

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150196-EI

PETITION FOR DETERMINATION OF
NEED FOR OKEECHOBEE CLEAN
ENERGY CENTER UNIT 1, BY
FLORIDA POWER & LIGHT COMPANY.

_____ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER
PARTICIPATING: COMMISSIONER RONALD A. BRISÉ
PREHEARING OFFICER

DATE: Tuesday, November 17, 2015

TIME: Commenced at 2:00 p.m.
Concluded at 3:30 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 WILLIAM COX, ESQUIRE, 700 Universe Boulevard,
3 Juno Beach, Florida 33408-0420, and CHARLES A. GUYTON,
4 ESQUIRE, Gunster Law Firm, 215 South Monroe Street,
5 Suite 601, Tallahassee, Florida 32301-1839, appearing on
6 behalf of Florida Power & Light Company.

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

11 BRADLEY MARSHALL, ALISA COE, and DAVID
12 GUEST, ESQUIRES, Earth Justice, 111 South Martin Luther
13 King Boulevard, Tallahassee, Florida 32301, appearing on
14 behalf of Environmental Confederation of Southwest
15 Florida.

16 J.R. KELLY, PUBLIC COUNSEL, and PATRICIA
17 CHRISTENSEN, ESQUIRES, Office of Public Counsel, c/o the
18 Florida Legislature, 111 W. Madison Street, Room 812,
19 Tallahassee, Florida 32399-1400, appearing on behalf of
20 the Citizens of the State of Florida.

1 APPEARANCES (Continued):

2 GARY A. DAVIS and JAMES S. WHITLOCK,
3 ESQUIRES, 21 Battery Park Avenue, Suite 206, Asheville,
4 North Carolina, 28801, and GEORGE CAVROS, ESQUIRE, 120
5 East Oakland Park Boulevard, Suite 105, Fort Lauderdale,
6 Florida 33334, appearing on behalf of Southern Alliance
7 for Clean Energy.

8 KELLEY CORBARI and LESLIE AMES, ESQUIRES,
9 Florida Public Service Commission, 2540 Shumard Oak
10 Boulevard, Tallahassee, Florida 32399-0850.

11 MARY ANNE HELTON, ESQUIRE, Deputy General
12 Counsel, Florida Public Service Commission, 2540 Shumard
13 Oak Boulevard, Tallahassee, Florida 32399, appearing as
14 Advisor to the Florida Public Service Commission.

15 CHARLIE BECK, ESQUIRE, General Counsel,
16 Florida Public Service Commission, 2540 Shumard Oak
17 Boulevard, Tallahassee, Florida 32399, appearing as
18 General Counsel to the Florida Public Service
19 Commission.

P R O C E E D I N G S

1
2 **COMMISSIONER BRISÉ:** Good afternoon. I'm
3 going to go ahead and call this hearing to order -- I
4 mean, prehearing to order, Docket No. 150196-EI,
5 petition for determination of need for the Okeechobee
6 Clean Energy Center Unit 1 -- that's a mouthful -- by
7 Florida Power & Light. Today is November 17th. It is
8 approximately 2:00.

9 Mr. Whitlock, are you on the phone?

10 **MR. WHITLOCK:** Commissioner Brisé, good
11 afternoon. I am. Can you hear me okay?

12 **COMMISSIONER BRISÉ:** Very loud and clearly.
13 All right. Thank you. So, staff, would you read the
14 notice, please?

15 **MS. CORBARI:** By notice issued October 23rd,
16 2015, this time and place was set for this prehearing in
17 Docket No. 150196-EI, petition for determination of need
18 for Okeechobee Clean Energy Center Unit 1 by Florida
19 Power & Light. The purpose of this prehearing was set
20 forth in that notice.

21 **COMMISSIONER BRISÉ:** Thank you. At this time
22 we'll go ahead and take appearances.

23 **MR. COX:** William Cox with Florida Power &
24 Light Company, Charles Guyton with the Gunster Law Firm
25 here today representing Florida Power & Light Company.

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

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

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

7 **MR. MARSHALL:** Bradley Marshall from the
8 Earthjustice Law Firm entering an appearance on behalf
9 of the Environmental Confederation of Southwest Florida.

10 **COMMISSIONER BRISÉ:** Okay. Thank you. Do you
11 want to enter an appearance for anyone else?

12 **MR. MARSHALL:** Yes. Also for David Guest and
13 Alisa Coe.

14 **COMMISSIONER BRISÉ:** All right. Thank you.

15 **MS. CHRISTENSEN:** Patty Christensen with the
16 Office of Public Counsel, and I'd also like to make an
17 appearance for J. R. Kelly, the Public Counsel.

18 **COMMISSIONER BRISÉ:** Okay. Mr. Whitlock?

19 **MR. WHITLOCK:** Jamie Whitlock entering an
20 appearance on behalf of the Southern Alliance for Clean
21 Energy, and would also make an appearance for George
22 Cavros, who I believe might be joining y'all in person
23 there shortly, and also my law partner, Gary Davis.

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

25 **MS. CORBARI:** Kelley Corbari and Leslie Ames

1 for Commission staff.

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

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

5 **COMMISSIONER BRISÉ:** Thank you very much.
6 Hope you feel better, Mary Anne.

7 All right. Preliminary matters, are there any
8 that we need to address at this time before we proceed
9 through the draft Prehearing Order?

10 **MS. CORBARI:** Staff will note that there are
11 proposed additional issues and a pending motion which we
12 can address now or as we proceed through the draft
13 Prehearing Order.

14 **COMMISSIONER BRISÉ:** Okay. What is our
15 pleasure?

16 **MS. CORBARI:** Staff would recommend addressing
17 it once we get to that section of the Prehearing Order.

18 **COMMISSIONER BRISÉ:** Perfect. Thank you.
19 Does any party have any preliminary matter that they
20 want to address at this time?

21 **MR. COX:** No, Commissioner.

22 **COMMISSIONER BRISÉ:** Okay. Thank you. All
23 right. I see heads nodding no.

24 Mr. Whitlock, I can't see your head nodding.

25 **MR. WHITLOCK:** Not at this time, Commissioner.

1 Thank you.

2 **COMMISSIONER BRISÉ:** All right. Thank you.
3 So let's go through the draft Prehearing Order now. I
4 will identify sections and I will -- I want the parties
5 or you all to let me know if there are any corrections
6 or changes that need to be made. We may go through this
7 pretty quickly, so please speak up and let me know if
8 you have a change or correction that you would like to
9 make.

10 Section I, case background.

11 **MR. COX:** Commissioner, just one small change
12 on the first page of the Prehearing Order, just a
13 correction to the zip code for Charles Guyton with the
14 Gunster Law Firm. It should be listed as 32301. And
15 that's it. Thank you.

16 **COMMISSIONER BRISÉ:** Okay. Duly noted. Thank
17 you.

18 Anyone else on Section I, case background?

19 Okay. Section II, conduct of proceedings.

20 Okay. Section III, jurisdiction.

21 All right. Section IV, procedure for handling
22 confidential information.

23 **MS. CORBARI:** As will be discussed under
24 Section IX, staff hopes to have a stipulated composite
25 exhibit list which includes specific discovery

1 responses. Some of the discovery responses staff hopes
2 to include have been granted confidential
3 classification. Staff will ensure all procedures are
4 followed with respect to these hearing exhibits.

5 **COMMISSIONER BRISÉ:** All right. Thank you.
6 Any parties have anything that they need to address in
7 this section?

8 All right. Moving on, Section V, prefiled
9 testimony and exhibits and witnesses.

10 Okay. Order of witnesses, Section VI. Are any
11 parties willing to stipulate to any witnesses at this
12 point?

13 **MR. MARSHALL:** This isn't a stipulation,
14 Commissioner.

15 **COMMISSIONER BRISÉ:** Okay.

16 **MR. MARSHALL:** But if no party has an
17 objection, we would ask that Karl Rábago be allowed to
18 testify after SACE's witnesses.

19 **COMMISSIONER BRISÉ:** Okay. Do any parties
20 have any objection or issue with that?

21 **MR. COX:** FPL has no objection.

22 **COMMISSIONER BRISÉ:** Okay.

23 **MR. MOYLE:** No. As is precedent, we work with
24 each other on that, so no problem.

25 **COMMISSIONER BRISÉ:** Okay.

1 **MS. CHRISTENSEN:** No objection from OPC.

2 **COMMISSIONER BRISÉ:** Okay. Mr. Whitlock.

3 **MR. WHITLOCK:** SACE has no objection,

4 Mr. Commissioner.

5 **COMMISSIONER BRISÉ:** All right.

6 **MS. CORBARI:** Staff has no objection.

7 **COMMISSIONER BRISÉ:** Okay. Perfect. So

8 Mr. Rábago will testify after SACE's witnesses.

9 **MR. MARSHALL:** Thank you.

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

11 So do we have any stipulations in terms of witnesses at
12 this time? No?

13 **MR. COX:** None that we're aware of. FPL at
14 this point would plan to cross-examine the other
15 parties' witnesses, but would certainly be open to
16 stipulations if they arise.

17 **COMMISSIONER BRISÉ:** All right. So if they do
18 arise, please let us know. Please work to that end as
19 much as possible. Okay.

20 **MR. MOYLE:** Can I ask a question on this
21 section on order of witnesses? Sometimes parties opt to
22 do both direct and rebuttal at the same time.

23 **COMMISSIONER BRISÉ:** Sure.

24 **MR. MOYLE:** Is there any intention to do that
25 in this case?

