

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150075-EI

PETITION FOR APPROVAL OF  
ARRANGEMENT TO MITIGATE IMPACT  
OF UNFAVORABLE CEDAR BAY POWER  
PURCHASE OBLIGATION, BY  
FLORIDA POWER & LIGHT COMPANY.

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER  
PARTICIPATING: JIMMY PATRONIS  
PREHEARING OFFICER

DATE: Monday, July 6, 2015

TIME: Commenced at 1:30 p.m.  
Concluded at 2:05 p.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 JOHN T. BUTLER, KEVIN I.C. DONALDSON and MARIA  
3 MONCADA, ESQUIRES, 700 Universe Boulevard, Juno Beach,  
4 Florida 33408-0420, on behalf of Florida Power & Light  
5 Company.

6 ANNA H. UPTON, ESQUIRE, 9005 Eagles Ridge  
7 Drive, Tallahassee, Florida 32312, on behalf of Florida  
8 Audubon Society.

9 JON C. MOYLE, JR. and VICKI GORDON KAUFMAN,  
10 ESQUIRES, Moyle Law Firm, P.A., 118 North Gadsden  
11 Street, Tallahassee, Florida 32301, appearing on behalf  
12 of Florida Industrial Power Users Group.

13 ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA, III,  
14 ESQUIRES, Gardner, Bist, Bowden, Bush, Dee, LaVia &  
15 Wright, P.A., 1300 Thomaswood Drive, Tallahassee,  
16 Florida 32308, appearing on behalf of Cedar Bay  
17 Generating Company, LP.

18 CHARLES REHWINKEL, DEPUTY PUBLIC COUNSEL, and  
19 JOHN J. TRUITT, ESQUIRE, Office of Public Counsel, c/o  
20 the Florida Legislature, 111 W. Madison Street, Room  
21 812, Tallahassee, Florida 32399-1400, appearing on  
22 behalf of the Citizens of the State of Florida.

23 MARTHA BARRERA and JOHN VILAFRATE, ESQUIRES,  
24 FPSC General Counsel's Office, 2540 Shumard Oak  
25 Boulevard, Tallahassee, Florida 32399-0850, appearing on

1       behalf of the Florida Public Service Commission Staff.

2                   MARY ANNE HELTON, DEPUTY GENERAL COUNSEL,  
3       Advisor to the Commission, Florida Public Service  
4       Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
5       Florida 32399-0850.

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

1  
2           **COMMISSIONER PATRONIS:** Good afternoon.

3 Welcome to this prehearing. I'm Jimmy Patronis, and  
4 welcome to my first prehearing as a Commissioner at the  
5 Florida Public Service Commission.

6           At this time I'll ask staff to please read  
7 the notice.

8           **MS. BARRERA:** This prehearing -- a prehearing  
9 has been scheduled for July 6th, 2015, to discuss the  
10 issues that will be dealt with at the case -- at the  
11 hearing in this matter. Sorry.

12           **COMMISSIONER PATRONIS:** Okay. Thank you.  
13 Let's go ahead and take appearances. If we could have  
14 those introductions, please.

15           **MR. BUTLER:** Thank you, Commissioner Patronis.  
16 John Butler appearing on behalf of Florida Power & Light  
17 Company. Also enter an appearance for Kevin Donaldson  
18 and Maria Moncada for FPL.

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

20           **MR. BUTLER:** Thank you.

21           **MR. WRIGHT:** Thank you, Commissioner. Robert  
22 Scheffel Wright, Gardner, Bist law firm. I'm appearing  
23 subject to a notice of limited appearance to protect the  
24 interests of Cedar Bay Generating Company and its  
25 confidential information. I'd also like to enter an

1 appearance for my law partner John T. LaVia, III.

2 **COMMISSIONER PATRONIS:** Okay.

3 **MR. WRIGHT:** Thank you.

4 **MS. UPTON:** Hi. My name is Anna Upton. I'm  
5 here on behalf of Florida Audubon Society, who's seeking  
6 to intervene in the matter.

7 **MS. KAUFMAN:** Good afternoon, Commissioner.  
8 Vicki Gordon Kaufman. I am here on behalf of the  
9 Florida Industrial Power Users Group, and I would like  
10 to enter an appearance for Jon Moyle.

11 **COMMISSIONER PATRONIS:** Okay.

12 **MR. TRUITT:** John Truitt with the Office of  
13 Public Counsel. I'd also like to enter an appearance  
14 for Charles Rehwinkel.

15 **COMMISSIONER PATRONIS:** Okay.

16 **MS. BARRERA:** Martha Barrera on behalf of  
17 Commission staff. And I would also like to enter an  
18 appearance for John Villafrate.

