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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200175-EU

PETITION FOR EMERGENCY
VARIANCE FROM OR WAIVER OF
RULE 25-6.049(5)-(6), F.A.C.,
BY CASA DEVON VENTURE, LP.

_____ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS
PARTICIPATING: COMMISSIONER DONALD J. POLMANN
PREHEARING OFFICER

DATE: Monday, November 2, 2020

TIME: Commenced: 9:30 a.m.
Concluded: 11:17 a.m.

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

REPORTED BY: DEBRA R. KRICK
Court Reporter

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA

1 APPEARANCES:

2 CHRISTOPHER M. HORTON and S. ELYSHA LUKEN,
3 ESQUIRES, 1010 N.E. Third Avenue, Suite 1910, Fort
4 Lauderdale, Florida 33301, appearing on behalf of Casa
5 Devon Venture, LP (Casa Devon).

6 KENNETH M. RUBIN and CHRISTOPHER T. WRIGHT,
7 ESQUIRES, 700 Universe Boulevard, Juno Beach, Florida
8 33408-0420, appearing on behalf of Florida Power & Light
9 Company (FPL).

10 KATHRYN G.W. COWDERY, ESQUIRE, FPSC General
11 Counsel's Office, 2540 Shumard Oak Boulevard,
12 Tallahassee, Florida 32399-0850, appearing on behalf of
13 the Florida Public Service Commission (Staff).

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

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

2 COMMISSIONER POLMANN: It is Monday, November
3 2nd. I have 9:30 a.m. I see someone in the
4 hearing room. Good morning, is that Kathryn?

5 MS. COWDERY: Good morning.

6 COMMISSIONER POLMANN: We are here to talk
7 about the petition for emergency variance and I
8 will call the prehearing to order at this time.

9 Staff, will you please read the notice?

10 MS. COWDERY: By notice, this time and place
11 was set for a prehearing conference in Docket
12 20200175-EU. The purpose of the prehearing is set
13 out in the notice.

14 COMMISSIONER POLMANN: Thank you, Ms. Cowdery.

15 If we're prepared, let's proceed with taking
16 appearances, starting with Casa Devon.

17 MR. HORTON: Good morning, Commissioner
18 Polmann. This is Christopher Horton here on behalf
19 of Casa Devon.

20 COMMISSIONER POLMANN: Thank you, Mr. Horton.

21 MR. HORTON: And my colleagues are here --
22 (Multiple speakers.)

23 MS. LUKEN: Good morning, this is Elysha
24 Luken, also on behalf of Casa Devon Venture, LP.

25 COMMISSIONER POLMANN: Thank you, Ms. Luken.

1 Florida Power & Light.

2 MR. RUBIN: Good morning, Commissioner
3 Polmann. This is Ken Rubin, appearing on behalf of
4 Florida Power & Light. And with me is Chris
5 Wright, also appearing on behalf of FPL.

6 COMMISSIONER POLMANN: Thank you, Mr. Rubin.
7 Staff.

8 MS. COWDERY: Kathryn Cowdery, appearing on
9 behalf of Commission Staff.

10 MS. HELTON : And, Commissioner, Mary Anne --

11 COMMISSIONER POLMANN: Thank you, Ms. Cowdery.

12 MS. HELTON : Commissioner, Mary Anne
13 Helton --

14 COMMISSIONER POLMANN: Ms. Helton, we cannot
15 hear you.

16 MS. HELTON : Commissioner, Mary Anne
17 Helton --

18 COMMISSIONER POLMANN: You are breaking up a
19 little. I am sorry, go ahead.

20 MS. HELTON: Mary Anne Helton is here as your
21 Advisor, along with your General Counsel, Keith
22 Hetrick.

23 COMMISSIONER POLMANN: Okay. That was better.

24 Mary Anne, we have got a little breakup there.
25 I don't know if it's your -- your microphone, the

1 voice-activated kind of comes and goes. I heard a
2 couple of syllables, so I think we will be okay.

3 Preliminary matters, Ms. Cowdery.

4 MS. COWDERY: Yes, Commissioner. State
5 buildings are currently closed to the public and
6 other restrictions on gatherings remain in place
7 because of COVID-19. Accordingly, this prehearing
8 is being conducted remotely, with the parties
9 participating by communications media technology.

10 Members of the public who want to observe or
11 listen to this prehearing may do so by accessing
12 the live video broadcast, which is available from
13 the Commission website. Upon completion of the
14 prehearing, the archived video will also be
15 available.

16 Each person participating today needs to keep
17 their phone or device muted when they are not
18 speaking, and only unmute when they are called upon
19 to speak. If they do not keep their phone muted,
20 or put their phone on hold, they may be
21 disconnected from the proceeding and will need to
22 call back in.

23 Also, telephonic participants should speak
24 directly into their phone, and not use the speaker
25 function.

1 Staff has no other matters at this time.

2 COMMISSIONER POLMANN: Thank you, Ms. Cowdery.

3 Just to confirm, do we have any other
4 participants on video or just Ms. Cowdery and I?
5 Is everybody else on audio only?

6 MR. STADEN: Yes, sir. Everybody is -- yes,
7 sir. Everybody is on audio only.

8 COMMISSIONER POLMANN: Thank you, Mike.

9 If staff has no other matters, I will ask the
10 parties, do any other party have a preliminary
11 matter that we should address? Please speak up.
12 Okay, anybody?

13 Okay. Hearing none at this time, we will
14 close that section and proceed through the draft
15 prehearing order.

16 Ms. Cowdery --

17 MS. COWDERY: Let us first go through the --

18 COMMISSIONER POLMANN: -- back to you. Let
19 me -- let me chime in here just a second.

20 I think -- I think what we will do, we are
21 probably going to go through this pretty quickly.
22 Do you -- do you have any comments before we start,
23 Ms. Cowdery?

24 MS. COWDERY: Other than I agree, let's just
25 go through the draft prehearing order section by

1 section. We have no comments until Section IV on
2 handling confidential information.

3 COMMISSIONER POLMANN: Okay. I will -- I will
4 just go through quickly through each section and
5 see if any of the parties have any comments, and if
6 I hear none, we will just keep proceeding.

7 So Section I, case background, are there any
8 comments from any party?

9 Okay. Hearing none, move to Section II, any
10 comment from any party?

11 Section III, do we have any comments from any
12 party?

13 Hearing none, let's go to Section IV,
14 procedure for handling confidential information.
15 Ms. Cowdery, do you have something to add, please?

16 MS. COWDERY: Yes, Commissioner.

17 Staff will note that when confidential
18 information is used in the hearing, parties must
19 follow the procedures for providing confidential
20 electronic exhibits to the Commission Clerk prior
21 to hearing.

22 Any party wishing to examine the confidential
23 material that is not subject to an order granting
24 confidentiality shall be provided a copy in the
25 same fashion as provided to the Commissioners,

1 subject to execution of any appropriate protective
2 agreement with the owner of the material.

3 Thank you.

4 COMMISSIONER POLMANN: Okay. Any questions on
5 that from the parties, procedure for handling
6 confidential information?

7 Okay, I hear no comments. Let's move to
8 Section V, testimony and exhibits and witnesses.
9 Anything from the parties?

10 MR. RUBIN: Good morning, Commissioner
11 Polmann. This is Ken Rubin for FPL. This case --

12 COMMISSIONER POLMANN: Proceed, sir.

13 MR. RUBIN: Thank you, sir.

14 This case is in somewhat of an unusual posture
15 in that there was no prefiled testimony, and I
16 understand from -- so normally the party with the
17 pureed would prefile their testimony, which in this
18 case would be Casa Devon, and the responding party
19 in this case, it would be FPL, would file its
20 testimony. Because that didn't happen here, my
21 understanding is that Commission Staff is
22 recommending -- or suggesting that witnesses need
23 to be finally identified by 5:00 p.m. this
24 Wednesday, November 4th, which is -- which is fine
25 with us.

1 I just want to point out that we have two days
2 set aside for this hearing on November 19th and
3 20th, and in the prehearing statement filed by Casa
4 Devon, they have identified at least 21 witnesses,
5 and potentially more, because there is some
6 statement about certain companies may offer various
7 expert witnesses. And so simply to, I guess, to be
8 able to facilitate appropriate preparation of this
9 case, we just would ask that the same requirement
10 apply, of course, across the board.

