

1 APPEARANCES:

2 R. WADE LITCHFIELD, JOHN T. BUTLER, and MARIA
3 MONCADA, ESQUIRES, 700 Universe Boulevard, Juno Beach,
4 Florida 33408-0420, on behalf of Florida Power & Light
5 Company.

6 JAMES D. BEASLEY, J. JEFFRY WAHLEN, and ASHLEY
7 M. DANIELS, ESQUIRES, Ausley & McMullen, Post Office Box
8 391, Tallahassee, Florida 32302, appearing on behalf of
9 Tampa Electric Company.

10 JEFFREY A. STONE, RUSSELL A. BADDERS and
11 STEVEN R. GRIFFIN, ESQUIRES, Beggs & Lane, P.O. Box
12 12950, Pensacola, Florida 32591-2950, appearing on
13 behalf of Gulf Power Company.

14 MATTHEW R. BERNIER, ESQUIRE, 106 East College
15 Avenue, Suite 800, Tallahassee, Florida 32301-7740; and
16 DIANNE TRIPLETT, ESQUIRE, 299 First Avenue North, St.
17 Petersburg, Florida 33701, appearing on behalf of Duke
18 Energy Florida, Inc.

19 JON C. MOYLE, JR., and KAREN PUTNAL, ESQUIRES,
20 Moyle Law Firm, P.A., 118 North Gadsden Street,
21 Tallahassee, Florida 32301, appearing on behalf of
22 Florida Industrial Power Users Group.

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24

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1 APPEARANCES:

2 JAMES W. BREW, ESQUIRE, Stone Mattheis
3 Xenopoulos & Brew, P.C., 1025 Thomas Jefferson Street,
4 NW, Eight Floor, West Tower, Washington, DC 20007,
5 appearing on behalf of White Springs Agricultural
6 Chemicals, Inc. d/b/a PCS Phosphate - White Springs.

7 J.R. KELLY, PUBLIC COUNSEL; CHARLES REHWINKEL,
8 ERIK SAYLER, PATRICIA A. CHRISTENSEN, and STEPHANIE,
9 MORRIS, ESQUIRES, Office of Public Counsel, c/o the
10 Florida Legislature, 111 W. Madison Street, Room 812,
11 Tallahassee, Florida 32399-1400, appearing on behalf of
12 the Citizens of the State of Florida.

13 CHARLIE MURPHY and BIANCA LHERISSON, ESQUIRES,
14 FPSC General Counsel's Office, 2540 Shumard Oak
15 Boulevard, Tallahassee, Florida 32399-0850, appearing on
16 behalf of the Florida Public Service Commission Staff.

17 KEITH HETRICK, GENERAL COUNSEL, and MARY ANNE
18 HELTON, DEPUTY GENERAL COUNSEL, Advisor to the Florida
19 Public Service Commission, 2540 Shumard Oak Boulevard,
20 Tallahassee, Florida 32399-0850.

P R O C E E D I N G S

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2 **MS. TAN:** By notice issued September 27th,
3 2016, this time and place was set for a prehearing in
4 the following dockets: 160001-EI, 160002-EG, 160003-GU,
5 160004-GU, and 160007-EI. The purpose of the prehearing
6 is set out in the notice.

7 **COMMISSIONER GRAHAM:** Thank you. Staff.
8 We're going to take appearances, and if I could have
9 you, when you give your names or give your company, you
10 don't have to do it each individual, but when you give
11 the company and the names, also give the dockets that
12 you're being a part of all at one time. And I guess we
13 can start right up here with Florida Power & Light.

14 **MR. BUTLER:** Thank you, Commissioner Graham.
15 For the 01 docket I have R. Wade Litchfield, John
16 Butler, and Maria Moncada. We also would be making
17 appearances in Docket 160007, the ECRC. And then for
18 the 02 docket, R. Wade Litchfield, John Butler, and
19 Kenneth Rubin. Thank you.

20 **MR. BADDERS:** Good afternoon. Russell Badders
21 on behalf of Gulf Power. I'll be appearing in 01 and
22 02 and 07 dockets along with Steven R. Griffin and
23 Jeffrey A. Stone.

24 **COMMISSIONER GRAHAM:** Okay.

25 **MR. BEASLEY:** Good afternoon. James D.

1 Beasley with the Ausley McMullen law firm. Appearing
2 with me are J. Jeffry Wahlen and Ashley M. Daniels of
3 the same firm in the 01, 02, and 07 dockets.

4 **MR. WATSON:** Ansley Watson, Jr., Macfarlane,
5 Ferguson & McMullen in the 03 and 04 dockets.

