

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:  
PETITION BY FLORIDA POWER  
& LIGHT COMPANY (FPL) FOR  
AUTHORITY TO CHARGE FPL  
RATES TO FORMER CITY OF  
VERO BEACH CUSTOMERS AND  
FOR APPROVAL OF FPL'S  
ACCOUNTING TREATMENT FOR  
CITY OF VERO BEACH  
TRANSACTION.

DOCKET NO. 20170235-EI

FILED 10/3/2018  
DOCUMENT NO. 06408-2018  
FPSC - COMMISSION CLERK

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JOINT PETITION TO  
TERMINATE TERRITORIAL  
AGREEMENT, BY FLORIDA  
POWER & LIGHT AND THE CITY  
OF VERO BEACH.  
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DOCKET NO. 20170236-EI

PROCEEDINGS: PREHEARING CONFERENCE  
  
COMMISSIONERS  
PARTICIPATING: COMMISSIONER CLARK  
PREHEARING OFFICER  
  
DATE: Wednesday, October 3, 2018  
  
TIME: Commenced: 9:30 A.M.  
Concluded: 10:08 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  
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1 APPEARANCES:

2 BRYAN S. ANDERSON and KENNETH RUBIN, ESQUIRES,  
3 Florida Power & Light Company, 700 Universe Boulevard,  
4 Juno Beach, Florida 33408-0420.

5 J. MICHAEL WALLS, ESQUIRE, Carlton Fields Law  
6 Firm, 4221 W. Boy Scout Boulevard, Tampa, Florida  
7 33607-5780, appearing on behalf of the City of Vero  
8 Beach.

9 BRUCE D. MAY, ESQUIRE, Holland & Knight Law  
10 Firm, 315 S. Calhoun Street, Suite 600, Tallahassee,  
11 Florida, 32301, appearing on behalf of Town of Indian  
12 River Shores.

13 DYLAN REINGOLD, COUNTY ATTORNEY, Indian River  
14 County Board of County Commissioners, 1801 27th Street,  
15 Building A, Vero Beach, Florida 32960.

16 J.R. KELLY, PUBLIC COUNSEL; STEPHANIE A. MORSE  
17 and TAD DAVID, ESQUIRES, Office of Public Counsel, c/o  
18 the Florida Legislature, 111 W. Madison Street, Room  
19 812, Tallahassee, Florida 32399-1400, appearing on  
20 behalf of the Citizens of the State of Florida.

21 LYNNE A. LARKIN, ESQUIRE, Civic Association of  
22 Indian River County, Inc., 5690 Highway, A1A #101, Vero  
23 Beach, Florida 32963.

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1 APPEARANCES (CONTINUED):

2 CHARLES MURPHY and SUZANNE BROWNLESS,  
3 ESQUIRES, FPSC General Counsel's Office, 2540 Shumard  
4 Oak Boulevard, Tallahassee, Florida 32399-0850,  
5 appearing on behalf of the Florida Public Service  
6 Commission Staff.

7 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE  
8 HELTON, DEPUTY GENERAL COUNSEL; Florida Public Service  
9 Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
10 Florida 32399-0850, Advisor to the Florida Public  
11 Service Commission.

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

2                   COMMISSIONER CLARK: All right. If all the  
3 parties are here, we will go ahead and get started  
4 this morning. We will call the prehearing or  
5 order -- is that my microphone? There we go. We  
6 got it.

7                   All right. Good morning again, we will call  
8 the prehearing to order. It's good to see everyone  
9 this morning. I will ask staff if they would to  
10 read the notice please.

11                  MR. MURPHY: Yes. By notices issued  
12 September 14th and 17th, 2018, this time and place  
13 has been set for a prehearing conference in Docket  
14 Nos. 20170235-EI and 20170235-EU.

15                  CHAIRMAN GRAHAM: All right. Thank you very  
16 much.

17                  We will take appearances at this time. We  
18 will just start on this end and come our way down.

19                  MR. ANDERSON: Good morning, Commissioner  
20 Clark. My name is Bryan Anderson. I am here with  
21 my colleague Ken Rubin, from Florida Power & Light  
22 Company.

23                  CHAIRMAN GRAHAM: Thank you.

24                  MR. RUBIN: Good morning, Ken Rubin for  
25 Florida Power & Light.

1 MR. WALLS: Good morning. Mike Walls with  
2 Carlton Fields on behalf of the City of Vero Beach.

3 MR. MAY: Good morning. I am Bruce May with  
4 the law firm of Holland & Knight appearing on  
5 behalf of the town of Indian River Shores.

6 MR. REINGOLD: Good morning. Dylan Reingold  
7 County Attorney here on behalf of Indian River  
8 County.

9 MS. LARKIN: Good morning, Commissioner. Lynn  
10 Larkin on behalf of the Civic Association of Indian  
11 River County.

12 MS. MORSE: Good morning. Stephanie Morse on  
13 behalf of the Office of Public Counsel, here for  
14 J.R. Kelly. Also with me is a new attorney from  
15 our office who recently joined us, it's Tad David,  
16 behind me.