19 **COMMISSIONER PATRONIS:** Okay.

20 **MS. HELTON:** And Mary Anne Helton, advisor to  
21 the Commission.

22 **COMMISSIONER PATRONIS:** Okay. Thank you.

23 Well, welcome. We actually have some  
24 preliminary matters we need to address first. We've got  
25 two motions. Let's go ahead and take up the first

1 motion.

2 And, FP&L, if you'll present your concerns.

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

4 Yes. FPL has filed a motion to include some  
5 counter designations to the deposition transcript of  
6 Witness Stephen Mark Rudolph in this proceeding. And  
7 basically a deposition was taken roughly a month ago of  
8 several of the Cogentrix/Cedar Bay personnel,  
9 Mr. Rudolph being one of them. There was an agreement  
10 that parties, if they wanted to designate portions of  
11 that deposition transcript for inclusion in the record,  
12 would be given an opportunity to do so, rather than  
13 including the entire deposition transcript in the  
14 record.

15 FIPUG identified certain portions of the  
16 transcript that they would like to designate into the  
17 record. We don't have any objection to that. But  
18 consistent with the usual rules of procedure and of  
19 evidence for counter designating portions that we feel  
20 need to be included for fairness, we have identified  
21 portions of Mr. Rudolph's deposition that we would  
22 counter designate. And, essentially, I conducted a  
23 brief cross-examination of Mr. Rudolph at the conclusion  
24 of FIPUG's examination. It was clarifying points that  
25 were raised in the testimony he gave in response to

1 FIPUG's questions, and that's the sole portion of the  
2 deposition that we're seeking to counter designate.

3 **COMMISSIONER PATRONIS:** Okay. Do you have a  
4 response?

5 **MS. KAUFMAN:** Yes. Thank you, Commissioner.  
6 Unfortunately, I'm pinch-hitting for Mr. Moyle. I'm not  
7 aware of, nor have I received, nor should I have  
8 received FPL's motion, so I don't know whether we object  
9 or not. And if we do, we will file an objection within  
10 the appropriate period.

11 **COMMISSIONER PATRONIS:** Okay. And we'll give  
12 you until Wednesday, July 8th, for a written, a written  
13 response. Okay. So we'll take that under  
14 consideration.

15 We have a second motion also with the attorney  
16 on behalf of Audubon, who set their motion with  
17 argument.

18 **MS. UPTON:** Thank you. Florida Audubon  
19 Society and its member -- and its members have a  
20 substantial interest in the outcome of this proceeding,  
21 and we are seeking intervention in this matter.

22 Florida Power & Light is seeking approval of a  
23 transaction that will result in the early retirement of  
24 a coal power plant. Coal power plants have known  
25 environmental impacts like air and water pollution that

1 degrade surrounding areas -- in this case, the St.  
2 John's River, the Broward River that our members use and  
3 enjoy the resources around. Continued operation of the  
4 plant will cause further environmental degradation, and,  
5 conversely, early retirement of the plant, which is what  
6 Florida Power & Light seeks to do, would be a great  
7 benefit to our members who utilize the surrounding  
8 resources. So Florida Audubon Society and its members  
9 pass the injury prong of the standing test.

10           Additionally, a great number of Florida  
11 Audubon Society's members utilize FPL as a power  
12 provider and are ratepayers themselves. For instance,  
13 Nassau County, we have 169 members. Nassau County is  
14 solely supplied by FPL, so all of our members in Nassau  
15 County are also ratepayers. And it's similar throughout  
16 the state; in the 32 counties that Florida Power & Light  
17 provide service, we have members. And so our members  
18 not only have an environmental interest, but  
19 environmental interest as ratepayers as well.

20           So we are interested in proceeding -- or  
21 intervening in these proceedings to protect Florida  
22 Audubon Society members' interests, and we'd like to  
23 highlight the environmental benefits that would come  
24 from the early retirement of the power plant.

25           We realize that the normal perspective that's

1 taken in a Public Service Commission hearing is from the  
2 ratepayers' point of view, but we'd like to point out  
3 that it is -- the guiding principle is what is in the  
4 public interest as a whole. And in Florida Power &  
5 Light's petition, they raise environmental impacts and  
6 benefits that we believe warrant consideration like the  
7 reduction of water use that would take place by taking  
8 this power plant out of commission and the reduction of  
9 CO2 emissions, which are huge benefits to the state as a  
10 whole.

11 **COMMISSIONER PATRONIS:** Just a point of  
12 information. How many members do y'all have in Nassau  
13 County?

