

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 160154-EI

PETITION FOR APPROVAL OF A  
PURCHASE AND SALE AGREEMENT  
BETWEEN FLORIDA POWER & LIGHT  
COMPANY AND CALYPSO ENERGY  
HOLDINGS, LLC, FOR THE  
OWNERSHIP OF THE INDIANTOWN  
COGENERATION LP AND RELATED  
POWER PURCHASE AGREEMENT.

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PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER  
PARTICIPATING: COMMISSIONER RONALD A. BRISÉ  
PREHEARING OFFICER

DATE: Tuesday, September 20, 2016

TIME: Commenced at 9:30 a.m.  
Concluded at 9:52 a.m.

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

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

## 1 APPEARANCES:

2 BRYAN ANDERSON , WILLIAM COX, and JOEL BAKER,  
3 ESQUIRES, 700 Universe Boulevard, Juno Beach, Florida  
4 33408-0420, appearing on behalf of Florida Power & Light  
5 Company.

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

10 DANIELLE M. ROTH and PATRICIA A. CHRISTENSEN,  
11 ESQUIRES, Office of Public Counsel, c/o the Florida  
12 Legislature, 111 W. Madison Street, Room 812,  
13 Tallahassee, Florida 32399-1400, appearing on behalf of  
14 the Citizens of the State of Florida.

15 WALTER TRIERWEILER, ESQUIRE, FPSC General  
16 Counsel's Office, 2540 Shumard Oak Boulevard,  
17 Tallahassee, Florida 32399-0850, appearing on behalf of  
18 the Florida Public Service Commission Staff.

19 KEITH HETRICK, GENERAL COUNSEL, and MARY ANNE  
20 HELTON, ESQUIRE, Florida Public Service Commission, 2540  
21 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,  
22 appearing as Advisors to the Florida Public Service  
23 Commission.

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

1  
2           **COMMISSIONER BRISÉ:** Good morning. We'll go  
3 ahead and call this prehearing to order on Docket  
4 No. 160154-EI. And we will ask staff to read the  
5 notice.

6           **MR. TRIERWEILER:** By notice issued on  
7 September 1st, 2016, by the Commission Clerk, this time  
8 and place has been set for a prehearing conference in  
9 Docket 160154. The details are contained within the  
10 Prehearing Order.

11           **COMMISSIONER BRISÉ:** All right. At this time  
12 we will take appearances.

13           **MR. ANDERSON:** Good morning, Commissioner  
14 Brisé.

15           **COMMISSIONER BRISÉ:** Good morning.

16           **MR. ANDERSON:** Bryan Anderson, William Cox,  
17 and Joel Baker appearing on behalf of Florida Power &  
18 Light Company.

19           **COMMISSIONER BRISÉ:** Okay.

20           **MR. MOYLE:** Good morning. On behalf of the  
21 Florida Industrial Power Users Group, FIPUG, the Moyle  
22 Law Firm would enter an appearance, Jon Moyle and Karen  
23 Putnal.

24           **COMMISSIONER BRISÉ:** Okay.

25           **MS. ROTH:** Good morning, Commissioner Brisé.

1 Danielle Roth with the Office of Public Counsel. And  
2 I'd like to make an appearance for Patty Christensen.

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

4 **MR. TRIERWEILER:** Good morning. I'm Walt  
5 Trierweiler. I represent the Public Service Commission.

6 **COMMISSIONER BRISÉ:** Thank you.

7 **MS. HELTON:** And good morning, Commissioner.  
8 I'm Mary Anne Helton here as your advisor. I'd also  
9 like to make an appearance for your General Counsel,  
10 Keith Hetrick.

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

12 So moving on. Thank you for being here this  
13 morning. It's a nice day out, and hopefully we'll be --  
14 it will be nice in here as well.

15 So we will move on to our preliminary matters.  
16 Mr. Trierweiler, are there any preliminary matters that  
17 we need to discuss before we get to the draft Prehearing  
18 Order? And I see two documents that probably are ripe  
19 for that.

20 **MR. TRIERWEILER:** Yes, Commissioner. The  
21 parties have been discussing a possible resolution of  
22 many, but not all, of the matters and issues relating to  
23 this case. This morning the -- a joint stipulation, a  
24 joint partial stipulation was filed, and attached to  
25 that is a joint motion for approval of the partial

1 stipulation. And perhaps this is an appropriate time to  
2 have the parties briefly outline their understanding of  
3 what they've stipulated to and to explain which  
4 procedural matters that they propose to waive at  
5 hearing.