1 **COMMISSIONER BRISÉ:** Not that I'm aware of.

2 **MS. CORBARI:** Staff would recommend, due to
3 the specific nature of the rebuttal testimony, that the
4 order of witnesses be direct, intervenor, and rebuttal.

5 **COMMISSIONER BRISÉ:** Okay.

6 **MR. MOYLE:** Okay. So just for planning
7 purposes, we're not going to have rebuttal and direct at
8 the same time, it sounds like.

9 **MS. CORBARI:** Unless the parties feel
10 otherwise, that's what -- that would be staff's
11 preference.

12 **COMMISSIONER BRISÉ:** I think we'll keep it
13 straight.

14 **MR. MOYLE:** Yeah. Yeah. I mean, FPL, usually
15 they're the ones that say, yeah, we want to do it or --
16 I assume, Charlie and Will, you guys do not want to do
17 it?

18 **MR. COX:** We support the way that staff has
19 presented it.

20 **MR. MOYLE:** Okay.

21 **COMMISSIONER BRISÉ:** Okay.

22 **MR. MOYLE:** Thank you.

23 **COMMISSIONER BRISÉ:** No problem. Thank you.

24 Section VII, basic positions. Is everyone
25 comfortable with their statements for their basic

1 positions at this time?

2 **MR. COX:** Yes. FPL is.

3 **COMMISSIONER BRISÉ:** Okay.

4 **MR. MOYLE:** We're good.

5 **COMMISSIONER BRISÉ:** All right.

6 **MR. MARSHALL:** Yes.

7 **MS. CHRISTENSEN:** OPC is fine.

8 **COMMISSIONER BRISÉ:** All right. Mr. Whitlock?

9 **MR. WHITLOCK:** SACE is fine, Mr. Commissioner.

10 Thank you.

11 **COMMISSIONER BRISÉ:** All right. You're
12 welcome.

13 Okay. Section VIII, issues and positions. At
14 this time it is my understanding that SACE has proposed
15 three additional issues and ECOSWF has proposed five
16 additional issues in this docket. So, staff, can you
17 walk us through that?

18 **MS. CORBARI:** Sure, Commissioner. FPL opposes
19 the inclusion of all additional issues proposed by SACE
20 and ECOSWF. OPC does not object to the inclusion of the
21 proposed additional issues. FPL, ECOSWF, and SACE have
22 provided comments supporting or objecting to the
23 inclusion of the proposed additional issues. Staff
24 would recommend that the parties should be allowed to
25 present their arguments on the inclusion of the proposed

1 issues. You may rule from the bench as desired or you
2 may take the arguments under advisement and issue a
3 ruling in the Prehearing Order or issue a separate
4 order.

5 Staff would note that the Order Establishing
6 Procedure requires that a party take a position at the
7 prehearing conference unless good cause is shown as to
8 why that party cannot take a position at this time.
9 Accordingly, if a party's position in the draft
10 Prehearing Order is currently no position at this time or
11 no position, that party must change its position or show
12 good cause why it cannot take a position. If a party
13 fails to take a position by that time, the Prehearing
14 Order will reflect no position for that party for such
15 issues.

16 **COMMISSIONER BRISÉ:** All right. So at this
17 time let me hear from the parties with the issues, the
18 newly proposed issues, and we'll go ahead and start with
19 ECOSWF.

20 **MR. MARSHALL:** I'm not going to go through all
21 of our comments and specific support of each proposed
22 issue unless you would like us to do that. Generally,
23 we are proposing these additional issues to ensure that
24 testimony regarding these issues is allowed to be
25 presented during the hearing and that cross-examination

1 on these issues is also allowed. We believe that these
2 issues are relevant under the statute in determining
3 whether the petition for need determination should be
4 granted by the Commission.

5 **COMMISSIONER BRISÉ:** Okay. Thank you. All
6 right. And your proposed issues are Issues 8, 9, 10,
7 and 11?

8 **MR. MARSHALL:** And 12.

9 **COMMISSIONER BRISÉ:** And 12. Okay. All
10 right. Okay. Staff?

11 **MR. GRAVES:** Commissioner, I'd just start with
12 the agreed upon issues come directly from the *Florida*
13 *Statutes* which governs the determination of need
14 proceedings.

15 **COMMISSIONER BRISÉ:** Actually, give me second.
16 I think let me hear from some of the other parties as
17 well. Go ahead, FPL.

18 **MR. COX:** Thank you, Commissioner Brisé. The
19 issues proposed by ECOSWF I think largely fit into two
20 categories. One is addressing reserve margin criteria
21 and also the idea of whether FPL should be able to use a
22 generation-only reserve margin criteria. They do frame
23 it in a slightly different way than SACE does on that
24 issue, but those are Issues 8, 9, and 12. And then they
25 have several issues, 10 and 11, that address demand

1 response programs, which is a type of conservation
2 measure.

3 The issues that you have before you in your
4 Order Establishing Procedure as tentative issues are the
5 standard issues in need determination proceedings before
6 the Commission. They've been used in every need
7 determination that we're aware of under 403.519.

8 You know, to the extent that the issues that
9 have been raised by ECOSWF are relevant to those issues,
10 I think they will get full consideration. In fact, if
11 you look at their prehearing statements and their
12 testimony, they have already addressed those issues.

13 Specifically when you look at Issue No. 1 as
14 proposed in the Order Establishing Procedure and then
15 again confirmed in the staff list of tentative issues on
16 September 21st, you'll see the issue of what total
17 reserve margin criteria should be used for FPL. Well,
18 that's clearly subsumed in part of the issue that says is
19 there a need for the proposed plant, in this case the
20 Okeechobee unit, taking into account the need for
21 electric system reliability and integrity? In every
22 proceeding those issues have been addressed under that
23 issue, what is the appropriate reserve margin?

24 And specifically in this case their second
25 issue goes to should FPL be able to use a reliability

1 criterion that's not used by other utilities? That issue
2 has come up before the Commission in the sense that in
3 TECO's last need determination they do have a
4 utility-specific reliability criterion, the supply side
5 reliability criterion. In that case, the Commission did
6 not call it a separate issue. It allowed the parties to
7 address the reliability issue under the standard Issue 1,
8 which does address the need for the proposed electrical
9 plant taking into account system reliability and
10 integrity.

11 The fact of the matter is the other issues
12 raised by ECOSWF really are framed more as arguments in
13 terms of demand response programs and how they compare to
14 generation. Those issues can clearly be addressed under
15 the standard Issue 2, which addresses conservation
16 measures reasonably available. It also can be addressed
17 under Issue 5, whether what we've proposed in terms of
18 the Okeechobee unit is the most cost-effective
19 alternative.

20 So, again, we see no need for these issues to
21 be taken up separately when they're clearly subsumed
22 within the issues. And if the Commission decides the
23 issues that it's laid out in the Order Establishing
24 Procedure, it will take into account and decide the
25 underlying issues that have been raised by ECOSWF. Thank

1 you.

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

3 OPC.

4 **MS. CHRISTENSEN:** As we said before, we don't
5 have an objection to inclusion of additional issues. In
6 fact, we support that idea. While we acknowledge that
7 these -- the issues that staff presented in its original
8 tentative issues list is the standard issues that are
9 raised in need determinations, similar to a rate case,
10 that doesn't exclude the need or the appropriateness of
11 raising additional specific issues that are specific to
12 that individual case. And I think that's really the
13 issue in this case is that we're not saying that the
14 generic need determination issues do not need a
15 determination. What we're saying here is there were
16 specific additional issues that were raised through
17 FPL's pleading and developed through testimony that were
18 filed by the parties that require or should have their
19 own separate issue.

20 Specifically what is the appropriate reserve
21 margin to be approved or that should be applied to this
22 need determination and whether or not the additional
23 criteria that FPL has proposed being used in this context
24 of the 10 percent reserve margin only, should that be
25 applied in this need determination?

1 I just want to clarify for the record, while we
2 do support the idea of readdressing 20 percent reserve
3 margin in a generic proceeding as it should be applied to
4 all of the IOUs, for this case we do think it is
5 appropriate to look at what reserve margin criteria
6 should be applied in this need determination.

7 And whether or not the Commission wants to
8 address a specific legal issue or address them as a
9 factual issue, I think either way can be appropriate
10 because I think there is certainly an issue of whether or
11 not that stipulation that the company refers to that was
12 adopted in 1999 applies in a need determination context.
13 So that can be approached either as a legal issue,
14 whether or not that stipulation is binding on this need
15 determination, or as a factual issue of whether or not a
16 20 percent reserve margin should be applied in this case,
17 and then you can keep the remaining standard issues. And
18 that would be OPC's position. Thank you.

19 **COMMISSIONER BRISÉ:** Okay. FIPUG.

20 **MR. MOYLE:** FIPUG would just seek clarity on
21 this, and I've heard two things that I think warrant
22 some comment.

23 One, I wasn't 100 percent sure whether FP&L is
24 saying this issue is not relevant, the reserve margin
25 issue is not relevant, or they're saying, no, it is

1 relevant but it's subsumed within Issue 1, and I think
2 that makes a difference in terms of preparing for the
3 case. So that's one point that I would hope FPL could
4 clarify.

5 And then the second point from OPC about is
6 this a factual issue or is it a legal issue, in a similar
7 vein, that's an important call that we would suggest
8 needs to be made before we get ready for hearing because
9 if it's legal, then there's probably not much need to go
10 through cross-examining witnesses on that. If it's
11 factual, then it would change your preparation. So two
12 points but a similar vein with respect to, you know, how
13 we're going to handle the 20 percent reserve margin
14 issue.