14 **MS. UPTON:** In Nassau County it's 169 members.  
15 We have approximately 28,000 members throughout the  
16 state.

17 When it comes to CO2 emissions, they are not  
18 confined to the area where the plant is located. As you  
19 know, air pollution goes up into the air and it can  
20 affect the state as a whole, so.

21 **COMMISSIONER PATRONIS:** Okay. FPL, do y'all  
22 have a response?

23 **MR. BUTLER:** We don't object to their  
24 intervention. The representation about having members  
25 who are FPL customers satisfies many concerns we might

1 otherwise have.

2 **COMMISSIONER PATRONIS:** Okay.

3 **MS. KAUFMAN:** Commissioner? I'm sorry.

4 **COMMISSIONER PATRONIS:** Yes, ma'am.

5 **MS. KAUFMAN:** I didn't know if you were ready  
6 for my response. I didn't want you to --

7 **COMMISSIONER PATRONIS:** Please do, yes,  
8 because y'all have standing on this also. I'm sorry.

9 **MS. KAUFMAN:** I'm sorry. I didn't mean to  
10 interrupt you.

11 **COMMISSIONER PATRONIS:** Again, this is my  
12 first rodeo.

13 **MS. KAUFMAN:** And I'm a little rusty, so,  
14 yeah.

15 I was going to say that FIPUG does object to  
16 the Audubon Society's intervention. We will file a  
17 written response to the motion. But our objection is  
18 based on the Audubon Society's articulation of their  
19 environmental concerns, which are not within the purview  
20 of this Commission. And we will elucidate that further  
21 in a written response, but we do object on that basis.

22 **COMMISSIONER PATRONIS:** Noted. Thank you. I  
23 appreciate your response.

24 I'll just be honest, I want to take all this  
25 into consideration, so I'll get back to you and you'll

1 see it in my final order. Are there -- does any other  
2 party have anything on this preliminary matter?

3 Okay. Let's go ahead and proceed through the  
4 draft Prehearing Order. I'll identify sections as we go  
5 through it. The parties, if you'll -- we'll kind of go  
6 through it quickly. If there's any corrections to be  
7 made, please, please make itself known.

8 So Section I, case background.

9 **MR. BUTLER:** Commissioner?

10 **COMMISSIONER PATRONIS:** Yes.

11 **MR. BUTLER:** Actually before we even get to  
12 there, I noticed in reading it through this morning that  
13 Mr. Donaldson, whose name I mentioned earlier, does not  
14 appear in the list of appearances here, and we'd ask  
15 that Kevin I.C. Donaldson be added as counsel for FPL.

16 **COMMISSIONER PATRONIS:** Okay. That can be  
17 noted; right? Thanks.

18 All right. Great.

19 **MR. WRIGHT:** Commissioner?

20 **COMMISSIONER PATRONIS:** Oh, there you go.

21 **MR. WRIGHT:** I do think it would be  
22 appropriate for us to be recognized as appearing for the  
23 limited purpose for which we filed our notice in the  
24 final Prehearing Order.

25 **COMMISSIONER PATRONIS:** Sure. It's written

1 down on mine, but I guess we need to --

2 **MR. WRIGHT:** Oh, good deal. Thank you very  
3 much.

4 **COMMISSIONER PATRONIS:** Sure. Sure. Thank  
5 you.

6 Okay. Going through the Prehearing Order,  
7 Section I, case background.

8 Section II.

9 Section III.

10 Section IV.

11 **MS. KAUFMAN:** Commissioner, we do have a  
12 question, I guess, on Section IV.

13 **COMMISSIONER PATRONIS:** Okay.

14 **MS. KAUFMAN:** And our question is that it's my  
15 understanding that in the past it has been the practice  
16 that when confidential information has already been  
17 filed, which I believe is the case here, that the staff  
18 will be responsible for making copies of that  
19 information and distributing it as opposed to someone  
20 who's using a confidential cross-examination exhibit  
21 that the party would have to provide the copies.

22 **MS. BARRERA:** Commissioner?

23 **COMMISSIONER PATRONIS:** Yes, ma'am.

24 **MS. BARRERA:** That is correct. At this point  
25 there are no changes to the procedure. The hearing will

1 involve a large number of confidential exhibits.  
2 Pursuant to the section in the Prehearing Officer (sic),  
3 it's the parties' responsibility to have copies for the  
4 Commissioners, necessary staff, and the court reporter  
5 in red envelopes clearly marked with the nature of the  
6 contents and with the confidential information  
7 highlighted.

8 Staff recommends that each party bring at  
9 least 15 copies to the hearing, but staff will provide  
10 the copies of the confidential portions of the prefiled  
11 testimony and exhibits.

