

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

FILED 8/1/2018
DOCUMENT NO. 04999-2018
FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20180009-EI
NUCLEAR COST RECOVERY CLAUSE.

_____ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS
PARTICIPATING: COMMISSIONER CLARK
PREHEARING OFFICER

DATE: Wednesday, July 25, 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 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 MATTHEW R. BERNIER, ESQUIRE, 106 East College
3 Avenue, Suite 800, Tallahassee, Florida 32301-7740, 299
4 First Avenue North, St. Petersburg, Florida 33701,
5 appearing on behalf of Duke Energy Florida, LLC.

6 J.R. KELLY, PUBLIC COUNSEL; CHARLES
7 REHWINKEL, DEPUTY PUBLIC COUNSEL, ESQUIRES, Office of
8 Public Counsel, c/o the Florida Legislature, 111 W.
9 Madison Street, Room 812, Tallahassee, Florida
10 32399-1400, appearing on behalf of the Citizens of the
11 State of Florida.

12 KYESHA MAPP and MARGO DUVAL, ESQUIRES, FPSC
13 General Counsel's Office, 2540 Shumard Oak Boulevard,
14 Tallahassee, Florida 32399-0850, appearing on behalf of
15 the Florida Public Service 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.

21

22

23

24

25

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

2 COMMISSIONER CLARK: All right. This is
3 everybody. It's 9:30, so we will go ahead and get
4 started and call the prehearing conference to
5 order.

6 And, Ms. Mapp, would you read the notice,
7 please?

8 MS. MAPP: By notice issued June 25th, 2018,
9 this time and place was set for a prehearing in
10 Docket No. 20180009-EI. The purpose of the
11 prehearing was set out in the notice.

12 COMMISSIONER CLARK: All right. Thank you.
13 We will take appearances now. We will start
14 with Duke.

15 MR. BERNIER: Good morning, Commissioner, Matt
16 Bernier on behalf what of Duke Energy.

17 MR. REHWINKEL: Good morning, Commissioner.
18 Charles Rehwinkel, Deputy Public Counsel, on behalf
19 of the Office of Public Counsel. And I would like
20 to enter an appearance for J.R. Kelly. I could
21 state for the record that Patty Christensen does
22 not need to be shown as appearing because FPL is
23 not involved in this docket.

24 Thank you.

25 COMMISSIONER CLARK: Thank you.

1 MS. MAPP: Kyesha Mapp on behalf of Commission
2 staff. And I would also enter an appearance for
3 Margo DuVal.

4 MS. HELTON: Mary Anne Helton. I am here as
5 your advisor. I would also like to enter an
6 appearance for Keith Hetrick, your General Counsel.

7 COMMISSIONER CLARK: All right. Thank you.

8 All right. Do we have any preliminary matters
9 that we need to go through before the draft order?

10 MS. MAPP: Yes. PCS Phosphate, FIPUG and SACE
11 have been excused from attending today's prehearing
12 conference.

13 COMMISSIONER CLARK: All right. Either of the
14 parties have any preliminary matters?

15 MR. BERNIER: No, sir.

16 COMMISSIONER CLARK: All right. We will start
17 going through the draft order. I am going to go
18 through the sessions. We will kind of move through
19 these. If you have an issue, don't hesitate to
20 speak up. And if you have any corrections or
21 changes, let me know.

22 Section I, Case Background.

23 Section II, Conduct of Proceedings.

24 Section III, Jurisdiction.

25 Section IV, Procedure for Handling

1 Confidential Information. Ms. Mapp, are there any
2 changes to this section?

3 MS. MAPP: No, there are no changes to this
4 section. However, staff will note that the parties
5 are advised that if they provide any confidential
6 information at the hearing, they are responsible
7 for having copies for the commissioners, necessary
8 staff and the court reporter in red envelopes
9 clearly marked with the nature of the contents
10 within the confidential information highlighted.

11 Staff recommends that each party bring at
12 least 15 copies to the hearing.

13 COMMISSIONER CLARK: Okay. Anybody else?

14 All right. Moving to Prefiled Testimony and
15 Exhibits, Ms. Mapp.

16 MS. MAPP: Staff will suggest that witness
17 testimonies -- or summaries of their testimony be
18 no longer than three minutes.

19 COMMISSIONER CLARK: All agree?

20 One note here, Section V, in the prehearing
21 order draft, I think it's on page three, we need to
22 change that to -- summaries of testimony shall be
23 limited to five minutes, change that to three
24 minutes in the actual order itself. Page three,
25 next to the last paragraph.

