

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

FILED 3/16/2018  
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FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20170266-EC  
PETITION TO DETERMINE NEED FOR SEMINOLE COMBINED  
CYCLE FACILITY, BY SEMINOLE ELECTRIC COOPERATIVE,  
INC.

\_\_\_\_\_ /

DOCKET NO. 20170267-EC  
JOINT PETITION FOR DETERMINATION OF NEED FOR SHADY  
HILLS COMBINED CYCLE FACILITY IN PASCO COUNTY, BY  
SEMINOLE ELECTRIC COOPERATIVE, INC. AND SHADY HILLS  
ENERGY CENTER, LLC.

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PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS  
PARTICIPATING: GARY F. CLARK  
PREHEARING OFFICER

DATE: Monday, March 12, 2018

TIME: Commenced: 9:30 a.m.  
Concluded: 9:50 a.m.

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

REPORTED BY: DEBRA R. KRICK  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

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

1 APPEARANCES:

2 GARY PERKO, BROOKE LEWIS, and MALCOM MEANS,  
3 ESQUIRES, Hopping Law Firm, P.O. Box 6526, Tallahassee,  
4 Florida 32314, appearing on behalf of Seminole Electric  
5 Cooperative.

6 ROBERT SCHEFFEL WRIGHT and JOHN T. LaVIA,  
7 III, ESQUIRES, Gardner Law Firm, 1300 Thomaswood Drive,  
8 Tallahassee, Florida 32308, appearing on behalf of  
9 Quantum Pasco Power, L.P., Patrick Daly, and Michael  
10 Tulk.

11 RACHAEL DZIECHCIARZ and CHARLES MURPHY,  
12 ESQUIRES, FPSC General Counsel's Office, 2540 Shumard  
13 Oak Boulevard, Tallahassee, Florida 32399-0850,  
14 appearing on behalf of the Florida Public Service  
15 Commission Staff.

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

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1 P R O C E E D I N G

2 COMMISSIONER CLARK: All right. We will go  
3 ahead and get started this morning.

4 Good morning, everyone. We will call this  
5 prehearing conference to order, and I will ask  
6 staff to please read the notice. Dire.

7 MS. DZIECHCIARZ: Thank you, Commissioner.

8 By notice issued February 9th, 2018, this time  
9 and place has been set for a prehearing conference  
10 in Docket Number 20170266-EC, petition to determine  
11 need for Seminole combined cycle facility by  
12 Seminole Electric Cooperative, Inc., and docket  
13 number 20170267-EC, the joint petition for  
14 determination of need for Shady Hills combined  
15 cycle facility in Pasco County by Seminole Electric  
16 Cooperative, Inc., and Shady Hills Energy Center,  
17 LLC.

18 COMMISSIONER CLARK: All right. Thank you  
19 very much.

20 We will take appearances now.

21 MR. PERKO: Good morning, Commissioner. My  
22 name is Gary Perko of the Hopping Green & Sams law  
23 firm. I'm here on behalf of Seminole Electric  
24 Cooperative, Inc., in Docket Number 20170266 and  
25 Seminole Electric Cooperative and Shady Hills

1 Energy Center, LLC, in Docket Number 20170267.  
2 With me is my associate Malcolm Means and  
3 Mr. Michael Ward, Vice-President of Sugar -- of the  
4 Seminole Electric Cooperative.

5 MR. WRIGHT: Good morning, Commissioner.  
6 Robert Scheffel Wright of Gardner law firm on  
7 behalf of Quantum Pasco Power, L.P., and Michael  
8 Tulk and Patrick Daly. Also with me is my law  
9 partner, John T. Lavia, III.

