

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150171-EI

Petition for issuance of
nuclear asset-recovery
financing order, by Duke
Energy Florida, Inc. d/b/a
Duke Energy.

_____/ DOCKET NO. 150148-EI

Petition for approval to
include in base rates the
revenue requirement for the
CR3 regulatory asset, by Duke
Energy Florida, Inc.

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER
PARTICIPATING: COMMISSIONER RONALD A. BRISÉ
PREHEARING OFFICER

DATE: Thursday, October 1, 2015

TIME: Commenced at 9:30 a.m.
Concluded at 10:11 a.m.

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

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

1 APPEARANCES:

2 DIANNE M. TRIPLETT, ESQUIRE, Duke Energy
3 Florida, Inc., Post Office Box 14042, St. Petersburg,
4 Florida 33733; appearing on behalf of Duke Energy
5 Florida, Inc.

6 JON C. MOYLE, JR., and KAREN PUTNAL,
7 ESQUIRES, Moyle Law Firm, P.A., 118 North Gadsden
8 Street, Tallahassee, Florida 32301, appearing on behalf
9 of Florida Industrial Power Users Group.

10 ROBERT SCHEFFEL WRIGHT and JOHN T. LaVIA,
11 III, ESQUIRES, Gardner Law Firm, 1300 Thomaswood Drive,
12 Tallahassee, Florida 32308, appearing on behalf of the
13 Florida Retail Federation.

14 JAMES W. BREW, OWEN J. KOPON, LAURA A. WYNN,
15 ESQUIRES, Xenopoulos & Brew, P.C., 1025 Thomas Jefferson
16 Street, NW, Eight Floor, West Tower, Washington, DC
17 20007, appearing on behalf of White Springs Agricultural
18 Chemicals, Inc. d/b/a PCS Phosphate White Springs.

19 J.R. KELLY, PUBLIC COUNSEL; CHARLES
20 REHWINKEL, DEPUTY PUBLIC COUNSEL, ESQUIRES, Office of
21 Public Counsel, c/o the Florida Legislature, 111 W.
22 Madison Street, Room 812, Tallahassee, Florida
23 32399-1400, appearing on behalf of the Citizens of the
24 State of Florida.

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1 APPEARANCES (continued):

2 ROSANNE GERVASI, LEE ENG TAN, KEINO YOUNG,
3 KELLEY CORBARI, and LESLIE AMES, ESQUIRES, Florida
4 Public Service Commission, 2540 Shumard Oak Boulevard,
5 Tallahassee, Florida 32399-0850, on behalf of the
6 Florida Public Service Commission (Staff).

7 MARY ANNE HELTON, ESQUIRE, Deputy General
8 counsel, Florida Public Service Commission, 2540 Shumard
9 Oak Boulevard, Tallahassee, Florida 32399-0850, on
10 behalf of the Florida Public Service Commission.

11 CHARLIE BECK, General Counsel, Florida
12 Public Service Commission, 2540 Shumard Oak Boulevard,
13 Tallahassee Florida, on behalf of the Florida Public
14 Service Commission.

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P R O C E E D I N G S

1
2 **COMMISSIONER BRISÉ:** Good morning,
3 everyone. I trust that everyone is doing well
4 today. You all are looking well, so I trust that,
5 you know, what you're promoting physically reflects
6 what's going on with you.

7 We're going to go ahead and get started,
8 Docket No. 150171-EI and 150148. I'm going to go
9 ahead and call this prehearing to order. Today is
10 October 1, 2015, and it is 9:30 a.m. This year has
11 gone by super fast. So, staff, would you read the
12 notice.

13 **MS. GERVASI:** Yes. Good morning. By
14 notice issued September 9th, 2015, this time and
15 place is set for a Prehearing Conference in
16 consolidated Docket Nos. 150171-EI and 150148-EI.
17 The purpose of the Prehearing Conference is set out
18 in the notice.

19 **COMMISSIONER BRISÉ:** All right. Thank
20 you.

21 At this time we'll go ahead and take
22 appearances.

23 **MS. TRIPLETT:** Good morning. Dianne
24 Triplett on behalf of Duke Energy Florida.

25 **COMMISSIONER BRISÉ:** Okay. Thank you.

1 **MR. MOYLE:** Jon Moyle on behalf of the
2 Florida Industrial Power Users Group with the Moyle
3 Law Firm. I'd also like to enter an appearance for
4 Karen Putnal, who's also with our firm.

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

6 **MR. WRIGHT:** Robert Scheffel Wright
7 appearing on behalf of the Florida Retail Federation
8 with the Gardner law firm. I'd also like to enter
9 an appearance for my law partner John T. LaVia, III.
10 Thank you.

11 **COMMISSIONER BRISÉ:** All right. Thank
12 you.