6 **MS. KEATING:** Good afternoon, Commissioner.
7 Beth Keating with the Gunster law firm. I'm here today
8 for FPUC in the 01, 02, 03, and 04 dockets; FPU-Fort
9 Meade in the 03 docket; and Fort Meade, the Indiantown
10 Division, and Chesapeake in the 04 docket.

11 **COMMISSIONER GRAHAM:** Okay.

12 **MR. MUNSON:** Good afternoon, Commissioner. My
13 name is Greg Munson also with the Gunster law firm on
14 behalf of Florida City Gas in dockets 03 and 04.

15 **MR. BREW:** Good afternoon, Commissioner.
16 James Brew with the firm of Stone, Mattheis, Xenopoulos
17 & Brew appearing in the 01, 02, and 07 dockets for White
18 Springs Agricultural Chemicals/PCS Phosphate.

19 **MR. WRIGHT:** Good afternoon, Commissioner.
20 Robert Scheffel Wright and John T. Lavia, III, of the
21 Gardner law firm appearing on behalf of the Florida
22 Retail Federation in Docket 160001, the fuel docket.
23 Thank you.

24 **MR. MOYLE:** Good afternoon. Jon Moyle with
25 the Moyle Law Firm appearing on behalf of the Florida

1 Industrial Power Users Group in the 01, 02, and
2 07 dockets. And Karen Putnal with the firm should also
3 be noted as entering an appearance. Thank you.

4 **MS. CHRISTENSEN:** Patricia Christensen with
5 the Office of Public Counsel. And I'd also like to put
6 in an appearance for J. R. Kelly, Public Counsel;
7 Charles Rehwinkel; and Erik Sayler with the Office of
8 Public Counsel in the 01, 02, 03, 04, and 07 dockets.

9 **MS. LEITMAN:** Melanie Leitman appearing on
10 behalf of my co-counsel, Paula Sparkman, out of Messer,
11 Caparello representing Sebring Gas of the 04 docket.

12 **MR. BERNIER:** Good afternoon, Commissioner.
13 Matt Bernier with Duke Energy and entering an appearance
14 in the 01, 02, and 07 dockets. And I'd like to enter an
15 appearance for Dianne Triplett in those same dockets and
16 for John Burnett in the 01 docket. Thank you.

17 **COMMISSIONER GRAHAM:** Anybody else before I go
18 to staff for appearances?

19 **MS. CHRISTENSEN:** Can I also add -- this is
20 Patty Christensen with the Office of Public Counsel --
21 an appearance for Stephanie Morris in all of the dockets
22 as well.

23 **COMMISSIONER GRAHAM:** Anybody else before I go
24 to staff?

25 Staff.

1 **MS. TAN:** Lee Eng Tan on behalf of the
2 02 docket, and making an appearance for Stephanie Cuello
3 in the 02 and 04 docket, and Margo Leathers and Wesley
4 Taylor in the 03 docket, Kelley Corbari in the 04
5 docket, Bianca Lherisson and Charlie Murphy in the 07
6 docket, and Danijela Janjic and Suzanne Brownless in the
7 01 docket.

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

11 * * * * *

12 **COMMISSIONER GRAHAM:** Okay. 07 docket, staff.

13 **MS. LHERISSON:** Yes, Commissioner.

14 Preliminary matters. Staff is hopeful that
15 all issues can be stipulated and witnesses excused in
16 this docket. Staff will continue to work towards this
17 end. If an agreement can be reached in the next few
18 days, the prehearing order will need to be modified to
19 reflect such an agreement. If an agreement is reached,
20 staff -- if an agreement is reached, staff proposes to
21 circulate an amended draft before an order is issued.

22 When we get to the issues, we will need to
23 address the possible spinout of issues related to FPL's
24 Turkey Point project and Gulf's Plant Scherer Unit 3.
25 There appears to be an agreement on doing this. There

1 also appears to be an agreement regarding DEF's Issue
2 11 and Gulf's Issues 9B and 9C. I am not seeing
3 disputes on any of the generic issues or the tariff
4 issue.

5 **COMMISSIONER GRAHAM:** Do we have any other
6 preliminary matters for the 07 docket?

7 Okay. Let's click on through the prehearing
8 order as before. Section I, Section II, Section III,
9 Section IV, Section V. Staff.

10 **MS. LHERISSON:** Staff will prepare a
11 Comprehensive Exhibit List, which will include all
12 prefiled exhibits and also include those exhibits staff
13 wishes to include in the record. Staff hopes that an
14 eventual stipulation will extend to the exhibits in this
15 docket.

16 **COMMISSIONER GRAHAM:** I just love staff is
17 just so hopeful.