11 We have indicated in an email to all parties
12 that we intend -- currently, at least, intend to
13 call perhaps four or five very brief witnesses in
14 order to make sure that we can get this case
15 completed within the time allotted.

16 The other thing that I would ask is that under
17 Section V(8) of the Order Establishing Procedure
18 that FPL be permitted to conduct voir dire as
19 necessary. Again, not really knowing that the
20 intentions are in terms of who will be called as
21 experts by Casa Devon or, quite frankly, what the
22 nature of their expert testimony will be, we are
23 simply requesting that opportunity at this time.

24 COMMISSIONER POLMANN: So noted. Thank you,
25 Mr. Rubin.

1 We do have Section VI, the order of witnesses,
2 which comes up next. I appreciate your comments.
3 And here, under testimony and exhibits, what I
4 heard you say has a lot to do with the testimony
5 and the types of witnesses.

6 Let me ask staff for some reflection on Mr.
7 Rubin's comments and then perhaps -- Ms. Cowdery,
8 do you have any remarks there? I think we also
9 need to hear from Casa Devon. So, Ms. Cowdery,
10 would you like to hear from -- from the petitioner
11 first, or do you want to reflect on Mr. Rubin's --

12 MS. COWDERY: I think just as --

13 COMMISSIONER POLMANN: -- comments --

14 (inaudible) --

15 MS. COWDERY: As a matter -- excuse me.

16 COMMISSIONER POLMANN: Go ahead.

17 MS. COWDERY: Commissioner, as a matter of
18 walking through the prehearing order, I think we
19 should first make sure there is no comments just on
20 Section V, as you pointed out, and then go into the
21 order of witnesses, which I think is really more
22 what Mr. Rubin's comments went toward, to make sure
23 Casa Devon doesn't have any comments on V, and
24 then, you know, move to VI, if that works for you.

25 COMMISSIONER POLMANN: That works for me. I

1 think there is substance here on the table with
2 FPL's comments that we can work together on.

3 So, Mr. Horton or Ms. Luken, would you like to
4 respond to the -- to the totality of Mr. Rubin's
5 remarks? The floor is yours.

6 MR. HORTON: Yes, Commissioner Polmann. Thank
7 you very much. This is Chris Horton on behalf of
8 Casa Devon.

9 We were in -- we are in receipt of the staff's
10 recommendation that witnesses be disclosed by
11 November 4th. We, like FPL, agree that due to the
12 unique nature of the current proceedings, that --
13 that witnesses should be disclosed, and that both
14 sides should be required to disclose their final
15 list of witnesses. We are in agreement on that.

16 The only caveat we have is we propose that the
17 final list of witnesses be disclosed by November
18 11, which is the day after the discovery deadline.
19 That would allow the parties to complete the
20 discovery that is currently pending and take all of
21 that information in consideration in finalizing
22 their witness list.

23 We recognize that we -- we did disclose quite
24 a few witnesses, but we will be streamlining our
25 case. We will be, you know, only calling the

1 witnesses that are nece-- absolutely necessary, and
2 making sure that there will be no duplication of
3 witnesses; and some of these witnesses likely are
4 duplicative.

5 So we -- we will be narrowing this witness
6 list. It will not be something in the form or
7 fashion that it currently is. We won't be calling
8 21 witnesses at this hearing. And we just believe
9 that it would be more appropriate for the parties
10 to be able to complete the discovery and disclose
11 that final witness list the day after the discovery
12 deadline, which is November 11th.

13 COMMISSIONER POLMANN: Okay.

14 MS. COWDERY: Commissioner Polmann.

15 COMMISSIONER POLMANN: Yeah, Ms. Cowdery, I am
16 a little bit concerned about, not the sequencing,
17 but the timing and the dates, so I need some input
18 there, but I would also like to hear your other
19 comments. Go ahead, please.

20 MS. COWDERY: Yes, Commissioner.

21 Our recommen-- Staff's recommendation is that
22 the final witness lists need to be provided by five
23 o'clock on November 3rd. And this matter of
24 defining what we mean by final witness list, that
25 list -- what we mean is any witnesses who may be

1 called need to be identified at that time.

2 And I understand, you know, with discovery
3 ongoing, it may -- and working with parties and
4 determining what exhibits are going to be
5 stipulated, then we may end up being able to really
6 pair that witness list down. But that is what we
7 mean.

8 If you -- if you intend -- if you think you
9 may be intending to call a witness, that witness
10 needs to be identified by November 3rd. And then
11 following discovery, and nailing down all the
12 exhibits and stipulations on exhibits, we will be
13 able to hopefully look into pairing that witness
14 list down -- those witnesses down.

15 COMMISSIONER POLMANN: So I think I heard that
16 if a witness is not on the list by close of
17 business tomorrow, then that person cannot be
18 called, and is not able to be subject to of disc --
19 if someone is not on the list, then they are not in
20 the case; is that correct?

21 MS. COWDERY: That is correct. You have to
22 give people time to, you know, have the opportunity
23 to depose a witness if they want to, or ask, you
24 know, about their credentials, things like that.

25 MR. HORTON: And, Commissioner Polmann --

1 COMMISSIONER POLMANN: Yes.

2 MR. HORTON: Commissioner Polmann, I
3 misunderstood the staff's recommendation. I mean,
4 I believe that Casa Devon then has most likely
5 complied with what the staff is recommending, so
6 we -- we have no objection then to this procedure.

7 And to the extent that we can pair down the
8 witnesses, you know, we will be doing that, and we
9 will work with FPL to finalize a much shorter list
10 of witnesses that ultimately will be called, and we
11 will do that once discovery is closed.

12 MR. RUBIN: Commissioner Polmann, this is Ken
13 Rubin. If I could ask -- and this is for
14 Ms. Cowdery actually. I thought I recalled a -- I
15 thought I recalled an email that said, Wednesday,
16 November 3rd, but I could be mistaken. I know that
17 Wednesday is November 4th, and November 3rd is
18 tomorrow. So I just wasn't sure whether we were to
19 provide this list by close of business tomorrow or
20 close of business Wednesday.

21 MS. COWDERY: That would be close of business
22 tomorrow. If I said Wednesday issues, I stand
23 corrected. It is Tuesday, November 3rd. I am
24 sorry.

25 MR. RUBIN: Okay. No worries. I could be

1 mistaken as well. Thank you.

2 COMMISSIONER POLMANN: Okay. So by example, I
3 am looking within -- hold on a second. I am
4 looking at a Draft Prehearing Order in Section VI,
5 and there is a list provided by Casa Devon from
6 pages four to five with -- I won't count them, but
7 multiple witnesses and the issue numbers to be
8 addressed.

9 So by way of example, that list needs to be
10 finalized by November 3rd. That's Tuesday,
11 tomorrow, by five o'clock. And for FPL, a similar
12 list should be concluded by that same time. And
13 then among these witnesses, they are subject to
14 discovery, and would be eligible to participate in
15 this case. The list may -- may be shortened. And
16 then the final list of witnesses is then going to
17 be due at the close of discovery and made available
18 to the parties November 12th.

19 Does everybody have that understanding? Speak
20 up.

21 MS. COWDERY: Commissioner, and I didn't
22 quite --

23 COMMISSIONER POLMANN: -- (inaudible) --

24 MS. COWDERY: It all sounded correct to me,
25 except I didn't hear quite the very end of your

1 sentence near the final list will be shown on the
2 prehearing order that will be finalized after
3 November 13th, which is the date all exhibits are
4 due at the Commission.

5 So after that final -- all the final exhibits
6 are submitted to the Commission, we know all the
7 exhibits. We will get the final prehearing order
8 out, and the witnesses will appear in that final
9 prehearing order.

10 COMMISSIONER POLMANN: Okay. If you will make
11 a note, Ms. Cowdery, when we come to the end of
12 today's prehearing, if we can wrap up with all of
13 the -- with all of the pertinent dates, just to
14 refresh and close out. Hopefully we will remember
15 to do that. So these are the important dates for
16 tomorrow, and then for deadline for discovery, and
17 final list of witnesses, exhibits and so forth. I
18 just want to make sure that we are all complete on
19 that. So thank you for -- for the clarification on
20 that. I have tried -- tried to come to some
21 closure here on -- let's see where we are -- on
22 Section V and VI.