15 **COMMISSIONER BRISÉ:** Okay. SACE, I don't know
16 if it's going to be Mr. Cavros or Mr. Whitlock.

17 **MR. WHITLOCK:** Mr. Commissioner, I'll speak on
18 that, if I could.

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

20 **MR. WHITLOCK:** Thank you, sir. SACE largely
21 agrees with much of what OPC just had to say, and it
22 kind of ties into a couple of, if not all of, SACE's
23 proposed issues.

24 We certainly believe what reserve margin
25 criterion should be used to determine FPL's need in this

1 document or ECOSWF Issue 8 should be a separate -- a
2 separate and relevant -- is a relevant issue and should
3 be a separate issue in this docket. Both SACE and ECOSWF
4 have submitted testimony, you know, to the effect that
5 the 20 percent is not correct. And the same goes to
6 ECOSWF's proposed Issue 9. And that kind of leads me
7 back into -- and, Mr. Commissioner, we might want to wait
8 until we get to the SACE issues on this where we have
9 raised some legal issues regarding the legal effect of
10 this 16-year-old stipulation that FPL relies on for the
11 20 percent. And I don't know if now would be the proper
12 time to address that or if we should go ahead and get
13 through ECOSWF's issues first.

14 **COMMISSIONER BRISÉ:** Yeah, we're going to get
15 through ECOSWF's issues first, and then we'll come over
16 to SACE's issues.

17 **MR. WHITLOCK:** Okay. Well, Mr. Commissioner,
18 I would just say that I do believe in particular
19 ECOSWF's proposed Issues 8 and 9 do need to be separate
20 issues in this docket. I think all the parties, all
21 the, most of the Intervenors anyway, even those who have
22 not provided prefiled testimony of witnesses, have
23 questioned whether or not a 20 percent reserve margin is
24 necessary in this case, and, furthermore, have serious
25 questions about the 10 percent generation-only reserve

1 margin and don't want to see those issues simply get
2 subsumed into a larger, broader issue. Thank you.

3 **COMMISSIONER BRISÉ:** Okay. Thank you. Okay.
4 Any further comments from parties? I don't know if FPL
5 wanted to address the issue that Mr. Moyle raised.

6 **MR. COX:** If I could just respond briefly to
7 Mr. Moyle.

8 **COMMISSIONER BRISÉ:** Sure.

9 **MR. COX:** He asked whether it was subsumed or
10 not. And I think we think to the extent it's relevant
11 and appropriate, the 20 percent reserve margin or the
12 reserve margin criteria issue, I'll call it, you know,
13 is subsumed in Issue 1.

14 The Commission has consistently found that the
15 '99 stipulation applies and it can only be changed in a
16 generic proceeding. And, in fact, OPC's own prehearing
17 statement states that, that it can only be changed in a
18 prehearing -- in a generic proceeding.

19 That being said, I mean, to the extent that
20 it's a relevant and appropriate issue for Issue 1, which,
21 again, the reliability criteria that FPL uses to
22 establish its need is relevant to Issue 1. Okay? We
23 don't dispute that those issues are relevant to Issue 1.
24 We think they can be addressed there. In fact, they have
25 been addressed there. But, again, we don't think that

1 this is the proceeding to change the 20 percent reserve
2 margin reliability criteria and that's our position. We
3 understand that their position is different. But we
4 wanted to make that clear and just say that we think to
5 the extent it's relevant and appropriate, the issue can
6 be addressed under Issue 1.

7 **COMMISSIONER BRISÉ:** Mr. Moyle?

8 **MR. MOYLE:** So he's saying to the extent it's
9 relevant. I just want to make sure that he's not
10 challenging its relevancy. Am I correct?

11 **MR. COX:** The reliability criteria that FPL
12 uses to establish its need in this case, those issues
13 are relevant to Issue 1.

14 **MR. MOYLE:** Okay. Thanks.

15 **MR. WHITLOCK:** Mr. Chairman, if I could just
16 briefly respond to Mr. Cox.

17 **COMMISSIONER BRISÉ:** Sure. Go right ahead.

18 **MR. WHITLOCK:** Mr. Chairman, I'd just like to
19 point out that, you know, it is Florida Power & Light
20 coming before this Commission with the burden of proof
21 to, you know, to demonstrate that it has the need for
22 this proposed power plant, and it bases that at least in
23 part on a 20 percent reserve margin. And, you know,
24 again, I just don't -- SACE does not believe that this
25 issue is subsumed. This 20 percent reserve margin is

1 based on a 16-year-old stipulation which we can discuss
2 in a minute. You know, I think it's at issue whether or
3 not that stipulation even applies in the proceeding.
4 And, you know, I think it should be -- the burden should
5 be placed where it's appropriate, which is on FPL to
6 show that that 20 percent is proper in this proceeding.
7 Thank you.

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

9 **MR. COX:** We accept that burden under Issue 1.

10 **COMMISSIONER BRISÉ:** Thank you. Mr. Graves or
11 Ms. Corbari.

12 **MS. CORBARI:** Actually I'm going to take it
13 from here. With the extent that the different reserve
14 margin criterion can be subsumed in Issue 1, staff
15 believes they can be addressed under Issue 1 and have
16 been in prior proceedings. All the issues, the language
17 are taken pretty much directly from the statute and
18 generally used in every need proceeding. The language
19 is broad enough to encompass the multiple facets of the
20 specific utility's individual need.

21 While FPL may have raised the 10 percent
22 generation-only reserve margin, that is a criterion under
23 Issue 1. Issue 1 does not specify reserve margin. It
24 could be anything, it could be transmission, and that's
25 why the parties -- staff believes the parties are welcome

1 to address the 20 percent reserve margin, loss of load
2 probability, generation reserve only margin, reserve
3 margin all within Issue 1, and that has been done in past
4 proceedings.

5 **COMMISSIONER BRISÉ:** Okay. So just to be
6 clear, you're saying that the proposed Issues 8, 9, and
7 12 can be addressed from staff's perspective in Issue 1.

8 **MS. CORBARI:** Yes, Commissioner.

9 **COMMISSIONER BRISÉ:** Okay. All right. Did we
10 address 10 and 11 yet, the proposed Issues 10 and 11
11 from staff's perspective?

12 **MS. CORBARI:** With regard to Issues 10 and 11,
13 staff agrees that the issues can be discussed under
14 Issue 2. Again, the language is from the statute and
15 broad enough to encompass a specific utility's
16 individual need. And as the demand-side management
17 resources can all fall, can all fall under there and,
18 again, have various -- similar issues have been
19 discussed under Issue 2 in past need determination
20 proceedings.

21 **COMMISSIONER BRISÉ:** Okay. All right. Okay.
22 Let me -- let's move on to SACE's issues, and then I'll
23 rule on all of them together.

24 Okay. Mr. Whitlock or Mr. Cavros, which one is
25 going to take this?

1 **MR. WHITLOCK:** I'll address these,
2 Commissioner Brisé. SACE has proposed Issue 1 is a
3 legal issue which is a separate and distinct issue which
4 I don't believe could be subsumed into any existing
5 factual issue now present in the case.

6 As you can see, what the issue basically asked
7 is if the 1999 stipulation requires the Commission to
8 review FPL's petition in this docket based on a
9 20 percent reserve margin. And, Commissioner Brisé, it
10 would, just to be short, it would be SACE's position that
11 the Commission needs to decide as a matter of law whether
12 it's required by the plain language of this stipulation
13 to consider FPL's petition in this docket based on a 20
14 percent reserve margin.

15 Again, you know, some of the other parties, not
16 just SACE, I believe Ms. Christensen from OPC just spoke
17 on it, have raised some issues about what the plain
18 language of this stipulation actually states and what it
19 legally requires or doesn't of the Florida Public Service
20 Commission. And SACE believes that the Commission needs
21 to render a legal ruling on this issue. Thank you.

22 **COMMISSIONER BRISÉ:** Okay. I think you have
23 another proposed issue.

24 **MR. WHITLOCK:** We do, Commissioner Brisé. Our
25 proposed Issue 2 goes back to -- it states, "If the

1 Commission does not address the appropriateness of FPL's
2 20 percent reserve margin criterion in this docket,
3 should the Commission establish a generic docket to
4 address what the appropriate reserve margin criteria are
5 for FPL and other IOUs?"

6 This kind of goes back to the conversation we
7 were just having, should the Commission decide, I believe
8 as it has in the past, that the need determination is not
9 the proper venue for consideration of a specific
10 utility's reserve margin, then SACE believes that a
11 generic docket ought to be established to consider what
12 FPL's appropriate reserve margin is.

13 Again, FPL is relying on a 16-year-old
14 stipulation for this 20 percent and, quite simply, it's
15 time for this to be updated with new analysis and study.
16 And if a generic docket is where that needs to be done,
17 we believe there needs to be an issue put out there for
18 Commission consideration.

19 **COMMISSIONER BRISÉ:** Okay. Before we move on
20 to the third issue, I want to hear from any other
21 parties.

22 **MR. COX:** For FPL, thank you, Commissioner
23 Brisé. Again, this issue addresses the reliability
24 issue that's raised in Issue -- in the standard
25 Issue 1 for need determination. It's what reliability

1 criterion should FPL use? It's calling into question a
2 Commission stipulation. It was approved in a Commission
3 order, participation of -- an industry-wide
4 participation, and all of the relevant parties that are
5 represented here by and large were a part of that
6 proceeding for the most part, not all, but most,
7 established the 20 percent reserve margin.