18 Anything else for Section V? Section VI.
19 Staff.

20 **MS. LHERISSON:** If an agreement can be reached
21 to excuse any witnesses, staff will confirm with each
22 Commissioner that the witnesses can be excused. If no
23 Commissioner has a question of these witnesses, the
24 witnesses may be excused from the hearing and his or her
25 testimony and exhibits entered into the record at the

1 hearing as though read.

2 **COMMISSIONER GRAHAM:** Yes, sir.

3 **MR. BUTLER:** I have a question at this point.
4 I just want to be sure I understand what the direction
5 is with respect to the potential deferral of FPL's
6 issues on the Turkey Point cooling canals. If that is
7 approved and, you know, I guess when that's approved,
8 one of the witnesses here and then several of the
9 exhibits listed in the prehearing order I think would be
10 removed. It's not stipulated into the record they be
11 removed and it wouldn't be appropriate for Mr. Labauve,
12 who is our witness on the cooling canals, to be a
13 witness if we don't have an issue on that topic. So I'm
14 just, I guess, looking to staff to understand how that
15 process will play out on -- between now and the hearing.

16 **COMMISSIONER GRAHAM:** Staff.

17 **MR. MURPHY:** How would you like it?

18 **MR. BUTLER:** I would like to -- I would like
19 to learn that we have agreement for the issue to be
20 deferred today, in which case I think we would just be
21 withdrawing Mr. Labauve's testimony and exhibits.

22 **MR. MURPHY:** When we get to the issues, I
23 think we may get there.

24 **MR. BUTLER:** Okay.

25 **MR. MURPHY:** And if that's the case, then you

1 can just --

2 **MR. BUTLER:** Come back to it?

3 **MR. MURPHY:** Yes.

4 **MR. BUTLER:** Okay. Thank you.

5 **MR. BADDERS:** Commissioner Graham, I do have
6 one change in Section VI.

7 **COMMISSIONER GRAHAM:** Sure.

8 **MR. BADDERS:** Actually it's two changes. We
9 need to add witness -- or Issue 9C to Witness Boyett and
10 Issue 9B to Witness Deason. And I'll provide that to
11 Mr. Murphy so he'll have a written record of that.

12 **COMMISSIONER GRAHAM:** One more time. Which
13 one to Boyett?

14 **MR. BADDERS:** Mr. Boyett, add Issue 9C, as in
15 Charlie.

16 **COMMISSIONER GRAHAM:** Okay.

17 **MR. BADDERS:** And on Deason, add Issue 9B, as
18 in Bravo.

19 **COMMISSIONER GRAHAM:** Okay. Are those the
20 only two changes?

21 **MR. BADDERS:** Yes, sir.

22 **COMMISSIONER GRAHAM:** Any other changes to
23 Section VI?

24 Okay. Let's move on to Section VII, Section
25 VIII. Staff.

1 **MS. LHERISSON:** The Order Establishing
2 Procedure requires that a party take a position at the
3 prehearing conference unless good cause is shown as to
4 why that party cannot take a position at this time.
5 Accordingly, if a party's position in the draft
6 prehearing order is currently "No position at this
7 time," or something similar, that party must change
8 its -- must change it at today's prehearing conference
9 or show good cause why it cannot take a position.
10 Otherwise, the prehearing order will reflect "No
11 position" for that party on that issue. If a party
12 wishes to change a position, please submit your position
13 in writing no later than noon tomorrow, October 12th.

14 **COMMISSIONER GRAHAM:** We'll make that end of
15 the day. Continue.

16 **MS. LHERISSON:** Commissioner, can we go
17 through the issues one at a time and see if there are
18 any disputes? Some have been stipulated.

19 **COMMISSIONER GRAHAM:** Okay. Issue 1, is there
20 any dispute? Issue 2. I'm sorry. I see people still
21 turning pages. Issue 1 still. Issue 2, Issue 3.

22 **MR. MOYLE:** Can I ask a question of
23 clarification or process with respect to Issue 3?

24 **COMMISSIONER GRAHAM:** Sure.

25 **MR. MOYLE:** And it probably will flow through

1 to some other issues as well.

2 FPL's position reflects a basis for recovery
3 on cost allocation that, my understanding, appears to be
4 different from some previous filings that they've made.
5 So given your point about being able to change positions
6 till close of business tomorrow, I'm kind of wondering
7 whether FPL anticipates changing its position with
8 respect to the 12CP and 25 percent cost allocation to
9 set forth a position consistent with a filing, I think,
10 that was made last week. I'm just not sure what the
11 plan is and how that's going to proceed, and I'd like to
12 be informed on that point.

13 **COMMISSIONER GRAHAM:** Mr. Butler.

