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REPORTED BY: JANYCE BOOTH
Court Reporter
(850) 894-0828

APPEARANCES: (As heretofore noted.)

PREMIER REPORTING
114 W 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

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I N D E X

No witnesses or exhibits - oral argument only

P R O C E E D I N G S

(Transcript follows in sequence from Volume 23)

CHAIRMAN BROWN: All right. We are back on the record, and first I just want to say something before we'll go to Staff.

Mr. Rehwinkel, I'm just a little -- I'm going to use Commissioner Edgar's word -- "perplexed" at the timing of this particular motion. I know you were trying to attempt to do this at the end of the direct case, but it has caught a lot of Staff, the commissioners, the parties off notice. It would have been preferable to at least have filed something in writing at the beginning of the day at least -- at the bare minimum. I'm just a little perplexed about the timing about this and the lack of an opportunity to adequately respond, at least from my perspective, not from Staff's.

MR. REHWINKEL: Well, Madam Chairman, I'm happy to respond to that, and I think there was purpose -- and I've spent the part of the day that I have not needed to be here -- I was -- Mr. Dewhurst was my witness; so I needed to stay through that.

I've been -- Mr. Kelly authorized me some time around lunch to take the steps to do this. So I've

1 been drafting my remarks and the motion. Close to
2 having that ready to file. But there -- this is a
3 process that we've been watching very closely since
4 the beginning of the hearing because, in our view,
5 the company changed their case, and they put us in
6 jeopardy -- there's a lot of money wrapped up in
7 that depreciation surplus.

8 So the Public Counsel and I have talked many
9 hours this week about the jeopardy that we face and
10 the cost benefit of pursuing this issue with this
11 expert witness. And we decided that there was more
12 to lose than there was to gain in going forward
13 after the company changed their case at the opening
14 of the case. And we perceive it that way; that
15 they -- their testimony -- Mr. Allis says there's
16 no -- it's a minor difference. There's no money
17 there, and it should be resolved through the
18 remaining life method, and there's no corrective
19 techniques that need to be undertaken.

20 So as the week has gone by, I've been asking
21 these witnesses, are you changing your testimony?
22 And they're saying no. Mr. Barrett opened the door
23 on that. He'll probably say that I opened the door
24 by asking about some historical surplus dollars.
25 But we were surprised by this, and we have taken

1 what Mr. Kelly, the Public Counsel, believes is in
2 the best interest of the clients that he
3 represents.

4 I would have preferred to have raised this
5 earlier. Mr. Butler has been very good at working
6 with the Public Counsel on the witnesses and the
7 witness times and whatnot, and I've been trying to
8 bring this to a head. And rather than do it when
9 Mr. Pous took the stand, we wanted to do this
10 before the weekend began. And our time to do this
11 was at the conclusion of their case.

12 We even asked Mr. Miranda, who kind of
13 parachuted into their direct, for understandable
14 reasons, to make sure he wasn't dealing with this
15 issue. We didn't believe the rate structure,
16 Ms. Cohen, and Ms. Deaton would have anything to do
17 with this issue.

18 So we were ready to go. We would have done it
19 earlier. And I -- I regret that this has caused
20 this level of upset, but in our view, this was as
21 soon as we could do this.

22 CHAIRMAN BROWN: Okay. That's fair enough.
23 Thank you for that clarification.

24 MR. REHWINKEL: And, Madam Chairman, we are
25 prepared -- I've got some notes about some of the

1 logistical impacts that we can discuss at the right
2 time.

3 CHAIRMAN BROWN: Okay. Just a moment.

4 FPL.

5 MR. BUTLER: Just very briefly. I would note
6 that we had changed our position on Issue 48
7 that -- and I've put this into play at prehearing
8 conference. There was no objection to our changed
9 position at the prehearing conference and nothing
10 until today. So the idea that this had to evolve
11 just throughout the day today seems a little
12 implausible to me.

13 CHAIRMAN BROWN: Just one second.

14 FIPUG.

15 MR. MOYLE: Well, I think there's a difference
16 between changing a position and changing an issue
17 because I noted their change of position at the
18 prehearing conference that Commissioner Edgar
19 chaired, but there wasn't an also corresponding
20 "and we want to make clear this issue is at -- in
21 play." And the prehearing conference is the last
22 opportunity to change -- not -- to put at issue, a
23 new issue, in front of the Commission, and it
24 wasn't taken there even though they changed their
25 position. I was thinking it was coming, but it

1 didn't come, and they've missed that boat. So that
2 was part of my due process objection earlier.