12 **COMMISSIONER PATRONIS:** Okay.

13 **MS. KAUFMAN:** Thank you. I just wanted that  
14 to be clear so there's no confusion at the hearing.

15 **COMMISSIONER PATRONIS:** Sure.

16 **MS. KAUFMAN:** Thank you.

17 **COMMISSIONER PATRONIS:** No. Thank you for  
18 bringing that to our attention.

19 Section V.

20 **MS. BARRERA:** Commissioner, staff will suggest  
21 that witness summary testimony be no longer than  
22 three minutes.

23 **COMMISSIONER PATRONIS:** Okay. Yes, sir.

24 **MR. BUTLER:** We would like to leave it at  
25 five. I mean, certainly we'll do our best to have our

1 witnesses be brief, but some of it's relatively complex  
2 information, and I would prefer not to be limited to  
3 only three minutes of oral summary.

4 **COMMISSIONER PATRONIS:** Well, I guess my  
5 concern is, is there's 36 witnesses that I've counted.  
6 Now, some of them are repeats that come back, back and  
7 forth, but I was trying to be sensitive. I won't be  
8 chairing that panel when it takes place.

9 **MR. BUTLER:** Well, I know that there is a  
10 desire to move this along. We share the desire to move  
11 it along. And I think probably, for example, if you  
12 wanted to have a limit where witnesses could have, say,  
13 a total of, like, eight minutes for direct and rebuttal  
14 and we can use it as we see fit, we might be able to  
15 work within that framework. But three minutes is pretty  
16 short from my experience. And, as I say, we've got some  
17 relatively complex matters to be -- to be covered and  
18 would prefer not to be limited to three minutes for  
19 those reasons.

20 **COMMISSIONER PATRONIS:** How about we split the  
21 difference at four, and that way we won't have to keep  
22 any math.

23 **MR. BUTLER:** Everybody just gets four minutes  
24 for their direct and then four minutes for rebuttal?

25 **COMMISSIONER PATRONIS:** Right.

1           **MR. BUTLER:** We can live with that.

2           **COMMISSIONER PATRONIS:** Okay. All right. So  
3 we'll make that note to be four minutes. Is that fine?  
4 Okay.

5           **MR. BUTLER:** Thank you.

6           **COMMISSIONER PATRONIS:** Section VI, order of  
7 the witness. Staff, will any witnesses be taken out of  
8 order?

9           **MS. BARRERA:** At this time, Commissioner,  
10 staff is not aware of any witnesses to be taken out of  
11 order, but other -- but witnesses may be suggested by  
12 the parties.

13           **MR. BUTLER:** Nothing for us. The order  
14 reflects what we intend to do.

15           **COMMISSIONER PATRONIS:** Okay.

16           **MS. KAUFMAN:** Commissioner? Sorry. I don't  
17 know that -- how this will fall out at the hearing,  
18 but -- and in the past we've worked with the parties as  
19 the hearing has progressed, but FIPUG's witness  
20 Mr. Pollock has a conflict. He has to be in Austin,  
21 Texas. And so he needs to testify after 12:00 on the  
22 first day -- sometime in this window -- after 12:00 on  
23 the first day and he has to be able to depart by noon on  
24 day two. So I'm hoping we'll just be able to work that  
25 out as we proceed through.

1           **COMMISSIONER PATRONIS:** Is that something we  
2 can specify now, or is there any problems with that?

3           **MS. HELTON:** Commissioner, it's always been  
4 the Commission's desire to work with the parties with  
5 respect to the timing of witnesses.

6           **COMMISSIONER PATRONIS:** Do the best we can.

7           **MS. HELTON:** But, you know, that's to the  
8 extent that everybody can make it work out and that the  
9 schedule works out. So hopefully that's something that  
10 Ms. Kaufman and Mr. Moyle can work out with the parties  
11 so that that can happen and that the presiding officer  
12 at the -- at the hearing will agree to.

13           **COMMISSIONER PATRONIS:** Be sensitive to.

14           **MS. KAUFMAN:** Absolutely. I just wanted to  
15 make the parties aware. We've always, I think, been  
16 able to work around various witnesses' availability.

17           In a -- since it's still my turn, I guess, I  
18 have two other things on the order of witnesses.

19           **COMMISSIONER PATRONIS:** Okay.

20           **MS. KAUFMAN:** The first is, again, just sort  
21 of in the nature of a heads-up. I don't think it's  
22 anything that has to be in the Prehearing Order, but it  
23 would be FIPUG's intention to object to witnesses that  
24 offer expert opinions unless they are qualified as an  
25 expert in that area. And I guess that's something that

1 will be taken up as each witness takes the stand, but I  
2 just wanted to let the parties know that and put it on  
3 the record.