14 **MR. BUTLER:** I assume Mr. Moyle is referring
15 to the settlement agreement or proposed settlement
16 agreement we filed in the rate case docket and the
17 consolidated dockets there. That would end up changing
18 our position on the allocation basis for production
19 plant from the 12CP and 25 percent that we are proposing
20 here consistent with our position in the rate case to
21 the 12CP and 1/13th that would be consistent with the
22 proposed settlement agreement. At this point we are
23 presenting them as alternatives because we obviously
24 don't know yet whether the proposed settlement agreement
25 would be approved. And unless and until it is, our

1 position remains that the 12CP and 25 percent
2 methodology would be appropriate. If the settlement is
3 approved, then, as stated in our position here, we would
4 sort of resort to or default to the position of using
5 the sort of current or past practice of the 12CP and
6 1/13th.

7 **MR. MOYLE:** And just on a -- from a timing
8 perspective, it's anticipated that that information and
9 decision will be known before this decision?

10 **MR. BUTLER:** I think that's still up in the
11 air and it's dependent on what the Commission ends up
12 scheduling. But I think there is a fair chance it will
13 not be decided. That's one of the reasons that we had
14 presented them as alternatives, Jon. It may be that we
15 reach the hearing date for this docket with not yet a
16 decision on whether or not to approve the settlement
17 agreement. And in anticipation of that possibility and
18 not knowing one way or the other how it'll play out,
19 that's why we're sort of keeping both positions open as
20 options.

21 **COMMISSIONER GRAHAM:** Staff.

22 **MR. MURPHY:** Just while we're at a break, if
23 we could roll back. We don't have -- however you work
24 that out is good with us. But what we'd like to do is
25 there's some variation in there being no dispute. Are

1 the parties -- is it acceptable if we reflect these
2 things as "No position" where we've got, for example,
3 someone agreeing with OPC or someone saying you've got a
4 burden of proof? Is that --

5 **MR. MOYLE:** Well, for my position, I mean, I'm
6 going to have to take issue with the 12CP and 25 percent
7 because we took issue with it in the rate case. So to
8 be consistent, I would need to say, no, 12CP and 1/13th
9 is the better way to go, you know, on issues like that.
10 But in terms of a stipulation with respect to the Turkey
11 Point cooling canals and the Scherer issue, I mean, my
12 understanding is those are going to be hopefully punted
13 down the road, and that's fine by us. We want to have
14 our chance to have the day in court and are not feeling
15 that it has to be in the clause proceeding, so we're not
16 going to be in the way of anything related to punting.

17 **MR. MURPHY:** Sure. But for the other
18 generics, you're okay with -- just get with me.

19 **MR. MOYLE:** Okay. Let's follow up offline, if
20 we can, on that.

21 **MR. MURPHY:** Yes, sir.

22 **MR. MOYLE:** So I guess, Mr. Chairman, the only
23 thing is, like, who knows how this all plays out, but
24 for the changes, I mean, obviously if this doesn't go
25 the way -- one way, I mean, we'd like to amend the

1 exhibit list to have the filing from last week be
2 available as an exhibit in this case that shows the 12CP
3 and 1/13th approach as the one FPL is proposing.

4 **COMMISSIONER GRAHAM:** So you propose that we
5 use the proposed settlement as one of the exhibits?

6 **MR. MOYLE:** Their filing, yes.

7 **MR. BUTLER:** I don't have an objection to
8 that, but I think you could probably just take official
9 recognition of it. But if it's the will of the parties
10 to include it as an exhibit, that's okay with me.

11 **COMMISSIONER GRAHAM:** And, staff, we're fine
12 with that? Mary Anne?

13 **MS. HELTON:** I actually have been doing some
14 reading on official recognition since the rate case
15 hearing, and I think it might be appropriate to make it
16 as an exhibit.

17 **COMMISSIONER GRAHAM:** Okay.

18 **MR. MOYLE:** Yeah, that way I can ask the
19 witness questions about it. "Isn't it true that this is
20 the best way to go?" kind of thing, so.

21 **COMMISSIONER GRAHAM:** No. I understand where
22 you're coming from.

23 **MR. MOYLE:** Yeah. Right. Okay. Thank you.
24 So we'll -- by close of business tomorrow, we'll submit
25 the filing that will list that document as an exhibit.

1 And I think you've dealt with it today, so thank you.

2 **COMMISSIONER GRAHAM:** Okay. Anything else on
3 Issue 3? Okay. Let's move on to Issue 4.

4 **MR. MOYLE:** That's the same point on Issue 4.

5 **COMMISSIONER GRAHAM:** Issue 5, Issue 6,
6 Issue 7.

7 **MR. MOYLE:** Same point. I don't feel the need
8 to point it out every time.