13 **MR. BREW:** Good morning. James Brew for
14 White Springs Agricultural Chemicals/PCS Phosphate
15 of Stone, Mattheis, Xenopoulos & Brew, and I'd like
16 to note an appearance for Laura Wynn and Owen Kopon.

17 **COMMISSIONER BRISÉ:** All right. Thank
18 you.

19 **MR. REHWINKEL:** Charles Rehwinkel, Office
20 of Public Counsel, on behalf of the customers of
21 Duke. And I would also like to enter an appearance
22 for J. R. Kelly, Public Counsel.

23 **COMMISSIONER BRISÉ:** All right. Thank
24 you.

25 **MS. GERVASI:** And Rosanne Gervasi on

1 behalf of Commission staff. And I will also enter
2 an appearance for Lee Eng Tan, Keino Young, Kelley
3 Corbari, and Leslie Ames also on behalf of
4 Commission staff.

5 **COMMISSIONER BRISÉ:** All right. Thank
6 you.

7 **MS. HELTON:** And Mary Anne Helton. I'm
8 here as your advisor today.

9 **MR. BECK:** Charlie Beck, General Counsel.

10 **COMMISSIONER BRISÉ:** All right. Thank
11 you.

12 Mary Anne, aren't you always here as our
13 advisor?

14 All right. Preliminary matters. Do we
15 need to address any preliminary matters before we
16 get to the draft Prehearing Order?

17 **MS. GERVASI:** Commissioner, there are none
18 to my knowledge.

19 **COMMISSIONER BRISÉ:** Okay. Parties, are
20 there any issues that we need to address? All
21 right. Thank you.

22 At this point it seems like there are
23 none, so that's excellent. Let's begin to go
24 through the draft Prehearing Order. I'll identify
25 the sections, and I want the parties to let me know

1 if there are any corrections or changes that we need
2 to make.

3 We may do this rather quickly, but you all
4 are pros, so I suppose we'll be able to get through
5 this in an expeditious manner. But if there's
6 something that you want to have addressed, be sure
7 to speak up, slow me down or, you know, raise your
8 hand, holler, whatever you need to do, so that we
9 can see where we are.

10 All right. Section I, case background.

11 Okay. Section II, conduct of proceedings.

12 Section III, jurisdiction.

13 All right. Section IV, procedure for
14 handling confidential information.

15 Okay. Section V, prefiled testimony and
16 exhibits and witnesses.

17 Okay. Section VI -- actually let me go
18 back to Section V. I notice that there is time
19 specific for --

20 **MS. GERVASI:** Oh, yes, sir. And with
21 respect to the order of witnesses in Section VI, we
22 would note that two of the staff witnesses are only
23 available at certain times during the course of the
24 hearing. Witness Maher is only available to testify
25 on October the 14th, and then Witness Schoenblum is

1 not available to testify that day, on the 14th, but
2 he's available the 15th or the 16th. So that may or
3 may not necessitate a little bit of reordering of
4 the witnesses to accommodate their availability.

5 And I would also note that the parties
6 have stipulated to the entry of the 150148 witness
7 testimony and exhibits and to their excusal from the
8 hearing, and that was part of the stipulation that
9 the Commission approved at the September 15th Agenda
10 Conference.

11 **COMMISSIONER BRISÉ:** Okay. Thank you. I
12 just wanted to make sure the parties were
13 comfortable with the fact that Witness Maher and
14 Schoenblum are only available at the times as
15 stated. Mr. Rehwinkel.

16 **MR. REHWINKEL:** Yes, Mr. Chairman, the
17 question that I have back on Section V, if we
18 could --

19 **COMMISSIONER BRISÉ:** Sure. We are at
20 Section V.

21 **MR. REHWINKEL:** Okay. And I'm not -- I
22 think there's a little bit of a curious situation
23 that arises in this case with respect to the concept
24 of friendly cross. The staff will have witnesses
25 that are staff witnesses, but they are representing

1 interests of ratepayers. The positions that the
2 Public Counsel has taken in large part is
3 presumptively in favor of the staff witnesses, but
4 it has a rebuttable presumption about the quality of
5 the evidence that may come forward. So we would ask
6 that -- and we would talk to the company about this
7 to make sure that we sort of have a protocol about
8 it, but our issues -- our positions aren't
9 necessarily completely aligned and we would like
10 some leeway in that regard. I think we could commit
11 that we would not be asking questions of a
12 bolstering nature but more of an exploratory nature
13 because this is a new process for all of us. So I
14 just wanted to put that on the record.

15 **COMMISSIONER BRISÉ:** All right. And duly
16 noted. As you know, I won't be the one making those
17 decisions on that day, so -- but duly noted. And I
18 think the record will reflect that, and I think the
19 team will convey that to the Chair. And I think
20 this is novel for most of us who are here as well
21 on -- who are currently serving on the Commission,
22 so I think proper latitude will probably be given.