8 Since that time, the Commission has used it in
9 every single need determination. In fact, in one case,
10 the FPC, Florida Power Corp. Hines 3 in 2003, the issue
11 was raised specifically, can we change it in an
12 individual utility's need determination proceeding? And
13 the Commission found, no, it can only be changed in a
14 generic proceeding, again, which is what OPC has told us
15 in their prehearing statement here today.

16 So to the extent this issue is relevant in
17 terms of what's the appropriate reserve margin criterion
18 to establish reliability for FPL's system, to establish
19 the need for the unit that FPL has the burden to put
20 forward before you in this case for approval, we think
21 that it's clearly subsumed in Issue 1. The Commission
22 has looked at this issue before, whether it would do it
23 in an individual utility's proceeding, and they've said,
24 no, we don't think it should be teed up as a separate
25 issue.

1 To the extent it's relevant and the parties
2 have, thinking it's relevant, addressed it in their
3 testimony, in their prehearing statements, again, there
4 is no need to have it as a separate issue.

5 And then looking at Issue 2, which is really
6 part and parcel of the same thing, it says, well, if you
7 don't find that it can be changed in this proceeding
8 or -- actually I'll use the words they used. "If the
9 Commission does not address the appropriateness of FPL's
10 20 percent reserve margin criterion in this docket,
11 should the Commission establish a generic docket?"

12 Well, again, it's the Commission's prerogative
13 any time to open a generic docket or investigation of any
14 issue that's under its jurisdiction. Okay. The
15 Commission can do that at any time. In this case, we're
16 under a statutory time frame for a hearing in 90 days, a
17 Commission decision in 135 days. It really doesn't seem
18 appropriate to have this as a separate issue. But,
19 again, at any time the Commission could decide it wants
20 to have a generic proceeding and FPL would clearly
21 participate in that. Thank you.

22 **COMMISSIONER BRISÉ:** All right. OPC.

23 **MS. CHRISTENSEN:** Commissioner, let me respond
24 briefly to some of the things raised by FPL's counsel.

25 To note for the record, the stipulation was

1 entered into by the IOUs. OPC, while participating in
2 the docket, did not sign onto the stipulation. And the
3 reason we support SACE's issues and specifically as a
4 separate legal issue is because FPL, again, has raised
5 their position that the stipulation is binding on this
6 Commission in this proceeding. And I think we need to
7 look at what the actual language of the stipulation
8 requires and have the Commission acknowledge what the
9 language of the stipulation does and does not require of
10 the Commission.

11 I think the language is, from our reading of
12 it, fairly explicit that it does not pertain necessarily
13 to need determinations and, therefore, it's appropriate
14 to raise what the margin reserve criteria is that should
15 be applied in this need determination, and that's why I
16 was very specific about stating what reserve margin
17 criteria should be applied to this need determination.
18 As we agree with FPL, if you're trying to change the
19 20 percent reserve margin as it applies to all IOUs, then
20 that would be appropriately addressed through a generic
21 proceeding. However, this Commission is not bound and
22 does not have its hands tied to a 20 percent reserve
23 margin for this need determination. And then the
24 question becomes what is the appropriate reserve margin
25 that needs to be applied? And we can have various

1 positions on that.

2 FPL obviously would take the position that the
3 20 percent and 10 percent reserve margin was appropriate.
4 Our position has been clearly stated that it's the
5 Commission's rule, and we can have an argument over that.
6 But to have that argument, it is appropriately teed up as
7 a separate legal issue. And we would support the
8 inclusion of a separate issue on reserve margin and also,
9 for the same reasons, a separate issue on whether or not
10 the generation reserve margin criteria that's been
11 proposed is -- should be adopted by the Commission.
12 Because I don't think the Commission has ever made a
13 determination either in a need determination or other
14 proceeding that that's a criteria that should be applied
15 in making the determination of whether or not a plant, a
16 proposed plant should go forward. Those are the reasons
17 that these are separate distinct issues from Issue 1,
18 which is much more broad and generic of whether or not
19 they need the plant for system reliability and integrity.
20 I think that's more of -- that doesn't encompass the crux
21 of the issue, and I think we need a separate issue to do
22 that or separate issues. Thank you.

23 **COMMISSIONER BRISÉ:** Okay. ECOSWF.

24 **MR. MARSHALL:** ECOSWF supports the inclusion
25 of the SACE proposed issues. I'm not going to repeat

1 everything counsel for OPC so eloquently stated, but
2 this clearly has become an issue here. Florida Power &
3 Light almost seems to be arguing that since they project
4 that their reserve margin will fall below 20 percent by
5 2019, that as a matter of law the petition for need
6 needs to be granted. And we certainly -- we believe
7 that that's simply not true, that that's not what the
8 stipulation requires and that's not what the law
9 requires, which specifically requires the Commission to
10 take into account the need for electric system
11 reliability and integrity, and that's a factual finding
12 regarding whether there is a system reliability issue.
13 Not all reserve margins are created equal, and we
14 believe that the Commission needs to look at this issue,
15 and that since this has become an issue, it should be
16 separately stated.

17 **COMMISSIONER BRISÉ:** Okay. FIPUG?

18 All right. Staff.

19 **MS. CORBARI:** With regard to the comments of
20 OPC and ECOSWF with having the generation-only reserve
21 margin criterion broken out, again, staff would just
22 reiterate what it said before, that that falls under
23 Issue 1 and can be addressed separately just as FPL set
24 it out separately in its petition.

25 With regard to SACE's proposed Issues 1 and 2,

1 staff is -- staff's concerns are -- deal with the
2 finality of an order. With regard to this stipulation,
3 whether it was 16 years ago, the Commission has already
4 answered this question in essence in another need
5 determination proceeding.

6 In 2002, this issue was raised by an intervenor
7 and the Commission stated that it approved the
8 stipulation. By approving the proposed stipulation, the
9 IOUs -- by the IOUs, we have already determined that 20
10 percent is the appropriate reserve margin criterion and
11 that the IOUs are required to utilize this criteria
12 unless modified in a subsequent proceeding.

13 Now whether or not the issue of is the
14 stipulation binding, the language -- past Commission
15 orders since that stipulation find it so, and it's been
16 used in every proceeding.

17 And the concern is whether or not you say if
18 this applies only to FPL is -- there is a potential
19 impact to the other IOUs involved in that stipulation,
20 and those IOUs are not parties to this proceeding and are
21 unable to comment on that issue.

22 So, therefore, with regard to the legal issues
23 posed, staff believes these two issues are not
24 appropriate for this docket and should be answered in a
25 generic proceeding.

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

2 **MS. CHRISTENSEN:** Commissioner?

3 **COMMISSIONER BRISÉ:** Sure.

4 **MS. CHRISTENSEN:** Can I just respond real
5 briefly? I'm not sure what happened in the 2002 Hines
6 need determination, but I do know that the stipulation
7 in and of itself states that all current and future
8 proceedings under the electrical Power Plant Siting Act,
9 including those for consideration of merchant plants and
10 all statutes, rules, regulations, and policies bearing
11 on the Commission's determination of need for new
12 generation, including the need determination criteria in
13 Section 403.519, *Florida Statutes*, the IOUs' obligation
14 to solicit proposals for generating capacity, and
15 obligations of the IOUs to otherwise prudently avail
16 themselves of a reasonable availability of conservation
17 alternatives and cost-effective resource options, and
18 the obligations of the IOUs to best serve their retail
19 customers through the respective resource planning
20 processes are unaffected by the stipulation and,
21 therefore -- and the approval thereof.

22 So the stipulation language itself I think
23 clearly says it's not applicable to need determination.
24 I don't know how you -- I think that an issue would be
25 appropriate to reconcile the Hines order with the actual

1 language of the stipulation, so I think it would be
2 appropriate to have a separate legal issue.

3 And, you know, I don't think that we have
4 reached administrative finality on the issue because it
5 may be that it was that issue -- that order in the Hines
6 case was applicable only to the Hines need determination
7 and not appropriately applied to this one. So I think a
8 separate legal issue that can be addressed by all the
9 parties, including staff, who have differing opinions on
10 how the stipulation should be applied would be
11 appropriate. Thank you.

12 **COMMISSIONER BRISÉ:** All right. Thank you. I
13 think, SACE, you have one other issue.

14 **MR. WHITLOCK:** Thank you, Commissioner Brisé.
15 I know staff has already expressed its opinion on this
16 issue. This one deals with FPL's generation-only
17 reserve margin criterion. I would note that in FPL's
18 comments it submitted in response to the inclusion of
19 these issues it did note that if these issues were going
20 to be included as subissues, that it would -- and
21 Mr. Cox, I'm sure, will correct me if I'm mistaken, but
22 I believe they've said that they would support SACE's
23 wording.

24 So, again, you know, this is a brand new
25 reliability criterion that FPL has created itself, and

1 SACE simply does not believe it is proper to have that
2 subsumed into a broader issue. This is the first time
3 the Commission will consider this criterion, and it's --
4 the decision that the Commission makes, it's going to be
5 precedent setting and it's going to be very important,
6 and it's simply not something that should be buried under
7 another issue. At the very least it should be a
8 sub-issue. And as I've said before, I believe FPL has
9 stated that if it was a sub-issue, it would perhaps be
10 agreeable to the way SACE has worded it in our proposed
11 Issue 3.

12 Again, I just think this is too important of an
13 issue to have a utility create its own reliability
14 criterion and then let Commission review of it go kind of
15 masked under another issue. Thank you.