1 MS. MAPP: Okay.

2 COMMISSIONER CLARK: All right. Order of
3 Witnesses.

4 MS. MAPP: No witnesses have been excused,
5 however, staff will confer with each Commissioner's
6 office should a request for a witness to be excused
7 if it is received. If the Commissioners do not
8 have any questions for these witnesses, the witness
9 may be excused in the hearing, and his or her
10 testimony and exhibits entered into the record at
11 the hearing as though read.

12 COMMISSIONER CLARK: Okay. All good?

13 MR. BERNIER: Yes, Commissioner. Given the --
14 jumping ahead a little bit here, I know, but given
15 where we are procedurally in this docket, I do
16 anticipate that we will be asking to have
17 Mr. Foster excused --

18 COMMISSIONER CLARK: Okay.

19 MR. BERNIER: -- if not later today, then at
20 some point in the near future.

21 MR. REHWINKEL: And the Public Counsel fully
22 anticipates to agreeing to that.

23 I just want to speak to that. I mean, we
24 believe -- we fully anticipate that this hearing
25 will be completely stipulated by the time

1 everything shakes out. And we didn't have any
2 concern with the three minutes because we don't
3 think there is going to be a need for it. We
4 generally think that, in a contested hearing,
5 that's not enough time to summarize, but in this
6 case, streamlining things, it makes sense.

7 COMMISSIONER CLARK: Okay. Great. Thank you
8 very much.

9 All right. Let's move to Basic Positions. Do
10 the parties have any changes to their positions?

11 MR. BERNIER: No, sir. I do not.

12 MR. REHWINKEL: Commissioner, we don't, but if
13 you could indulge me for a second, I would like to
14 make a statement for the record.

15 COMMISSIONER CLARK: Certainly.

16 MR. REHWINKEL: The Public Counsel's office
17 normally does not, consistent with our position on
18 the burden of proof, stipulate to cost recovery
19 amounts with utilities.

20 As you will see, and as we explain in our
21 basic position, and as you will see in our
22 positions, we have done that in this case because
23 the dollar amounts -- the major dollar amounts have
24 been long stipulated, and the carrying costs and
25 other amounts, we have verified and are fully

1 supported and we agree with.

2 It's unusual for us to do that, but we do that
3 in full confidence that the numbers are correct,
4 and they are based on a long-settled stipulated
5 dollar amounts. Thank you.

6 COMMISSIONER CLARK: Okay. Thank you.

7 I just want to -- FIPUG and SACE both mention
8 FPL in their basic positions. Since they are not a
9 party to this docket, I think we should probably
10 just strike the portions that relate to FPL; is
11 that a fair statement, Ms. Helton?

12 MS. HELTON: Yes, sir, I think so.

13 COMMISSIONER CLARK: Okay. Okay. Ms. Mapp,
14 anything else?

15 MS. MAPP: Yes. Are we still on the basic
16 positions?

17 COMMISSIONER CLARK: Basic positions, yes,
18 ma'am.

19 MS. MAPP: Okay. There is -- yes, staff would
20 -- there is nothing further on basic positions, no.

21 COMMISSIONER CLARK: Okay. All right. Moving
22 into Issues and Positions. Any changes on the
23 issues?

24 MS. MAPP: Staff would note that the order
25 establishing procedure requires that each party

1 take a position by the prehearing conference unless
2 good cause is shown as to why the party cannot take
3 a position. And staff would just note at this time
4 that a position stating no position at this time
5 pending execution of an acceptable transition
6 stipulation amongst the parties is not an
7 appropriate position and will need to be amended,
8 or it will be changed to no position.

9 MR. REHWINKEL: Commissioner, from Public
10 Counsel's standpoint, let me explain why our
11 position is that way, and I do have a new position
12 to give you today on that.

13 This is going to be the first instance in 10
14 years of a utility basically exiting the NCRC
15 clause. We have talked to Duke, and talked among
16 the parties, and we all have -- are close to an
17 agreement on what I call the transition statement
18 that says: Here's what's happened in the clause,
19 and a here's what's left with respect to CR3, and
20 it's being recovered these other places.

21 And I think we are close to getting that done.
22 And I think with that being done, that will
23 completely obviate the need to appear live and have
24 any testimony, and will facilitate Mr. Foster being
25 excused from the hearing.

1 So we are going to be -- we have been busy
2 with taxes and storm, and other issues, but I am
3 going to focus today, and probably tomorrow, with
4 Duke and the other parties to try to get that
5 statement nailed down.

6 But I can give this position at this time: It
7 would strike everything up to the word execution,
8 and insert the phrase, yes, comma, upon the. So
9 our position would say: Yes, upon the execution of
10 an acceptable transition stipulation among the
11 parties.