10 Thank you.

11 COMMISSIONER CLARK: Thank you.

12 MS. DZIECHCIARZ: And for staff, we have  
13 myself, Rachael Dziechciarz and Charlie Murphy.

14 MS. HELTON: And Mary Anne Helton. I am here  
15 as your advisor this morning.

16 I would also like to make an appearance for  
17 your General Counsel, Keith Hetrick.

18 COMMISSIONER CLARK: All right. Thank you  
19 very much.

20 All right. Let's move into the preliminary  
21 matters. Are there any preliminary matters that we  
22 need to get to before we go to the draft, Ms.  
23 Dziechciarz?

24 MS. DZIECHCIARZ: Yes, Commissioner.

25 Staff has received two notices of intent to

1 use portions of deposition from both parties. The  
2 notice of intent to use portions of Michael Ward's  
3 deposition by intervenors and the notice of intent  
4 to use portions of the deposition of Mr. Tulk, Mr.  
5 Daly and Mr. James Mays.

6 The parties have until close of business today  
7 to respond in writing, or if they would like to  
8 raise any objections to these notices orally, they  
9 can do so now.

10 COMMISSIONER CLARK: All right. Yes, sir.

11 MR. PERKO: Yes, Commissioner. The  
12 intervenor's notice of deposition use indicated  
13 that they intended to use portions of Mr. Ward's  
14 deposition. Unfortunately, because the deposition  
15 has not been yet transcribed, it doesn't identify  
16 the pages and line numbers.

17 I would object to the extent that those -- the  
18 portions do not relate to the corporate  
19 representative deposition portion of Mr. Ward's  
20 deposition. He was deposed as both a witness and a  
21 corporate representative as to specific topics. So  
22 until I see what -- specifically what portions  
23 intervenors intend to interviews for other purposes  
24 other than impeachment, I really can't -- I will  
25 have to reserve objection.

1 COMMISSIONER CLARK: Mr. Wright.

2 MR. WRIGHT: Thank you, Commissioner.

3 Mr. Ward's -- to respond first to Mr. Perko's  
4 comments. Mr. Ward's deposition was taken on  
5 Friday. It has not yet -- we don't have the  
6 transcript yet, and we don't have any objection at  
7 all to their having reasonable time to review.

8 What we propose to use after -- after we get  
9 the transcript, we will turn it around as fast as  
10 we can with the portions that we intend to use  
11 marked according to the prehearing order. So with  
12 respect to that, that's the best we can do.

13 With respect to their notice of intent, we  
14 have -- we are working on a response that we will  
15 file by close of business today. We don't have the  
16 transcript of Mr. Tulk or Mr. Daly's depositions  
17 yet either. So we were not aware until Friday  
18 afternoon that they intended to use them for  
19 purposes other than impeachment and, accordingly, I  
20 did not order an expedited copy of the transcript,  
21 but the deposition was taken last Thursday.

22 So we are -- we are working on our written  
23 response, but I -- I think that's all we can do  
24 today.

25 MR. PERKO: Commissioner, if I could.

1 COMMISSIONER CLARK: Yes, sir.

2 MR. PERKO: In order to facilitate things, I  
3 would be happy to email Mr. Wright a copy of that  
4 deposition.

5 COMMISSIONER CLARK: Okay. So, Mary Anne,  
6 help me out here just a second. So the only other  
7 way that this gets in, unless they stipulate to it  
8 today, is it's introduced at the hearing, is that  
9 correct?

10 MS. HELTON: Yes, Commissioner. I think that  
11 if they can stipulate to it going in today, that  
12 obviously creates much less issue; otherwise, I  
13 would say we take it under advisement and deal with  
14 it at the appropriate time.

15 COMMISSIONER CLARK: So I am hearing both of  
16 you, you are not saying you are agreeing to allow  
17 it in, is that correct?

18 MR. PERKO: I think that's correct. And it's  
19 not for lack of trying, it's just the timing.

20 COMMISSIONER CLARK: Just haven't seen it.  
21 Understand. Okay, no problem, we will just defer  
22 the ruling then.

23 Thank you.

24 MS. DZIECHCIARZ: Commissioner, if I may --

25 COMMISSIONER CLARK: Yes.

1 MS. DZIECHCIARZ: -- do any of the parties  
2 have any objection to staff's notice of intent to  
3 use the late filed exhibits for Witness Kyle Wood?