16 **COMMISSIONER BRISÉ:** Okay. Let's hear from
17 FPL.

18 **MR. COX:** Thank you, Commissioner Brisé.
19 First of all, let me just comment on one thing that he
20 said. He said that this issue shouldn't be masked or
21 hidden or something to that effect. Clearly it's not.
22 If you look at the testimony filed in the case, if you
23 look at the prehearing statements, every party has
24 addressed that under Issue 1, so it's clearly in front
25 of the Commission.

1 In the recent DSM goals case last year the
2 Commission said that to the extent that this
3 generation-only reserve margin factor became a factor in
4 FPL's next need determination case, the Commission would
5 review it at that time. So that's where we find
6 ourselves. And clearly under Issue 1 you can review.
7 There's no question. And I think staff largely agreed
8 with that.

9 I mean, just to be clear, FPL uses three
10 different reliability criteria to establish reliability
11 needs for its system. There is the reserve margin, the
12 20 percent reserve margin; there is the generation-only
13 reserve margin, the 10 percent that was focused on in
14 this issue; and there's also loss of load probability
15 criterion.

16 The loss of load probability criterion has
17 never been part of an express proceeding that I'm aware
18 of where the Commission has approved it per se, but
19 certainly in every need determination it is a criteria
20 that all of the utilities in Florida utilize. So it was
21 not necessarily established in a generic proceeding like
22 the 10 percent reserve margin, but, nonetheless, it's
23 considered in every need determination under Issue 1. So
24 we think that these issues again are appropriate to
25 address under Issue 1. The parties have done that.

1 There's no need for a separate issue. Thank you.

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

3 Mr. Cavros.

4 **MR. CAVROS:** Good afternoon, Commissioner
5 Brisé. I would only add that -- assume the practice of
6 subsuming issues under larger issues is for
7 administrative economy and administrative efficiency.
8 We have, by my count, what, about 11 issues? I have
9 seven issues in this docket. If we have eight, I don't
10 think it would really impact our administrative economy
11 that much. And, you know, it is a precedent setting --
12 would be a precedent setting decision if the Commission
13 were to approve this, and, you know, we just feel it
14 needs to be elevated to the point where it can be argued
15 as a separate issue.

16 **COMMISSIONER BRISÉ:** By my count, we're
17 talking 12 issues; right? That's what we're looking at
18 in terms of proposed; right?

19 **MR. COX:** Commissioner Brisé, there was one
20 point I forgot to mention in response to what SACE's
21 other counsel said in terms of our position on this
22 issue.

23 **COMMISSIONER BRISÉ:** Uh-huh.

24 **MR. COX:** He mentioned that we were willing to
25 accept SACE's Issue 3. Really what our position is, we

1 don't think the issue is necessary. If the Commission
2 does decide it is necessary, our first choice would be
3 an appropriately worded issue consistent with what we
4 proposed with Issue 1A, and it's fairly close to what
5 SACE is proposing with Issue 3. So as an alternative,
6 again, if the Commission decides it thinks the issue is
7 needed, we certainly could live with that. But, again,
8 our first position is we don't think it's needed. Thank
9 you.

10 **COMMISSIONER BRISÉ:** Okay. What's SACE's take
11 on the language as proposed by FPL on Issue 1A?

12 **MR. WHITLOCK:** Commissioner Brisé, I'm trying
13 to locate that. I think that would essentially be what
14 ECOSWF's proposed Issue 9 was; correct?

15 **MR. COX:** From FPL's perspective, that's not
16 correct.

17 **MR. WHITLOCK:** Not correct. Oh, okay. Is
18 it -- Will, would it be stated "Is the generation-only
19 reserve margin used by FPL an appropriate reliability
20 criterion"?

21 **MR. COX:** Yes. And it's found on page 17 of
22 the draft Prehearing Order.

23 **MR. WHITLOCK:** I see it now.
24 Commissioner Brisé, SACE would certainly be
25 acceptable to that language in lieu of our -- the

1 language in SACE's proposed Issue 3.

2 **COMMISSIONER BRISÉ:** Okay. I'll take that
3 into advisement. All right. Are those all the -- OPC,
4 I'm sorry.

5 **MS. CHRISTENSEN:** Commissioner, I would
6 just -- I think either SACE's proposed issue or FPL's
7 proposed issue gets to the heart of the issue on the
8 generation-only. I would ask that we be more specific
9 and just add the additional language for determining the
10 need for the proposed OCEC Unit 1 since we're talking
11 about the criteria that's being applied in this
12 proceeding. I don't know if FPL would have any
13 objection to adding that additional language for
14 determining the need for proposed OCEC Unit 1 to the end
15 of its issue. But I think with the addition of that
16 language, it's clear that we're talking about applying
17 it in this proceeding.

18 **COMMISSIONER BRISÉ:** Okay. Let me hear from
19 FPL, and then we'll go to staff.

20 **MR. COX:** Just to clarify, that would make it
21 pretty much almost the same wording as the SACE issue?

22 **MR. WHITLOCK:** Which is why we worded it like
23 that.

24 **MR. COX:** Again, that would be our second
25 choice if the Commission wants to go forward with an

1 issue there. Thank you.

2 **COMMISSIONER BRISÉ:** All right. Staff.

3 **MS. CORBARI:** Again, staff would reiterate
4 that Issue 1 is broad enough to encompass a multitude of
5 criterion a utility may use to show its need, and it's
6 the utility's burden to put forth the evidence as to
7 each criterion it uses. The generation-only reserve
8 margin criteria is only one of the criteria FPL outlines
9 in its petition. Therefore, staff again would state --
10 would recommend that this can be subsumed and addressed
11 in Issue 1.

12 **COMMISSIONER BRISÉ:** All right. Thank you.
13 So I'm ready to rule on a few of these, and some I'm
14 going to take into advisement and you'll get a ruling
15 hopefully by Thursday or Friday. Okay?

16 So the proposed Issue 8, 9, 10, 11, and 12 by
17 ECOSWF I think can be subsumed, so 8, 9, and 12 I think
18 can be appropriately subsumed in Issue 1. Issues 10 and
19 11 can be appropriately subsumed in Issue 2.

20 The legal issue brought up by SACE in terms of
21 does the stipulation entered into in Docket No. 981890-EU
22 and approved by the Commission in Order No.
23 PSC-99-2507-S-EU require the Commission to review FPL's
24 petition in this docket based on a 20 percent margin, I'm
25 going to take that one under advisement. Okay?

1 I'm also going to take the following issue to
2 that under advisement, which is if the Commission does
3 not address the appropriateness of the -- of FPL's
4 20 percent margin, reserve margin criterion in this
5 docket, should the Commission establish a generic docket
6 to address the appropriate reserve margin criteria for
7 FPL and other IOUs, so I'm going to take that into
8 advisement.

9 And the last issue in terms of the language in
10 terms of the generation-only reserve margin, that too I'm
11 going to take into advisement. So those are the three
12 I'm going to take into advisement, and we will have a
13 decision on that as soon as I make it.

14 So -- but for the proposed Issues 8, 9, 10, 11,
15 and 12, I think everybody got where I'm at on that.

16 **MR. MARSHALL:** Commissioner Brisé, I would
17 just ask that your holding be reflected in the order
18 that they are, in fact, subsumed by those issues.

19 **COMMISSIONER BRISÉ:** Okay. Duly noted. Okay.

20 **MR. MOYLE:** And since we'll have your ruling
21 coming out, particularly as it relates to that
22 generation-only reserve margin issue, it's a new issue
23 that is before you. I don't think FIPUG has done this
24 since I've been representing them, but I think, just
25 thinking ahead a little bit, we would like to be able to

1 comment on that issue but would like to see what the
2 evidence presented at hearing is before doing so. So
3 with your permission, we'd like to take a position that
4 staff usually does, which is, you know, let's see what
5 the evidence says on that issue.

6 So since I don't think we'll have a chance to
7 talk live prior to that --

8 **COMMISSIONER BRISÉ:** Okay. Sure. Sure.

9 **MR. MOYLE:** -- I just thought I'd bring that
10 up and make sure it didn't cause any big problems if we
11 took that position.

12 **COMMISSIONER BRISÉ:** Okay. Staff, help me out
13 here.

14 **MS. CORBARI:** Staff would recommend that
15 should -- that the parties, as they do normally, if the
16 issues are allowed in, that depending on the date the
17 order is issued, that the parties should provide a
18 position by close of business the next day or at least
19 no later than -- what is it -- Wednesday, is it the
20 24th -- the Wednesday prior to Thanksgiving as the
21 hearing starts the following Tuesday --

22 **COMMISSIONER BRISÉ:** Sure.

23 **MS. CORBARI:** -- as is customary.

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

25 **MR. MOYLE:** Okay. Well, so we'll probably

1 just take the position, which I think is a legitimate
2 position to take to say we're going to have live
3 witnesses and intend to have some questions about that,
4 and we'll see what the evidence presents before taking
5 our final position.

6 **COMMISSIONER BRISÉ:** Okay. Now you're
7 complicating it for me.

8 **MR. MOYLE:** Well, I guess what I'm kind of
9 getting at, I would rather, if staff will take a
10 position, they're a party, if they'll say yes or no, you
11 know, then it should be good for the goose, good for the
12 gander.

13 **COMMISSIONER BRISÉ:** Okay. Mary Anne, did you
14 want to chime in?

15 **MS. HELTON:** As you've already noted,
16 Mr. Chairman, I'm not at my best today.

17 **COMMISSIONER BRISÉ:** Sure.