12 And that's on page 10 of the -- and I can say
13 that again for you if you would like.

14 COMMISSIONER CLARK: Yes, if you would,
15 please.

16 MR. REHWINKEL: So you would strike no
17 position at this time pending, and inserted, yes,
18 comma, upon the. So it would read: Yes, comma,
19 upon the execution of an acceptable transition
20 stipulation among the parties.

21 MS. MAPP: I'm sorry, just to clarify, are you
22 saying that you believe Duke shouldn't appear next
23 year?

24 MR. REHWINKEL: I apologize. I thought
25 they -- no, I apologize, it should be, no, comma.

1 COMMISSIONER CLARK: Is there a need? So the
2 answer is no.

3 MR. REHWINKEL: I am so.

4 COMMISSIONER CLARK: Got it.

5 MR. REHWINKEL: I was upside down on that one.

6 MS. MAPP: Okay.

7 MR. REHWINKEL: So our position would be: No,
8 comma, upon the execution of an acceptable
9 transition stipulation among the parties.

10 COMMISSIONER CLARK: Is that, in fact, a
11 stipulation?

12 MR. REHWINKEL: Well, I don't know that it is
13 until we execute the agreement. And our intention
14 would be to execute the agreement and then submit
15 it to the Commission shortly --

16 COMMISSIONER CLARK: Okay.

17 MR. REHWINKEL: -- but in advance of the
18 hearing.

19 So I guess your concern is, do we know whether
20 we are going to have a hearing or not? Do we know
21 whether this is stipulated or not? And I feel very
22 confident that we will have that done, and I don't
23 know, what's the best way to accomplish that?

24 COMMISSIONER CLARK: Ms. Helton, do you want
25 to address that?

1 MS. HELTON: Well, I just have a question
2 because I want to make sure I understand because I
3 couldn't answer a question that my boss had for me.

4 MR. REHWINKEL: Okay.

5 COMMISSIONER CLARK: Okay.

6 MS. HELTON: So are you saying that if there
7 is no acceptable transition stipulation that there
8 will be a hearing next year, at which Duke will
9 need to appear, and I guess you will need to appear
10 at least, at a minimum?

11 MR. REHWINKEL: Yeah, I think in theory, that
12 would be the case. I think the likelihood of that
13 not happening is extremely remote.

14 MS. HELTON: I know you -- well, let me just
15 ask this, if it's okay, Commissioner?

16 COMMISSIONER CLARK: Yes, please.

17 MS. HELTON: By what date are you expecting to
18 have an acceptable transition stipulation if you
19 have one? I mean, are we looking at it before the
20 hearing this year? In the next week? Or are we
21 looking at it imminently before the hearing that
22 would be scheduled next year?

23 MR. REHWINKEL: I think it could be buttoned
24 down by the end of this week and filed.

25 COMMISSIONER CLARK: As long as you have

1 completed it before the hearing itself, then this
2 stipulation works; is that correct?

3 MR. REHWINKEL: That's correct.

4 MR. BERNIER: That's correct.

5 MR. REHWINKEL: One thing I might suggest,
6 because I think this is -- there is not a lot of
7 effort that needs to be put out for this hearing
8 is, perhaps what could happen, is if you could hold
9 open the issuance of the prehearing order until
10 Monday, and give us time by the end of this week to
11 submit a stipulation, then you would know that
12 everything had been done. I don't know if that's
13 possible.

14 COMMISSIONER CLARK: Will that meet our
15 timelines?

16 MS. MAPP: I am sorry, Commissioner?

17 COMMISSIONER CLARK: Would that meet our
18 timeline requirements?

19 MS. MAPP: The only requirement for a
20 prehearing order is that it be issued prior to the
21 hearing commencing. So being that the hearing
22 starts August 7th, Monday would be enough time to
23 have the order issued. It would be up to your
24 discretion if you would like to hold it off until
25 then.

1 COMMISSIONER CLARK: So would that work for
2 Duke as well?

3 MR. BERNIER: Yes, Commissioner, it works well
4 for us. We are working with Public Counsel on this
5 now.

6 COMMISSIONER CLARK: Okay. Ms. Helton, is
7 there any reason that I should not do this from a
8 procedural perspective?

9 MS. HELTON: Not that I can think of.

10 COMMISSIONER CLARK: Okay.

11 MR. REHWINKEL: So I guess what I would have
12 to ask, then, is that we have this position here,
13 and it -- what we would do is we have a draft of an
14 agreement to execute. And assuming we got -- and
15 at this point, one -- SACE has indicated they don't
16 need to be on that agreement. So it would be
17 Public Counsel, FIPUG and --

18 MR. BERNIER: PCS.

19 MR. REHWINKEL: -- PCS, because retail is not
20 in it this year, and Duke. The sooner we get it
21 done, and I think we will, and we would execute it
22 and file it, and I guess the positions on here, we
23 have to file it with something that said to you
24 that each of the parties said, no, because of
25 Attachment A -- you know, what we are going to want

1 is this document to be attached to the order.