4 MR. PERKO: No objection from petitioners.

5 MR. WRIGHT: No objection.

6 COMMISSIONER CLARK: Okay. Thanks.

7 All right. Are there any other preliminary  
8 matters? All right.

9 All right. We are going to go through the  
10 prehearing order now. I am going to identify the  
11 sections, as I go through them, let me know if  
12 there are any corrections or changes that need to  
13 be made. I am going to move through them real  
14 quick unless you speak up and say something, and we  
15 will get everybody out of here quick.

16 Section 1: Case background.

17 Section 2: Conduct of proceedings.

18 Section 3: Jurisdiction.

19 Section 4: Procedure for handling  
20 confidential information.

21 Section 5: Prefiled testimony and exhibits.

22 Section 6: Order of witnesses.

23 MR. PERKO: Commissioner.

24 COMMISSIONER CLARK: Yes, sir.

25 MR. PERKO: And this -- this has to do with



1 the fact that this is a consolidated docket, but we  
2 filed testimony for all our witnesses in both  
3 dockets, some of those testimonies are identical,  
4 but there are a few that are different in the  
5 different dockets. And staff has listed Michael P.  
6 Ward twice here, and I believe that's the reason,  
7 but the same would apply to David Wagner and Robert  
8 DeMelo. Their testimonies in the two dockets are  
9 slightly different because one focuses on the  
10 Seminole combined cycle facility and the other  
11 focuses on the Shady Hills combined cycle facility.

12 So I just wanted make that clear. I don't  
13 know if we need to list them twice, but to make  
14 sure that testimonies filed in both dockets for  
15 those witnesses get into the record.

16 COMMISSIONER CLARK: Ms. Dziechciarz, do you  
17 have --

18 MS. DZIECHCIARZ: We have to list them twice  
19 because they have the different docket numbers, so  
20 that's why.

21 MR. PERKO: Thank you.

22 And just to be clear, I would want the  
23 testimony for the other witnesses, which is  
24 identical, but entered into both dockets.

25 MS. DZIECHCIARZ: Yes, we can do that.

1 MR. PERKO: Thank you.

2 COMMISSIONER CLARK: Okay.

3 MR. PERKO: So if we could list Mr. Wagner and  
4 Mr. DeMelo twice, as well as Mr. Ward.

5 COMMISSIONER CLARK: Thank you.

6 MS. DZIECHCIARZ: Will do.

7 COMMISSIONER CLARK: All right, anything else  
8 under order of witnesses?

9 All right, let's move to Item 7 basic  
10 positions.

11 MR. WRIGHT: Commissioner --

12 COMMISSIONER CLARK: Yes.

13 MR. WRIGHT: -- just for clarity, Mr. -- the  
14 staff, in going from prehearing statements to  
15 prehearing order renumbered issues, so we are --  
16 Dr. Sotkiewicz was listed as a witness on Issue 6.  
17 The staff had changed that to be 5C. So at least  
18 for now, that should be 5C, and then our -- where  
19 he is shown as 7A and 7B, those are now 6A and 6B  
20 and 6 is gone.

21 COMMISSIONER CLARK: Do they have the -- are  
22 they looking at the same sheet I am looking at?

23 MS. DZIECHCIARZ: Yes. We are aware of the  
24 numbering issue, so what we will -- once we figure  
25 out the issue with 5C, then we can fix everything

1           else accordingly.

2           So we made yours, Mr. Wright, match everyone  
3           else's so we could talk apples to apples, but then  
4           we will renumber.