18 **MS. HELTON:** And I want to make sure I
19 understand exactly which issue it is that Mr. Moyle is
20 addressing as far as his inability to take a position at
21 this time should you decide that it is an issue in the
22 case.

23 **MR. MOYLE:** It's the generation reserve margin
24 only. It's the issue that has never been in front of
25 this Commission. We've got witnesses that filed some

1 testimony, but they're going to be here live and I know
2 they'll get a lot of questions and there will be a lot
3 of evidence on it. And I think, you know, until you get
4 a witness live and on cross, in this particular instance
5 we would just like the ability to reserve the right to
6 take a position until after the live hearing.

7 **MS. HELTON:** I guess where my confusion is,
8 it's my understanding that Power & Light really has not
9 used a different methodology in this case than it has in
10 any other previous need case with respect to presenting
11 evidence to the Commission that there is a need for the
12 plant at issue here. I understand that Mr. Moyle
13 doesn't know at this time whether there will be a
14 legitimate issue or not, and I think it would be fair to
15 give him a little bit of time to develop --

16 **COMMISSIONER BRISÉ:** A position.

17 **MS. HELTON:** -- a position, but I'm not sure,
18 other than the fact that this is potentially being laid
19 out as a specific issue, what really is new here.

20 **COMMISSIONER BRISÉ:** Okay.

21 **MR. MOYLE:** I think -- respectfully I think
22 factually it is new. I mean, I don't think we have a
23 debate about that. I mean, TECO may have used it once.
24 But my sense is that this generation reserve margin only
25 is a criterion that this is the first time the

1 Commission will have it before it in a contested
2 evidentiary proceeding. I think it was in some Ten-Year
3 Site Plans. But as we saw, you know, this morning,
4 those aren't where you can have live witnesses talking
5 about it.

6 **COMMISSIONER BRISÉ:** OPC.

7 **MS. CHRISTENSEN:** Can I -- yeah. Can I offer
8 a friendly suggestion that possibly Mr. Moyle could take
9 the position, "no, pending the evidence adduced at
10 hearing," and that way he's taken a position but he's
11 also caveated it depending upon what the evidence at the
12 hearing produces, and maybe that would satisfy staff's
13 wish to have a position taken and Mr. Moyle's need to
14 hear the live testimony before finalizing a position on
15 that issue.

16 **COMMISSIONER BRISÉ:** Mary Anne, what are your
17 thoughts?

18 **MS. HELTON:** It doesn't have to be an essay.
19 I mean, I think a "no at this time" is sufficient or
20 "yes."

21 **COMMISSIONER BRISÉ:** Okay.

22 **MR. MOYLE:** And I don't want to take us down
23 the rabbit trail, but, you know, I do want to know more
24 about the issue and plan to learn more about the issue.

25 So I feel like the witness where I'm saying

1 "yes or no, yes or no," I think I want to say maybe, but
2 I'm not sure I have that ability.

3 **COMMISSIONER BRISÉ:** The latitude.

4 **MR. YOUNG:** Mr. Chairman?

5 **COMMISSIONER BRISÉ:** Yes.

6 **MR. YOUNG:** If I could interject. I would
7 point out for the record these issues have been proposed
8 by ECOSWF, by SACE during the prehearing statements.
9 There's -- testimony has been filed in this docket from
10 the beginning. Also, Mr. Moyle had an opportunity to
11 file comments on these issues. So for him to say that
12 these are new issues and he can't take a position,
13 that's troubling to me in terms of him not being able to
14 take a position or trying to delay taking a position as
15 outlined in the OEP. And we understand that there is
16 possibly good cause for him to take a position later
17 because you have not ruled on these issues, whether
18 these issues should be included or excluded, but I think
19 he should take -- it's my belief that I think he should
20 take a position.

21 **COMMISSIONER BRISÉ:** Okay.

22 **MR. MOYLE:** I didn't mean to suggest that they
23 were not issues that had been out there, but they've
24 been contested. And most of the time contested issues
25 don't have a long shelf life, so I wanted to see what

1 happens on this.

2 **COMMISSIONER BRISÉ:** Sure. So I guess our
3 expectation is that you're going to assume a position
4 one way or the other and by the appropriate deadlines
5 that we currently have, and after that it's a matter of
6 latitude provided by the Chair for the questions.

7 **MS. CHRISTENSEN:** Commissioner?

8 **COMMISSIONER BRISÉ:** Yes.

9 **MS. CHRISTENSEN:** I didn't know whether we
10 were leaving the issues and positions section, but I did
11 have some changes to some of the issues that are not
12 contested --

13 **COMMISSIONER BRISÉ:** Sure.

14 **MS. CHRISTENSEN:** -- that I'd like to make at
15 this time when it's appropriate.

16 **COMMISSIONER BRISÉ:** Yes, let's do that.

17 **MS. CHRISTENSEN:** Okay. On OPC -- on
18 Issue 2, OPC would ask to change the position to yes,
19 period. And on Issue 3, OPC would ask to change the
20 position to no, period. And those are all the changes
21 in positions that I have.

22 **COMMISSIONER BRISÉ:** Okay. Okay. So 2, no,
23 period, and 5, no, period?

24 **MS. CHRISTENSEN:** I believe 2 was an
25 affirmative, yes --

1 **COMMISSIONER BRISÉ:** Oh, yes.

2 **MS. CHRISTENSEN:** -- the way the question was
3 worded.

4 **COMMISSIONER BRISÉ:** Sure.

5 **MS. CHRISTENSEN:** Yes, period. And,
6 otherwise, we've taken positions on all the other
7 issues, so that's --

8 **COMMISSIONER BRISÉ:** Okay.

9 **MS. CHRISTENSEN:** We've now taken positions on
10 all issues.

11 **COMMISSIONER BRISÉ:** All right. Thank you.
12 Yeah. So we haven't gone through the positions. We've
13 just addressed the issues.

14 So let's do it this way. If you have
15 positions that are different from the positions that are
16 in the document, please let us know at this time. And
17 so we're going to go ahead and start with FPL.

18 **MR. COX:** FPL does not have any changes.
19 Thank you.

20 **COMMISSIONER BRISÉ:** Okay. FIPUG.

21 **MR. MOYLE:** No changes.

22 **COMMISSIONER BRISÉ:** Okay. ECOSWF.

23 **MR. MARSHALL:** ECOSWF has no changes.

24 **COMMISSIONER BRISÉ:** Okay. SACE.

25 **MR. WHITLOCK:** Commissioner Brisé, SACE just

1 has one minor change, which would be on Issue 7.

2 **COMMISSIONER BRISÉ:** Okay. Go right ahead.

3 **MR. WHITLOCK:** Where we had previously taken
4 no position at this time. We would change that to an
5 affirmative yes.

6 **COMMISSIONER BRISÉ:** Okay. OPC.

7 **MS. CHRISTENSEN:** And we've already --

8 **COMMISSIONER BRISÉ:** Addressed your issues.

9 **MS. CHRISTENSEN:** -- addressed our issues that
10 we had changes to. Thank you.

11 **COMMISSIONER BRISÉ:** Okay. Staff.

12 **MS. CORBARI:** We have no changes.

13 **COMMISSIONER BRISÉ:** All right. So are we
14 done with Section VIII, issues and positions?

15 **MS. CORBARI:** Commissioner, I just wanted to
16 just make sure --

17 **COMMISSIONER BRISÉ:** Sure.

18 **MS. CORBARI:** -- clarify that should you rule
19 SACE's additional issues be included, the deadline for
20 filing positions in writing would be close of
21 business -- could we say noon on the Wednesday, the
22 holiday -- before the holiday?

23 **COMMISSIONER BRISÉ:** Yes.

24 **MS. CORBARI:** Okay. Thank you.

25 **COMMISSIONER BRISÉ:** Okay. All right. Moving

1 on to Section IX, exhibit list.

2 **MS. CORBARI:** Staff will note a preliminary
3 draft Comprehensive Exhibit List has been prepared,
4 which includes prefiled -- all prefiled exhibits and
5 includes exhibits staff wishes to include in the record
6 as identified as of yesterday. Staff has circulated the
7 preliminary draft list to the parties for review and to
8 determine if there are any objections to the draft
9 Comprehensive Exhibit List or any of staff's exhibits
10 being entered into the record. Staff will -- plans on
11 updating the list and circulating it no later than close
12 of business tomorrow.

13 **COMMISSIONER BRISÉ:** All right. Mr. Moyle.

14 **MR. MOYLE:** Thanks for the hard work on the
15 exhibit list. Can I assume that depositions won't be on
16 the exhibit list that'll be circulated tomorrow?

17 **MS. CORBARI:** At this time staff has no
18 depositions.

19 **MR. MOYLE:** Okay. Thank you.

20 **COMMISSIONER BRISÉ:** Okay. So are we good
21 with the exhibit list? Okay. I'm seeing --

22 **MR. COX:** Yes.

23 **COMMISSIONER BRISÉ:** All right. Very good.
24 I'm seeing heads nod, so I think we're good.
25 Mr. Whitlock, are we good with the exhibit list?

1 **MR. WHITLOCK:** SACE is good, Mr. Commissioner.
2 Thank you.

3 **COMMISSIONER BRISÉ:** All right. Thank you.
4 Section X, proposed stipulations. And is my assumption
5 correct that there are no stipulations at this point?

6 **MR. COX:** None that FPL is aware of at this
7 time.

8 **COMMISSIONER BRISÉ:** Okay. No stipulations.
9 All right. Section XI. Pending motions,
10 staff.