3 CHAIRMAN BROWN: Okay. I'm going to turn to
4 Staff now, Mr. Rehwinkel, before I get back to you.

5 MS. BROWNLESS: Yes, ma'am.

6 First off, I think that because this has
7 come -- it is a very complicated Motion for Summary
8 Judgment, and it has come late in the day as an
9 oral motion. So the first thing we would ask is
10 that the Office of Public Counsel be required to
11 file a written motion and that all parties be given
12 an opportunity to file responses.

13 The standard time for that is seven days
14 pursuant to the rules. However, we would ask that
15 that be shortened --

16 CHAIRMAN BROWN: Mm-hmm.

17 MS. BROWNLESS: -- so that the response time
18 for that be three days.

19 CHAIRMAN BROWN: And that would be three
20 business days or three --

21 MS. BROWNLESS: Three business days, yes,
22 please.

23 CHAIRMAN BROWN: Okay.

24 MR. LITCHFIELD: Madam Chair, if I could ask
25 for clarification from Ms. Brownless. She said all

1 parties would have the chance to respond. They've
2 all joined in the motion; so it seems to me that
3 they would simply be endorsing whatever Public
4 Counsel files and that only the Petitioner would be
5 actually responding to the motion.

6 MS. BROWNLESS: Yes. That's --

7 MR. LITCHFIELD: Or anybody else opposing it
8 if we can change a few folks here.

9 MS. BROWNLESS: Yes. Or anyone else opposing
10 it, yes.

11 CHAIRMAN BROWN: All right. So then -- Office
12 of Public Counsel.

13 MR. REHWINKEL: Madam Chairman, it's ten
14 minutes to six. I would say that within 30 minutes
15 of concluding the hearing for today, I would be
16 able to send out a completed motion for the parties
17 for -- just for understanding the timing.

18 CHAIRMAN BROWN: Okay.

19 MR. REHWINKEL: So I'll be able to do that.

20 CHAIRMAN BROWN: Okay. That's good. So
21 then --

22 MS. BROWNLESS: And you would file that with
23 the clerk first thing Monday morning; right,
24 Charles?

25 MR. REHWINKEL: I -- I would be happy to

1 e-mail it to all the parties --

2 MS. BROWNLESS: Today.

3 MR. REHWINKEL: -- tonight. That's what I
4 meant by 6:30. We'll file it when the clerk's
5 office opens, but I'll get it to the parties --

6 CHAIRMAN BROWN: But it will be deemed -- will
7 it be deemed accepted by the Public Service
8 Commission as of today?

9 MS. BROWNLESS: No. It will be deemed
10 accepted by the Public Service Commission Monday
11 when it's filed.

12 CHAIRMAN BROWN: So then the three days would
13 be --

14 MS. BROWNLESS: Tuesday, Wednesday, Thursday.

15 CHAIRMAN BROWN: Okay.

16 MS. BROWNLESS: So any responses would be 5 --
17 be by 5 p.m. on Thursday.

18 CHAIRMAN BROWN: Okay.

19 MS. BROWNLESS: Now, with regard to the second
20 part, what do we do procedurally with this hearing
21 now? I believe it's appropriate for us to continue
22 on with the intervenor's case in whatever order
23 they wish to present their witnesses and whosever
24 witness they wish to present because it is in fact
25 their case.

1 Now, I believe that the -- that Florida Power
2 & Light has perhaps a different view of that, and
3 to the extent that they do, they can express that
4 now and perhaps also file written responses.

5 MR. LITCHFIELD: I think maybe what
6 Ms. Brownless may be referring to is we'd like the
7 opportunity to do a little bit of research over the
8 weekend as to whether, at this late stage in the
9 proceeding, given the record, in part entered and
10 in part still developing, but this process has been
11 built around a major piece of testimony filed by
12 Public Counsel whether they would need the
13 Commission's permission to withdraw it at this
14 point. We'd like the chance to research that a
15 little bit and provide those results on Monday and
16 maybe take it from there.

17 CHAIRMAN BROWN: Would it be helpful to have a
18 later start time on Monday? Say 1:30 Monday?

19 MS. BROWNLESS: Yes, ma'am.

20 CHAIRMAN BROWN: Okay. Would it be helpful?

21 MR. LITCHFIELD: Yes.

22 CHAIRMAN BROWN: Yes?

23 MR. BUTLER: Yes, that would be fine.

24 CHAIRMAN BROWN: Okay. That's my inclination.

25 So -- so I guess we shall do as Ms. Brownless

1 laid out.