9 **COMMISSIONER GRAHAM:** No, that's fine.

10 **MR. MOYLE:** Yeah.

11 **COMMISSIONER GRAHAM:** Issue 8, Issue 9A. Yes.

12 **MR. BADDERS:** Commissioner Graham, I believe
13 we have a proposed stipulation on this issue that all of
14 the parties are either in agreement with or will take a
15 Type 2 stipulation. I just want to get confirmation of
16 that from all of the parties.

17 **COMMISSIONER GRAHAM:** Does that sync with
18 everybody's knowledge?

19 **MS. CHRISTENSEN:** Yes. OPC's understanding is
20 we do have some agreed-to language to stipulate this
21 issue and defer it.

22 **MR. MOYLE:** And we haven't agreed to the
23 stipulation affirmatively but said we're not going to
24 stand in the way and we think it should be deferred, so
25 we're happy with that result.

1 **MR. BADDERS:** I believe that would be the
2 stip -- Type 2 stipulation that we typically see.

3 **COMMISSIONER GRAHAM:** Yeah. So if anybody is
4 not in agreement with that, speak up. I'll assume you
5 all are. There you go. 9B.

6 **MR. BADDERS:** I believe the same is true for
7 9B and 9C.

8 **COMMISSIONER GRAHAM:** Questions, concerns,
9 comments on 9B, 9C, Issue 10.

10 **MR. BUTLER:** Issue 10 is FPL's issue for
11 deferral of the Turkey Point Cooling Canal Monitoring
12 Plan project. We believe that there is agreement to
13 defer that. And I have not heard any objection to the
14 language that FPL has proposed as the statement or the
15 basis for deferral, so I would ask whether there's any
16 objection to stipulating to that.

17 **COMMISSIONER GRAHAM:** Any comments, concerns,
18 questions on Issue 10 from what FPL just said?

19 **MR. MOYLE:** FIPUG would take the same position
20 as I just took with Gulf with respect to saying we
21 support the deferral of the matter, don't have an issue
22 with it being deferred, think that's a good idea.

23 **COMMISSIONER GRAHAM:** Okay. Ms. Christensen,
24 you're reaching for your button.

25 **MS. CHRISTENSEN:** Yes. And I think we've

1 stated we're in agreement with deferring it and we
2 didn't have any dispute with the language. We would
3 note that this doesn't create a presumption for next
4 year's proceeding in the correctness of the cost.

5 **COMMISSIONER GRAHAM:** Yes. Staff, do you have
6 anything to add before I move to 11? You're good?
7 Don't feel like you have to add anything.

8 **MR. MURPHY:** I guess as we go forward, we may
9 need to decide what witnesses can be excused, given
10 this, and what issues are just fallout issues and what
11 witness you might have to have here for Mr. Moyle's
12 concerns, if we get there.

13 **MR. BUTLER:** Sure. Do you want to cover that
14 now or wait till the end?

15 **MR. MURPHY:** Even after this. Just whenever
16 --

17 **MR. BUTLER:** I can do it pretty simply, if you
18 want to. I mean, our -- my sense is that unless we
19 reach agreement with Mr. Moyle on the -- or the issue is
20 otherwise resolved by the settlement agreement on the
21 allocation question, Ms. Deaton, the first witness
22 listed in the -- back on page 4 in the order of
23 witnesses, she would need to appear. And with the
24 stipulation that I believe has just been approved for
25 Issue 10, Mr. Labauve, there would be no reason for him

1 to appear. His testimony solely relates to the cooling
2 canal project.

3 **COMMISSIONER GRAHAM:** So you would strike the
4 testimony of both -- part of Deaton and all of Labauve?

5 **MR. BUTLER:** That's right. There's a small
6 portion of Ms. Deaton's testimony that relates to the
7 cooling canals. We can take that out. But as a
8 witness, she'll still be the person to appear.

9 Mr. Labauve would not need to at all because his
10 testimony is exclusively on the cooling canals.

11 **COMMISSIONER GRAHAM:** Staff, does that handle
12 your concern, your question?

13 **MR. MURPHY:** Yes. Thank you.

14 **COMMISSIONER GRAHAM:** Okay. Anybody else on
15 Issue 10? Okay. Let's move to Issue 11, Issue 12.

16 **MR. BREW:** Commissioner.

17 **COMMISSIONER GRAHAM:** Yes.

18 **MR. BREW:** It's my understanding on Issue
19 11 that there's agreement to do a Type 2 stipulation on
20 that issue.

21 **COMMISSIONER GRAHAM:** On Issue 11?

22 **MR. MURPHY:** That is my understanding as well
23 if -- I guess we need to hear from Mr. Moyle.