6 **COMMISSIONER BRISÉ:** Yes. And I would agree  
7 with you that that -- that this is the perfect time for  
8 them to do so so that we can have clarity on what these  
9 stipulations actually mean and how that impacts the way  
10 the hearing will be conducted. Okay. So let's hear  
11 from FPL and then OPC and then FIPUG.

12 **MR. COX:** Good morning, Commissioner Brisé.  
13 Will Cox for Florida Power & Light Company.

14 The parties have been working in a cooperative  
15 spirit to see if there was a way to streamline the  
16 hearing process in this case, and we've had good  
17 discussions over the last few days, and with other  
18 things going on, it's been difficult to get everyone  
19 together, but we were able to get filed just before the  
20 prehearing a joint partial stipulation. And that  
21 partial stipulation represents a unanimous position of  
22 the parties, meaning FPL, OPC, and FIPUG, on certain  
23 procedural elements for the hearing process.

24 In lieu of a normal full evidentiary hearing  
25 under 120.57(1), the parties have proposed to stipulate

1 to the following. We've agreed to waive opening  
2 statements. We've -- the FIPUG and OPC counsel have  
3 agreed to waive cross-examination of FPL's witnesses.  
4 The parties have agreed to stipulate to the  
5 admissibility of testimony of all four FPL witnesses and  
6 their exhibits, and the parties have also agreed to  
7 stipulate to entry into the record of the Comprehensive  
8 Exhibit List and the exhibits contained therein prepared  
9 by the Commission staff.

10 The parties are in agreement that the four  
11 witnesses could be excused subject to the discretion of  
12 the Commission from the hearing. The parties have  
13 agreed to waive their right to file post-hearing briefs,  
14 and the parties do not object to a bench decision, if  
15 it's the Commission's will, at the October 3rd and 4th  
16 scheduled hearing in this docket, and that would be  
17 based on the evidentiary record developed up to the date  
18 of hearing.

19 With regard to the second piece of the joint  
20 partial stipulation, it addresses our best effort to see  
21 if we could resolve certain issues. At the end of the  
22 day, we were able to get a partial stipulation in the  
23 sense that OPC and FPL were able to agree on positions  
24 on Issues 6, 7, and 9. FIPUG did not join in on those  
25 joint stipulated positions.

1                   **COMMISSIONER BRISÉ:** Sure.

2                   **MR. COX:** And that's what we have before you  
3 today. Thank you.

4                   **COMMISSIONER BRISÉ:** Thank you.

5                   OPC.

6                   **MS. ROTH:** Well, for the sake of redundancy or  
7 not being redundant, rather, we do agree with everything  
8 that Mr. Cox just said, and the procedural we do agree  
9 with, and we also do agree with the Issues 6, 7, and 9.  
10 So would you like me to go through them again or is that  
11 --

12                   **COMMISSIONER BRISÉ:** No. I think it -- I  
13 think for the record you have stated that you are in  
14 agreement.

15                   **MS. ROTH:** Yes.

16                   **COMMISSIONER BRISÉ:** So I will ask you are  
17 there any differences from what Mr. Cox said that you  
18 would like to put on the record?

19                   **MS. ROTH:** No, there are not. He was correct.  
20 Thank you.

21                   **COMMISSIONER BRISÉ:** Thank you.

22                   FIPUG, Mr. Moyle.

23                   **MR. MOYLE:** Thank you. Mr. Cox, with respect  
24 to the procedural matters, I think hit the main ones.  
25 Another one that we included in there is since it is

1 anticipated that it will be a paper hearing, we're  
2 simply -- the testimony will go in, the exhibits will go  
3 in. There won't be arguments. FIPUG would respectfully  
4 ask to be excused from the hearing. And that was also  
5 part of the stipulation. None of the parties object to  
6 that.

7 But, you know, with respect to this process, I  
8 think from FIPUG's perspective, not that we're saying,  
9 oh, we agree with this, that it's a good idea, that, you  
10 know, everything set forth is okay, we're just simply  
11 saying that we have opted not to --

12 **COMMISSIONER BRISÉ:** Sure.

13 **MR. MOYLE:** -- you know, climb the litigious  
14 mountain in this case and we'll be okay with everything  
15 coming in and you all making a decision at your  
16 pleasure, whether it's a bench decision or whether staff  
17 writes up a recommendation and you consider it in the  
18 ordinary course. You know, we do think it's important  
19 to have a good record and a clear decision with respect  
20 to your final order, which we understand we'll get in  
21 any event.