23 **MR. MOYLE:** Mr. Chair, FIPUG would echo
24 those comments and reserve the latitude to be able
25 to ask some questions in that regard. But also with

1 respect to the order of witnesses, FIPUG often has
2 expert witnesses that have to come in from out of
3 town, and the parties are very accommodating. So,
4 you know, I appreciate the heads-up, but there's no
5 issues with respect to taking witnesses, staff
6 witnesses out of order.

7 **COMMISSIONER BRISÉ:** All right. Thank
8 you.

9 Ms. Triplett.

10 **MS. TRIPLETT:** Thank you, Mr. Chairman. I
11 agree, and I trust that my colleagues will limit
12 their questions to only those questions that are
13 truly -- where they may have a -- not the same
14 interest aligned. So I think we can work that out.
15 I would just ask that, given the nature of the
16 proceeding, that perhaps Duke Energy be allowed to
17 be the last one to ask questions perhaps before the
18 Commissioners just in case there's anything that
19 comes up that we may need to address.

20 And then with respect to the order of
21 witnesses, I understand and I appreciate, but I
22 perhaps -- I would just like to say I think we can
23 maybe work out perhaps a stipulation so that we can
24 maybe limit the hearing to one day, because I was
25 hopeful that we could get it done in one day. So --

1 but I know we'll just work on that and maybe come to
2 some agreement before the hearing.

3 **COMMISSIONER BRISÉ:** Okay. We hear that.
4 Thank you.

5 Now on to Section VI, order of witnesses.
6 I think we've pretty much covered that.

7 **MS. GERVASI:** I think so too,
8 Commissioner. But there is one other point that I
9 would like to make with respect to this section, and
10 that has to do with in-house staff witnesses
11 Mavrides and Coston and Hallenstein. They are
12 testifying with respect to only one issue, and that
13 is Issue 14, which is one of the issues that we --
14 the parties and staff are proposing to be
15 stipulated. So we're hoping that maybe we will be
16 able to get agreement from everybody, we haven't
17 sought that just yet, for those witnesses to be
18 excused from the hearing.

19 **COMMISSIONER BRISÉ:** All right. Thank
20 you. And, you know, as we know, the custom of this
21 group of Commissioners is as much as can be worked
22 out prior to and we leave the larger issues, more
23 challenging issues to be addressed by the full
24 Commission is preferable. And I think there will be
25 plenty of work and space for us to have decisions to

1 make. So as much as we can sort of bring it down to
2 those issues, we'd certainly appreciate that.

3 Okay. Moving on to Section VII, basic
4 positions.

5 **MR. BREW:** Commissioner?

6 **COMMISSIONER BRISÉ:** Yes.

7 **MR. BREW:** I'd like to make a correction
8 to the PCS statement of basic position where it
9 appears at the top of page 10 of the latest version
10 of the Prehearing Order.

11 **COMMISSIONER BRISÉ:** Okay.

12 **MR. BREW:** The sentence reads, "As for the
13 remaining securitization issues in this matter," I
14 need to insert "PCS opposes adoption of the proposed
15 financing order filed by DEF," and I'll provide the
16 language to staff.

17 But the petition for relief actually asks
18 the Commission to approve the Financing Order and
19 proposed findings of fact submitted by the utility,
20 even though that's not actually summarized in their
21 statement of basic positions either. But I do think
22 it's a fundamental issue, and I wanted PCS's
23 position on the filed proposed order to be perfectly
24 clear. Thank you.

25 **COMMISSIONER BRISÉ:** Okay. Thank you.

1 **MR. REHWINKEL:** Yes. And the Public
2 Counsel has an amendment to our basic position. I
3 can read it. It's just one sentence.

4 **COMMISSIONER BRISÉ:** Sure.

5 **MR. REHWINKEL:** And in our third paragraph
6 we would put after the first sentence, after the
7 word "ratepayers," the sentence "As filed, the
8 proposed Financing Order does not meet this test."
9 And I can email that exact language to the staff as
10 well.

11 **COMMISSIONER BRISÉ:** Okay. All right.
12 Anything else on basic positions?

13 **MR. MOYLE:** I assume, as is practice, that
14 to the extent we have any changes, we can get them
15 to staff by noon or 5:00 tomorrow. Is that
16 consistent with our practice?

17 **COMMISSIONER BRISÉ:** It is, but I'll refer
18 to staff.

19 **MS. GERVASI:** That's fine with staff. We
20 would ask if PCS Phosphate wouldn't mind emailing us
21 their correction as well because I'm not sure that I
22 got it exactly right.

23 **MR. BREW:** Yes. I'll do that today.

24 **COMMISSIONER BRISÉ:** Okay. All right. So
25 are we clear with basic positions and that we'll

1 have whatever adjustments that need to be made to
2 basic positions in by tomorrow? All right. Okay.
3 Thank you.