24 **MR. MOYLE:** Yeah. We're not going to stand in
25 the way of a Type 2. We just don't want to

1 affirmatively stipulate, but we're good on moving along.
2 Same with the other positions; we're not going to stand
3 in the way of it, but --

4 **MR. BERNIER:** Yeah, Mr. Commissioner, that's
5 our issue, and we would agree with that as well, so --

6 **COMMISSIONER GRAHAM:** Okay. Issue 12.

7 Is that all of our issues?

8 **MR. BADDERS:** Commissioner Graham, I hesitate
9 to go back, but given the Commission's -- yes, but --
10 given the positions of the parties on Issues 9A, B, and
11 C, I believe all the other issues related to Gulf, the
12 generic issues, the parties would probably be in the
13 position to either stipulate to our number or take a
14 Type 2 because at this point we have no remaining
15 issues.

16 **COMMISSIONER GRAHAM:** You had to go back
17 there, didn't you?

18 **MR. BADDERS:** Sorry.

19 **COMMISSIONER GRAHAM:** Comments on Gulf's
20 statement on 9A, B, and C? Ms. Christensen.

21 **MS. CHRISTENSEN:** Yes. To the extent that
22 we've actually agreed to the deferral issue, we would be
23 able to take a positive stipulation, I believe, on 9A as
24 set forth in the prehearing order. As to the remaining
25 issues, it would be "No position," and we would be in a

1 position to do a Type 2 stipulation on the remaining
2 issues.

3 **COMMISSIONER GRAHAM:** Okay. Anybody else have
4 a comment -- anybody else have a comment or concern on
5 Gulf's statement on 9A, B, and C?

6 **MR. MOYLE:** No. I would just say, "See
7 above." We're not going to stand in the way of it, but
8 are not affirmatively stipulating to all the stuff that
9 they put in their position.

10 **MR. BADDERS:** And with that, when we get to
11 issues, excusals, and all of that, that would get all of
12 our issues resolved and each of our witnesses in the
13 position to possibly be excused, pending the
14 Commissioners.

15 **COMMISSIONER GRAHAM:** Okay. All right.

16 **MR. MURPHY:** Commissioner, sorry.

17 **COMMISSIONER GRAHAM:** Sure.

18 **MR. MURPHY:** I believe we're at the same place
19 with TECO and Duke, and there are only a couple of
20 issues here that we would have for FPL. So it's
21 narrowed considerably, and hopefully we could excuse
22 witnesses and stipulate the record for whatever we can.

23 **COMMISSIONER GRAHAM:** All right. So we've
24 gone through the issues. We're on -- have we handled
25 the FIPUG objections as well?

1 **MS. LHERISSON:** FIPUG has raised objections to
2 the expertise of all witnesses for whom no area of
3 expertise were listed in the prefiled testimony. In
4 light of where we are with the issues, does FIPUG have
5 an objection to the expertise of any witness? If so, to
6 whom?

7 **MR. MOYLE:** So that's kind of a standing issue
8 that we have with the Commission with respect to how
9 experts are handled. So we would just maintain, I
10 guess, Ms. Deaton, that, you know, properly she should
11 be identified as an expert in certain areas in her
12 prefiled testimony as compared to it not being
13 identified. But I think things are on a path toward
14 moving forward. So we would maintain our position that
15 we maintain and -- with respect to experts that we've
16 maintained in all the other proceedings. But given the
17 discussions and where things are headed, I'm not sure
18 we're going to have witnesses.

19 **MR. MURPHY:** I think we are going to have
20 Deaton as a witness.

21 **MR. MOYLE:** My understanding of the
22 conversation is that potentially we may, but it somewhat
23 depends on sequencing and how things play out with
24 respect to the filing that FPL made. I mean, we're
25 going to be prepared to, but, you know, who knows how

1 it'll all end up.

2 **MS. HELTON:** Well, I think there's the
3 possibility that the settlement will not be addressed by
4 the Commission until after this hearing the first week
5 in November. So does that change where you're coming
6 from?

7 **MR. MOYLE:** Maybe the best thing to do is just
8 to have conversations with FPL and staff and see if we
9 can come up with a way to resolve this without
10 Ms. Deaton having to come testify on that point. I
11 mean, I want to reserve that right, but, you know, I've
12 talked to her a number of times about the allocation
13 approach, so there's maybe a way we can deal with it
14 without having to have the witness come.

15 **MS. HELTON:** And, Mr. Chairman, I'm sorry, I
16 have to ask this question. If Ms. Deaton does come,
17 what we're really trying to get to is do you want to
18 voir dire Ms. Deaton?

19 **MR. MOYLE:** No.

20 **MS. HELTON:** Thank you.