17 MR. MURPHY: Charlie Murphy and Suzanne  
18 Brownless no Commission staff.

19 MS. HELTON: Mary Anne Helton here as your  
20 advisor. I would also like to enter an appearance  
21 for your General Counsel, Keith Hetrick.

22 COMMISSIONER CLARK: All right. Does that  
23 cover everybody?

24 All right. Let's move into preliminary  
25 matters. Mr. Murphy, do we need to address any

1 preliminary matters before we get into the draft  
2 order?

3 MR. MURPHY: Well, there are some pro se  
4 parties that are not here. Under the order of  
5 establishing procedure, they could be dismissed  
6 from the proceeding if that's your desire.

7 COMMISSIONER CLARK: Okay. Yes, sir. If they  
8 are not present, we will dismiss them from the  
9 proceedings.

10 MR. MURPHY: Thank you, sir.

11 Moving on, there are four issues that are  
12 not -- or five issues that all parties do not agree  
13 should be included in the docket. Staff suggests  
14 that you address these issues when you get to the  
15 issue section of the draft prehearing order. There  
16 is also a pending motion for reconsideration that  
17 we could take up when we are under that section.

18 OPC has a motion that may warrant some  
19 discussion also under the motion section of the  
20 prehearing order.

21 COMMISSIONER CLARK: Okay. Anything else?

22 MR. MURPHY: Not that I am aware of.

23 COMMISSIONER CLARK: All right. Any of the  
24 parties have any preliminary matters?

25 All right. Let's go through the draft

1 prehearing order. We are going to go through the  
2 sections. Let me know if you have any corrections  
3 or changes as we go through those specific sections  
4 and we will discuss them accordingly.

5 Beginning with Section 1, case background.

6 MR. WALLS: Commissioner Clark.

7 COMMISSIONER CLARK: Yes, sir.

8 MR. MAY: Bruce May with the Town of Indian  
9 River Shores. Just as a -- on the first page of  
10 the draft order, I was inadvertently left off in  
11 the appearances. I would ask to be included as  
12 appearing on behalf of the Town of Indian River  
13 Shores.

14 COMMISSIONER CLARK: Okay. Yes, sir. Not a  
15 problem.

16 MR. ANDERSON: Along the same lines,  
17 Commissioner Clark, our colleague Vice-President  
18 for Regulatory Affairs, Ken Hoffman, is listed as  
19 counsel here, if he could be not listed there.

20 COMMISSIONER CLARK: Okay. Very good.

21 Anything else?

22 All right. Section 2, Conduct of Proceedings.

23 MS. LARKIN: I'm sorry, Commissioner.

24 COMMISSIONER CLARK: Yes, ma'am.

25 MS. LARKIN: I had a question about the case

1 background. It puts forth the entire previous  
2 hearing on June 2nd. I was -- and the order. I  
3 thought that it was -- this is all de novo, so I  
4 didn't know how much of that background is actually  
5 proper in there. It goes through why, wherefore,  
6 all of that.

7 COMMISSIONER CLARK: It is part of the  
8 background of the case.

9 Charlie, can you -- you want to address that  
10 from a legal perspective?

11 MR. MURPHY: Well, it is not the basis for  
12 what's being determined. It is the history of what  
13 has happened. If she has some suggested edits, you  
14 could consider them or not, but I don't think it  
15 has any bearing on the outcome of this proceeding.

16 COMMISSIONER CLARK: Okay.

17 MS. LARKIN: Okay. If it -- it sets out a few  
18 facts, and that was my only concern. If we are  
19 going to address those facts in this particular  
20 proceeding, then I am happy with it.

21 COMMISSIONER CLARK: Okay. Great.

22 Anything else?

23 All right. Let's move to Jurisdiction.

24 Section 4, Procedure for Handling Confidential  
25 Information.



1 Prefiled Testimony and Exhibits, Witnesses.  
2 Order of Witnesses.

3 MR. ANDERSON: Commissioner Clark.

4 COMMISSIONER CLARK: Yes, sir.

5 MR. ANDERSON: Could we please reflect FPL  
6 witness David Herr, H-E-R-R, as the second witness  
7 in the order of witnesses between Mr. Forrest and  
8 Mr. Bores? He will be -- he is kind of a must-go  
9 witness that day.

10 Thank you.

11 COMMISSIONER CLARK: That is not a problem.

12 MR. ANDERSON: Okay.

13 MS. LARKIN: Commissioner, I was curious as to  
14 whether the status of Terry Deason is an expert  
15 witness or not.

16 COMMISSIONER CLARK: Okay. Do we want to  
17 address that?

18 MR. MURPHY: Yes. The time to raise an  
19 objection to an expert witness was in the  
20 prehearing statement. I believe the time has  
21 passed for that under the terms of the order  
22 establishing procedure.

23 MS. LARKIN: Okay -- I am sorry, go ahead. I  
24 am sorry, it wasn't clear to me his status. I  
25 would have objected sooner, but it didn't look

1           like -- as you read it, it's a legal, really,  
2           argument, and so it looked like he was actually  
3           appearing as a lawyer. Now it looks to me like he  
4           is an expert witness doing law, but, you know, as a  
5           witness. It's sort of a legal argument into the  
6           testimony, that's unusual for me. And forgive me,  
7           I haven't --

8                    COMMISSIONER CLARK: Sure. I think that there  
9           may be some -- I think there may be some  
10          clarification from previous past practices of the  
11          Commission regarding past commissioners, as I  
12          understand it.