2 COMMISSIONER CLARK: No, subject to the terms
3 of the attached document?

4 MR. REHWINKEL: Yes. Yeah.

5 So what we would do is work that out so we
6 would give you a stipulation and agreed upon
7 language here so that you could say that Issue 5
8 was stipulated, and then that Mr. Foster could be
9 excused and we could do whatever and take 15
10 minutes on the 7th. Is that --

11 COMMISSIONER CLARK: I think that works. Are
12 we all in agreement that we can make -- so do we
13 need to change the deadline for the amended
14 positions?

15 MS. MAPP: Okay. Close of business Monday,
16 July 30th, I believe.

17 COMMISSIONER CLARK: I think that's right.

18 MR. REHWINKEL: Okay.

19 COMMISSIONER CLARK: Is it the 30th?

20 MS. MAPP: Yes. So, okay -- yes, so all
21 changes to positions should be received by staff by
22 5:00 p.m., Monday, July 30th.

23 COMMISSIONER CLARK: Okay. And you are going
24 to modify the position in Issue 5 accordingly, so
25 that takes care of both of those issues, am I

1 correct?

2 MR. REHWINKEL: Yes.

3 COMMISSIONER CLARK: We are all in agreement?

4 MS. MAPP: Yes.

5 COMMISSIONER CLARK: All right. I assume we
6 still need to move through the rest of these.

7 Section -- all right. Section IX, Exhibit
8 List.

9 MS. MAPP: Yes, staff has prepared a draft
10 comprehensive exist list, which includes two
11 prefiled exhibits from Witness Foster. Staff has
12 circulated this draft list to all parties for
13 possible stipulations.

14 COMMISSIONER CLARK: All right. Are we able
15 to stipulate the comprehensive exhibit list?

16 MR. REHWINKEL: Public Counsel can. And I
17 would assume the other parties are going to have to
18 indicate by a deadline that y'all set, but we can
19 state here today we stipulate to it.

20 MR. BERNIER: Duke will stipulate as well.

21 COMMISSIONER CLARK: Okay. Great.

22 All right. Section X, Proposed Stipulations
23 on Issues 1 through 4. Ms. Mapp.

24 MS. MAPP: Yes, there are proposed --
25 currently proposed stipulations on Issues 1 through

1 4 as listed within this section.

2 COMMISSIONER CLARK: Okay. We are all in
3 agreement?

4 MR. BERNIER: Yes, sir.

5 COMMISSIONER CLARK: Section XI, Pending
6 Motions.

7 MS. MAPP: There are no pending motions.

8 COMMISSIONER CLARK: XII, Confidentiality
9 Motions.

10 MS. MAPP: Pending confidentiality requests
11 are listed within this section.

12 COMMISSIONER CLARK: All right. Section XIII,
13 Post-Hearing Procedures. Any party wish to waive
14 post-hearing briefs?

15 MR. BERNIER: Pending execution of the
16 transition stipulation, we will waive.

17 COMMISSIONER CLARK: Okay.

18 MR. REHWINKEL: Same with the Public Counsel.

19 COMMISSIONER CLARK: Okay. We are in
20 agreement.

21 Anything else, Ms. Mapp?

22 MS. MAPP: Yes. In the event that there is no
23 transition stipulation and parties do wish to file
24 briefs, staff would recommend that briefs be no
25 longer than 20 pages, and that each position be no

1 more than 50 words offset with asterisks.

2 COMMISSIONER CLARK: And the due date?

3 MS. MAPP: The due date would be August 27th,
4 2018.

5 COMMISSIONER CLARK: All right. We are all in
6 agreement.

7 All right. Section XIV, Rulings. Parties
8 waive opening statements pending --

9 MR. BERNIER: Yes, sir.

10 MR. REHWINKEL: Yes.

11 COMMISSIONER CLARK: Okay. Ms. Mapp.

12 MS. MAPP: In the event that -- oh, well, they
13 have been waived. So, yes.

14 COMMISSIONER CLARK: They are waived.

15 All right. Other Matters. The hearing docket
16 is set for Tuesday August 7th at 1:30.

17 Staff, is there any other matters to address
18 at this prehearing conference?

19 MS. MAPP: Staff is not aware of any other
20 matters.

21 COMMISSIONER CLARK: Okay. Any other party?

22 MR. BERNIER: No, sir.

23 MR. REHWINKEL: No, sir.

24 COMMISSIONER CLARK: All right. We will stand
25 adjourned.

1 Thank you.

2 (Whereupon, the proceedings concluded at 9:50

3 a.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, 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 1st day of August, 2018.



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