2 MS. BROWNLESS: And then at 1:30 on Monday
3 we'd start with -- now, we have been given a
4 witness list.

5 CHAIRMAN BROWN: We don't have a copy of it.

6 MR. BUTLER: May I approach the bench and pass
7 out --

8 CHAIRMAN BROWN: Yes, please.

9 MR. BUTLER: -- before the motion?

10 MS. BROWNLESS: And on this witness list for
11 Monday, the intervenors, I believe, have agreed to
12 first Mr. Baudino then Mr. Dismukes, Mr. Shultz,
13 Mr. Woolridge, Mr. O'Donnell. Mr. Pous my
14 understanding is Public Counsel will withdraw.
15 Then Mr. Lawton.

16 They're suggesting on Tuesday Kollen, Baron,
17 Pollock, Brosch, Alderson, Gorman, and Andrews, and
18 on Wednesday, Mr. Chris.

19 Is that the schedule that everyone has agreed
20 to?

21 MR. BUTLER: That is what was given to FPL,
22 and we have no objection to proceeding in that
23 order.

24 CHAIRMAN BROWN: I do have a question on this.
25 And, again, as I previously stated about that, you

1 know, we're definitely, as is the tradition of the
2 Commission, inclined to entertain a request to take
3 witnesses up on certain days. We try to
4 accommodate that as much as possible, but if we get
5 done on Monday with this list, I would like to move
6 forward with any other witnesses.

7 MR. BUTLER: Anticipating that you might have
8 that desire, I had approached FEA's counsel, and
9 they had confirmed that with a little bit of notice
10 on Monday, you know, earlier in Monday, they could
11 move their witnesses, Alderson, Gorman, and Andrews
12 to the end of Monday if that was -- you know, if we
13 got to a point where we wanted to cover them.

14 MR. JERNIGAN: That's correct, ma'am. I just
15 need some time to make sure that they can travel
16 from their hotels and whatnot --

17 CHAIRMAN BROWN: I appreciate that. Thank
18 you.

19 And then Tuesday, how about Tuesday?

20 MR. BUTLER: Well, I think the idea would be
21 that to whatever extent, you know, we didn't get
22 finished with them on Monday, they could either
23 just stay in their current order on Tuesday or move
24 up to the beginning of the list on Tuesday. Again,
25 not understanding --

1 CHAIRMAN BROWN: No, no, no, no, no. If we
2 get done early on Tuesday within the remaining --

3 MR. BUTLER: Oh, oh, oh. We could certainly
4 begin with our rebuttal case just immediately
5 following --

6 CHAIRMAN BROWN: That's what I wanted to hear.

7 MR. BUTLER: Yes. Sorry.

8 CHAIRMAN BROWN: Thank you. Okay. I do want
9 to utilize our time wisely; so that's very helpful.

10 Commissioners, any questions on any of this?
11 Comments?

12 COMMISSIONER EDGAR: I would like to
13 understand a little more clearly what it is we will
14 be doing when we get together Monday morning --
15 afternoon and what time.

16 CHAIRMAN BROWN: We're getting together at
17 1:30.

18 COMMISSIONER EDGAR: And then to begin with
19 Baudino at 1:30?

20 CHAIRMAN BROWN: Yes.

21 Was that a question?

22 Oh, yes.

23 Okay. Parties, comments, questions? Is
24 everybody clear?

25 Mr. Skop.

1 MR. SKOP: Yes. Madam Chair, thank you.

2 Again, we're in support of that and certainly
3 look forward to moving forward within the allotted
4 hearing dates. The Larsons have no questions for
5 the intervenor witnesses and would respectfully
6 request to be excused from that portion of the
7 hearing until the rebuttal testimony begins.

8 CHAIRMAN BROWN: You're excused.

9 MR. SKOP: Thank you.

10 CHAIRMAN BROWN: Any comments, questions on
11 the process?

12 Mr. Rehwinkel, did you still want to address
13 the Commission?

14 MR. REHWINKEL: Well, I think that we're still
15 trying to sort out the impact on our side of this.
16 There are some logistical issues with respect to
17 other witnesses' testimony.

18 We have folks preparing errata that would
19 reflect the withdrawal of Mr. Pous's testimony. I
20 will need to consult with FPL about Mr. Smith's
21 testimony. They have stipulated it in, and I
22 would -- Mr. Smith would kill me for saying this,
23 but I would certainly understand if they want to
24 revisit that, but I would hope to work out with
25 them the extraction of Mr. Pous's testimony that is

1 presented in Mr. Smith's testimony.

2 Mr. Shultz refers to some depreciation expense
3 impacts of Mr. Pous's recommendation which are
4 lower than the company's which, if you took that
5 out, would actually make the adjustment higher, and
6 Mr. Lawton references some of Mr. Pous's testimony;
7 so we're trying to sort through that.

8 My commitment to the Commission is that we
9 will get that information to FPL and to the other
10 parties and Staff ASAP as soon as we complete it,
11 and we're working through that right now.