13                   Ms. Helton, do you want to address that, and  
14          how those are addressed specifically related to  
15          dockets and things that they worked on? I don't  
16          understand from the legal perspective how that  
17          works. Maybe you could address that.

18                   MS. HELTON: Well, under our practice, we do  
19          not label witnesses as expert witnesses or mention  
20          the area of expertise for their testimony. When  
21          they prefile their testimony, we don't label  
22          witnesses as expert witnesses or fact witnesses.  
23          We -- it's our practice to assume that everyone  
24          appears as an expert witness, and that if you have  
25          an objection that you want to raise, you can file a

1 motion to strike testimony by -- I think that -- I  
2 can't remember if that's by the time of your  
3 prehearing statement, or at least before the  
4 prehearing conference; or you can state in your  
5 prehearing statement that you will desire to  
6 conduct a voir dire of the witness, and that would  
7 have to have been identified in the prehearing  
8 statement as well.

9 MS. LARKIN: Oh, so the voir dire would also  
10 be in the prehearing statement?

11 COMMISSIONER CLARK: Correct.

12 MS. HELTON: Yes, the fact that you wanted to  
13 do that. That's all mentioned in the order  
14 establishing procedure.

15 And, Commissioner, just because we have a few  
16 people who are appearing today that haven't  
17 normally appeared before the Commission, if we  
18 could circle back to a couple of things, I just  
19 want to make sure everyone is --

20 COMMISSIONER CLARK: Sure.

21 MS. HELTON: -- squared up and understands  
22 about our practice that we've already skipped over.

23 On the procedure for handling confidential  
24 information, if you intend to cross-examine a  
25 witness with confidential information, then you

1 must bring that information with you in a red  
2 folder, and we do our best to not mention that  
3 confidential information live. The staff will -- I  
4 am not sure if any confidential information was  
5 prefiled in testimony.

6 MR. ANDERSON: There are some exhibits.

7 MS. HELTON: There are some exhibits. Staff  
8 will have copies of prefiled exhibits in the  
9 hearing room, but everything else you would need to  
10 bring.

11 And with respect to the witnesses that appear,  
12 in the prehearing order it mentions that witnesses  
13 will have three minutes to summarize their  
14 testimony. So I just wanted to make sure folks  
15 were aware of that.

16 MS. LARKIN: Thank you for your patience.

17 COMMISSIONER CLARK: Yes, ma'am. Thank you.

18 All right. We were on Order of Witnesses,  
19 right? Anything else?

20 All right. Section 7, Basic Positions.

21 Section 8, Issues and Positions. I think this  
22 is where we will start going through the issues.  
23 Staff.

24 MR. MURPHY: Yes, Issues 2, 3, 4, 10 and 14  
25 are not consistent. Staff recommends that you make

1           them up one at a time now and hear from the parties  
2           on them.

3           COMMISSIONER CLARK: All right. We are going  
4           to take up the ones that we don't have consensus on  
5           to begin with. We will go through these one at a  
6           time. You can provide me with your positions, your  
7           issues, and we will react accordingly.

8           So let's begin with Issue No. 2. We will  
9           start with FPL.

10          MR. ANDERSON: Thank you, Commissioner Clark.

11          Our observations are mainly in the area of  
12          kind of fine-tuning the issues in the case. This  
13          particular one, it should be excluded because it  
14          does not state a issue of law or fact for decision  
15          by the Commission in this proceeding. It's more in  
16          the nature of what, you know, a weight of the  
17          witnesses jury instruction would be, which is not  
18          the practice of the Commission.

19          COMMISSIONER CLARK: Okay. Anybody else have  
20          a statement on Issue No. 2?

21          MS. LARKIN: I do --

22          COMMISSIONER CLARK: Ms. Larkin.

23          MS. LARKIN: -- in case anybody else does,  
24          yeah.

25          Issue No. 2 is sort of part of what I am

1 looking at when we bring in all the issues from the  
2 prior hearing, as well as I know staff is  
3 interpreting this sort of as a continuation of the  
4 facts. I have had a little difficulty, again  
5 coming from the civil world, not practicing here  
6 before.

7 This is arguing facts that are presented in a  
8 great many places in the petition, and certainly  
9 even in the case background and in the positions,  
10 the regular positions that we just jumped over, and  
11 just basically a full essay of the June 2nd hearing  
12 kind of repeated throughout many of these things.

13 I want to be able to address those facts.  
14 Now, I have tried to coordinate them with the  
15 testimony and the supplemental testimony that's  
16 been given, although there is a great deal to go  
17 through, and I wish I had staff, but it's just me.  
18 So what I am looking for is an ability, or an  
19 assurance that all of those facts will also be  
20 included in our discussion.

21 It's somewhat of what my witnesses are also  
22 addressing. They don't necessarily know exactly  
23 which parts of those testimonies, since they aren't  
24 legal experts either, what issues are going to be  
25 coming under extraordinary circumstances, public

1 interest.