4 All right. Moving on to Section VIII,
5 issues and positions.

6 **MR. REHWINKEL:** From the Public Counsel's
7 standpoint, we have had several conversations with
8 the company and staff and other parties, and I
9 believe we're going to have more today.

10 **COMMISSIONER BRISÉ:** Sure.

11 **MR. REHWINKEL:** I think in the interest of
12 time and efficiency, I'm not going to take the time
13 to adjust or make modifications to the numerous
14 positions in here. I think what I would like to do,
15 if that's okay with you and the staff, is to see
16 what comes out of today and see if there is a need
17 to make modifications, and then I will email those
18 by whatever deadline the staff wants rather than go
19 through it issue by issue here. Because I don't --
20 I think we could be moving a lot of deck chairs
21 around here for no reason.

22 **COMMISSIONER BRISÉ:** Yeah. It is my
23 understanding that -- I'm aware that there's a
24 meeting that's supposed to take place, and that
25 makes a lot of sense to me, that if there are issues

1 that could be taken off the table or modified as the
2 talks move forward, that we would have gone through
3 this process and maybe an hour or two hours later it
4 would look completely different than at this point.

5 So are there any suggestions or anything
6 that we need to do at this point as we go through
7 this section?

8 **MS. GERVASI:** I think staff is fine with
9 that. If there -- I think we have a general
10 understanding of what the issues are that we are not
11 in alignment on, and maybe we can at least focus on
12 wordsmithing those few issues, if necessary, as we
13 move along. And it's really just the legal issue
14 that I'm concerned about this morning.

15 **COMMISSIONER BRISÉ:** Sure.

16 **MS. GERVASI:** But when we get to that, we
17 can discuss it. There may be others, if the parties
18 have others.

19 **COMMISSIONER BRISÉ:** Okay. So it sounds
20 like you want me to go through all the issues;
21 right?

22 **MS. GERVASI:** Maybe quickly.

23 **COMMISSIONER BRISÉ:** Okay. All right.

24 Issue 1.

25 **MS. GERVASI:** And I think we can say that

1 1 through 13 are all stipulated.

2 **COMMISSIONER BRISÉ:** 1 through 13 are
3 stipulated.

4 **MS. GERVASI:** Correct.

5 **COMMISSIONER BRISÉ:** Okay.

6 **MS. GERVASI:** And those stipulations have
7 been approved by the Commission.

8 **COMMISSIONER BRISÉ:** Right. So Issues 1
9 through 13 have already been stipulated and
10 approved.

11 Financing Order issues, Legal Issue A.

12 **MS. GERVASI:** And this is the issue that I
13 mentioned.

14 **COMMISSIONER BRISÉ:** Sure.

15 **MS. GERVASI:** It came up just this week,
16 so we just really haven't had time, I don't think,
17 just yet to iron out exactly how we can all agree to
18 a wording on those issues. So staff and DEF at this
19 point are not in alignment as to how to word the
20 issues.

21 Legal Issue A, the DEF Legal Issue A
22 requests the Commission to determine what costs are
23 subject to potential disallowance as part of the
24 120-day look back under 366.95(2)(c)5. We believe
25 that the statute expressly answers that question by

1 saying it's the incremental issuance costs, and we
2 could probably all agree to that based on the
3 language of the statute. But my understanding is
4 that incremental issuance costs is not a term that's
5 defined in the statute, so that if the question that
6 Duke has is with respect to how it should be
7 defined, then perhaps it could be reworded to ask,
8 you know, what is the definition of incremental
9 issuance costs subject to potential disallowance
10 under the statute. I don't know whether that will
11 take care of DEF's Issue A or not.

12 **COMMISSIONER BRISÉ:** Okay. Ms. Triplett.

13 **MS. TRIPLETT:** Thank you. And I think
14 that -- what is the definition of incremental
15 issuance costs, that was your formulation? I think
16 that would probably get to what I'm getting at.

17 Just to be clear, I'm not trying to --
18 we're not trying to be difficult. This is just a
19 very important issue to us, that we understand and
20 make sure that everybody, including the Commission,
21 understands how the terms that are used in this
22 particular section are defined and what is included
23 in that review, and so that was why we were
24 proposing the issue. But I think getting -- that's
25 the point is getting to what is the specific

1 definition so that we're all in agreement and
2 understanding at least, not agreement maybe, but
3 understanding as to what specifically goes into
4 those costs. So we could agree to change Legal
5 Issue A to the formulation that we just heard.

6 **COMMISSIONER BRISÉ:** Okay.

7 **MS. GERVASI:** And then with respect to
8 DEF's Legal Issue B and staff's Legal Issue A, they
9 appear to be similar. They are different in the
10 sense that DEF has worded the issue in a more narrow
11 way, I think, than staff has. And the way it's
12 worded, the way DEF has it worded asks whether the
13 Commission is authorized to use a lowest cost
14 standard with respect to issuance costs, the actual
15 bond issuance costs only; whereas, staff's question
16 is -- or the way we have framed our issue has to
17 do with the Commission's authority to utilize a
18 lowest cost standard with respect to the actual
19 overall costs of financing, all of the financing
20 costs, including actual interest and other ongoing
21 financing costs, which is a broader question.