12 MS. BROWNLESS: And when -- when can we expect
13 that, Mr. Rehwinkel?

14 MR. REHWINKEL: That I do not know. There are
15 some complications with respect to that because as
16 our witnesses are -- as we've worked through this
17 process on witness availability, they aren't just
18 waiting around for this. They're working on other
19 cases. So we're working through that as fast as
20 possible, and we have three people working on it as
21 we speak --

22 MS. BROWNLESS: Okay.

23 MR. REHWINKEL: -- on our side in addition to
24 the witnesses. So we're going to be here tonight
25 and this weekend working on it, and we'll do it as

1 soon as possible.

2 CHAIRMAN BROWN: And you have the additional
3 time on Monday too as well.

4 MR. REHWINKEL: Yes. Hopefully much earlier
5 than that out of fairness to the others.

6 MS. BROWNLESS: And just so I can be clear as
7 to whose testimony would be affected, can you go
8 through that list again, please?

9 MR. REHWINKEL: Yes. Mr. -- obviously
10 Mr. Pous. But Mr. Lawton references on DJL-5 --
11 this is from a quick view today -- Mr. Pous's
12 depreciation amount.

13 Mr. Smith references Mr. Pous on Pages 3
14 through 5 and 40 and 41, but the issue that we
15 would need to clean up would be with extracting or
16 excising his adjustments from Mr. Smith's
17 schedules.

18 And Mr. Shultz on Pages 37, Line 20 through
19 38, Line 3 and his HWS-9 schedule are the ones that
20 reference Mr. Pous's recommended depreciation
21 expense levels.

22 MS. BROWNLESS: Thank you.

23 MR. REHWINKEL: Thank you.

24 CHAIRMAN BROWN: Okay. Any other matters to
25 discuss? We will --

1 MR. LITCHFIELD: Well, I was going to say --

2 CHAIRMAN BROWN: (simultaneous speaking)

3 You're gonna --

4 MR. LITCHFIELD: No. I guess I just -- we're
5 willing to talk with the Office of Public Counsel
6 over the weekend about what Mr. Rehwinkel refers to
7 as logistics. I know we are going to be interested
8 in seeing how those new numbers, as revised without
9 Mr. Pous's testimony, work out. Perhaps they will
10 even be recommending a rate increase for Florida
11 Power & Light Company going forward.

12 The other question that I would put to Public
13 Counsel -- and they don't have to answer it here
14 today -- is whether they ought not to withdraw all
15 of their testimony to the extent that it's being
16 significantly altered as a result of the withdrawal
17 or proposed withdrawal of the Pous testimony, or
18 otherwise are they going to be changing their case
19 at this late hour and affecting our due process?

20 MR. REHWINKEL: I am happy to address that
21 right now, Madam Chair.

22 Mr. Lawton's testimony, with the adjustment of
23 Mr. Pous, only goes towards the company's -- it
24 goes in their favor. Same with Mr. Shultz. And
25 Mr. Smith presents Mr. Pous's testimony. He does

1 not sponsor it or rely or support his adjustments.
2 So we will reflect the adjustments that are in
3 Mr. Pous's testimony as a reduction to our
4 adjustments which would be an increase in the
5 revenue requirement for the company. We will
6 reflect that in Mr. Smith's testimony. We will do
7 it objectively, and we will work with the company
8 to make sure they understand that.

9 But certainly our witnesses do not rely upon
10 Mr. Pous except in very, very immaterial ways.
11 Mr. Shultz is the only one that makes an adjustment
12 in reliance.

13 MS. BROWNLESS: Well, at this time, because we
14 have not seen -- until we see the revised testimony
15 of Mr. Smith, although we previously stipulated, we
16 would reserve the right to revisit that --

17 CHAIRMAN BROWN: Absolutely.

18 MS. BROWNLESS: -- position.

19 MR. BUTLER: As would we. We don't know
20 whether we will or won't, but at this point, we
21 can't stipulate to his being excused.

22 CHAIRMAN BROWN: Okay. And encourage the
23 parties to use this time prudently, and we are in
24 recess until 1:30 on Monday. Have a good weekend,
25 everybody.

1 (Transcript continues in sequence in Volume
2 25.)
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CERTIFICATE OF REPORTER

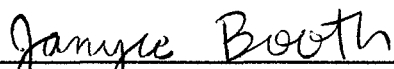
STATE OF FLORIDA)
COUNTY OF LEON)

I, JANYCE BOOTH, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 29th day of August, 2016.



JANYCE BOOTH
NOTARY PUBLIC
COMMISSION #FF 953203
EXPIRES January 20, 2020