2 And a lot of this background -- now, I  
3 understand some of that comes under a rather broad  
4 umbrella. The public interest is a big issue.  
5 Extraordinary circumstances is a big issue. But a  
6 lot of this has a little more important impact than  
7 other things.

8 And so my idea on this was how do we address  
9 those facts that may not be -- as I say, I haven't  
10 completely coordinated yet -- all those things in  
11 the petition, in some of the case background, and  
12 certainly in some of the position issues get  
13 stated, but how do we then address it if it doesn't  
14 actually come up?

15 And as I understand it, too, sometimes if we  
16 are going to agree to stipulate to certain  
17 testimony, that makes it harder for me to do that,  
18 because if that testimony then doesn't come up, I  
19 can't stipulate to it. I need to get to that  
20 person and talk to them about those issues that  
21 they talk about.

22 Is that clear?

23 COMMISSIONER CLARK: Okay. So I guess we are  
24 getting to kind of burden of the proof issue here.

25 Ms. Helton, do you want to address this?

1 MS. HELTON: Quite honestly, I am not sure  
2 that I really understand Issue 2. You and the  
3 remaining panel members who will be here next week,  
4 you are the fact-finders, and after you have heard  
5 the evidence, then you will decide what weight to  
6 give to the evidence and to the facts in making  
7 your decision. And I am not sure how to lay that  
8 out in an issue for the staff -- for the parties to  
9 brief, for the staff to make its recommendation and  
10 for you to decide. That's just, to me, a function  
11 of the process.

12 So to me, Commissioner, I am not seeing why  
13 this issue should be included.

14 COMMISSIONER CLARK: Ms. Larkin.

15 MS. LARKIN: Yes, I understand the point of  
16 view, and staff has been very patient in trying to  
17 elucidate that point, and I understand it.

18 What it really is trying to cover is some of  
19 the, what I might call rhetoric that appears in not  
20 necessarily in the fact pattern, not necessarily in  
21 the other issues.

22 It's an interesting case, I think we would all  
23 agree. And there are some aspects of it that are  
24 sort of being absorbed. That's, again, my concern  
25 about the June 2nd hearing without testimony,



1 without, you know, evidentiary testimony.

2 A lot was said, a lot was implied, and a lot  
3 seemed to have been accepted by the Commission, and  
4 normally so in that kind of proceeding. But here,  
5 we have an evidentiary based hearing, and I want to  
6 be able to address that should that somehow slip  
7 by.

8 MS. HELTON: Commissioner.

9 COMMISSIONER CLARK: Ms. Helton.

10 MS. HELTON: By the June 2nd hearing, I am  
11 assuming you are talking about the meeting where  
12 the Commissioners voted on the proposed agency  
13 action order. That discussion is not part of this  
14 record.

15 The only thing that is part of this record  
16 will be the testimony that is filed and entered  
17 into the record, any cross-examination, any  
18 exhibits that are admitted, and any matters for  
19 which the Commission has taken official  
20 recognition. So that is the box within which the  
21 Commission will be taking a vote along with your  
22 briefs at the conclusion of the hearing.

23 So I am not understanding, still,  
24 Commissioner, the reason for Issue 2.

25 MS. LARKIN: Again, I know it's a difficult

1 one, but the -- all of the prior hearing was based  
2 on a great deal of unproven testimony, a lot of  
3 rhetoric. And I think the record should be clear  
4 that any of those allegations which are repeated in  
5 our background -- and I don't mean to repeat  
6 myself. I certainly understand if you vote against  
7 it. I just really do think that those issues are  
8 now embedded in what gets decided here.

9 COMMISSIONER CLARK: Okay. I think Ms.  
10 Helton's point has been that that's actually not  
11 the case, that none of the -- none of the records  
12 from the June 2nd meeting are actually  
13 automatically transferred over into this hearing.  
14 Everything is based on your prefiled testimony,  
15 your rebuttal testimony, that -- you know, those  
16 things are what they are.

17 MS. LARKIN: Right.

18 COMMISSIONER CLARK: Charlie, you had  
19 another --

20 MR. MURPHY: Yes, sir.

21 This is just black letter law that the  
22 petitioners have the burden of proof, and that the  
23 decision must be based on competent, substantial  
24 evidence in the record.

25 COMMISSIONER CLARK: Okay.

1           MR. MURPHY: The other thing is an abstraction  
2           that I can't get my mind around. I just don't even  
3           understand it. And I am sorry to put it that way,  
4           but I just don't get it.

5           COMMISSIONER CLARK: All right. I will take  
6           this one under advisement and we will issue a  
7           ruling in the order.

8           All right. Let's move to Issue No. 3.

9           MR. ANDERSON: Commissioner Clark, this was an  
10          issue that, as I recall, was raised by a party  
11          that's no longer in the case. We feel that this  
12          should be excluded because the FPL rate case  
13          settlement agreement, it's not a subject of this  
14          proceeding. The party that raised the issue has  
15          withdrawn.

16          COMMISSIONER CLARK: Okay.

17          MS. LARKIN: I would object to that. I would  
18          hope that would still be part of the case, just to  
19          note.