22 So our answer to DEF's question would be,
23 yes, the Commission is authorized to use the lowest
24 cost standard with respect to the issuance costs.
25 However, we would have to go further than that and

1 go beyond the question and say we also believe that,
2 you know, the cost of financing, ongoing financing
3 costs, interest is also within the Commission's
4 authority to utilize that lowest cost standard. It
5 is an important issue.

6 All four of our financing expert witnesses
7 have testified to a lowest cost standard. And I
8 believe that if we were to word it that way, that
9 DEF's answer could be, you know, no, the
10 Commission's authority is not with respect to all of
11 the financing costs, it should be narrowed, and that
12 would give them, you know, room to argue in their
13 brief, you know, why it is that the actual interest
14 and other financing costs should be not looked at by
15 the Commission.

16 **COMMISSIONER BRISÉ:** All right.

17 Ms. Triplett.

18 **MS. TRIPLETT:** Thank you. And our concern
19 with the formulation of staff's issue is that --
20 there's a euphemism for this, but I don't
21 necessarily want to use it, but it's one of those
22 things where the wording of the issue assumes that
23 that is the appropriate standard. So it's like are
24 you still, you know, doing bad behavior that you
25 shouldn't be doing? And so to us it is a -- it

1 doesn't track the statute and so it's not
2 appropriate just in the wording.

3 I think that staff could also in their
4 position with respect to our wording of Legal Issue
5 B make similar arguments as far as what is the
6 appropriate scope of the review. If there is still
7 concern that our issue is too narrow, then I would
8 perhaps suggest something, you know, very simple:
9 "In determining whether some or all of actual bond
10 issuance costs should be disallowed pursuant to the
11 statute, what should the Commission take into
12 account?" And that would leave parties free to
13 argue whatever they want. I was going to suggest
14 that, but I was trying to work within staff's
15 language. But that may be the easier thing is just
16 cut the question off earlier, so I throw that in for
17 consideration.

18 **MR. REHWINKEL:** Can I suggest that with
19 this issue, if you take the staff's formulation and
20 in the second line where it says, "should," could
21 you change that to the word "may," and then after
22 the question mark, "And if so, to what extent should
23 they?" Would that provide the breadth that the
24 staff is looking for and the non-adoption of the
25 standard that the company looks for and the point on

1 the cost continuum that the company would be looking
2 for? I just throw that out as a suggestion because
3 it seems like that would address both concerns.

4 **COMMISSIONER BRISÉ:** Ms. Triplett.

5 **MS. TRIPLETT:** I recognize that gets
6 better. It still contains a standard. But, you
7 know, if that's where this is going, we can argue
8 vigorously against it in our position. It does make
9 it better.

10 **MS. GERVASI:** Staff is -- can live with
11 either way. We are okay with DEF's suggestion to
12 shorten the issue and just leave it more open as to
13 what should the Commission take into account, and
14 this will allow us to enter -- to do our statutory
15 interpretation, our legal analysis within the
16 post-hearing briefs as well as within the staff
17 recommendation. So we're -- I think we can live
18 with that.

19 **COMMISSIONER BRISÉ:** Okay.

20 **MS. TRIPLETT:** Since I suggested it, I
21 would prefer that one. But, I mean, I would like to
22 hear what, you know, the others have to say.

23 **COMMISSIONER BRISÉ:** Yeah. Does that
24 work?

25 **MR. REHWINKEL:** That's fine with me.

1 **COMMISSIONER BRISÉ:** Okay. It sounds like
2 we found good language there. All right.

3 **MS. GERVASI:** Thank you. And with respect
4 to the remaining issues, unless the parties have
5 anything that they think is important enough to take
6 up the time today, I don't know that staff does.
7 That was the one issue we were concerned about.

8 **COMMISSIONER BRISÉ:** Okay.

9 **MR. MOYLE:** I just want to make clear for
10 the record, and staff has footnoted it, but with
11 respect to all of these stipulations related to the
12 Financing Order issues, FIPUG is not affirmatively
13 saying, yes, we agree. We're just saying we're not
14 going to take a position on these and leave it at
15 that. So I just want the record to be clear on
16 that. Thank you.

17 **COMMISSIONER BRISÉ:** Okay. All right.
18 Let me just do this for clarity for the record.
19 Fourteen through 19, those are stipulated already.
20 All right.

21 **MS. GERVASI:** Those are proposed
22 stipulations, yes, sir.

23 **COMMISSIONER BRISÉ:** Proposed
24 stipulations, yeah.

25 Twenty, everyone is comfortable with the

1 language they have so far, recognizing that it can
2 change? Okay. Okay.