21 **COMMISSIONER GRAHAM:** You were taking a big
22 risk on that question.

23 (Laughter.)

24 Okay. So does that conclude Section VIII?
25 All right. Section IX.

1 **MS. LHERISSON:** Staff will prepare a
2 Comprehensive Exhibit List for the purpose of numbering
3 and identifying the exhibits at hearing. Staff will
4 provide the exhibit list to parties as soon as possible.

5 **MR. BUTLER:** Commissioner Graham.

6 **COMMISSIONER GRAHAM:** Mr. Butler.

7 **MR. BUTLER:** Consistent with the stipulation
8 on Issue 10 to defer the cooling canal issues, I think
9 that the exhibits identified here for Mr. Labauve on
10 pages 20 and 21 would not need to be included in the
11 record.

12 **COMMISSIONER GRAHAM:** Duly noted. Anybody
13 else on Section IX? Section X. Staff.

14 **MS. LHERISSON:** Proposed stipulations and
15 undisputed issues were discussed before. It is staff's
16 hope that the record and all issues will be stipulated
17 and all witnesses excused.

18 **MR. MOYLE:** So can I back up just for a
19 second?

20 **COMMISSIONER GRAHAM:** Yeah, sure.

21 **MR. MOYLE:** So with respect to the witness
22 testimonies, it sounds like they're coming out, they're
23 not going in the record, is that right, from
24 Mr. Butler's perspective and FPL's perspective with the
25 exception of Ms. Deaton on the cost allocation approach?

1 **MR. BUTLER:** Yeah, we only have two witnesses.
2 And of those two, yes, Mr. Labauve would not be
3 testifying. Ms. Deaton would be.

4 **MR. MOYLE:** Okay. And is the same -- I assume
5 the same holds true with Gulf, that with respect to
6 their stuff, since it's being deferred, that that's not
7 coming in either.

8 **MR. BADDERS:** No, that is not what the
9 stipulation says. It says our witnesses' testimony will
10 go into the record. So we're in a different posture.

11 **MR. MOYLE:** But we're not having a decision
12 made on the testimony that comes in. It's not like the
13 Commission is going to make a ruling and say, "We've
14 considered this substantively and we say X, Y, or Z."
15 So I'm not sure why it has to come in.

16 **MR. BADDERS:** My understanding is that it will
17 come in and it will also be transferred over to the 186
18 docket.

19 **MR. MOYLE:** Which is the rate case docket?

20 **MR. BADDERS:** Potential rate case docket, yes.
21 But it will go in in this docket to satisfy everything
22 else that's in this docket, and basically that was part
23 of the stipulation. We wanted that testimony in to be
24 able to defer.

25 **MR. MOYLE:** Right. And we didn't agree to the

1 stipulation, you know, with respect to that. I just
2 don't want to be in a position of you all at some point
3 saying, "Well, you put this testimony in, and this
4 testimony is, you know, defining him." And we're having
5 our day in court at the rate case, and I just want to
6 make sure we're all on the same page, that that's when
7 we're having our day in court and the admission of this
8 evidence is not impacting that one way or the other.

9 **MR. STONE:** Commissioner Graham, Jeff Stone on
10 behalf of Gulf Power Company.

11 Mr. Moyle was not present when the
12 negotiations with Public Counsel to resolve the issue
13 were conducted last week. The -- we are in a different
14 posture than FPL. Our issue is not being deferred until
15 next year. Our issue is being rolled into the rate
16 case. As a result, in order to not disadvantage the
17 parties and maintain the status quo, there was one
18 element that had to be stipulated to, and that is the
19 eligibility for ECRC.

20 I understand Mr. Moyle's position, and he is
21 not being prejudiced in the rate case to take his
22 position on anything other than eligibility of ECRC. If
23 he decides that he is going to object to this
24 stipulation as it's agreed to by Public Counsel and
25 Gulf, then he will have his opportunity to have a

1 hearing because we will not be deferring the issue. But
2 if he accepts the Type 2 stipulation, which he has
3 previously indicated that he would, he is waiving his
4 right to contest the ECRC eligibility issue. He's
5 retaining all of the rights as deferred into the rate
6 case, and he continues to retain his rights to challenge
7 the dollars themselves in the ongoing proceeding,
8 whether it be in the rate case or in the ECRC
9 proceeding.

10 **COMMISSIONER GRAHAM:** Ms. Christensen.

11 **MS. CHRISTENSEN:** Yes. Our understanding is
12 we are going forward with saying that the equipment that
13 was put onto Scherer 3 was ECRC eligible. The ultimate
14 question of whether or not these should be allowed to be
15 recovered because they're being used for the customers
16 or not is an issue that's being deferred to the rate
17 case, and then that will impact future recovery and
18 future ECRCs and whether or not this amount should be
19 refunded, if that helps clarify the issue. We're not
20 objecting to the fact that these were put on to be
21 compliant with the ECRC requirements.