23 Mr. Rubin, you -- you raised an issue within
24 your comments on voir dire. At the risk of
25 going -- going back and rehashing, I would like to

1 ask you specifically on that point if you could
2 refresh us on -- on your statement on that, because
3 I would like to get some comment here from Ms.
4 Cowdery. I did not hear a particular response from
5 Casa Devon. I want to know if there is something
6 of substance that needs to be addressed there.

7 So, Mr. Rubin, could you narrowly specifically
8 on that -- I don't know that there was something
9 extraordinary about it, but I just want to close
10 that particular point, please.

11 MR. RUBIN: Commissioner Polmann, I believe we
12 have actually addressed the matters that -- that I
13 was raising in terms of the witnesses, the order in
14 which they were disclosed. I think the only item
15 that perhaps I raised, and I maybe -- maybe I am
16 misunderstanding, but I think the only point that I
17 raised that maybe we haven't addressed is the
18 request that we be permitted to conduct voir dire
19 as necessary, reserving our right to do that under
20 the Order Establishing Procedure because of the
21 fact that we really still don't know the opinions
22 or qualifications of any of the presumed experts
23 that Casa Devon intends to call based upon what's
24 been filed to date.

25 Unless I -- unless I misunderstood the

1 question, or there was something else you wanted me
2 to address, I think that's the only other item that
3 perhaps we haven't discussed.

4 COMMISSIONER POLMANN: No, I think that --
5 well, I just wanted to make sure that we've got
6 everything out. The voir dire -- voir dire, voir
7 dire, however it is that one pronounces that, since
8 you guys are better at the Latin than I am --
9 assuming that's Latin. It's all Greek to me. I
10 just want to make sure that -- the other aspect of
11 this is given what appears to be a long list of
12 witnesses without knowing what the final list is
13 going to be, I am hopeful, very hopeful that once
14 we go through discovery, that the parties, as well
15 as the Commissioners will find an opportunity to
16 stipulate to the discovery -- through the discovery
17 that ends up stipulating the witnesses, or as many
18 as possible. So just keep that in mind, please.

19 Kathryn, do you have anything else to add,
20 Ms. Cowdery?

21 MS. COWDERY: Yes, Commissioner. I would say
22 that given the nature of this case, if there are
23 any questions that counsel have about the expert
24 witness credentials, that voir dire would be
25 appropriate at hearing.

1 That's all I have.

2 COMMISSIONER POLMANN: Okay. Any closing
3 comments from the parties?

4 MR. RUBIN: Commissioner Polmann, this is Ken
5 Rubin again for FPL.

6 As always, and I know that Casa Devon agrees,
7 we will do whatever we can to stipulate on certain
8 matters, but to your point about stipulating
9 witnesses, because there is no prefiled testimony
10 in this case, I believe that any witness that
11 either party intends to call would have to be
12 called to actually testify because there is no
13 prefiled testimony that -- that normally under our
14 normal commission proceeding we'd be able to
15 stipulate into the record.

16 COMMISSIONER POLMANN: Well, certainly,
17 that's -- that's an important point. Thank you for
18 that.

19 Ms. Cowdery just commented on, I will simply
20 say challenging expertise. I think Mr. Rubin, if I
21 remember correctly, you, somewhere in your
22 comments, had those words.

23 Again, I don't want to burden the issue here,
24 but if there's any closing remarks to further
25 assist in that subject, now is the opportunity to

1 speak; if not, we will move on.

2 MR. HORTON: Commissioner Polmann, this is
3 Chris Horton on behalf of Casa Devon.

4 We would like to note that we would also
5 reserve the right to conduct voir dire as to any
6 potential experts that are called by FPL, and we --
7 we don't object to FPL's request for the same.

8 COMMISSIONER POLMANN: Of course.

9 All right. Anything else on Section V or
10 Section VI? Okay. If not, let's close those two
11 sections and move on. We are looking at Section
12 VII, basic positions, and let me proceed here.

13 Do the parties have any changes to their basic
14 positions? Let me start with Casa Devon.

15 MR. HORTON: We have no comments, Commissioner
16 Polmann.

17 COMMISSIONER POLMANN: Okay. And Florida
18 Power & Light, basic positions?

19 MR. RUBIN: We have no changes to our basic
20 position either, Commissioner Polmann.

21 COMMISSIONER POLMANN: Thank you.

22 All right. Section VIII, issues and
23 positions. Ms. Cowdery, you want to introduce
24 that, please?

25 MS. COWDERY: Staff will note that staff has

1 taken no position on all issues at this time.

2 If a party does not take a position on issues,
3 persuant to the Order Establishing Procedure, their
4 position will be changed to no position in the
5 prehearing order.

6 Also, pursuant to the Order Establishing
7 Procedure, if a party fails to take a position on
8 any issue by the time of the prehearing conference,
9 the party waives its opportunity to conduct
10 cross-examination on the issue, as well as to file
11 a post-hearing brief on the issue.

12 Thank you.

13 COMMISSIONER POLMANN: Thank you, Ms. Cowdery.

14 Let me just check here.

15 Okay, we have five issues on the table that
16 are already established, and then we have a couple
17 of contested issues. So what we will do is go
18 through the five issues to start with. I see that
19 the parties have taken positions, so we do not have
20 any issues with positions not yet taken. So --
21 hold on a second. I keep scrolling back and forth
22 and losing my place.

23 Okay. What I would like to do is go -- go
24 through issues one, two, three, four, five, and I
25 will ask the petitioner and then the utility if you

1 have any changes. If you do, you can verbalize
2 those here today, but then also I would ask that
3 you confirm that in writing to Ms. Cowdery and to
4 provide distribution to all in the normal list --
5 the normal list.

6 Ms. Cowdery, what would be your deadline here?
7 And I know we are going to summarize at the end,
8 but just for discussion purposes right now, what is
9 the deadline here for finalizing the positions,
10 Items 1 through 5?

11 MS. COWDERY: Commissioner, if a party has any
12 changes to the basic positions that are found in
13 the Draft Prehearing Order, they need to get those
14 changes to me by close of business, that's five
15 o'clock, tomorrow, Tuesday, November 3rd.

16 COMMISSIONER POLMANN: Okay. Very good.

17 So looking at Issue No. 1, Mr. Horton or Ms.
18 Luken, do you have any change in your position on
19 Issue No. 1, please?

20 MR. HORTON: Commissioner Polmann, I think I
21 can kind of short-circuit this. For the first five
22 issues, we have no comments or changes at this time
23 to our positions.

24 COMMISSIONER POLMANN: Excellent. I
25 appreciate the summary.

1 Mr. Rubin or Mr. Wright, since we've
2 established that approach, I will -- I will now
3 also ask you on all issues, 1 through 5, do you
4 have any changes or any issues?

5 MR. RUBIN: Thank you, Commissioner Polmann.

6 As with Casa Devon, we have no changes to
7 FPL's positions on Issues 1 through 5.

8 COMMISSIONER POLMANN: Very good.

9 That does not foreclose, by the way, your
10 opportunity to provide a written -- a written
11 change as noted in the previous comments. So if it
12 becomes necessary, you can avail yourself of that
13 opportunity.

14 We have contested issues, and, Ms. Cowdery, do
15 you want to introduce that, please?

16 MS. COWDERY: Yes, Commissioner.

17 Issue A was proposed by Casa Devon Venture is:
18 Whether the purpose of the statute underlying Rule
19 25-6.049 FAC, the Florida Energy and Efficiency and
20 Conservation Act, is to promote energy conservation
21 and reduce electricity consumption.

22 Staff recommends that Casa Devon should argue
23 first, and FPL should be allowed to respond. Staff
24 would recommend that Issue A not be included as a
25 separate issue because it can be subsumed into

1 Issue 1.

2 COMMISSIONER POLMANN: Okay. So we are clear
3 on what Issue 1 is, and the parties had no change
4 in that position. So looking at Issue A, I would
5 like to hear from Casa Devon.

6 MR. HORTON: Commissioner Polmann, thank you.

7 We believe that Issue A is not subsumed within
8 the Issues 1 through 5. We believe this is a
9 stand-alone issue. We do understand, though, the
10 staff's position, and why they believe that this
11 could be considered to be subsumed within Issues 1
12 through 5. You know, we are going to take the
13 position on Issue B that Issue B is definitely
14 subsumed within the issues that have already been
15 agreed upon between the parties.