22 So, no, I appreciate the parties working  
23 cooperatively. We had other issues that we had to  
24 attend with with respect to filing briefs and things, so  
25 I apologize for a little bit of a, you know, late notice



1 to you on this. But we think it's a good resolution and  
2 would encourage you, if you're ready, willing, and able,  
3 to accept the stipulation so that you can proceed.

4 Thank you.

5 **COMMISSIONER BRISÉ:** Sure, sure. And just for  
6 my clarity, Issues, 6, 7, and 8, you all have not taken  
7 a position.

8 **MR. MOYLE:** That's right. Rather than  
9 affirmatively stipulating to that like OPC, this is a  
10 Type 2 stipulation.

11 **COMMISSIONER BRISÉ:** Sure, sure.

12 **MR. MOYLE:** So we'll maintain -- well,  
13 actually I guess we should just maintain our position as  
14 set forth in the prehearing. But I think it's six of  
15 one, half a dozen of another.

16 **COMMISSIONER BRISÉ:** Sure.

17 **MR. MOYLE:** So we won't -- to be clear, I  
18 don't want a Type 2. I'll just -- we'll maintain our  
19 position and it can get resolved in the ordinary course  
20 of business.

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

22 All right. Are there any other preliminary  
23 matters that we need to deal with? Mary Anne.

24 **MS. HELTON:** I'm sorry. I'm not sure that I  
25 really understand Mr. Moyle's position with respect to

1 the stipulated issues. If you're saying that -- I just  
2 looked at your positions as laid out in the draft  
3 Prehearing Order, and so you're just not taking issue  
4 with the stipulation between OPC and the company? I  
5 mean, is your position different than the stipulation?  
6 I'm a little bit --

7 **MR. MOYLE:** We just stand by our prehearing  
8 position as set forth in the prehearing that we filed.

9 **COMMISSIONER BRISÉ:** So for 6, it's "The costs  
10 should be recovered in base rates"; for 7, "No position  
11 at this time"; for 8, it's "No"; and for 9, it's "No  
12 position at this time."

13 **MS. HELTON:** And 8 is not part of the -- for  
14 the record to be clear, Mr. Chairman, 8 is not part of  
15 the stipulation.

16 **COMMISSIONER BRISÉ:** 8 is not, so 6, 7, and 9.

17 **MS. HELTON:** 6, 7, and 9.

18 **MR. MOYLE:** That's correct.

19 **COMMISSIONER BRISÉ:** That's correct.

20 **MS. HELTON:** Okay. Thank you. I'm sorry.

21 **COMMISSIONER BRISÉ:** No problem. Thank you  
22 for that clarification.

23 All right. Are there any other preliminary  
24 matters that we need to attend to, Mr. Trierweiler?

25 **MR. TRIERWEILER:** No, Commissioner.

1                   **COMMISSIONER BRISÉ:** Okay. So let's proceed  
2 and go through the draft Prehearing Order at this time.  
3 I'll identify the sections, and I want the parties to  
4 let me know if there are any corrections or changes to  
5 be made. We may quickly go through this, and so please  
6 speak up if you have a change or correction that we need  
7 to make. And I think I'll rule on these at the end  
8 after we go through all of these issues here.

9                   Section I, case background.

10                  Okay. Section II, conduct of proceedings.

11                  Section III, jurisdiction.

12                  Section IV, procedure for handling  
13 confidential information.

14                  Section V, prefiled testimony and exhibits and  
15 witnesses. Okay. Staff, is there anything that you  
16 need to say or -- with respect to that at this time?  
17 No?

18                  **MR. TRIERWEILER:** Commissioner, they're  
19 waiving summaries.

20                  **COMMISSIONER BRISÉ:** Okay. Section VI, order  
21 of witnesses.

22                  Let's go back to Section V. There's a couple  
23 of other clarifying things that we need to address  
24 there.

25                  **MR. TRIERWEILER:** In light of the joint

1 stipulation, staff will contact each of the  
2 participating Commissioners to determine which, if any,  
3 of the four witnesses are required to attend the  
4 hearing.

5 **COMMISSIONER BRISÉ:** Okay.

6 **MR. TRIERWEILER:** And if witnesses are  
7 presented, staff will suggest the witness summary  
8 testimony be no longer than five minutes. However, as  
9 we've learned, they are -- they had intended to waive  
10 their summaries.