20          COMMISSIONER CLARK: Okay. Any other comments  
21          or observations?

22          MR. MURPHY: Staff has no position on  
23          inclusion of this legal issue.

24          COMMISSIONER CLARK: All right. I will take  
25          that one under advisement.

1 All right. Let's move to Issue No. 4.

2 MR. ANDERSON: Commissioner Clark, this issue  
3 was also I raised by a party that's no longer in  
4 the case. It should be excluded for several  
5 reasons.

6 First, it should not be accepted because it is  
7 misleading. It's framed in terms of an increase in  
8 rates. There is no proposal to increase rates in  
9 this case.

10 Second, the proper issue in the case is the  
11 Commission's authority to approve an acquisition  
12 adjustment. That's a legal authority issue, which  
13 is set forth in Issue 1, to which no parties  
14 objected.

15 COMMISSIONER CLARK: Okay. Anyone else?

16 Ms. Larkin?

17 MS. LARKIN: Yes, indeed.

18 I think No. 4 is, indeed, a subset of Issue  
19 No. 1, but it only speaks to the acquisition  
20 adjustment rates issue. And to me, one seems to  
21 cover all aspects of the acquisition adjustment.  
22 This one -- at least in my study of the case law --  
23 it indicates that prior Commission decisions, it  
24 makes a difference that matters. It's not -- it's  
25 singled out because it's a specific part of that,

1           and so that's why I would -- I support it staying  
2           in.

3           COMMISSIONER CLARK: All right. Staff?

4           MR. MURPHY: Staff believes it's subsumed in  
5           Issue No. 1 and could be stricken.

6           COMMISSIONER CLARK: Okay. All right. I will  
7           take this one under advisement as well.

8           Issue No. 10.

9           MR. ANDERSON: Commissioner Clark, FPL  
10          believes this issue could be considered within  
11          Issue No. 11, need not be an issue. That's the  
12          principle point.

13          COMMISSIONER CLARK: All right. Anyone else?  
14          No other opinions.

15          All right. Staff?

16          MR. MURPHY: Staff believes it could be  
17          addressed -- No. 10 could be addressed under No.  
18          11.

19          COMMISSIONER CLARK: Okay. Great.

20          All right. Final issue, No. 14.

21          MR. ANDERSON: Similar to the other points,  
22          Commissioner Clark, we believe Issue 14 should be  
23          excluded because it's offered by a party that has  
24          withdrawn from the case.

25          Additionally, the cost of the power purchase

1 obligations are an inseparable part of the  
2 transaction and will necessarily be incurred to  
3 provide utility service.

4 COMMISSIONER CLARK: Okay. Ms. Larkin.

5 MS. LARKIN: Yeah. This is actually mine, not  
6 a withdrawn party. And it -- again, it seems to be  
7 one of the issues when we are talking about what we  
8 are rolling into the acquisition adjustment. And a  
9 part of the issue on cost of service are -- they  
10 don't seem to be directly addressed many times the  
11 specific contracts from FMPA, the OUC. All the  
12 others are distinctly an interesting issue their  
13 value there, are they a cost of service, which then  
14 puts them directly under the statute as to whether  
15 or not they are added or not.

16 Now, I can see where it might be combined, but  
17 I think, again, I think it's a fairly important  
18 point when we are talking about what are the end  
19 rates going to be.

20 COMMISSIONER CLARK: Okay. Anybody else want  
21 to address that?

22 MR. MURPHY: Staff believes that this can be  
23 addressed as part of Issue No. 9.

24 COMMISSIONER CLARK: Any contract would be  
25 taken into consideration under the acquisition

1 adjustment. That's what your saying, Charlie; is  
2 that right?

3 MR. MURPHY: I think so.

4 COMMISSIONER CLARK: Ms. Larkin, you disagree  
5 with that?

6 MS. LARKIN: I do. I understand the position,  
7 I just would object. I think it needs to be a  
8 separate issue simply because the overall statutory  
9 framework really focuses in on cost of service.

10 COMMISSIONER CLARK: Okay. All right. All  
11 right. We will address that one in the final order  
12 as well.

13 Okay. Let's run through the other issues  
14 really quick. If anyone has -- I just want to make  
15 sure we are on the record that we are in consensus  
16 on the other issues, make sure there is no  
17 problems.

18 Issue No. 1.

19 5.

20 6.

21 MR. WALLS: Yes, on Issue 5.

22 COMMISSIONER CLARK: 5, yes, sir.

23 MR. WALLS: Our witness, James O'Conner, was  
24 left off of the COV position as a witness on Issue  
25 5.

1           COMMISSIONER CLARK: I'm sorry, repeat the  
2           witness.

3           MR. WALLS: James O'Conner, the rebuttal  
4           witness for the City was identified as a witness on  
5           Issue 5.

6           MR. MURPHY: Commissioner Clark, that  
7           information has been provided to me for several  
8           issues, and I can confirm my list with you so we  
9           don't have to stop going through. There are a  
10          couple of places here that his name was left off.

11          COMMISSIONER CLARK: Okay. We are good there.

12          MR. MAY: That's fine with me.

13          COMMISSIONER CLARK: Issue 6.

14          7.

15          8.

16          9.

17          11.

18          12.

19          13.