16 And so to the extent that that is the way the
17 Commission is going to rule and determine, that we
18 are fine with Issue A, then, being treated in the
19 same way as Issue B, as it being subsumed within
20 Issues 1 through 5.

21 Otherwise, the reason we have set forth this
22 issue is because we believe that the ultimate
23 purpose of the statute underlying the rule is
24 important for the determinations that will be made
25 by the Commission in regards to Casa Devon's waiver

1 or variance.

2 COMMISSIONER POLMANN: Thank you.

3 FPL, would you to respond to that, please?

4 MR. RUBIN: Yes, Commissioner Polmann.

5 We -- we agree with -- with your staff, that
6 issue -- Casa Devon's Contested Issue A is
7 completely subsumed within Issue 1. There is
8 neither a need for this separate issue nor is it
9 appropriate.

10 The phrasing in -- in the contested Issue A
11 assumes the purpose or purposes of the statutes
12 underlying the rule to the exclusion of potentially
13 other purposes. And it's clear that under Issue 1,
14 the Commission will consider the underlying purpose
15 of the statutes that support this rule, and whether
16 those purposes have been achieved by other means by
17 Casa Devon. So we don't see that there is any need
18 nor is it appropriate to have this as a separate
19 issue.

20 In terms of Mr. Horton's other comment,
21 Contested Issue A and Contested Issue B are
22 completely separate and distinct from each other.
23 And from FPL's perspective, there is no
24 relationship between or tie such that the
25 Commission has to rule on both of them the same

1 way. So we support staff's position on Contested
2 Issue A, and respectfully request that it not be
3 included as a distinct and separate issue.

4 COMMISSIONER POLMANN: Thank you, Mr. Rubin.

5 Ms. Cowdery, do you -- do you have any other
6 comments, or would you like to comment on the
7 parties' explanations, or their remarks on
8 positions here? Anything to add --

9 MS. COWDERY: I don't really have anything to
10 add.

11 COMMISSIONER POLMANN: -- on the -- okay.

12 This might -- I just -- just let me reflect
13 here, and then I will ask for Ms. Helton also if
14 you have -- if you would like to offer any guidance
15 here, whether -- in particular whether we have
16 enough information right at this moment or -- or we
17 want to do give this some more thought and take
18 this under advisement, but let me -- let me just
19 offer my thoughts here.

20 The way the issue is posed, I am a little bit
21 concerned that it is it is very narrowly phrased
22 and poses a bit of a conundrum for the Commission,
23 because it's -- it's identified in wording as
24 suggesting that the rule -- I am sorry -- the
25 statute here has a singular purpose.

1 When it says: Whether the purpose of the
2 statute is to promote energy conservation and
3 reduce electricity consumption, it suggests that
4 the Commission is to make a finding of the purpose
5 of the statute, which puts us in a position of
6 interpreting and ruling on the legislative intent.
7 I am very wary of that. And it's not that -- it
8 doesn't suggest that the Commission is explaining
9 the rule, but interpreting legislative purpose.

10 I am disinclined to offer to our commission
11 what I think is a difficult position on which to
12 have to take some action. So I am hesitant to have
13 this be a separate and distinct issue.

14 The subject matter of promoting energy
15 conservation and reducing electricity consumption I
16 do believe is a subject that will be addressed at
17 hearing, and certainly is germane to be debated as
18 regards this petition. So but there is no question
19 about the subject matter. The way the issue is
20 posed gives me some discomfort.

21 So, Ms. Helton, do you have anything that you
22 would like to add at this point, or is this
23 something that we -- that we should take some time
24 to reflect on?

25 MS. HELTON: Well, Mr. Chairman, I agree with

1 Ms. Cowdery that Issues A and B could be subsumed
2 under the already identified issues in the
3 Prehearing Order, but it's also appropriate at this
4 time to take it under advisement if that is your
5 preference, and staff can discuss it further with
6 you off-line.

7 COMMISSIONER POLMANN: Well, I -- I think at
8 this point -- I have heard the parties. I will
9 rule at this point that Issue A, as written, I
10 don't think is appropriate as a separate issue.
11 And I do believe -- I am comfortable taking a
12 position that this issue, Contested Issue A, can be
13 addressed substantively within Issue No. 1.

14 So my ruling is that Issue A as a separate
15 issue will not be included, and that the -- and
16 that this subject is adequately subsumed within
17 Issue A. So -- so that will be my ruling here on
18 Issue A. I am sorry, the Issue A will be subsumed
19 adequately within Issue No. 1. So let's move on
20 here.

21 Issue B, Ms. Cowdery, do you want to introduce
22 that, or shall we -- I can simply ask you to
23 explain that for us. Would you like to introduce
24 that, Ms. Cowdery?

25 MS. COWDERY: Commissioner, we received some

1 alternative language for Issue B, which has been
2 proposed by FPL, so I think it would be appropriate
3 for FPL to explain their position on Contested
4 Issue B, and then allow Casa Devon the opportunity
5 to respond.

6 COMMISSIONER POLMANN: Let's confirm that
7 everyone has that revised language. Can I hear
8 from -- from Casa Devon and make sure that you have
9 that language, the revised language, please?

10 MR. HORTON: Commissioner Polmann, we do have
11 the revised language, and we -- our objection
12 stands.

13 COMMISSIONER POLMANN: All right. Mr. Rubin,
14 would you like to speak on the revised language?

15 MR. RUBIN: Yes. Thank you, Commissioner
16 Polmann.

17 This morning, we revised that language, which
18 was sent to all parties, in an effort to make it as
19 neutral as possible. We believe it's critical that
20 this issue remain as a separate and distinct issue
21 in this case so that the Commission is required to
22 provide guidance and establish the appropriate
23 precedent in situations where a party ignores or
24 otherwise avoids a Commission rule, takes actions
25 in violation of or in disregard to that rule and

1 then tries to bootstrap their way into a variance
2 or waiver by relying on the hardship that they
3 created by ignoring or disregarding the rule.

4 I heard Ms. Helton say that this issue could
5 be subsumed within one of the other issues. But
6 absent this specific issue and phrase as it's been
7 phrased, an issue that we believe is central to the
8 case, the Commission will not be required to make a
9 determination that a, quote, "substantial
10 hardship", end quote, as that term is used in the
11 statute, when created by the party who then relies
12 upon that hardship as the premise for the variance
13 or waiver is an appropriate way to satisfy their
14 legal burden under the statute.

15 So for example, here, the Commission could
16 determine in response to Issue 2 that Casa Devon
17 will suffer a substantial hardship absent a
18 variance or waiver, but without FPL's Contested
19 Issue B, which I am addressing, the Commission may
20 choose not to specifically address the issue of
21 whether Casa Devon created that hardship, and
22 whether their action in doing so can support the
23 granting of the variance or waiver.

24 So in summary, our position is that FPL's
25 Contested Issue B presents a factual and a legal

1 issue in this case, and should remain a distinct
2 issue in this case that the Commission can address,
3 and will address.

4 We believe it's critically important from the
5 standpoint of precedence, guidance, as well as in
6 protecting the agency's jurisdiction, that this
7 issue be separately identified because that will
8 then require a Commission to vote on the specific
9 issue and provide guidance for future commissions
10 if a substantially similar set of facts arises
11 where a petitioner essentially bypasses the
12 Commission and its exclusive jurisdiction, then
13 seeks to rely on the actions it took to support the
14 notion that there is now a substantial hardship and
15 that a waiver should be granted.

16 So with those comments, Commissioner Polmann,
17 we would respectfully submit that Issue B should
18 remain as a separate issue for the Commission to
19 decide in this case.

20 COMMISSIONER POLMANN: Mr. Horton, would you
21 like to speak on the revised language?

22 MR. HORTON: Yes, Commissioner Polmann. Thank
23 you.

24 We believe, along with the staff's
25 recommendation, that this issue is subsumed within

1 the issues already agreed upon by the parties,
2 specifically on whether or not we have met the
3 burden of proving a substantial hardship in this
4 matter.