5           MR. WRIGHT: Okay. Good. Thank you.

6           COMMISSIONER CLARK: Mr. Perko.

7           MR. PERKO: Yes, we will -- I think we can  
8           work that out.

9           COMMISSIONER CLARK: Okay.

10          All right. Is there anything else -- was  
11          there anything on basic positions?

12          Okay. Section 8: Issues and positions. I  
13          understand that we've introduced -- the intervenors  
14          have introduced an additional issue. We moved  
15          that. That is now 5C. Before we get to that one,  
16          are there any disagreements on any of the other  
17          issues?

18          MR. PERKO: Commissioner, I guess this may  
19          actually relate to a preliminary matter, but last  
20          week we filed a motion to revise the testimony of  
21          one of our witnesses, Julia Diazgranados, and I  
22          think that there is agreement on that motion; but  
23          assuming that motion is granted, we would have a  
24          couple of changes in -- in our position statements,  
25          specifically our basic position stated on page six,

1           there is a reference to 388 million or more. That  
2           would change to 530 million, and we could delete or  
3           more.

4           The same -- the same would be true with  
5           respect to our position statements on Issue 3A, 3B,  
6           5A and 5B, and I believe that's it.

7           And we would also respectfully request an  
8           opportunity, assuming if Issue 5C is added, an  
9           opportunity to present our position statement and  
10          the witnesses that would address that issue.

11          COMMISSIONER CLARK: Okay. Ms. Dziechciarz.

12          MS. DZIECHCIARZ: Staff intends to work on the  
13          renumbering, and once we get everything all in  
14          order, we will give it back to you guys and give  
15          you a chance to review it again. So that's no  
16          problem for us.

17          COMMISSIONER CLARK: Okay. All in agreement?

18          MR. WRIGHT: Yes, sir.

19          MR. PERKO: Yes, sir.

20          COMMISSIONER CLARK: Okay. All right. Seeing  
21          no other issues, let's move on to 5C.

22          Mr. Wright, you introduced the issue. You  
23          want to explain your rationale?

24          MR. WRIGHT: Yes, sir, Commissioner. We  
25          believe this is an appropriate issue. It goes to

1           prudence as well as just cause effectiveness.

2           In a conference with Mr. Murphy before we  
3 began, we discussed that staff might be comfortable  
4 with this issue if we are willing to delete the  
5 word "all" at the end of the first line of the  
6 issue statement. We are willing to do that. And  
7 with that, we would ask that the issue be kept in.

8           COMMISSIONER CLARK: Okay.

9           MR. WRIGHT: And, of course, we have no  
10 objection to Seminole and Shady Hills having  
11 appropriate time to provide a position.

12          COMMISSIONER CLARK: Mr. Perko.

13          MR. PERKO: We do believe that this issue is  
14 subsumed within cost-effectiveness, but I am not  
15 going to object to it as long as we have the  
16 opportunity to provide our position statement and  
17 the witnesses that will address the issue.

18          COMMISSIONER CLARK: Okay. Ms. Dziechciarz.

19          MS. DZIECHCIARZ: And staff also is of the  
20 opinion that it was subsumed, but don't object to  
21 it coming in as well with the deletion of the word  
22 "all".

23          COMMISSIONER CLARK: Okay. All right. Any  
24 other issues on Item No. 8, on issues and  
25 positions?

1 All right. Let's move to Item 9, exhibit  
2 list.

3 Item 10, proposed stipulations -- I am sorry.  
4 Ms. Dziechciarz.

5 MS. DZIECHCIARZ: Just to let you know, I am  
6 sorry, that staff has prepared a comprehensive  
7 exhibit list, which includes all of the prefiled  
8 exhibits, and then those that staff wishes to  
9 include into the record; however, we have submitted  
10 a very broad list in the draft prehearing order  
11 that we circulated to the parties. So I wanted to  
12 let the parties know that we will be narrowing  
13 that, and that will be another change that you will  
14 see when we redo all this numbering and get all the  
15 other issues ironed out.