20          MR. REINGOLD: Commissioner Clark.

21          COMMISSIONER CLARK: Yes, sir.

22          MR. REINGOLD: Indian River County, I had  
23          emailed Mr. Murphy, I think a couple days ago,  
24          about 13. I just wanted to revise the IRC as a no,  
25          County joins FPL's position on Issue 13.



1 Thank you very much.

2 COMMISSIONER CLARK: No, county joins, okay.

3 MR. REINGOLD: Thank you very much.

4 COMMISSIONER CLARK: Agreement?

5 15.

6 16.

7 17.

8 18.

9 19.

10 And 20.

11 All right. Anything else that we need to  
12 discuss under the issues?

13 MR. MAY: Commissioner Clark.

14 COMMISSIONER CLARK: Go ahead, Mr. May.

15 MR. MAY: I was just going to ask to take a  
16 look at Issues 18 and 19. In light of the fact  
17 that those parties are no longer part of this  
18 proceeding, I am not sure those issues are in play  
19 at this juncture.

20 COMMISSIONER CLARK: I think that is correct.

21 Is it 18 and 19, or 17, 18, 19? No, 18 and 19.

22 Yes, those -- since the parties are no longer here,  
23 those two issues will be removed.

24 MR. MAY: Thank you.

25 COMMISSIONER CLARK: All right. Anything else

1 under Issues? We are all good, all right.

2 Let's move to Section IX, Exhibit List.

3 MR. MURPHY: Staff has prepared a  
4 comprehensive exhibit list which includes all  
5 prefiled exhibits, and also includes those exhibits  
6 staff wishes to include in the record. I believe  
7 that there is agreement to stipulate the exhibit  
8 list and exhibits but I would like to confirm if  
9 anyone is opposed to it.

10 COMMISSIONER CLARK: We are all good?

11 MR. ANDERSON: With one addition we talked  
12 about, which is our errata dated September 26th.

13 MS. MORSE: And similarly for OPC, depending  
14 on the outcome of the motions related to that  
15 errata, we would have an exhibit based on the new  
16 information.

17 MR. MURPHY: Yes. And I am looking at Rodney  
18 who is going to coordinate that. We got it.

19 COMMISSIONER CLARK: We got it, and we agree  
20 do it, right?

21 MR. MURPHY: Yes.

22 COMMISSIONER CLARK: Okay. We are all good.  
23 All right. Let's go to the next one.

24 Section No. X, Proposed Stipulations.

25 MR. MURPHY: Yes, sir. There are three

1 proposed stipulations, the one we just discussed,  
2 the proposed exhibit list. And Rodney just  
3 confirmed for me that once we make those changes  
4 that y'all have requested, would will recirculate  
5 to make sure you are happy with them.

6 The other one is CAIRC's proposed stipulation  
7 of 2016, '17 and '18 City Council meeting minutes.  
8 And I have not heard anybody opposed to them, and I  
9 am wondering if we've got a stipulation there, that  
10 those would --

11 MS. LARKIN: I was going to say, I am very  
12 close. I think FPL is still reviewing, or I just  
13 haven't heard back from them yet. Everybody else  
14 stipulated.

15 COMMISSIONER CLARK: Okay.

16 MR. ANDERSON: FPL will stip to authenticity  
17 but not to admissibility. We are puzzled as to the  
18 relevance and would like to see how that is shown  
19 at hearing.

20 COMMISSIONER CLARK: Okay.

21 MR. WALLS: COVB, the City of Vero Beach,  
22 joins FPL's position.

23 MR. REINGOLD: Indian River County actually  
24 had communicated with the parties. I believe there  
25 were a couple of additional minutes that we are

1 going to add.

2 Also just a question for the folks here, it  
3 says City Council meeting minutes. Ms. Larkin,  
4 were there Utility Commission meeting minutes as  
5 well?

6 MS. LARKIN: Yes.

7 MR. REINGOLD: So I just want -- if that's  
8 what's included, I would just want that.

9 COMMISSIONER CLARK: City Council and Utility  
10 Commission meetings.

11 MS. LARKIN: Yeah. I believe one of yours was  
12 Utility, too, right? Yes.

13 COMMISSIONER CLARK: Okay.

14 MR. MAY: We would concur, Commissioner Clark.  
15 And with respect to the Utility's Commission  
16 meeting, that would be the August 30th  
17 commission -- Utility's Commission meeting. I  
18 think we had talked about that.

19 MS. LARKIN: Yes. Right. Yeah. There may  
20 be -- actually, there may be one other, but that  
21 was part of the original package, so yeah.

22 COMMISSIONER CLARK: Mr. Murphy, you got all  
23 this?

24 MR. MURPHY: Well, I think when they present  
25 them, you are going to bring them with you and they

1 will be looked at.

2 So we have stipulated as to authenticity but  
3 not admissibility. When will that come up in the  
4 hearing? If it's stipulated in, this would  
5 normally just would hand them out and they would  
6 be -- they would be in. Have you got a witness to  
7 sponsor these?

8 MS. LARKIN: No -- not necessarily. They  
9 are -- that's why they are separate. That's why  
10 I -- the issues started coming up based on a lot of  
11 the back and forth with interrogatories in  
12 discovery. So some of that gets backed up by these  
13 things.