11 **MS. CORBARI:** On November 6th FPL filed a
12 motion to strike or exclude portions of the direct
13 testimony of Natalie A. Mims filed on behalf of the
14 Southern Alliance for Clean Energy. On November 16th
15 SACE filed its response in opposition to FPL's motion.
16 Staff would recommend the parties should be allowed to
17 present their arguments on the proposed motion. You may
18 rule from the bench as desired, or you may take the
19 arguments under advisement and issue a ruling in the
20 Prehearing Order or issue a separate order.

21 **COMMISSIONER BRISÉ:** Okay. So at this time
22 let me hear from the parties. I think SACE goes first;
23 right? FPL, sorry, you -- it was your motion to strike.
24 I'm sorry. Go right ahead.

25 **MR. GUYTON:** Charles Guyton on behalf of

1 Florida Power & Light Company.

2 Commissioner Brisé, despite the 30 some pages
3 of motions and responses that you have before you today,
4 the issue that we're asking you to rule on is relatively
5 simple, and it is should SACE be allowed to relitigate in
6 this proceeding what the Commission determined in the
7 recent DSM goals proceeding, i.e., the amount of
8 conservation that is reasonably available to FPL?

9 And just as the issue is simple, the answer is
10 simple, no. Relitigation of the same issue by the same
11 parties using the same evidence would violate the
12 doctrines of administrative finality and collateral
13 estoppel. It would ultimately be an inappropriate
14 reconsideration of the DSM goals order well out of time
15 and it would be a waste of time. It would not promote
16 administrative efficiency.

17 Eleven months ago, 11 months and a day ago the
18 Commission ruled in the DSM goals proceeding. It issued
19 Order PSC No. 14-0696. That order was the culmination of
20 an 18-month Commission-supervised process to establish
21 DSM goals. It ended with a three-day contested hearing.

22 Under the Commission's rule that was being
23 implemented, the Commission's obligation was to establish
24 utility goals, quote, based on an estimate of the total
25 cost-effective kilowatt and kilowatt hour savings

1 reasonably achievable, end quote. And that is precisely
2 what this Commission did in setting the DSM goals; it
3 identified the DSM that was cost-effective for and
4 reasonably achievable by Florida Power & Light Company.

5 In that proceeding, SACE presented the
6 testimony of Witness Mims, who extensively argued that
7 the analysis of a reasonably achievable DSM by FPL was
8 deficient. And FPL, in response, thoroughly rebutted
9 Ms. Mims' testimony, and the Commission ultimately
10 rejected Ms. Mims' testimony and SACE's arguments and
11 relied instead upon FPL's DSM potential analysis.

12 In this case SACE sponsors the same witness
13 addressing the same alleged deficiencies of the same DSM
14 goal analysis. And if there is any doubt that we're
15 talking about the same analysis, just look at the passage
16 that begins and ends the passage in Ms. Mims' testimony
17 that we seek to strike. At page 5 she says, "FPL relies
18 upon its energy efficiency goals from the 2014 FEECA
19 docket to determine the level of efficiency that's used
20 as 'all cost-effective efficiency' in this docket. In
21 the FEECA docket, the company used an erroneous
22 methodology to calculate its DSM potential, and thus
23 vastly underestimated the amount of cost-effective DSM
24 available." That's her quote. Clearly she is talking
25 about the DSM goals analysis in the DSM docket.

1 Then she gives us 13 pages of a synopsis of 40
2 or so pages that she gave in the DSM goals analysis, and
3 she concludes with this statement. "Quite simply, FPL
4 had the opportunity to seek and obtain much higher levels
5 of energy efficiency and it did not do so." Clearly,
6 once again, she was talking about the DSM goals analysis.

7 Commissioner Brisé, the proper way to challenge
8 an issue decided by the Commission is either to request
9 reconsideration or is to take an appeal of a docket.
10 SACE, a party to the DSM goals proceeding, did neither;
11 therefore, SACE has forfeited its ability to request that
12 the Commission effectively or essentially reconsider
13 SACE's stale evidence.

14 Now under the doctrine of administrative
15 finality there is a terminal point in every proceeding
16 when the parties and the public may effectively rely on
17 the Commission's determination. That's standard black
18 letter case law in Florida. FPL respectfully submits
19 that that time has come and gone in terms of a DSM goal
20 holding. We are entitled, given the finality of that
21 decision, to rely on that decision and the Commission's
22 decision therein, and SACE has not been able to show --
23 hasn't even attempted to show any change of
24 circumstances.

25 Now under the doctrine of collateral estoppel

1 there are four essential elements: One, there must be an
2 identity of issue; two, the issue must have been
3 litigated in a prior proceeding; three, the determination
4 of that issue was critical to the outcome of the
5 proceeding; and, four, there was a fair and full
6 opportunity for the parties to litigate the issue. All
7 four of those conditions are met in this circumstance.

8 In the DSM goals proceeding, as in this case,
9 the issue is what is the level of DSM reasonably
10 achievable or available to FPL? That issue was
11 thoroughly litigated in an 18-month process and a
12 three-day hearing. The determination at issue led to the
13 establishment of the DSM goals. SACE had a full and fair
14 opportunity to litigate the issue. They just lost it.
15 FPL has every right to rely on that decision by this
16 Commission in assessing whether the conservation
17 reasonably available to it negates the need for
18 Okeechobee Unit 1.

19 Commissioner Brisé, it makes no sense to
20 relitigate an issue with the same issues and the same
21 tired arguments in this case. We are under a very strict
22 rule-driven deadline of 90 days to hearing. It would be
23 a waste of your time, and time is of the essence in this
24 proceeding.

25 Finally, it would be inconsistent with at least

1 11 prior Commission decisions that we cite in our motion
2 to revisit in a determination of need case the level of
3 reasonably achievable DSM that has been set in prior goal
4 proceedings. This case, just like those 11 cases we
5 cite, is no different, particularly since SACE is arguing
6 the same unconvincing arguments that you've already heard
7 and rejected.

8 Commissioner, I appreciate your attention. I'd
9 like to reserve a few moments to respond to any arguments
10 that SACE's counsel might make. Thank you.

11 **COMMISSIONER BRISÉ:** Thank you. Who's
12 handling this? Okay. Mr. Whitlock.

13 **MR. WHITLOCK:** Thank you, Mr. Commissioner.
14 Mr. Commissioner, I'd agree with Mr. Guyton on one
15 thing, and that's that the issue here is quite simple.
16 SACE is not trying to litigate FPL's most recent DSM
17 goals proceeding or to request reconsideration of the
18 Commission's decision or order in that proceeding. Had
19 SACE wanted to do so, Mr. Commissioner, I respectfully
20 submit SACE would have done so through proper procedural
21 means and in a timely fashion and not through prefiled
22 direct testimony of a witness in a need determination
23 approximately a year later. So I want to put that to
24 rest right away. SACE is not trying to relitigate the
25 DSM goals order of the Commission or in any way trying

1 to open that docket back up. That argument is simply
2 disingenuous.

3 Now Mr. Guyton likes to -- Commissioner,
4 Mr. Guyton likes to use the words "reasonably achievable"
5 and "reasonably available" like they mean the same thing.
6 They don't. They're simply different issues at hand in
7 this need determination versus what the Commission had to
8 deal with in the DSM goals case.

9 In the DSM goals case, the Commission, by
10 statute and by the rules interpreting that statute, was
11 required to set appropriate or reasonably achievable DSM
12 goals for FPL. That was the issue: What are appropriate
13 or reasonably achievable DSM goals?

14 Now, Commissioner Brisé, as you can look at
15 Issue 2, the issue is are there conservation measures
16 reasonably available to FP&L which might mitigate the
17 need for the proposed Okeechobee Clean Energy Center
18 Unit 1? These are simply different issues, and thus they
19 aren't litigated in the DSM goals docket.

20 And, Commissioner, I would respectfully submit
21 what FPL is trying to do here is to get a precedential
22 decision from the Commission that it hasn't gotten
23 before, and FPL misrepresents the 11 need -- what the
24 Commission actually held in those 11 need determinations
25 it cites in its brief, and, in fact, SACE has actually

1 cited language from several of those need determinations
2 in its response brief which shows what the Commission has
3 actually held. But what FPL wants is for the Commission
4 to find that its reasonably achievable DSM goals are, per
5 se, its reasonably available conservation measures which
6 might mitigate the need for a proposed power plant in the
7 subsequent need determination, and that's simply not what
8 Commission precedent says.

9 What Commission precedent says, and it's set
10 out in detail in SACE's brief, is that a utility's DSM
11 goals are evidence of whether there are reasonably
12 available conservation measures which might mitigate the
13 need for a proposed plant. However, those reasonably
14 achievable DSM goals are not conclusive to that question,
15 nor are they preclusive to a party offering testimony to
16 show that there are additional conservation measures.

17 And, Commissioner Brisé, that is exactly what
18 SACE is doing through the testimony of Ms. Mims. SACE is
19 offering testimony showing there are additional
20 reasonably available, within the meaning of Section
21 403.519, *Florida Statutes*, conservation measures which --
22 available to FPL which might mitigate the need for this
23 proposed power plant.

24 FPL has submitted rebuttal testimony, and now
25 it's simply up to the Commission to weigh the evidence.

1 FPL is not the trier of fact here, Mr. Commissioner.
2 That's up to the Commission.

3 None of the legal doctrines cited by FPL,
4 administrative finality, collateral estoppel, they all
5 sound good, none of them apply here. SACE is not trying
6 to litigate the DSM goals docket. We are simply, through
7 Ms. Mims' testimony, offering evidence on an issue that
8 was not at issue in the DSM goals docket.