16 COMMISSIONER CLARK: Mr. Wright.

17 MR. WRIGHT: With respect to that, I assume we  
18 will have at least half a day, half a working day  
19 to respond to the revised exhibit list.

20 COMMISSIONER CLARK: No problem.

21 MS. DZIECHCIARZ: Yes. We are hoping to get  
22 it to you by COB Wednesday at the latest.

23 MR. WRIGHT: That's great. Thank you.

24 The only other thing I wanted to mention,  
25 Commissioner, is that Dr. Sotkiewiez's exhibits are

1 filed in both docket,s and accordingly, we expect  
2 them to be treated as being in both dockets. We  
3 don't see the need to list both dockets under each  
4 witness name as is listed with Seminole's  
5 witnesses, but if that's your preference, we can do  
6 that, too. It's --

7 COMMISSIONER CLARK: Okay. Mr. Perko.

8 MR. PERKO: I feel the same way. And I was  
9 under the assumption that all of Dr. Sotkiewicz's  
10 exhibits would be entered into both dockets, as  
11 would all of our exhibits.

12 COMMISSIONER CLARK: Okay. Does staff agree?

13 MS. DZIECHCIARZ: Yes.

14 COMMISSIONER CLARK: Okay. Very good.

15 MR. WRIGHT: Thank you.

16 COMMISSIONER CLARK: All right. Anything else  
17 under exhibits?

18 All right. Section 10: Proposed  
19 stipulations.

20 Section 11: Pending motions. Ms.  
21 Dziechciarz.

22 MS. DZIECHCIARZ: Yes, there is the one  
23 pending motion at this time, aside from the  
24 confidentiality motions that Mr. Perko had  
25 mentioned. The Seminole Electric Cooperative,

1 Inc.'s, motion for leave to file revised direct  
2 testimony and exhibits. And staff is also  
3 expecting the corresponding motion from Mr. Wright  
4 to amend the response to Ms. Diazgranados', and  
5 Witness Sotkiewiez's testimony.

6 COMMISSIONER CLARK: Okay. Is everybody in  
7 agreement?

8 MR. PERKO: I believe we are in agreement.

9 MR. WRIGHT: We don't object to their motion.  
10 We -- to be clear, and I discussed this with staff,  
11 we intend to file supplemental testimony, not a  
12 whole amended block of testimony, supplemental  
13 testimony addressing the changes in Ms.  
14 Diazgranados' deposition. If you would, would you  
15 ask staff, do they need a motion with that, since  
16 it's referenced in Mr. Perko, in Seminole's motion,  
17 we didn't think we needed to file a separate  
18 motion. But if we do, we will. Do you think we  
19 do?

20 COMMISSIONER CLARK: Mary Anne.

21 MS. HELTON: If it's referenced in the  
22 petitioner's motion, and if we are all in agreement  
23 today, I don't think a separate additional motion  
24 is necessary.

25 COMMISSIONER CLARK: Okay.



1           MR. PERKO: We would degree, Commissioner.  
2           And just so the record is clear, we don't object to  
3           the filing of supplemental testimony as to the  
4           change in Ms. Diazgranados' testimony, but we would  
5           reserve objections to the extent it goes beyond  
6           that.

7           COMMISSIONER CLARK: Understood. Great, in  
8           agreement. Okay, very good.

9           All right. Moving to Section 12: Pending  
10          confidentiality motions.

11          MS. DZIECHCIARZ: And, Commissioner, as I  
12          mentioned, there are several pending  
13          confidentiality motions, and staff is working on  
14          orders to resolve these.

15          COMMISSIONER CLARK: Great.

16          MR. PERKO: Commissioner, if I could just  
17          interject. Those -- in addition to the ones listed  
18          here, on Friday we filed a fifth request for  
19          confidential classification, and I believe a sixth  
20          request has either been filed late Friday or will  
21          be filed this morning, so -- it will be filed  
22          today. So we will get staff the specific items.