14 I have people from our City Council who will  
15 testify, and so people that can sponsor them,  
16 people who have been at the Utility Commission  
17 meetings. So they can do, it's just I think,  
18 again, I am begging patience from someone who  
19 hasn't done this outside of the civil courts, and  
20 hopefully they will be -- I mean, I know they will  
21 be very pertinent, I just didn't realize that there  
22 was a timing frame I had to go with --

23 COMMISSIONER CLARK: Are they required to be  
24 sponsored by a witness?

25 MR. MURPHY: Typically an exhibit would be,

1 unless it's stipulated in. The example would be  
2 our Exhibit No. 1 that doesn't have a witness.

3 Maybe if we could convene after the prehearing  
4 and see if anything can be worked out, and then it  
5 could be reflected in the order.

6 COMMISSIONER CLARK: Okay. Is that agreeable  
7 with everybody? We will give you a few minutes  
8 afterwards to work that out.

9 MR. ANDERSON: Yes, Commissioner.

10 MS. LARKIN: Sure.

11 COMMISSIONER CLARK: Okay. Great. Thanks.

12 MR. MURPHY: The third one is the Town of  
13 Indian River Shores has proposed stipulation of  
14 four franchise interlocal agreements, and I think  
15 these tie back to staff's proposed Exhibit No. 2, I  
16 guess it would be, that is the muni, and who is in  
17 and out, that kind of thing. I believe there is  
18 agreement for this, I am not aware.

19 MR. MAY: That's right. It's my understanding  
20 that all the parties have agreed to this.

21 COMMISSIONER CLARK: Okay. All right.  
22 Anything else?

23 MR. MURPHY: Not under this section.

24 COMMISSIONER CLARK: All right. Let's go to  
25 Pending Motions.

1           MR. MURPHY: There is a pending motion for  
2           reconsideration of your order -- protective order  
3           to the City of Vero Beach regarding the deposition  
4           of its Mayor. Under the applicable rule, this has  
5           got to be addressed by the full panel, and we  
6           recommend that that be taken up as preliminary  
7           matter there.

8           After filing its prehearing statement, staff  
9           filed a motion for official recognition of certain  
10          legislative materials. Absent objection of  
11          parties, staff asks that you grant that.

12          COMMISSIONER CLARK: Any objection from the  
13          parties?

14          MR. RUBIN: FPL has no objection.

15          MR. WALLS: City of Vero Beach has no  
16          objection.

17          MR. MAY: The Town of Indian River Shores does  
18          not object.

19          MR. REINGOLD: No objection from Indian River  
20          County.

21          MS. LARKIN: No objection from the Civic  
22          Association.

23          MS. MORSE: No objection from OPC.

24          COMMISSIONER CLARK: All right. So ordered.

25          MR. MURPHY: FPL has motions, I guess now only

1           one, related to standing, and those will be taken  
2           up as a hearing issue. And I believe OPC has a new  
3           motion.

4           COMMISSIONER CLARK: Okay.

5           MS. MORSE: Yes, by the close of business  
6           today, OPC expects to file a motion to supplement  
7           the testimony of our expert due to the new economic  
8           analysis submitted by FPL last week for one of its  
9           witnesses. So it would be very brief limited based  
10          on the new numbers and the new data.

11          COMMISSIONER CLARK: All right.

12          MR. RUBIN: Commissioner Clark, for FPL, we  
13          don't object in principle to the motion. We've  
14          communicated with Public Counsel that provided the  
15          supplemental testimony is that it, you know, that  
16          it simply does what is stated in the motion, it  
17          doesn't raise any new issues, it doesn't expand the  
18          scope of the testimony, we won't have any objection  
19          to it; but we really do need to see the revised or  
20          supplemental testimony before we can consent to  
21          that.

22          COMMISSIONER CLARK: OPC.

23          MS. MORSE: I expect to communicate that to  
24          FPL during the day. I did circulate the motion  
25          last night to all the parties, with the exception



1 of Mr. May, who was inadvertently left off. But,  
2 you know, that is our intent, what we stated in the  
3 motion is going to be the testimony.

4 MR. RUBIN: And, Commissioner Clark, as soon  
5 as we see it, we will be able to immediately  
6 respond.

7 COMMISSIONER CLARK: Okay. We will address it  
8 in the order.

9 Mr. Murphy?

10 MR. MURPHY: That was what I was going to  
11 suggest.

12 COMMISSIONER CLARK: All right. Thank you.  
13 Okay. Any other pending motions?

14 Okay. Let's go to Pending Confidentiality  
15 Motions.

16 MR. MURPHY: There are three from FPL, and  
17 CAIRC has suggested that there could be discovery  
18 responses that might have confidential information.  
19 It hasn't been provided yet, so it's not ripe.

20 COMMISSIONER CLARK: Okay.

21 MR. RUBIN: Commissioner Clark, we will be  
22 filing another request for confidential  
23 classification today. It's based upon Public  
24 Counsel's supplemental testimony in discovery  
25 responses they filed yesterday. They took the FPL

1 model and did some manipulations, so we will be  
2 filing that today to make sure that it is also  
3 protected.