9 And, Commissioner Brisé, I would respectfully
10 ask, since I probably won't get a chance to respond to
11 Mr. Guyton, that the Commission does carefully consider
12 the briefs filed in this matter. Thank you, sir.

13 **COMMISSIONER BRISÉ:** Thank you.

14 Mr. Guyton.

15 **MR. GUYTON:** Two brief responses because I
16 think there's a two-pronged argument here. Well, I'll
17 add a third. We don't suggest that we're the trier of
18 fact. We're arguing legal precedent to you, the trier
19 of fact, to suggest that we ought to have an efficient
20 disposition of the issues in this case.

21 Counsel for SACE suggests that there are two
22 entirely different issues in these two cases. One, the
23 Commission was deciding what DSM was reasonably
24 achievable. In this case, the Commission is called upon
25 to address the dramatically different issue of what is

1 reasonably achievable. It's the same statute, it's
2 FEECA. Both the sections at issue were adopted by the
3 Legislature at the same time. This is a distinction
4 without a difference. But I think if I just state or
5 restate our position fairly succinctly, it'll be easily
6 understood.

7 If DSM is not achievable, it is not available.
8 You've already decided what DSM is achievable by FPL.
9 That necessarily says what's available for FPL to
10 implement.

11 SACE also suggests that they're arguing about
12 additional measures. There are no additional measures.
13 We're talking about the same measures that Ms. Mims
14 talked about over and above FPL's analysis in the DSM
15 goals proceeding. They haven't identified a single
16 additional measure in her testimony.

17 You considered the evidence there. You said
18 that they were not appropriate and you decided to base
19 the DSM goals on the measures that were in FPL's
20 analysis. There are no additional SACE measures in this
21 case, and the portion of Ms. Mims' testimony that
22 attempts to relitigate what's already been decided by the
23 Commission should be excluded from the record. Thank
24 you.

25 **COMMISSIONER BRISÉ:** Thank you. All right.

1 So we -- I got the response on yesterday, wasn't it?

2 **MS. CORBARI:** Yes, Commissioner.

3 **COMMISSIONER BRISÉ:** Yesterday. So I've been
4 going over it, and we will have a decision out on that
5 not right now. So we will respond to that as well. I
6 think there are some interesting arguments on both sides
7 on this issue, so I will take that into advisement as
8 well.

9 We intend to have all of these decisions out
10 ideally between Thursday and Friday. Okay. So we will
11 work very hard towards that end.

12 All right. Section XII, pending
13 confidentiality motions.

14 **MS. CORBARI:** Commissioner, there are a couple
15 of pending confidentiality motions which will be
16 addressed by separate orders.

17 **COMMISSIONER BRISÉ:** Yeah. There's a few
18 sitting on my desk, so.

19 **MS. CORBARI:** I didn't want to say that.

20 **COMMISSIONER BRISÉ:** Post-hearing procedures.

21 **MS. CORBARI:** The parties should prepare
22 post-hearing briefs for this docket. Staff would
23 recommend the briefs be no longer than 40 pages.

24 **COMMISSIONER BRISÉ:** Okay.

25 **MS. CHRISTENSEN:** Commissioner, might I ask if

1 our position -- our positions may be 100 words?

2 **COMMISSIONER BRISÉ:** Okay. Yeah. I think
3 we'll be fine with that.

4 Okay. So all parties understand 40 pages and
5 the positions, 100 words. Everybody is good with that?
6 Okay.

7 **MS. CORBARI:** Staff would note that the briefs
8 will be due on December 9th, 2015, which is the week
9 after the hearing.

10 **COMMISSIONER BRISÉ:** Okay.

11 **MS. CHRISTENSEN:** May I ask for clarification?
12 Are we expecting daily transcripts?

13 **MS. CORBARI:** Yes. Staff has requested daily
14 transcripts.

15 **MS. CHRISTENSEN:** Thank you.

16 **COMMISSIONER BRISÉ:** All right. Anything else
17 in terms of post-hearing proceedings -- procedures that
18 we have questions on or need clarity on?

19 Okay. Rulings. Opening statements shall be
20 limited to seven minutes, and you are welcome to waive
21 your opening statements, if you so desire. As stated,
22 briefs will be limited to 40 pages.

23 The additional issues that have been brought up
24 today, we've already addressed the time frame as to when
25 that will be out. And the motion to strike, we've

1 already addressed as to when we will address that. Are
2 there any other matters that we need to address at this
3 prehearing conference? Mr. Moyle.

4 **MR. MOYLE:** FIPUG has one. In our prehearing
5 statement that we filed we registered an objection to
6 any FPL witnesses who would be testifying as expert
7 witnesses, so we're assuming they're all fact witnesses
8 at this point but just wanted to -- because FPL hasn't
9 said they're not. So to the extent that that's the
10 case, fine, they're fact witnesses. If they're expert
11 witnesses, then we would like the opportunity to voir
12 dire them if FPL takes some action to let us know that
13 they're changing their mind as to how they view them.

14 **COMMISSIONER BRISÉ:** Okay. FPL.

15 **MR. COX:** Mr. Guyton will respond for FPL on
16 that. Thank you.

17 **COMMISSIONER BRISÉ:** Mr. Guyton?

18 **MR. GUYTON:** With all due respect to
19 Mr. Moyle, I think he may have waived it. There was an
20 Order Establishing Procedure that said if you're going
21 to move to strike any or a portion of a witness's
22 testimony, you need to do it by the -- file the motion
23 by the time of the prehearing conference. That would
24 include trying to suggest that someone is an
25 inappropriate witness and his testimony should be struck

1 because Mr. Moyle doesn't consider them to be an expert.

2 We filed our motion to strike consistent with
3 the Order Establishing Procedure. He should have as
4 well. There are several expert witnesses that FPL is
5 offering in this case, and no one has suggested that
6 they're not an expert. We think it would be
7 inappropriate at this time -- at this late date. There's
8 no motion to strike.

9 **COMMISSIONER BRISÉ:** Okay. Mr. Moyle, before
10 I go to Mary Anne.

11 **MR. MOYLE:** Let Mary Anne go first, if that's
12 okay.

13 **COMMISSIONER BRISÉ:** Okay. Mary Anne, go
14 right ahead.

15 **MS. HELTON:** I think Mr. Moyle might be
16 talking about the process that we followed in the fuel
17 docket where I think he may have made a similar, if not
18 the same objection, and the staff counsel for the
19 01 docket specifically made sure that all of the parties
20 filed notices in the docket file specifically listing
21 the areas of expertise of each witness. That didn't
22 happen in this docket.

23 As Mr. Moyle knows, staff has promised at its
24 last process workshop, which was two or three weeks ago,
25 that we are looking at this process based on, you know,

1 an evaluation of what happened in the fuel docket. Also,
2 we are looking at what other states do trying to come up
3 with what we think might be the best process that we can
4 work out with all utilities that you regulate as well as
5 all regular intervenors in the process, and we haven't
6 fleshed all of that out yet.

7 **COMMISSIONER BRISÉ:** So I'll just tell you
8 what's going to happen. We're not going to have a voir
9 dire process in this -- in this hearing moving forward,
10 especially if we haven't had those issues -- I mean, had
11 that identification made in advance. And as far as we
12 know, it hasn't happened.

13 **MR. MOYLE:** Okay. Thank you. Thank you for
14 that ruling. With respect to moving to strike, I mean,
15 I don't know that you have to do that with an expert. I
16 mean, an expert gets up and, as I mentioned, says he's
17 an expert in agriculture and can't tell the difference
18 between a pig and a cow. You know, I don't think the
19 Commission is entitled to make a finding on such
20 testimony. So, you know, I don't think a motion to
21 strike drives the issue.

22 But, you know, for the record, we would like to
23 conduct voir dire on anybody that is deemed an expert.
24 FPL hasn't designated anybody an expert. In the last
25 proceeding the designation was done shortly before

1 hearing. So, you know, we'll try to sort through this,
2 but we would not waive our right to conduct voir dire
3 and -- but we understand the ruling and respect it.

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

5 Any other matters?

6 **MS. CORBARI:** Staff has none.

7 **COMMISSIONER BRISÉ:** Okay. Any of the parties
8 with any other matters?

9 **MR. COX:** FPL has none. Thank you.

10 **COMMISSIONER BRISÉ:** Okay. FIPUG, we just
11 addressed your other matter?

12 **MR. MOYLE:** I think we're good for now. I
13 know that you will get the order out on those other
14 issues.

15 **COMMISSIONER BRISÉ:** Sure.

16 **MR. MOYLE:** We said noon on Wednesday, so I
17 expect we'll be getting it before that.

18 **COMMISSIONER BRISÉ:** Sure.

19 **MR. MARSHALL:** ECOSWF has no other issues.

20 **COMMISSIONER BRISÉ:** All right.

21 **MR. CAVROS:** I think we're good for now.

22 Thank you, Chairman.

23 **COMMISSIONER BRISÉ:** Okay.

24 **MS. CHRISTENSEN:** And OPC has no additional
25 issues.

1 **COMMISSIONER BRISÉ:** All right. Thank you
2 very much, everyone. Thank you for your participation
3 today. And we expect to have an uneventful hearing but
4 one that we glean a lot of information so that we're
5 able to make a solid decision. So with that, we are
6 adjourned. Travel safely.

7 (Prehearing Conference adjourned at 3:30 p.m.)
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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 18th day of November, 2015.

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