5 With that said, I would like to note and
6 respond to some of the comments by FPL, that FPL
7 just made, and this gives a little more color on
8 why we are objecting and why we think this issue is
9 not appropriate, and that's that we are not proving
10 substantial hardship solely through the fact that
11 we entered into an agreement with HUD, and that
12 there are certain obligations with HUD. That goes
13 to the issue that FPL is proposing here on whether
14 or not we essentially waive our right to assert
15 substantial hardship because we did not come to FPL
16 or the Commission in the first place. We have many
17 other grounds for proving a substantial hardship,
18 so this is just one of those grounds that this
19 issue goes to.

20 Second of all, and more importantly, I think
21 the problem with this issue is that it requires the
22 Commission then to interpret the statute in a
23 manner that the plain language of the statute
24 doesn't provide for. That what the -- what FP&L is
25 asking the Commission to do is not set forth

1 anywhere within the legislation. The plain meaning
2 of the statute or the rule does not provide for
3 the -- this issue to be resolved in a manner that
4 FP&L is asking for, and there is no legal support
5 whatsoever for such a interpretation. So we find
6 that this -- this issue is troubling because we
7 think FP&L is trying to inject an issue into this
8 proceeding that has no basis in law.

9 So our response is that this would be
10 subsumed. We honestly, we believe that this is
11 sort of a red herring, that this isn't really
12 what -- what the main crux of the issues are to be
13 heard by the Commission and considered by the
14 Commission, and we object to it.

15 COMMISSIONER POLMANN: Okay. Well, thank you
16 for that.

17 MR. HORTON: Thank you, Commissioner Polmann.
18 I don't know if my colleague, Ms. Luken, I know
19 this is a hot topic for her. I don't know if she
20 had anything to add or if I covered everything.

21 COMMISSIONER POLMANN: Ms. Luken, do you have
22 any other comments, please?

23 MS. LUKEN: Yes. This is -- this is Elysha
24 Luken, and I believe Mr. Horton did cover it.
25 Although, I would point out that the language

1 within Issue B is asking for a determination on
2 what are the parameters of a substantial hardship.
3 That's squarely within Issue 2, which is where the
4 Commission is going to be asked to decide whether
5 or not a substantial hardship has been
6 demonstrated.

7 And other than that, I believe Mr. Horton has
8 covered our main points. Thank you.

9 COMMISSIONER POLMANN: Okay. Thank you.

10 MR. HORTON: Commissioner Polmann, just -- Ms.
11 Luken, in her comments, jogged my memory about
12 something.

13 I would like to note that we -- in our
14 objection here, we did note that we believe that if
15 this issue was permitted, that we would want to
16 propose a counter issue, and we would want to
17 propose our position on this issue, which we have
18 set forth here today.

19 And the reason I think that's important is
20 because we believe that the facts will show that my
21 client did go to FP&L and asked about master
22 metering before they entered into the contract with
23 HUD, and before they entered into any of the
24 contracts with their GC and their solar
25 subcontractor.

1 COMMISSIONER POLMANN: You know, honestly, I
2 have to say I am not quite sure I understand what
3 you just said. So you referenced a counter issue.
4 If you have something that you want to add as an
5 additional issue to help me understand how to rule
6 on Issue B, now would be the time to discuss adding
7 an issue to counter Issue B, because we -- we have
8 to make a decision on whether to include Issue A --
9 I am sorry, whether to include Issue B today or
10 not. So, you have to make a complete argument on
11 Issue B today, like now.

12 MR. HORTON: Thank you, Commissioner Polmann.

13 And the counter issue was something we raised
14 in the preliminary issue discussion. And the
15 counter issue would be along the lines of whether
16 FPL's own actions or inactions would essentially
17 ameliorate the -- if Issue B was answered yes -- or
18 no -- sorry -- then whether -- whether FP&L is
19 waived from asserting that and raising that as an
20 issue in opposition to the substantial hardship,
21 where FP&L's own inactions -- actions or inactions
22 led to the ruling on Issue B.

23 And specifically what I am referring to is the
24 fact that my client, through them directly and
25 through agents, reached out to FP&L, and FP&L told

1 them that master metering was acceptable for this
2 project, and was permitted. That is why they moved
3 forward in the manner that they moved forward.

4 COMMISSIONER POLMANN: Okay. I understand.
5 Thank you.

6 MR. HORTON: Thank you, Commissioner Polmann,
7 for the opportunity to explain myself further.

8 COMMISSIONER POLMANN: Yes, sir.

9 MR. RUBIN: Commissioner Polmann, could I
10 respond -- could I respond, Commissioner Polmann?

11 COMMISSIONER POLMANN: Sure.

12 MR. RUBIN: A couple of things.

13 First of all, FPL absolutely denies that it
14 provided permission, consent, approval, whatever
15 the term may be, to Casa Devon, told them that they
16 could master meter. But really, more to the point,
17 the burden is on Casa Devon to satisfy the
18 Commission's requirements for a variance or waiver,
19 regardless of any communications that occurred
20 between FPL and Casa Devon.

21 So in other words, even if FPL said to Casa
22 Devon, sure, you can master meter, FPL doesn't have
23 authority to waive a Commission rule. And so while
24 we dispute factually what's been said, that's
25 really a non-issue in this case because it is Casa

1 Devon's burden to prove the requirements to comply
2 with the statute, the statutory requirements and
3 the Commission rule.

4 And just to kind of harken back to one of the
5 reasons that it's important that this remain a
6 separate and distinct issue. There is case law.
7 It is a legal issue regarding whether a party's own
8 actions in ignoring or -- or avoiding a Commission
9 rule satisfies the requirement of creating a
10 hardship that would satisfy the requirements of the
11 statute.

12 So we believe this is a distinct legal issue,
13 one that the Commission should provide guidance on,
14 and that's really why we believe that this should
15 be and remain a separate and distinct issue.

16 COMMISSIONER POLMANN: Well, thank you. I am
17 pondering here.

18 I am not -- I hate to use this word, but I am
19 not happy with the wording of the initial -- the
20 original Issue B or the revised Issue B. The whole
21 notion of substantial hardship is a matter of
22 judgment that I think falls within the authority of
23 the Commission to make a determination, and the
24 discussion that I just heard between the parties --
25 I heard in other cases of, you know, who's

1 responsible for what, which is never -- never a
2 comfortable place for the Commission to be in in
3 hearing -- at hearing.

4 This is something I am going to have -- going
5 to have to think about, and I will take this under
6 advisement. Quite frankly, we haven't had adequate
7 time to -- to review and consider FPL's proposed
8 alternative language. And the notion of creating a
9 hardship, or having an outside entity somehow
10 impose a hardship upon a party, or a sequence of
11 events creating a hardship, it just requires a
12 little bit more thought here.

13 So I am not going to be able to make a ruling
14 here at this moment. I need to discuss this with
15 my Advisor and General Counsel and reflect on this
16 a little bit more today, and we will make a ruling
17 on this later on. You will be notified here as
18 soon as we do that.

19 So whether Issue B is going be to be subsumed
20 and the parties can make their case within other
21 issues, or whether we have a stand-alone issue to
22 try to hash this out separately, I am just not
23 quite sure.

24 So thank you for explaining and clarifying
25 your positions on this. I am not able to rule on

1 this at this time, and I will take this under
2 advisement. You will hear about this from staff as
3 soon as I am able to come to some conclusion on
4 that. But thank you -- thank you for your time
5 explaining this. It's very helpful.

6 So let's move on to Contested Issue C, and --
7 let me see here. This is an issue raised by Casa
8 Devon and, Ms. Cowdery, do you -- do you have
9 anything you would like to introduce here first?
10 And then we will hear from the petitioner.

11 MS. COWDERY: Yes, Commissioner.

12 For Issue C, staff has a -- staff believes
13 that this is a separate issue that should be
14 considered. The only difference is that we believe
15 that the issue should be phrased a little bit
16 differently.

17 The primary difference is just that we believe
18 that the issue should say: In the alternative, if
19 the Commission denies Casa Devon's petition for
20 emergency variance or waiver, that the Commission
21 find that they should be allowed to master meter as
22 a specialized-use housing accommodation. And our
23 reason for that is that tracks the request for
24 relief in the original petition.

25 And as before, because Casa Devon raised this

1 issue, we believe Casa Devon should argue first and
2 FPL should be allowed to respond.