4 And then the other thing really relates to  
5 Mr. Pollock's availability as well, which is that in  
6 discussion with FPL, I guess, and staff, we would be  
7 willing to stipulate Mr. Pollock and Mr. Lane without  
8 them having to appear. So if that's something that the  
9 parties are interested in, I guess they can contact  
10 FIPUG and let us know.

11 **MS. HELTON:** Commissioner, may I ask  
12 Ms. Kaufman a question with respect to the expert  
13 qualifications? As I --

14 **COMMISSIONER PATRONIS:** Please do.

15 **MS. HELTON:** As I understand the requirement  
16 in the Order Establishing Procedure -- and I'm looking  
17 at Page 5 where it says you are to list in your  
18 prehearing statement any objections to a witness's  
19 qualifications as an expert. So are there particular  
20 experts that you have in mind, or are you saying all  
21 experts?

22 **MS. KAUFMAN:** I will admit to you, Ms. Helton,  
23 that I am not intimately familiar with the testimony in  
24 this case. It's my understanding though that in order  
25 for an expert to offer an opinion, he has to be

1 qualified in a particular area. So it would be our  
2 intent at the hearing if an ex -- if a witness begins to  
3 offer what's an expert opinion and we believe he's not  
4 qualified, then we would intend to object.

5 If you're asking me now to give you specifics  
6 on which witness and which areas, that I cannot do.

7 **COMMISSIONER PATRONIS:** Ms. Barrera.

8 **MS. BARRERA:** Commissioner, the witnesses  
9 are -- in their direct testimony all have -- list their  
10 qualifications and experience and such.

11 **COMMISSIONER PATRONIS:** Right. I saw that.

12 **MS. BARRERA:** My feeling is that possibly  
13 FIPUG should object. You know, if they want to object,  
14 they should list which witnesses after they have read  
15 the, you know, the testimony and the -- that part of the  
16 testimony that sets out the witness qualifications and  
17 designate which witnesses they plan to attack should  
18 there be testimony that they submit as experts, you  
19 know. And I think that would be notice to the parties  
20 to know which witnesses they need to defend or which  
21 witnesses they need to, you know, to provide the  
22 information to.

23 **COMMISSIONER PATRONIS:** I understand.

24 **MS. BARRERA:** So that, I think, is just the  
25 basis of proper notice.

1           **COMMISSIONER PATRONIS:** Okay.

2           **MR. BUTLER:** Commissioner?

3           **COMMISSIONER PATRONIS:** Yes, sir.

4           **MR. BUTLER:** I would also note that with the  
5 exception of the deposition of Mr. Patterson, which is  
6 to occur tomorrow, FIPUG has participated in depositions  
7 of all of FPL's witnesses. So any questions, confusion  
8 they might have had from reading the prehearing  
9 testimony about the extent of expertise they've had an  
10 opportunity to explore. So we don't see why they  
11 wouldn't be in a position to identify that now.

12           **COMMISSIONER PATRONIS:** Noted. Okay.

13           **MS. KAUFMAN:** Commissioner, I wasn't intending  
14 to make this into a big issue. I was simply putting the  
15 parties on notice. It's the parties' responsibility, I  
16 think, to designate their witness's area of expertise.  
17 But I'm not suggesting that you need to rule or  
18 anything. It was really just to let the parties know  
19 for the record.

20           **COMMISSIONER PATRONIS:** Okay. Are there  
21 any -- are there any witnesses that may be excused?

22           **MR. BUTLER:** Commissioner, one thing that I  
23 have as a question here to FIPUG, two of their witnesses  
24 are actually, as I understand it, the desire to enter in  
25 portions of deposition transcripts. And I don't think

1 that there's a plan to have those witnesses appear, but  
2 that's, I guess, a question to Ms. Kaufman. That would  
3 be Mr. Evans and Mr. Rudolph.

4 **MS. KAUFMAN:** That's my understanding,  
5 Mr. Butler, that their depositions would be entered into  
6 the record in lieu of their appearances. They are more  
7 than 100 miles away and they would be adverse witnesses  
8 to FIPUG.

9 **COMMISSIONER PATRONIS:** Anything else? All  
10 right.

11 **MS. BARRERA:** Commissioner?

12 **COMMISSIONER PATRONIS:** Yes, ma'am.

13 **MS. BARRERA:** We are also wondering if the  
14 parties plan to take any witnesses out of order or if  
15 they would like to -- or if FP&L will present their  
16 witnesses' direct and rebuttal at the same time or wait  
17 till after Intervenor testimony.

