR. BADDERS:** We will work with Public Counsel
11 and staff to modify that.

12 **MR. REHWINKEL:** Assuming that, then we will be
13 in a no position or nonobjection Type II stipulation
14 mode on Issue 16, as well.

15 **COMMISSIONER BALBIS:** Okay.

16 **MR. REHWINKEL:** Thank you.

17 **COMMISSIONER BALBIS:** Okay. Any questions on
18 Section XIII or what we have covered thus far? Okay.

19 So we will move on to Section XIV. And I
20 wanted at this time to discuss the Proposed Issue 10D,
21 and I'd like to hear from the parties, because I
22 understand there is some dispute on this issue. So
23 whose ever issue this was can start, I believe, Mr.
24 Moyle.

25 **MR. MOYLE:** Thank you. This is an issue that

1 FIPUG has put forward. And I think it always helps to
2 step back and consider, you know, the framework, where
3 we are. We have had a lot of issues that have been
4 stipulated today, but these proceedings are kind of set
5 up under Chapter 120 to consider disputed issues of fact
6 if they arise.

7 There is also the legal issues, but the issue
8 that FIPUG has put forward, FPL is seeking through the
9 environmental cost-recovery clause to recover
10 \$825 million associated with new combustion turbine
11 units, and we are opposed to that, Public Counsel is
12 opposed to it, and we are opposed to it on arguments
13 that the clause does not contemplate that. It's not
14 something that is legally permissible through the
15 clause.

16 But then FIPUG is in a bit of a unique
17 position that we also would argue that it is not
18 something that can be authorized, given the settlement
19 agreement that was entered into with FPL last year. And
20 so it's a different argument, and it's contractually
21 based, but nevertheless it's an argument that we think
22 is appropriate to put forward in this docket.

23 And so the issue that FIPUG has proposed
24 simply calls that out with specificity to bring to the
25 Commission's attention, the contractual argument to say,

1 well, you know, it's kind of like even if all this was
2 something that could be done under the law, which we
3 don't think it is, but even if you assume that, we are
4 arguing that it's contractually prohibited and precluded
5 by the settlement agreement. Specifically, the language
6 found in Paragraph 6 of the settlement agreement that is
7 set forth in the proposed issue.

8 So we think it's wholly appropriate to be
9 considered at this point in time. It has a direct
10 impact on FIPUG's members, and we negotiated a
11 settlement agreement that provided for a stay out in a
12 rate freeze, and there was language that said -- I will
13 paraphrase, but that essentially there wouldn't be
14 efforts to recover things through clauses that had not
15 historically, traditionally been recovered through
16 clauses. And we don't believe historically and
17 traditionally power plants have been recovered through
18 clauses, and, you know, believe that the answer to the
19 breach of contract question will be FPL is precluded
20 contractually from continuing to seek recovery of these
21 power plants through the environmental cost-recovery
22 clause.

23 So I hope that gives you some insight and
24 background into the issue, and why we have put it
25 forward.

1 **COMMISSIONER BALBIS:** Okay, thank you. And to
2 the party that is disputing this, I believe, Mr. Butler.

3 **MR. BUTLER:** Thank you, Mr. Commissioner.

4 We actually find the issue kind of unholy, but
5 putting that aside, we are not opposed to having this as
6 an issue. We think it's really a legal issue in that it
7 is asking contract interpretation questions. Obviously,
8 it is being raised very late in the game after the point
9 when all the testimony that could have addressed it has
10 already been prefiled. So I think that it is kind of an
11 awkward position for being something that would be
12 addressed factually at the hearing, but we'll take a
13 position on it as it is written.

14 Mr. Moyle took advantage of the opportunity to
15 tell you why he thinks that it is contractually
16 precluded, and I will just say that briefly that there
17 is other language in the same paragraph of the
18 settlement agreement which FPL believes makes it pretty
19 clear that this is recoverable consistent with the terms
20 of the settlement, and that is what we will be
21 reflecting in our position. Thank you.

22 **COMMISSIONER BALBIS:** Thank you, Mr. Butler.
23 And I wouldn't be concerned. I have a convenient
24 memory, so I just ignored all that part that he stated.
25 But I appreciate your position on this. And are there

1 any other parties that are disputing this? And, if so,
2 now would be the time to discuss it.

3 **MR. MOYLE:** And it sounds just -- it doesn't
4 sound like it's a dispute, maybe just, you know, I'm not
5 sure that it is disputed after hearing Mr. Butler, so we
6 appreciate FPL's willingness to have it teed up.

7 **COMMISSIONER BALBIS:** Mr. Butler, to your
8 comment on being added late in the game, I believe the
9 order establishing procedure allows for issues to be
10 added up to the prehearing conference, if I'm not
11 mistaken. Staff can correct me on that.

12 **MR. MURPHY:** That's correct.

13 **COMMISSIONER BALBIS:** Okay. So I know it came
14 in late, but, you know, this is -- I don't want to say
15 unusual procedurally how we are having the separate
16 hearings, but I'll allow some leeway. I do think it is
17 a valid issue. Will additional time be needed to
18 develop positions from the parties on this issue?

19 **MR. REHWINKEL:** The Public Counsel, as I said,
20 will need probably until noon tomorrow to provide a
21 position and we are formulating one right now.