3 COMMISSIONER POLMANN: Well, let me -- let me
4 say first that I have had my own thoughts trying to
5 understand the special use, and, in fact, I do
6 believe that that is a separate question that
7 really applies only in the alternative. So I would
8 support the staff suggestion that the language on
9 the issue is better stated and framed as the staff
10 has proposed.

11 So let me suggest that we hear from Casa Devon
12 first, and if you could include in your remarks any
13 comment that you would like to offer as to staff's
14 suggested modification on the language.

15 So, Mr. Horton or Ms. Luken, if you can
16 introduce this item for us and let's hear from you.

17 MR. HORTON: Thank you, Commissioner Polmann.

18 We spent a lot of time on drafting the issue
19 in the manner we did to capture what we thought was
20 the essence of the rule and the issue. With that
21 said, though, we understand -- we -- we take your
22 comments under advisement, and staff's
23 recommendation, and we would not object to the
24 changes in the issue as proposed by the staff.

25 Moving on to the substance of why this issue

1 is appropriate. We believe that it is a
2 stand-alone issue. It was raised in our initial
3 emergency petition. It was then raised again in
4 our corrected petition that has been filed that's
5 led to these proceedings. So it is an issue that
6 we properly raised, and we believe that it's an
7 issue that should be properly determined to the
8 extent that the Commission denies the waiver and
9 variance upon the other grounds that are set forth
10 within the other issues.

11 This is an issue that has been considered --
12 has been raised and considered in past filings for
13 waivers or variances, specifically in instances
14 where condominium hotels have requested that they
15 be considered under the exemptions under
16 25-6.049(5). We are specifically just asking for a
17 more narrowly tailored approach under C, and to be
18 determined a specialized-use housing accommodation
19 or similar facility.

20 And I do note that that is not captured within
21 the issue proposed by the staff because that is an
22 important distinction we want to make, and that we
23 plan to make. And we will -- we are just noting
24 that -- that the -- under the rule, it is a
25 specialized-use housing accommodation. It then

1 lists the types of specialized-use housing
2 accommodations that the rule permits a waiver or
3 variance under, but then it -- it specifically
4 says: Or similar facility. And that is what we
5 are specifically asking the Commission determine,
6 that we are a similar facility that would fall
7 within the specialized-use housing accommodation.

8 COMMISSIONER POLMANN: Okay. Thank you for
9 those comments.

10 The real question is whether this is subsumed
11 under -- under other issues, and I think I heard
12 one of your remarks go to timeliness, so perhaps
13 that's a either timeliness or the specific request
14 of this. So there is a little bit of background
15 and clarification that I need to make, you know, to
16 confirm and make a determination for -- for myself
17 reviewing this with staff and legal advisor. I
18 think my determination whether -- whether this is
19 allowed as a separate issue or as a matter of -- of
20 subject matter and substance, it would be something
21 included within other issues.

22 Now, if it's not written as a separate issue,
23 my position would be that you are certainly allowed
24 to argue the point -- the substance of this matter,
25 you would certainly be allowed to argue under other

1 issues. So I am not precluding the subject in any
2 case. The -- the question that you brought forward
3 is whether or not it's a stand-alone issue, and
4 ultimately, my ruling would be is it a stand-alone
5 issue or not? In which case the allowance would
6 be, if it's not a stand-alone issue, you would have
7 the opportunity to address it elsewhere among the
8 issues, and how you chose to do that would be
9 yours.

10 I would like to get a comment here from --
11 from the utility, if you wish to chime in, Mr.
12 Rubin or Mr. Wright, give you an opportunity here
13 to -- to make a remark, please.

14 MR. RUBIN: Yes, thank you, Commissioner
15 Polmann.

16 FPL opposes this issue for both legal and
17 factual reasons. Both Ms. Cowdery and Mr. Horton
18 noted that the request that is included in both
19 Staff Issue C and Casa Devon Issue C was addressed
20 in the original petition that initiated this
21 litigation prior to the issuance of the
22 Commission's PAA order. And I know that Mr. Horton
23 mentioned that it was also referenced in this
24 petition. We take issue with that.

25 Let me just start, I guess, by, you know, sort

1 of setting the stage that the petitioner has the
2 obligation to raise in the petition all of the
3 issues it seeks to have decided in the proceeding.
4 The case law is very clear that, you know, once the
5 PAA issue is ordered -- I am sorry, is issued,
6 the -- the protest or request for a hearing is a de
7 novo proceeding.

8 So basically we are all starting with a clean
9 slate at this point. The court has said that a
10 request for a formal administrative hearing
11 commences a de novo proceeding intended to
12 formulate agency action and not to review action
13 taken early preliminarily. That's the Beverly
14 case.

15 In this case, on September 1st, Casa Devon
16 filed their petition, which is currently scheduled
17 for hearing later this month. At paragraph eight,
18 in fact, on page 15 of that petition, Casa Devon
19 acknowledges that this is a de novo proceeding.
20 And, you know, in this case, they sought a variance
21 or waiver. They've pled that. But this proposed
22 issue would allow the Commission to determine
23 whether they fit within one of the exemptions of
24 the requirements for individual metering. And
25 quite simply, that has not been pled, and it's not

1 part of the relief sought by Casa Devon in their
2 petition.

3 Their petition mentions Rule 25-6.049(5)(c),
4 which is the subsection that identifies the
5 facilities and types of facilities that may master
6 meter pursuant to these exemptions in just two
7 places. The first is on page five at paragraph
8 5(n). And there, it's only in the context of an
9 allegation that the Commission made a mistake in
10 determining in its PAA order where it found that
11 Casa Devon failed to meet the requirements to
12 allege a request for declaratory statement; but
13 that assertion is completely irrelevant to this de
14 novo proceeding unless it has been pled, which it
15 has not.

16 The second place that they mention that rule
17 is in the footnote on page 14. And that footnote
18 is offered to support their contention, which is
19 again is irrelevant to this proceeding, that in the
20 prior case, Casa Devon established the two criteria
21 for granting a variance or a waiver.

22 So in other words, the footnote purports to
23 support an argument that the Commission was wrong
24 when it denied Casa Devon's request for a variance
25 or waiver at the August 18th Agenda Conference.

1 And to that end, not as a request for belief -- I'm
2 sorry, request for relief in this de novo
3 proceeding, here's what they say: Casa Devon has
4 demonstrated entitlement to a variance from the
5 literal requirements of the exemption to individual
6 metering in Rule 25-6.049(5)(d) or (d), or a waiver
7 from the application of the additional requirements
8 in these exemptions. So that reference was to what
9 they sought in the case below, not in this case.

10 So if you look at the exemptions that they
11 seek to rely upon now, despite the fact that they
12 have not included that in their pleadings, or in
13 their prayer for relief, those facilities are
14 certain medical facilities, religious institution
15 housing, university or college housing, categories
16 that Casa Devon does not fit within. And, you
17 know, despite not pleading it, they now seek to
18 make an argument that they a qualify for the
19 exemption from the rule requiring individual
20 metering because they are specialized-use housing,
21 or similar to one or more of the enumerated
22 facilities. They are not, but more to the point,
23 it was never pled.

24 So respectfully, we -- FPL submits that
25 Contested Issue C in either form, whether in the

1 form submitted by Staff or by Casa Devon, it's just
2 not appropriate for this case because it's not been
3 pled and it shouldn't be allowed to become an issue
4 and raised -- to be raised and litigated at the
5 final hearing in this stage of the case. If Casa
6 Devon wanted to raise that issue, it should have
7 been pled, and it was not.

8 COMMISSIONER POLMANN: Thank you Mr. Rubin.

9 You know, I appreciate all of your
10 explanations, and I think what this comes down to
11 in either wording -- and I support the staff
12 wording as an alternative because it simply makes
13 more sense, that this issue is not required -- it
14 becomes moot if the petition is granted otherwise.

15 So if the Commission, as the staff alternative
16 language is provided, the question becomes is the
17 Casa Devon apartment building, does that meet the
18 requirements according to that rule?

19 There are alternative ways to ask that
20 question. So the issue for me is whether --
21 whether that question belongs inside this hearing,
22 and I need to think about that. And specifically
23 whether it belongs inside this hearing as a
24 stand-alone question.

25 So, you know, I could rule on that right this

1 minute, but I am disinclined to do that. I just
2 need to think through exactly what my -- what my
3 final argument and rationale would be, whether to
4 include it or not.