3 So I'm going to do blocks, and if there
4 are things that you would like to change, please
5 advise.

6 Twenty-one through 28, recognizing that 27
7 was dropped.

8 Okay. Okay. Since I haven't heard
9 anything, I guess we'll move on. Twenty-nine and 30
10 are proposed stipulations. Thirty-one through 35,
11 recognizing that 34 is a proposed stipulation.

12 Okay. Thirty-five through 39, recognizing
13 that 37 and 38 are proposed stipulations. Okay.
14 Everyone seems comfortable.

15 Forty through 52, recognizing that 43 has
16 been dropped, 48 has been dropped, and the balance
17 are proposed stipulations. Okay. All right.

18 **MR. MOYLE:** Can I ask a question --

19 **COMMISSIONER BRISÉ:** Sure. Go ahead.

20 **MR. MOYLE:** -- for clarification? So
21 FIPUG in some of these positions has taken no
22 position at this time, and we'll probably be
23 modifying that position per our discussion. But to
24 the extent FIPUG would agree with OPC, OPC in a lot
25 of these issues takes a position of no final

1 positions being taken, and it's a general and
2 preliminary matter and they state a position kind of
3 in that context. I assume that's fine as a position
4 for this proceeding, kind of given the unique nature
5 of it that there's no issues there.

6 **COMMISSIONER BRISÉ:** Sure. Let me confer
7 with my advisor here.

8 **MR. REHWINKEL:** Before you do that, let
9 me -- I just wanted to say before -- Commissioner?

10 **COMMISSIONER BRISÉ:** Sure. Go ahead.

11 **MR. REHWINKEL:** One of the -- this is one
12 of the things I just didn't want to kind of
13 laboriously go through here. The first sentence in
14 some of our general positions, we've completed the
15 review of the rebuttal and the depositions were
16 concluded on Friday, so we're going to be in a
17 position to take a position pending the outcome of
18 what happens today, and so that first sentence will
19 drop. And we will probably take, in large part, a
20 presumptive position in favor of the staff
21 witnesses. So just for purposes of your analysis,
22 we're going to recede from that in whatever we send
23 out by the deadline electronically.

24 **COMMISSIONER BRISÉ:** Okay. Thank you.
25 Mary Anne.

1 **MS. HELTON:** I mean, I recognize that this
2 is a little bit of a different proceeding for
3 everybody and this is really only the second time
4 that the Commission has done one of these
5 securitization dockets; however, I don't think that
6 changes the fact that we still expect parties to
7 take a position by the time the Prehearing Order is
8 issued unless they can show good cause why for some
9 reason they can't.

10 **MR. REHWINKEL:** One of the things that's
11 caused us to be a little tentative in our position
12 is this is a fast-moving process by the statutory
13 time frames. The company and the staff and their
14 consultants have been working in a dynamic process.
15 Things have been changing every day. Yesterday we
16 had a flurry of emails where we were modifying
17 positions and issues and stipulation proposals. So
18 that's a little bit why we're kind of being
19 tentative. But we will take a definitive position
20 to the extent we can based on what we know,
21 depending on the outcome of what happens today.

22 **COMMISSIONER BRISÉ:** Sure. And I think we
23 take full recognition of that. We expect that
24 everyone takes firm positions obviously by the time
25 the order comes out, and so we expect all the

1 parties to do the same, you know, as we would
2 normally do, and that's our expectation.

3 Okay. Anything else on issues and
4 positions?

5 **MS. GERVASI:** No, sir.

6 **COMMISSIONER BRISÉ:** Okay. Anything else
7 on issues and positions from any of the parties?
8 No? Great.

9 Okay. Moving on to Section IX, exhibit
10 list.

11 **MS. GERVASI:** And with respect to this
12 section, Commissioner, staff would like to note that
13 we have prepared a Comprehensive Exhibit List, and
14 it will -- it includes all the prefiled exhibits and
15 also those exhibits that staff wishes to include in
16 the record. We haven't shared it with the parties
17 yet, it's a new document, but we will check with the
18 parties prior to the hearing to determine if there
19 are any objections to any of that or to any of
20 staff's exhibits being entered into the record.

21 **COMMISSIONER BRISÉ:** Okay.

22 **MR. REHWINKEL:** May I ask -- it's been a
23 contentious issue in some recent dockets. There
24 were two important depositions taken last week. Are
25 those part of the exhibit list that you propose?

1 **MS. GERVASI:** No, they are not.

2 **MR. REHWINKEL:** Okay. Thank you.

3 **COMMISSIONER BRISÉ:** Okay. Anything else
4 in terms of the exhibit list?

5 Okay. Approved stipulations. As
6 reflected, Section X of the prehearing draft order,
7 stipulations on the docket 150148 issues, Issues 1
8 through 13 were approved by the Commission on the
9 15th at the conference agenda. So I think that that
10 speaks for itself; right?