11 **COMMISSIONER BRISÉ:** Sure. Thank you.

12 Okay. Section VI, order of witnesses.

13 Section VII, basic positions. I think we've  
14 pretty much addressed that. And is there anything that  
15 staff needs to address in terms of the basic positions?

16 **MR. TRIERWEILER:** Staff will recommend that  
17 any changes to the basic positions that may be raised  
18 today should be submitted in writing no later than noon  
19 tomorrow, September 21st, 2016.

20 **COMMISSIONER BRISÉ:** Okay. And we will go  
21 through -- Section VIII, sorry, issues and positions.  
22 Do the parties have any changes to their position? And  
23 I'll go through 1 through 10 individually just so that  
24 the record is clear, and we'll do that quickly right  
25 now. Give me a second. Let me get there.

1           Okay. Issue 1, Issue 2, Issue 3, Issue 4, 4A,  
2 Issue 5, Issue 6, Issue 7, Issue 8, Issue 9, and Issue  
3 10.

4           **MR. TRIERWEILER:** Commissioner, FIPUG had  
5 indicated that they had taken no position as to Issues  
6 7 or 9. The OEP requires that the parties take a  
7 position by the prehearing or they waive their ability  
8 to raise a position regarding any of those issues at a  
9 later date absent a finding of substantial -- what is  
10 the wording -- good cause, actual good cause shown.

11           Now as FIPUG has indicated that they intend to  
12 waive their appearance at the hearing, perhaps FIPUG  
13 could respond regarding their position on 7 and 9.

14           **COMMISSIONER BRISÉ:** Sure. Mr. Moyle.

15           **MR. MOYLE:** So what -- my understanding of how  
16 this typically works is, is that, as you said or as  
17 staff said, noon tomorrow is the drop dead date to  
18 submit revised positions. So we would like to review  
19 this, maybe talk to our experts. If we want to revise a  
20 position, we'll do it by noon tomorrow. If not, then it  
21 will remain "No position at this time," which reverts to  
22 "No position," which kind of takes care of the issue, as  
23 I understand it.

24           **COMMISSIONER BRISÉ:** Sure.

25           **MR. TRIERWEILER:** Staff would like to make

1 sure that FIPUG is not taking a position regarding the  
2 stipulation between OPC and FPL regarding Issues 7 or 9.

3 **MR. MOYLE:** I think that's fair. We'll get  
4 out of the way on that.

5 **MR. TRIERWEILER:** All right.

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

7 **MR. ANDERSON:** Commissioner Brisé?

8 **COMMISSIONER BRISÉ:** Yes, sir.

9 **MR. ANDERSON:** Just to note, the language in  
10 the FPL stipulations in 7 and 9 should be read as  
11 conforming to the stipulation. The Issue 7 stipulated  
12 position with Public Counsel and our office, we dropped  
13 a sentence which is shown as the last sentence of our  
14 position of 7. And then for Issue 9, the stipulated  
15 position is in terms of whether there should be a  
16 reporting requirement, yes, this requirement is  
17 reasonable and appropriate. Our Issue 9 said we didn't  
18 have an objection. So that's -- if that could be shown.

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

20 **MR. TRIERWEILER:** We don't have any objection.

21 **COMMISSIONER BRISÉ:** All right. Any other --  
22 any objections? Seeing none, we'll make those changes.  
23 Thank you. We'll accept those changes, rather.

24 All right. Are there any other issues that we  
25 need to take up regarding issues and positions at this

1 time? Okay. Going once, twice. Sold to the highest  
2 bidder. Perfect.

3 Section IX, exhibit list.

4 **MR. TRIERWEILER:** Commissioner, staff prepared  
5 a Comprehensive Exhibit List which listed all prefiled  
6 exhibits and those exhibits staff wish to include in the  
7 record. Staff circulated the draft and, through the  
8 joint stip, the parties have stipulated to the  
9 admissibility of the Comprehensive Exhibit List.

10 **COMMISSIONER BRISÉ:** Perfect. Thank you.

11 Moving to Section X, we've already looked at  
12 them, but proposed stipulations.

13 Okay. Section XI, pending motions.

14 **MR. TRIERWEILER:** Commissioner, staff will  
15 note that there's a pending motion regarding the  
16 approval of the joint stipulation.

17 **COMMISSIONER BRISÉ:** Okay. Section XII, any  
18 pending confidentiality motions?