22 **COMMISSIONER BALBIS:** Okay. Does noon
23 tomorrow work for everyone?

24 **MR. WRIGHT:** Yes, sir. Thank you.

25 **MR. BUTLER:** That's fine for FPL, as well.

1 **COMMISSIONER BALBIS:** Okay. All right. So I
2 will include Issue 10D, and the parties will have until
3 noon tomorrow to provide positions to staff on that.

4 Okay. As far as other rulings, again, to be
5 consistent, opening statements will be limited to five
6 minutes per party. Now would be the time for parties to
7 object or request additional time, and you can always
8 waive your right to opening statements.

9 **MR. BUTLER:** Commissioner Balbis, will that
10 five minute limit apply to the December 19/20 hearing on
11 the NO2 Compliance Project?

12 **COMMISSIONER BALBIS:** Yes.

13 **MR. BUTLER:** I'm thinking that we might like
14 to see a little bit more time for opening statements on
15 that just because it's a relatively complex project,
16 it's going to be, kind of, the focus of that hearing,
17 and if you could expand that to ten minutes. We might
18 not need all of it, but I would be more comfortable with
19 that.

20 **COMMISSIONER BALBIS:** Okay. Any objections to
21 ten minutes from the parties? Okay. Hearing none, I
22 will rule that for the November hearing it be limited to
23 five minutes, and for December, ten minutes.

24 **MR. BUTLER:** Thank you.

25 **COMMISSIONER BALBIS:** Okay. Other matters.

1 Are there any other matters to address in this
2 prehearing conference?

3 **MR. MURPHY:** Yes, Commissioner. For
4 clarification, it is staff's understanding that after
5 completing the record, the November hearing will be
6 continued until December, when a separate hearing will
7 be conducted on the FPL NO2 Project. The November
8 hearing exhibits and prefiled testimony along with the
9 December live testimony and any exhibits that are
10 accepted at the December hearing will form the record of
11 the December hearing. Is that the parties'
12 understanding, as well?

13 **MR. BUTLER:** It is for FPL, yes. And just to
14 clarify, the intent is to move forward in reaching
15 resolution on the issues, is it 1 through 9, and the
16 issues other than the 10 series and 11 based on the
17 record that is developed at the November 4 to 6 hearing,
18 correct?

19 **MR. MURPHY:** Yes. And as I understand it, a
20 final order would be issued on those issues, and then a
21 second final order would be for the NO2 Project.

22 **MR. BUTLER:** That sounds good to us.

23 **COMMISSIONER BALBIS:** Is everyone okay with
24 that?

25 **MR. MURPHY:** Commissioner, one more thing.

1 **COMMISSIONER BALBIS:** Sure.

2 **MR. MURPHY:** I just want to apologize for
3 sending you through this with a bad script. There's
4 user error on the word processing.

5 **COMMISSIONER BALBIS:** That's okay. I think we
6 have all been pretty busy lately.

7 All right. Are there any other matters to
8 discuss in this docket?

9 **MR. MOYLE:** FIPUG is fine with the process on
10 that. Two final orders seems a little unusual. I
11 just -- you know, we can talk about that maybe offline,
12 but I don't know how you have two final orders in a
13 single docket.

14 **COMMISSIONER BALBIS:** Mr. Murphy.

15 **MR. MURPHY:** Yes. I think the intent of not
16 opening a second docket was to maintain the record that
17 we have. And I think we can have a final order, an
18 order that is final with respect to the issues that have
19 been stipulated, and that was the purpose of including
20 the subject to true-up portion of this, so that we could
21 go forward with a hard deadline of January on the
22 factors that are necessary for these companies.

23 The other final order would be strictly with
24 respect to the issues on the NO2, and those numbers to
25 the extent that they resulted in fallout numbers in the

1 previous one would be subject to true-up on the original
2 numbers.

3 **MR. MOYLE:** Okay.

4 **MR. MURPHY:** It is unusual.

5 **MR. MOYLE:** Thank you.

6 **MR. MURPHY:** Yes.

7 **COMMISSIONER BALBIS:** And although it is
8 unusual, again, I want to thank staff and also the
9 parties, I mean, that we try to be creative in ways to
10 maintain everyone's due process rights and make sure
11 that these factors are set and no one is harmed by this.
12 So I appreciate everyone's flexibility on that.

13 Are there any other matters to discuss in this
14 docket?

15 Hearing none, I would like to adjourn the
16 prehearing in the 07 docket and then move on to the 01
17 docket.

18 * * * * *

1 STATE OF FLORIDA)

000030

2 : CERTIFICATE OF REPORTER


3 COUNTY OF LEON)

4
5 I, JANE FAUROT, RPR, Chief, Hearing
6 Reporter Services Section, FPSC Division of
7 Commission Clerk, do hereby certify that the
8 foregoing proceeding was heard at the time and place
9 herein stated.

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

16
17 I FURTHER CERTIFY that I am not a relative,
18 employee, attorney or counsel of any of the parties,
19 nor am I a relative or employee of any of the
20 parties' attorney or counsel connected with the
21 action, nor am I financially interested in the
22 action.

23
24 DATED THIS 18th day of October, 2013.

25


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