11 Section XI, proposed stipulations. And
12 here we have Docket No. 150171 and the Issues 14
13 through 52. The parties and staff have reached a
14 number of proposed stipulations on these issues and
15 are set forth in Section XI. I think we went
16 through those as we went through the issues and
17 positions; right? Are there any issues or things
18 that we need to talk about with proposed
19 stipulations?

20 **MS. GERVASI:** Commissioner, I would note
21 that with respect to two issues, because this has
22 been a very dynamic process and we've been
23 wordsmithing up until the 11th hour, on Issue 46,
24 staff made a last-minute clarification to this
25 issue, and I just want to raise this to bring it to

1 the attention of all parties to make sure that we
2 still have a proposed stipulation.

3 We changed the nuclear asset-recovery
4 charge in Issue 46, the true-up mechanism should be
5 conducted at least every six months, and then we
6 had -- before that we had not less than twice a year
7 or something like that. This more closely tracks
8 the statute, which says it has to be at least
9 biannually. And then --

10 **COMMISSIONER BRISÉ:** Let's address that
11 one first.

12 **MS. GERVASI:** Thank you.

13 **COMMISSIONER BRISÉ:** Do we have any issues
14 with the language as proposed by staff? Okay. It
15 sounds like we are still where we need to be.

16 **MS. GERVASI:** Very good. And then the
17 same thing with respect to Issue 52, we hadn't
18 really nailed down the reasoning why the docket
19 should remain open actually for quite a long period
20 of time throughout the course of the life of the
21 bonds for like the next 20 years. And so what we
22 did was we included language to the effect that
23 explains that the docket should remain open through
24 completion of the Commission's review of the actual
25 costs of the nuclear asset-recovery bond issuance

1 conducted pursuant to Section 366.95(2)(c)4, *Florida*
2 *Statutes*. And I just wanted to make sure that
3 everybody was still okay with that proposed
4 stipulation.

5 **COMMISSIONER BRISÉ:** Okay. Let me hear
6 from the parties. Mr. Brew.

7 **MR. BREW:** I'm still not certain, and I
8 know this is a dynamic process, how or where parties
9 would address changes that may occur with respect to
10 ongoing financing costs and potential changes in the
11 servicer or other things. Would that be -- would
12 those arise under a new docket?

13 **MS. GERVASI:** Because this docket will
14 remain open, we don't see a need for another docket
15 to address those matters if and when they may come
16 up. But we will be addressing servicer fees and
17 those types of costs within the Financing Order
18 itself.

19 **COMMISSIONER BRISÉ:** Let me ask you a
20 question. You said the docket would remain open.

21 **MS. GERVASI:** Right.

22 **COMMISSIONER BRISÉ:** And there was a
23 question about closing the docket? So if you
24 could --

25 **MS. GERVASI:** Well, there's always the

1 question about whether a docket should be closed or
2 not.

3 **COMMISSIONER BRISÉ:** Right.

4 **MS. GERVASI:** And so that really is all we
5 meant to address with that last issue, whether the
6 docket should be closed or remain open. And because
7 there's a true-up process throughout the course of
8 the bonds, that it should remain open for that
9 reason.

10 If other issues were to come up -- the
11 statute is pretty clear that the Commission only has
12 the authority to do the true-up after, you know, the
13 bonds have been sold. So I'm not sure what might
14 come up, but the docket will be open if something
15 does.

16 **MR. REHWINKEL:** The Public Counsel, I
17 don't know if it would be part of what we talk about
18 after this -- I'm not clear exactly whether this
19 means that the docket would be closed. I don't know
20 what the time frame is, so I don't think we could
21 agree to this language just yet. So I would like
22 to -- I think by the end of the day we probably can
23 find some language we agree with on 52, but this has
24 changed from what we talked about yesterday. And
25 I'm uncertain about the time frame, so I would say,

1 no, we won't agree with this at this time.

2 **COMMISSIONER BRISÉ:** Okay. Ms. Triplett.

3 **MS. TRIPLETT:** Yes. I have an answer, I
4 think, to Mr. Brew's concern, but let's just save
5 it, I think, for this afternoon because I think
6 it'll just be more productive.

7 **COMMISSIONER BRISÉ:** Okay. So we don't
8 have a proposed stipulation yet on 52. Okay.

9 **MS. GERVASI:** Thank you. Fair enough.

10 **MR. BREW:** Mr. Commissioner, I also have
11 some questions on the phrasing of Issue 38, but we
12 can pick that up later too.

13 **COMMISSIONER BRISÉ:** Okay.
14 Thirty-eight -- oh, that was one of the proposed
15 stipulations as well. Okay.

16 **MR. MOYLE:** Maybe I should ask this
17 question at our --

18 **COMMISSIONER BRISÉ:** At your meeting?