19 **MR. TRIERWEILER:** Staff will note that there  
20 are two confidentiality requests pending. The staff's  
21 goal is for the orders on the confidentiality requests  
22 to be issued prior to the hearing on October 3rd.

23 **COMMISSIONER BRISÉ:** Okay. Section XIII,  
24 post-hearing procedures.

25 **MR. TRIERWEILER:** Parties have waived briefs.

1           **COMMISSIONER BRISÉ:** Okay. And I believe that  
2 we heard on the record that all parties are in agreement  
3 already. Let me confirm that.

4           **MR. ANDERSON:** Yes, for FPL.

5           **COMMISSIONER BRISÉ:** Okay.

6           **MR. MOYLE:** No, we've agreed to waive the  
7 filing of briefs. And I guess my only note would be  
8 that probably a correction should be made to the  
9 sentence that says, "If a party fails to file a  
10 post-hearing statement, the parties shall have waived  
11 all issues and may be dismissed from the proceeding,"  
12 because obviously that's not the intent of our  
13 stipulation. But we agree to waive the brief but don't  
14 want to be dismissed.

15           **COMMISSIONER BRISÉ:** Sure. OPC.

16           **MS. ROTH:** Yes, I agree with -- we agree with  
17 FIPUG. That should probably be stricken from it.

18           **COMMISSIONER BRISÉ:** Okay. And I see a nod  
19 from FPL as well.

20           Staff.

21           **MR. TRIERWEILER:** We have no objection.

22           **COMMISSIONER BRISÉ:** Okay. Perfect. Thank  
23 you.

24           So the next section is -- that -- dealing with  
25 the dates and so forth for the briefs. I don't know



1 if you need to read that for the record, but  
2 Mr. Trierweiler.

3 **MR. TRIERWEILER:** Parties have waived opening  
4 statements through their joint stipulation.

5 **COMMISSIONER BRISÉ:** Okay. Okay. So now  
6 we're moving on to Section XV -- XIV, sorry, the  
7 rulings, and we dealt with that in terms of the opening  
8 statements.

9 And so now we're going on to other matters.  
10 Are there any other matters that we need to address in  
11 this prehearing conference?

12 **MR. TRIERWEILER:** Staff has none.

13 **COMMISSIONER BRISÉ:** Okay. So, Mary Anne, in  
14 terms of these stipulations, there's nothing that I need  
15 to do with regard to these stipulations; right?

16 **MS. HELTON:** That's correct. I think that  
17 that will be brought to the panel when we convene -- I  
18 think, is it next week or the week after? I'm actually  
19 not sure at this point, but when we convene for the  
20 hearing.

21 **COMMISSIONER BRISÉ:** Yeah, I think it's the  
22 week after.

23 Okay. If there are -- Mr. Moyle.

24 **MR. MOYLE:** I'm not sure I understood what  
25 Mary Anne said.

1           **MS. HELTON:** I'm -- the panel -- there's a  
2 panel assigned to this hearing, and so the panel will  
3 actually vote on the stipulations when they convene for  
4 the hearing. And then it's my understanding that since  
5 you have waived briefs, that the staff will most likely  
6 make an oral recommendation with respect to the other  
7 issues and the Commission will have the opportunity to  
8 vote on that as a bench decision. And if they choose  
9 not to do that, then the staff would obviously be filing  
10 a recommendation.

11           **MR. MOYLE:** Okay. All right. Well, we have a  
12 request to be excused. I assume that can be handled  
13 today.

14           **COMMISSIONER BRISÉ:** Sure. Yes, yes. So we  
15 will excuse from you the hearing.

16           **MR. MOYLE:** Thank you.

17           **COMMISSIONER BRISÉ:** FIPUG, we'll excuse FIPUG  
18 from the hearing.

19           **MR. MOYLE:** Thank you. And, you know, if the  
20 Commission decides that they want briefs, you know, we'd  
21 be happy to provide one. If they want to make a bench  
22 decision, that's fine as well. So, you know, even  
23 though we're waiving our right to file a brief, if you  
24 all have an issue that you think would be benefited by  
25 the filing of briefs, we're happy to provide that.

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

Are there any other matters? Okay. If there are no other matters, this concludes the prehearing and we are adjourned. Thank you.

(Prehearing Conference adjourned at 9:52 a.m.)

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

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 23rd day of September, 2016.

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25  


\_\_\_\_\_  
LINDA BOLES, CRR, RPR  
FPSC Official Hearings Reporter  
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