5 I appreciate the comments from Casa Devon and
6 from FPL. I will take those under advisement, and
7 I will discuss this with staff and our General
8 Counsel's Office, and we will decide on this later
9 today.

10 I have got various arguments going both ways,
11 so I just need to decide what the basis of my
12 decision is going to be. Thank you for your -- for
13 explaining yourselves. This is either complicated
14 or it's very, very simple to me, so I just need to
15 decide which -- which way I am going to go on it.

16 Okay, so those are the contested issues. Ms.
17 Cowdery, I think we are -- we are back to you. Do
18 you want to kind of remind us where we are?

19 MS. COWDERY: I believe, Commissioner, we are
20 on Section IX, the exhibit list.

21 Staff has prepared the Draft Comprehensive
22 Exhibit List which had, at the time of preparation,
23 you know, all known exhibits. FPL had not
24 identified any exhibits at that time.

25 As I think I stated earlier, our intent is

1 to -- actually, I don't think I mentioned this
2 earlier. After all the exhibits are submitted to
3 the Commission, the deadline being November 13th,
4 we will finalize the comprehensive exhibit list,
5 because of discovery being ongoing, it has not been
6 finalized at this time. But at this time, if there
7 are any known changes to the parties' exhibit list,
8 we would like to hear that at this time.

9 COMMISSIONER POLMANN: Okay. Casa Devon, do
10 you have any changes on the exhibit list?

11 MR. HORTON: No comments.

12 COMMISSIONER POLMANN: Okay. FPL, apparently
13 you didn't have a list of exhibits. Do you have
14 anything -- well, what is your expectation?

15 MR. RUBIN: We are fine with complying,
16 Commissioner Polmann, with the comments that Ms.
17 Cowdery just made.

18 COMMISSIONER POLMANN: Okay. So the note here
19 that I am looking at says close of business
20 November 13th for exhibits, and we will go with
21 that.

22 MS. COWDERY: And, Commissioner, all parties
23 have been emailed instructions, which are
24 Attachment A to the draft prehearing order about
25 how to electronically provide confidential or

1 nonconfidential exhibits to the Clerk, and if they
2 have any questions, they can contact me.

3 COMMISSIONER POLMANN: Okay. So again, any
4 questions on submitting exhibits, and especially on
5 anything confidential, please contact Ms. Cowdery.

6 Let's move on to stipulations. Ignore the --
7 (inaudible) --

8 MS. COWDERY: Staff notes there are no --

9 COMMISSIONER POLMANN: Staff, we have no
10 proposed stipulations at this time --

11 MS. COWDERY: That is correct.

12 COMMISSIONER POLMANN: -- is that correct?

13 My colleagues on the bench will hope to find
14 something in this section before we go to hearing,
15 so see if y'all can work on that. I have a good
16 reputation of coming up with something, so don't
17 let me down.

18 Okay. Pending motions, Ms. Cowdery.

19 MS. COWDERY: We have no pending motions at
20 this time.

21 COMMISSIONER POLMANN: Confidentiality.

22 MS. COWDERY: No pending confidentiality
23 motions at this time.

24 COMMISSIONER POLMANN: Post-hearing
25 procedures.

1 MR. RUBIN: Commissioner Polmann --

2 COMMISSIONER POLMANN: Yes, sir.

3 MR. RUBIN: I'm sorry.

4 COMMISSIONER POLMANN: Go ahead.

5 MR. RUBIN: Yes, Commissioner Polmann. There
6 are no pending confidentiality matters, however, we
7 received discovery late Friday from Casa Devon, and
8 giving it an initial look, I believe there will
9 be -- or may well be a request for confidential
10 classification that we will have to file when
11 responding to that discovery. So I just wanted to
12 give everyone a heads-up that though there are none
13 pending now, there may well be one when we respond
14 to that discovery.

15 COMMISSIONER POLMANN: Thank you.

16 Anything else on confidentiality?

17 Okay. Hearing none, we'll turn to
18 post-hearing procedures, please, Ms. Cowdery.

19 MS. COWDERY: Staff recommends that
20 post-hearing briefs should be limited to 40 pages
21 inclusive of attachments, should briefs be
22 necessary.

23 COMMISSIONER POLMANN: Go ahead, I was on mute
24 talking to myself. So we have agreement from the
25 parties on the pages total. Any comments on that,

1 please?

2 MR. RUBIN: Commissioner Polmann, this is Ken
3 Rubin for FPL. No comments on the -- on the length
4 of the brief, and perhaps we will talk about this
5 when we get to the schedule, but I would note that
6 with the current timing of the due date for the
7 brief, which is just after the Thanksgiving week.
8 Thanksgiving is November 26th this year. We would
9 ask for an additional week in terms of submitting
10 the brief rather than on December 3rd, that we
11 would submit it December 10th. I just didn't know
12 if this was the appropriate place to raise that, or
13 when we speak about the schedule.

14 COMMISSIONER POLMANN: It doesn't matter if it
15 was appropriate or not, Mr. Rubin, I think you -- I
16 think you brought it up, so thank you for that.

17 We will note of that nobody is having
18 Thanksgiving this year because of our current
19 circumstances with the pandemic, so do you have any
20 other arguments you want to make on that -- on that
21 subject?

22 MS. COWDERY: Commissioner, staff --

23 COMMISSIONER POLMANN: I am just kidding. I
24 am just kidding.

25 So, Ms. Cowdery, do you want to address that

1 now or when we get to the scheduling?

2 MS. COWDERY: In order to keep to the
3 schedule, we are trying to, you know, have more
4 than an expedited decision on this, we need to have
5 the briefs in in a very, maybe shortened manner,
6 but December 3rd would be necessary in order to
7 then give staff to be able to make a decision
8 timely -- get a recommendation, if necessary, and
9 have a decision made by the Commission.

10 COMMISSIONER POLMANN: So all of this --
11 talking to Mr. Rubin -- you know, to some degree,
12 and not to be flip about it, to some degree, the
13 complexity of this case is going to depend on the
14 parties and how the Commission -- whether or not
15 the Commission is comfortable with a bench
16 decision, and whether or not the parties feel
17 compelled to file briefs is all up in the air. So
18 we don't know how this is going to go, but it comes
19 back to trying to -- trying to finish, as Ms.
20 Cowdery indicated, if the briefs come back on
21 December 3rd -- and again, not trying to force the
22 Commission on to a particular schedule, we are
23 still looking at a recommendation back to the
24 Commission -- I am just speculating, Ms. Cowdery.
25 I don't know if we have any projected calendar date

1 for recommendation back to the Commission. Perhaps
2 we do.

3 MS. COWDERY: I do not believe we do --

4 COMMISSIONER POLMANN: Do you have something
5 speculative on that?

6 MS. COWDERY: I do not believe we have
7 specific date at this time.

8 COMMISSIONER POLMANN: Yeah, okay.

9 So, Mr. Rubin, I think we are in a position
10 where acknowledging your concern, and I do. I do.
11 I think we just need a plan to -- plan to work
12 according to the schedule as it exists now. If
13 there is some opportunity to make an adjustment
14 here sometime over the next couple of weeks, we
15 will -- we will certainly take -- take your remark
16 into account. We need to review this with the
17 Chairman's office as to calendars, and I know staff
18 will be doing that, as we routinely do through the
19 holiday time period, and with COVID too, things are
20 going to be piling up right after the holidays.

21 So I appreciate your remark. I am
22 certainly -- (inaudible) -- your side. We will
23 certainly keep that in mind.

24 Any other comments from staff or the parties
25 on post-hearing procedures?

1 Okay. Ms. Cowdery, we are looking at opening
2 statements.

3 MS. COWDERY: Yes, Commissioner.

4 Staff recommends that the Prehearing Officer
5 make a ruling that opening statements, if any,
6 should not exceed five minutes per party unless any
7 party chooses to waive its opening statement.

8 COMMISSIONER POLMANN: Okay, this is fairly
9 standard, except in those cases where we have
10 extraordinary circumstances where we have subject
11 matter that the parties agree and the prehearing
12 officer decides that some additional time is
13 necessary, there have been occasions where we've
14 had many, many witnesses where we tried to reduce
15 the five minutes a little bit. So let me see if
16 the parties agree that five minutes is an
17 appropriate time for each of the witnesses. Do we
18 have comments on that, please?