19 **MR. MOYLE:** -- later meeting, but I'm kind
20 of reading these as sort of stipulations of fact.
21 They are stipulations of fact, and I don't read them
22 as necessarily tying to a question. Am I getting
23 that wrong?

24 **MS. GERVASI:** The proposed stipulations
25 are intended to answer each of the issues that they

1 correspond to, so they are statements to resolve the
2 issues.

3 **MR. MOYLE:** Okay. So ultimately when this
4 is approved, it'll be the question and the statement
5 that's here?

6 **MS. GERVASI:** Correct, if they're
7 approved.

8 **MR. MOYLE:** Thank you.

9 **COMMISSIONER BRISÉ:** Ms. Triplett, you
10 wanted to say something?

11 **MS. TRIPLETT:** He was looking at me like I
12 was going to answer, so I just let Ms. Gervasi
13 answer.

14 **MR. REHWINKEL:** The Public Counsel and
15 Mr. Brew reminded me of a discussion that we had had
16 on 38, and we want to propose some slight tweaks to
17 that language just to be clear that -- although I
18 think in concept we agree with the language, with
19 the essence of the stipulation, we want to suggest
20 some changes. So for the record, we're 99 percent
21 there, but it's not locked down.

22 **COMMISSIONER BRISÉ:** All right. So 38 is
23 still a work in progress as well.

24 **MS. GERVASI:** Thank you.

25 **COMMISSIONER BRISÉ:** Okay. Are there any

1 of the proposed stipulations, any other ones that we
2 need to sort of identify as works in progress?

3 All right. Okay. Any pending motions?

4 **MS. GERVASI:** No, sir, there are none.

5 **COMMISSIONER BRISÉ:** Okay. Section XIII,
6 pending confidentiality motions.

7 **MS. GERVASI:** There are some pending
8 confidentiality requests. DEF's 4th through 8th
9 requests, I believe, are currently pending. It is
10 only the 8th request for confidential classification
11 that contains information which may be introduced at
12 the hearing, and so we will endeavor to get a ruling
13 on that one just as soon as we can.

14 **COMMISSIONER BRISÉ:** Okay.

15 **MS. TRIPLETT:** Mr. Chairman, my paralegal
16 informed me by email that we had a notice of intent
17 that was filed with respect to recent discovery, and
18 we're working to get that request in. I'm not sure
19 of the numbers, but I can get that information to
20 you. We'll get it in quickly because it also may
21 contain information that may be used at hearing.

22 **MS. GERVASI:** Thank you. It'll probably
23 be the 9th request, and we're expecting that because
24 we noticed the notice of intent. It's just that the
25 request isn't in just yet.

1 **COMMISSIONER BRISÉ:** Okay.

2 **MS. GERVASI:** But when that one comes in,
3 we will also endeavor to get that one done quickly
4 too because that one may also contain some materials
5 that we may want to introduce.

6 **MS. TRIPLETT:** Okay. And then I know we
7 have late-filed deposition exhibits, but the good
8 news is no confidentiality with those, so that
9 would -- that should be the end of it. Thanks.

10 **COMMISSIONER BRISÉ:** All right. Section
11 XIV, post-hearing procedures.

12 **MS. GERVASI:** Staff would recommend that
13 we keep to the briefs being no longer than 40 pages
14 and that they will remain due on October the 23rd,
15 which has already been scheduled.

16 **COMMISSIONER BRISÉ:** All right. I hope
17 everyone is clear on that. Forty pages and due on
18 the 23rd of October.

19 **MS. TRIPLETT:** May I say something?

20 **COMMISSIONER BRISÉ:** Sure.

21 **MS. TRIPLETT:** I'm not going to complain
22 about 40 pages, and I typically don't do this, but
23 the position of 50 words, is there any way -- some
24 of the issues, if they remain, could maybe -- we
25 would ask maybe for 100 words just given the nature

1 of the issues -- for the positions, I mean.

2 **MR. REHWINKEL:** We would support that.

3 **MR. WRIGHT:** We would too.

4 **MS. GERVASI:** We have no problem.

5 **COMMISSIONER BRISÉ:** Okay. So it sounds
6 like that would not be an issue to bring the 50 up
7 to 100. Okay.

8 All right. Section XV, rulings. So your
9 opening statements will be ten minutes for DEF, 20
10 minutes shared by Intervenors, and five minutes for
11 staff. Okay.

12 As you recognize, staff has five minutes,
13 recognizing that this process is a little different,
14 so we're going to provide staff with five minutes
15 for them to make opening statements as well.

16 Okay. Other matters, are there any other
17 matters that we need to address at this Prehearing
18 Conference?

19 **MS. GERVASI:** Commissioner, none that I'm
20 aware of.

21 **COMMISSIONER BRISÉ:** Okay. Anyone else?
22 Perfect. So since there are no other matters to
23 address, we stand adjourned.

24 (Prehearing Conference adjourned at 10:11
25 a.m.)

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 2nd day of October, 2015.

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