23          COMMISSIONER CLARK: Okay.

24          MS. DZIECHCIARZ: Sounds good. Thank you.

25          COMMISSIONER CLARK: All right. Moving to

1 Item No. 13: Conflicts with order establishing  
2 procedure. None.

3 Item No. 14: Post-hearing procedures. Ms.  
4 Dziechciarz.

5 MS. DZIECHCIARZ: So staff recommends that  
6 post-hearing briefs be no longer than 40 pages. We  
7 also recommend 50 words for party position  
8 summaries, as indicated in the OEP, and briefs will  
9 be due on April 4th, 2018.

10 And so all parties are aware, staff has  
11 already ordered an expedited transcript, 72 hours.  
12 So if the hearing goes until Friday, we should have  
13 the deposition by close of business Monday.

14 COMMISSIONER CLARK: Very good. Are all the  
15 parties in agreement?

16 MR. WRIGHT: I would respectfully ask that we  
17 have somewhat more words allowed for our position  
18 statements. I am not going to give you four  
19 paragraphs, but if we could have 75 or 100 words,  
20 there is only about 15 issues, 13 issues, I think.  
21 Would 100 words be okay on the -- on the position  
22 statements?

23 COMMISSIONER CLARK: Could we agree on 75?

24 MR. WRIGHT: I can.

25 COMMISSIONER CLARK: Mr. Perko.

1 MR. PERKO: I can agree to that.

2 COMMISSIONER CLARK: I will give you 75.

3 MR. WRIGHT: Thank you.

4 COMMISSIONER CLARK: All right. All other  
5 issues we are in agreement on.

6 MR. WRIGHT: Yes, sir.

7 COMMISSIONER CLARK: All right. Rulings:  
8 We've agreed limit openings to five minutes per  
9 party. Briefings are limited to 40 pages.

10 The motion to -- the motion for leave to file  
11 revised testimony is granted.

12 I believe that is all of the matters that we  
13 have --

14 MR. PERKO: Commissioner --

15 COMMISSIONER CLARK: Yes.

16 MR. PERKO: -- if I could just interject on  
17 the opening statements. Because we are dealing  
18 with two dockets here, if we could increase that to  
19 seven-and-a-half minutes, I would -- I would  
20 appreciate it.

21 COMMISSIONER CLARK: On the combined, correct?

22 MR. PERKO: Correct, or 10.

23 COMMISSIONER CLARK: Mr. Wright.

24 MR. WRIGHT: We have no objection to  
25 seven-and-a-half. We have no objection to 10. As

1 long as we have equal time, we will be fine. Thank  
2 you.

3 MR. PERKO: We are certainly agreeable to  
4 that. So if we could have 10, I would appreciate  
5 it. I think it would help the Commission  
6 understand the case better.

7 COMMISSIONER CLARK: We will split the baby  
8 and go with seven-and-a-half, how about that?  
9 Seven-and-a-half minutes.

10 MR. PERKO: Thank you, Commissioner.

11 COMMISSIONER CLARK: All right. Any other  
12 matters that we need to address at this time?

13 Ms. Dziechciarz.

14 MS. DZIECHCIARZ: Nope.

15 COMMISSIONER CLARK: All right. Parties, any  
16 other matters?

17 MR. WRIGHT: No, sir.

18 MR. PERKO: No, sir.

19 COMMISSIONER CLARK: Great. All right. We  
20 will call this hearing adjourned.

21 Thank you very much.

22 MR. PERKO: Thank you.

23 (Whereupon, the proceedings were concluded at  
24 9:50 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA     )  
COUNTY OF LEON        )

I, DEBRA R. KRICK, Professional Court Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages, numbered 3 through 20, are a true and correct record of the aforesaid 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 16th day of March, 2018.



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DEBRA R. KRICK  
NOTARY PUBLIC  
COMMISSION #GG015952  
EXPIRES JULY 27, 2020