18 **MR. BUTLER:** At this point, it's our intent to  
19 present them separately on rebuttal.

20 **COMMISSIONER PATRONIS:** Okay. All right. Any  
21 other issues with order of witnesses?

22 Okay. Section VII, basic positions. I assume  
23 the parties have no changes in their basic positions.  
24 Are there any changes? Okay.

25 If there's any changes -- any changes to the

1 basic positions need to be submitted in writing no later  
2 than noon tomorrow to staff.

3 Section VIII, issues and positions. Do the  
4 parties have any changes to their positions?

5 **MS. KAUFMAN:** We do. And we'll be happy to  
6 read it or submit it or both, whichever the Commissioner  
7 prefers.

8 **COMMISSIONER PATRONIS:** If you want to go  
9 ahead and present it now.

10 **MS. KAUFMAN:** Okay.

11 **MS. BARRERA:** Excuse me. If we can identify  
12 the issue in which you have the change.

13 **MS. KAUFMAN:** It's -- it's actually an  
14 addition, and it's on Issue 7, which is on page 15. I  
15 think I'm looking at the prior draft, but I think it's  
16 the same page, toward the bottom.

17 So we just want to add a sentence after the  
18 position that's reflected there. And it would say,  
19 "Additionally, because the railcars will not be used to  
20 deliver coal to the Cedar Bay facility for the vast  
21 majority of the remaining contract term but will be  
22 subleased to third parties, the railcar lease payments  
23 should be recovered through base rates."

24 **MS. BARRERA:** And we will request that the  
25 position be submitted in writing by tomorrow. That way

1 we can put exactly what FIPUG wants.

2 **MS. KAUFMAN:** I'll be happy to do that.

3 **COMMISSIONER PATRONIS:** Okay. All right.

4 Section IX, exhibit list.

5 **MS. BARRERA:** Excuse me, Commissioner.

6 **COMMISSIONER PATRONIS:** Yes, ma'am.

7 **MS. BARRERA:** We have a contested issue.

8 **COMMISSIONER PATRONIS:** Oh, I'm sorry. We do.

9 We do have a contested issue.

10 **MS. BARRERA:** The issue is not numbered. It's  
11 on page 17 of the Prehearing Order. And the parties may  
12 want to address this issue. It is OPC's issue, so I  
13 recommend that OPC go first.

14 **COMMISSIONER PATRONIS:** Okay. All right. On  
15 behalf of Office of Public Counsel.

16 **MR. TRUITT:** Thank you, Commissioner.

17 As noted, this -- there's multiple issues  
18 presented in this position, but arguably the key issue  
19 that sparked this proposed transaction is the fact that  
20 Cedar Bay's PPA's fixed price O&M and capacity payments,  
21 the critical economic drivers, are far above market  
22 prices in current avoided costs.

23 FPL argues in its petition and direct  
24 testimony that the avoided cost is \$27 per megawatt hour  
25 and an all-in price of \$178 per megawatt hour under the

1 PPA. Now we don't dispute that the PPA is economically  
2 unfavorable for FPL's customers; however, the issues in  
3 this case revolve around the prudence of the method  
4 chosen by FPL to eliminate the PPA. As part of that  
5 prudence review, FPL's chosen method to eliminate the  
6 current PPA, it's only logical the Commission compare  
7 other available options, one of which is a regulatory  
8 out clause in the PPA.

9 Now in the prehearing statements, FPL  
10 referenced regulatory out clause and stated that it  
11 altered the doctrine of administrative finality,  
12 referencing Order No. 25668, which was issued  
13 February 3rd, 1992.

14 We'd like to note there's two critical  
15 exceptions to the doctrine of administrative finality, a  
16 significant change of circumstances, and demonstrated  
17 public interest.

18 Notwithstanding that there is a regulatory out  
19 clause in this PPA, one of the last ones in the State of  
20 Florida, finding a demonstrated public interest would  
21 allow the Commission to limit recovery of costs under  
22 the PPA should the Commission find the PPA is so  
23 economically unfavorable as to not be in the public  
24 interest.

25 Second, FPL specifically appealed the topics

1 of regulatory out clauses in *FPL v. Beard*, 626 So.2d  
2 660, which was decided by the Florida Supreme Court in  
3 1993, a year after the order cited in the prehearing  
4 statement.

5 In that case, FPL argued the regulatory out  
6 clause was needed. And to quote from the decision, the  
7 court stated, "FPL asserts circumstances could arise  
8 under which the Commission, acting in the public  
9 interest or pursuant to a legislative mandate, would  
10 preclude the recovery of payments made to a QF."