22 **MR. STONE:** Ms. Christensen and I are making
23 consistent statements.

24 **COMMISSIONER GRAHAM:** Okay. Mr. Moyle.

25 **MR. MOYLE:** And I'm just trying to get out of

1 the way without giving up any of my rights, so.

2 **COMMISSIONER GRAHAM:** Okay. Well, it sounds
3 like then the only thing that you're giving up right now
4 is the ability to challenge if it should be in the EC --

5 **MR. STONE:** It's challenge -- it's giving up
6 his right to challenge eligibility for ECRC. He
7 continues to retain the right to argue that as a matter
8 of policy it should be in base rates rather than ECRC,
9 but he -- if he agrees to the Type 2 stipulation, he is
10 giving up his right to contest the eligibility for ECRC
11 because that is an essential part of the stipulation as
12 presented.

13 **MR. MOYLE:** Right. But if there were costs in
14 there related to, you know, membership in a health club
15 or something that was like -- had nothing to do with
16 anything related to, I'm not stipulating that, you know,
17 that would be part of the recovery, as I understand it.
18 Or I'm not stipulating to anything, but I'm not
19 precluded from bringing that up and saying, "Wait a
20 minute. What's a health club membership, you know,
21 doing in this case?"

22 **COMMISSIONER GRAHAM:** I'll allow you to take
23 out health club memberships and used cars.

24 (Laughter.)

25 Mr. Stone, are you good?

1 **MR. STONE:** I'm good.

2 **COMMISSIONER GRAHAM:** So don't come with
3 health club memberships and used cars.

4 **MR. STONE:** There will be no health club
5 memberships or used cars.

6 **COMMISSIONER GRAHAM:** Okay. All right.

7 **MR. MURPHY:** Commissioner, just to be clear,
8 Mr. Moyle, so we are at "No position" on this for your
9 Type 2 stipulation, with the understanding that you can
10 still challenge numbers and things that are outside
11 of -- that these facilities do come under the ECRC, they
12 may be decided to be rolled into base rates, they may be
13 determined to not meet the threshold of being retail,
14 but the facilities are within the parameters of the
15 ECRC, but you can still, any kind of audit, the numbers
16 are still subject to true-up and challenge going
17 forward. Is that --

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

19 **MR. MOYLE:** I mean, the health club
20 membership, I mean, obviously that wouldn't be within
21 the Environmental Cost Recovery Clause, so --

22 **MR. MURPHY:** And it would be reflected in an
23 audit, too, and you could challenge it, yes.

24 **MR. MOYLE:** Yeah. So all I'm trying is just
25 not to be in a position six months from now where

1 somebody has taken a transcript and going, "No, you, you
2 know, you didn't preserve your rights." So I think
3 we've done it with the conversation, and the record
4 hopefully will be clear.

5 **MR. MURPHY:** Thank you.

6 **COMMISSIONER GRAHAM:** Okay. We finished
7 Section X; correct?

8 **MS. LHERISSON:** Yes.

9 **COMMISSIONER GRAHAM:** We're going to Section
10 XI.

11 **MS. LHERISSON:** Yes. There are no pending
12 motions.

13 **COMMISSIONER GRAHAM:** Section XII.

14 **MS. LHERISSON:** There are two pending
15 confidentiality motions, and staff is working on them.

16 **COMMISSIONER GRAHAM:** Section XIII.

17 **MS. LHERISSON:** If issues are stipulated, a
18 bench decision may be possible. If no agreement is
19 reached, briefs will be due November 16th.

20 **COMMISSIONER GRAHAM:** Once again, three
21 minutes, opening statements. Briefs are 40 pages. Any
22 other matters with this docket before we continue?

23 Okay. Well, we'll adjourn the 07 docket
24 and go on to the 01 docket.

25 (Proceeding adjourned at 1:47 p.m.)

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

3
4 I, LINDA BOLES, CRR, RPR, Official Commission
Reporter, do hereby certify that the foregoing
5 proceeding was heard at the time and place herein
stated.

6
7 IT IS FURTHER CERTIFIED that I
stenographically reported the said proceedings; that the
8 same has been transcribed under my direct supervision;
and that this transcript constitutes a true
transcription of my notes of said proceedings.

9
10 I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties, nor
11 am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
12 financially interested in the action.

13 DATED THIS 12th day of October, 2016.

14
15 LINDA BOLES

16 LINDA BOLES, CRR, RPR
17 FPSC Official Hearings Reporter
(850) 413-6734