4 COMMISSIONER CLARK: Everybody else is good.

5 All right. Moving to No. 13, Conflicts with  
6 Order Establishing Procedure.

7 MR. ANDERSON: Other than Mr. Moran and  
8 Mr. Heady, none.

9 COMMISSIONER CLARK: Good.

10 All right. Section 14, Post-Hearing  
11 Procedures. Staff?

12 MR. MURPHY: Can we confirm whether the  
13 parties wish to file a post-hearing brief in this  
14 matter?

15 COMMISSIONER CLARK: Okay. Parties, this is  
16 where you respond.

17 MR. ANDERSON: Let me check real quick.

18 COMMISSIONER CLARK: Okay.

19 MR. ANDERSON: Commissioner Clark, FPL's view  
20 would be that if other parties are of the view that  
21 the case need not be briefed, we are fine without  
22 briefs.

23 COMMISSIONER CLARK: Okay.

24 MR. WALLS: The City of Vero Beach would join  
25 in FPL's position.

1 MR. MAY: That would be the Town's position as  
2 well.

3 MR. REINGOLD: And Indian River County as  
4 well.

5 MS. LARKIN: I would prefer to have the  
6 briefings, of course. I'm sorry.

7 MS. MORSE: OPC expects to file a brief.

8 COMMISSIONER CLARK: Okay. All right. Well,  
9 if briefs are needed, go ahead, Mr. Murphy.

10 MR. MURPHY: Staff recommends they be no  
11 longer than 40 pages.

12 COMMISSIONER CLARK: All parties in agreement  
13 with that part? All right.

14 MR. ANDERSON: Yes.

15 COMMISSIONER CLARK: Transcripts will be  
16 expedited. Briefs are due on October 19th, 2018.

17 All right. Let's move into Section XIV. I  
18 thought we just did XIV. Mine are misnumbered.

19 Section XIV, Rulings. Let's talk about  
20 opening statements. Parties, staff, what's your --

21 MR. MURPHY: If you want to hear from the  
22 parties first.

23 COMMISSIONER CLARK: Sure. We will start with  
24 the parties.

25 FPL.

1 I have some ideas if y'all are confused.

2 MR. ANDERSON: No worries, Commissioner Clark.  
3 We would be of the same view of opening statements,  
4 if other parties are just as good foregoing them,  
5 FPL would not require one.

6 COMMISSIONER CLARK: Okay.

7 MR. WALLS: City joins FPL's position.

8 MR. MAY: I am not sure I understood.

9 COMMISSIONER CLARK: They are waiving opening  
10 statements.

11 MR. MAY: We would follow suit if that was the  
12 agreement with all the parties.

13 MR. REINGOLD: I can concur with that.

14 MS. LARKIN: Heck, I am going to spoil the  
15 party again. I would really like to have an  
16 opening statement but --

17 COMMISSIONER CLARK: Okay.

18 MS. LARKIN: Sorry.

19 COMMISSIONER CLARK: Understood.

20 OPC.

21 MS. MORSE: We are comfortable with either  
22 way, all the parties.

23 COMMISSIONER CLARK: Okay. Here's what we  
24 will do then, we are going do -- well, staff, give  
25 me --

1           MR. MURPHY: We would prefer that they not  
2           exceed five minutes, and then sometimes parties  
3           divide -- you know, sides of an issue divide up  
4           time, and sometimes it's so much per. And I don't  
5           know if there is a discussion on that point, or  
6           where y'all want to be on that.

7           COMMISSIONER CLARK: We have a lot of parties  
8           on one side of the table. Why don't we do 10  
9           minutes per side. 10 minutes on each side. You  
10          guys can split 10 minutes up and you guys can split  
11          10 minutes, how about that?

12          MS. LARKIN: That's fine.

13          COMMISSIONER CLARK: All right. We are all in  
14          agreement?

15          MS. MORSE: Yes.

16          COMMISSIONER CLARK: Okay. Briefs due  
17          October 19th, limited to 40 pages.

18          The decisions on all of the disputed issues  
19          will be included in the prehearing order.

20          Just to restate, Mr. Heady and Mr. Moran have  
21          been dismissed from the case, and I think that is  
22          most of it.

23          Are there any other matters that we need to  
24          address?

25          MR. MURPHY: Staff is good.

1           COMMISSIONER CLARK: Staff is it good, all  
2 right.

3           MR. ANDERSON: FPL is fine.

4           COMMISSIONER CLARK: Everybody is good. No  
5 other issues.

6           Wow, I thought we were going to be here a lot  
7 longer than this. You guys did great.

8           Mr. May, you are going to ruin it for me,  
9 aren't you?

10          MR. MAY: Yeah, just one clarification.

11          So with opening statements, the Association  
12 and OPC would divide their 10 minutes and then --

13          COMMISSIONER CLARK: Correct.

14          MR. MAY: -- the people supporting the  
15 petition would --

16          COMMISSIONER CLARK: Divide their 10 minutes.  
17 That is correct.

18          MR. MAY: Thank you.

19          COMMISSIONER CLARK: Any other clarifications,  
20 questions or issues?

21          All right. If not, we stand adjourned.

22          (Whereupon, the proceedings concluded at 10:08  
23 a.m.)

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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 3rd day of October, 2018.




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