11 The Supreme Court went on to find the  
12 Commission made a decision to remove regulatory out  
13 clauses later in an endeavor to make its orders as final  
14 as the law permits.

15 Now, based on the statements of the court and  
16 the argument in that case and the court's interpretation  
17 of the arguments, the present exercise of regulatory out  
18 clause do not alter the doctrine of administrative  
19 finality. So we believe it's only appropriate for the  
20 Commission in this case, while conducting a prudence  
21 review of the proposed transaction, that the Commission  
22 consider all the options that are available besides  
23 simply the one that FPL presented. Thank you,  
24 Commissioner.

25 **COMMISSIONER PATRONIS:** FIPUG.

1           **MS. KAUFMAN:** Regardless of your decision on  
2 this issue, we're going to remain with the position as  
3 we reflected it in the Prehearing Order.

4           **COMMISSIONER PATRONIS:** Okay. FPL.

5           **MR. BUTLER:** Commissioner, we reiterate our  
6 position that the doctrine of administrative finality,  
7 you know, does and should apply here. I mean, yes, the  
8 contract has a regulatory out provision, but, you know,  
9 the change of circumstances is simply a matter of  
10 economics having become less favorable, the contract,  
11 over time. If the Commission were to treat that as a  
12 change of circumstances that justified departing from  
13 the doctrine of administrative finality, it would give  
14 basically no parties to contracts any certainty about  
15 the exercise of those contracts ever. Basically the  
16 reason people want to change the terms of contracts are  
17 because of some change of circumstances that, you know,  
18 makes the economics more favorable for one side or the  
19 other. And if one is going to allow parties to have  
20 confidence that contracts will be enforced, that simply  
21 can't be a valid change of circumstances.

22           I think that what the doctrine has in mind,  
23 administrative finality in creating that exception, is  
24 where there has been some just different legislation,  
25 different circumstances that make the whole nature of

1 the relationship different than it had been at the time  
2 of contracting. And there's nothing about the  
3 relationship that's any different today than it was when  
4 this contract was entered into. It's simply that the  
5 prices of fuel and other conditions have changed to the  
6 point where a contract that was favorable one way  
7 initially maybe is unfavorable in that direction and  
8 more favorable in the other direction now. But that's  
9 not the sort of thing that ever could or should result  
10 in a departure from administrative finality.

11 And as to the public interest, I mean, again,  
12 it's sort of tautological. Of course, if a contract is  
13 now unfavorable, then it would be good in that  
14 particular instance for customers if the Commission were  
15 to force the parties to abandon that contract. But I  
16 think the long-term implications of that would be  
17 drastically opposed to the public interest. I mean,  
18 parties in, you know, proceedings where very long-term  
19 commitments are being made and are being approved by the  
20 Commission need to know that that approval is going to  
21 remain without being revisited simply because the  
22 economics change.

23 So for all of those reasons, we think that the  
24 doctrine of administrative finality is applicable here.  
25 That it would be improper and very much a matter of poor

1 public policy for the Commission to take Public  
2 Counsel's suggestion that the easy way out here is  
3 simply to trash the contract rather than dealing  
4 properly with a legitimate way for the parties to end it  
5 on terms that are mutually agreeable. Thank you.

6 **COMMISSIONER PATRONIS:** Thanks. I'm inclined  
7 not to allow it.

8 All right. We'll move to exhibition (sic)  
9 list, IX.

10 **MS. BARRERA:** Staff notes that it will prepare  
11 a draft Comprehensive Exhibit List which will list all  
12 prefiled exhibits and those exhibits staff wishes to  
13 include in the record. Staff will circulate the draft  
14 and will check with the parties prior to the hearing to  
15 determine if there are any objections to the exhibit  
16 list or any of staff's exhibits being entered into the  
17 record.

18 **COMMISSIONER PATRONIS:** Okay. Section X.

19 **MS. BARRERA:** Staff will note that there are  
20 no stipulations at this time. Should there be  
21 stipulations, we will -- after the Prehearing Order is  
22 issued, we will be -- provide it to the Commissioners  
23 prior to the hearing.

24 **COMMISSIONER PATRONIS:** Okay. Section XI.

25 **MS. BARRERA:** The pending motions have already

1 been heard, and staff is not aware of any other motion.

2 **COMMISSIONER PATRONIS:** Okay. Section XII.

3 **MS. BARRERA:** Staff will note that there are  
4 several confidentiality requests pending. Staff is  
5 currently working with the parties to narrow the scope  
6 of those confidentiality requests so that orders can be  
7 issued.

8 **COMMISSIONER PATRONIS:** Okay. Section --

9 **MS. KAUFMAN:** Commissioner?

10 **COMMISSIONER PATRONIS:** Yes.

11 **MS. KAUFMAN:** In that regard, again, just so  
12 the parties are on notice, FIPUG does have and will be  
13 filing some written objections to some of the requests  
14 for confidentiality regarding some of the documents that  
15 are at issue. And perhaps we can work that out without  
16 a ruling -- I don't know -- but just so the parties are  
17 aware.

18 **COMMISSIONER PATRONIS:** Okay. Section XIII.

19 **MS. BARRERA:** Post-hearing -- excuse me.

20 **COMMISSIONER PATRONIS:** Mary Anne.

21 **MS. HELTON:** I'm sorry, Commissioner, to keep  
22 interrupting. It looks to me like the last filing for  
23 request for confidential treatment was on June the 19th,  
24 according to the Prehearing Order. Haven't the  
25 seven days passed?

1           **MS. KAUFMAN:** I think there have been some --  
2 I think they're up to number seven, if I'm --

3           **MS. HELTON:** Okay. Maybe -- I'm sorry. Maybe  
4 I have the wrong draft. But -- so you're just going to  
5 object to those that have been filed within the  
6 seven-day period to object?

7           **MS. KAUFMAN:** Whatever the appropriate time  
8 frame is.

9           **MS. BARRERA:** It is seven days.

10          **MS. KAUFMAN:** Yeah. A lot of -- it's -- the  
11 same documents are being filed sort of over and over  
12 again. Some were attached to depositions. We will  
13 respond -- I believe we have till Wednesday to respond  
14 to the last request that was filed.

15          **COMMISSIONER PATRONIS:** Okay. Section XIII,  
16 post-hearing procedures.

17          **MS. BARRERA:** Yes. Parties have indicated  
18 that they will be filing post-hearing briefs on the  
19 issues in this docket. Pursuant to Rule 28-106.215,  
20 *Florida Administrative Code*, a party's proposed findings  
21 of fact and conclusions of law, if any, statement of  
22 issues and positions and briefs shall together total no  
23 more than 40 pages, and staff recommends post-hearing  
24 briefs be no longer than 40 pages.

25          **COMMISSIONER PATRONIS:** Are all parties in

1 agreement with that?

2 **MR. BUTLER:** That's fine for FPL.

3 **MS. BARRERA:** Okay.

4 **COMMISSIONER PATRONIS:** Okay.

5 **MS. BARRERA:** Staff will also note that a  
6 summary of each position of not more than 75 words set  
7 off with asterisks could be included in the statement.  
8 We're recommending that the summary be limited to  
9 75 words.

10 **COMMISSIONER PATRONIS:** Is that all in  
11 agreement? Okay.

12 **MS. BARRERA:** Staff finally notes that any  
13 briefs will be due on August 11th, 2015, for the  
14 September 15th, 2015, Agenda Conference.

15 **COMMISSIONER PATRONIS:** Okay. Section XIV,  
16 rulings.

17 **MS. BARRERA:** Staff suggests that the  
18 Prehearing Officer make a ruling that opening  
19 statements, if any, should not exceed five minutes per  
20 side, unless any party chooses to waive its opening  
21 statement.

22 **MR. BUTLER:** Once again, I'm going to ask for  
23 more. Five is pretty short. I certainly appreciate the  
24 Commission's interest in not having the proceeding held  
25 up unduly by prehearing statements. There aren't a lot

1 of parties in this docket though, and I think that, you  
2 know, ten minutes would be sufficient for us and not an  
3 extended period that would unduly delay the start of the  
4 hearing.

5 **COMMISSIONER PATRONIS:** Is that okay? Any  
6 problem with ten minutes?

7 **MS. KAUFMAN:** Is ten minutes okay?

8 **COMMISSIONER PATRONIS:** Is that -- are you --

9 **MS. KAUFMAN:** We don't -- we don't object to  
10 ten minutes. It's kind of long, but we don't object.

11 **COMMISSIONER PATRONIS:** Well, again, I would,  
12 I would encourage you to keep it as close to five as you  
13 can, but I'll move it to ten minutes.

14 Okay. Other matters? Staff, are there any  
15 other matters to address in this Prehearing Conference?

16 **MS. BARRERA:** There are no other matters that  
17 we are aware of.

18 **COMMISSIONER PATRONIS:** Okay. All right.  
19 Well, seeing no other matters before the counsel today,  
20 this concludes our prehearing, and the Prehearing  
21 Conference is adjourned. Thank you for your attendance.

22 (Prehearing Conference adjourned at 2:05 p.m.)  
23  
24  
25

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

3  
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 10th day of July, 2015.

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