19 MS. COWDERY: Commissioner, this is Kathryn
20 Cowdery again. What I am talking about is, like,
21 the opening statements of the lawyers, because in
22 this --

23 COMMISSIONER POLMANN: Oh, okay --

24 MS. COWDERY: -- we won't need any
25 summaries --

1 COMMISSIONER POLMANN: I am sorry.

2 MS. COWDERY: -- by the witnesses since it's
3 live testimony.

4 COMMISSIONER POLMANN: I am confused. I am
5 glad we have somebody who knows what we are talking
6 about.

7 Okay. Opening statements, what I just said is
8 the same thing, it just applies to people on the
9 phone presenting at hearing.

10 So opening statements for the parties, five
11 minutes.

12 MR. RUBIN: Commissioner Polmann, this is Ken
13 Rubin. We are fine with that.

14 COMMISSIONER POLMANN: Okay. Mr. Horton?

15 MR. HORTON: No comment.

16 COMMISSIONER POLMANN: I will take that as a
17 agreement to five minutes, and that will be up to
18 the Chairman if you -- if you keep talking beyond
19 five minutes, he will act accordingly at his
20 discretion. So my apologies for the confusion. We
21 are not used to having no prefiled testimony, so...

22 Other matters? Are there any other matters to
23 address in this prehearing conference, Ms. Cowdery?

24 MS. COWDERY: Staff is not aware of any other
25 matters from.

1 COMMISSIONER POLMANN: Okay. As I mentioned
2 earlier, can we do a quick review on schedule, and
3 I would like to just review rulings at this time,
4 what we have ruled and what we -- what we have
5 pending, if you have a summary. And I apologize, I
6 do not. And if we need some help from anybody else
7 on our side of the phone, let's see -- let's see if
8 we can get what we think is a comprehensive list,
9 please.

10 MS. LUKEN: Commissioner -- Commissioner
11 Polmann, this is Elysha Luken, and I apologize for
12 interjecting here, but is there --

13 COMMISSIONER POLMANN: Oh, no. Go ahead.

14 MS. LUKEN: Okay. Thank you.

15 And the reason I think I need to raise this is
16 because it appears to me that this may implicate
17 our client's due process rights, and I want to make
18 sure that we are being fully heard with respect to
19 FP&L's Contested Issue B, as in boy.

20 As we stated previously, we believe this is
21 already subsumed in Issue No. 2, and therefore, you
22 know, can be raised by FPL if they decide they want
23 to do it. However, in Mr. Horton's statements
24 previously, he advised that we would have some
25 counter issues to this Issue B were it to be

1 permitted, which we don't think it should be as a
2 stand-alone issue; but if it is going to be
3 allowed, we would like to articulate the two
4 counter issues that we would think would need to
5 also be included. And my understanding is if we do
6 not raise any other issues at this hearing, that we
7 are waiving those, and I -- I certainly don't want
8 to be in that position. So if I could just
9 articulate what those two issues are.

10 These are from our prior proposed issues that
11 we discussed at the issue identification meeting.
12 The first one is our Issue No. 10 from that
13 meeting, wherein we indicated the issue should be:
14 Whether FPL's failure to timely respond to Casa
15 Devon's inquiry to install solar panels on a
16 multi-unit housing complex using master metering
17 contributes to the violation of, quote, principles
18 of fairness, unquote, in the application of Rule
19 25-6.049 to Casa Devon's proposed solar energy
20 system.

21 And then our next issue that we would think
22 would need to be considered -- again, only if the
23 Commission is going to rule that Issue B should be
24 a stand-alone issue -- would be a modification of
25 our prior Issue 9, which is: Is FPL estopped from

1 claiming that Casa Devon failed to timely request a
2 waiver when FPL affirmatively provided incorrect
3 information to Casa Devon six months prior to Casa
4 Devon's entry into a contract with HUD.

5 COMMISSIONER POLMANN: Okay. That's been
6 heard on the record, and I -- I appreciate you
7 reminding me that that was mentioned by Mr. Horton,
8 I believe, if my recollection is correct, during
9 comments under Issue B.

10 So as I mentioned earlier, if you would
11 provide those counter issues, or additional issues
12 in the event that Issue B were to be included,
13 we'll take your proposed additional issues under
14 advisement as well, if you would provide those and
15 email them back to, Ms. Cowdery.

16 I would like to hear from Mr. Rubin for the
17 record. I suspect I may know FPL's position, but,
18 Mr. Rubin, if you would please comment on Ms.
19 Luken's proposed additional issues counter to your
20 Issue B?

21 MR. RUBIN: Yes, Commissioner Polmann. I will
22 try to be -- I will try to be brief on this.

23 COMMISSIONER POLMANN: That would be good.

24 MR. RUBIN: The time to raise these issues has
25 come and gone. Casa Devon was fully aware of FPL's

1 proposal for its Contested Issue B. Had they
2 chosen to submit their, what they are now
3 suggesting to be two additional issues, that should
4 have been done so that we would have been prepared
5 to argue. If they wanted to do that, they should
6 have been submitted for today's hearing. It's
7 just -- I mean, if they get to now submit two new
8 issues, does FPL get to submit additional new
9 issues?

10 The Commission process and procedure was
11 pretty clear in terms of when issues needed to be
12 submitted. We would have objections to their
13 issues from the perspective of them being
14 argumentative, assuming facts that had not been
15 established, and probably a number of other things,
16 but the time for doing that has come and gone, and
17 so respectfully, we would oppose that request by
18 Casa Devon.

19 COMMISSIONER POLMANN: Okay. Thank you for
20 those comments. I think that puts into the record
21 what we need. I will just leave it at that.

22 I don't know if you want to put that in
23 writing, Mr. Rubin, I will leave that to you. I
24 think it's on the record, but any way, whatever you
25 choose to do is fine.

1 In any regard, I'm taking -- taking those into
2 consideration as we address the remaining matters
3 that are under advisement.

4 Let me see. We are a little bit out of
5 sequence here. I would have thought that we had
6 addressed everything, but since we are in other
7 matters, let me just ask that we wrap up and
8 hopefully there is nothing else, but kind of in the
9 due process context, let me just ask, does any
10 party or staff have anything else you want to
11 address before we do a summary? And the summary
12 would be on schedule and matters that I need to
13 rule on. So anybody have anything else that they
14 want to bring forward, now would be the last
15 moment.

16 MS. COWDERY: Commissioner Polmann, I do want
17 to --

18 MS. LUKEN: Commissioner Polmann --

19 MS. COWDERY: -- point out that the order
20 establishing --

21 COMMISSIONER POLMANN: Who do we have? Okay.
22 I hear nothing from the parties, so I am going to
23 go to Ms. Cowdery.

24 Kathryn, go ahead.

25 MS. COWDERY: Oh, I was going to just say that

1 that the Order Establishing Procedure, I think,
2 gives the normal language that any issue not raised
3 by a party either before or during the prehearing
4 conference shall be waived. So I think that it was
5 appropriate to identify specific issues at this
6 time by Casa Devon.

7 COMMISSIONER POLMANN: Okay. I don't
8 disagree.

9 Okay. I hear nothing else from the parties,
10 Casa Devon or FPL, so I am going to close that
11 discussion, and we are on the summary as I had
12 requested from staff.

13 Ms. Cowdery, let's proceed with that. To the
14 extent that you are comfortable that you have
15 covered everything, that's fine. If any other
16 staff member has something to add to that, I will
17 hear from Ms. Cowdery first, and if any staff
18 members feels that we haven't addressed all of the
19 issues, I just want to make sure that to the extent
20 that we possibly can, that we have got the schedule
21 and remaining issues I need to rule on.

22 So, Ms. Cowdery, please proceed.

23 MS. COWDERY: Okay. Going through the
24 timeframe and the times that you requested, all
25 changes to any positions and all known witnesses

1 must be identified and submitted to me by tomorrow
2 by close of business, five o'clock, Tuesday,
3 November 3rd.

4 The discovery deadline, pursuant to the Order
5 Establishing Procedure, is November 10th, 2020.

6 The hearing exhibits are required to be
7 submitted pursuant to the Order Establishing
8 Procedure, on November 13th.

9 You have ruled that Contested Issue A will not
10 be included as it is subsumed in Issue 1.

11 You have taken Contested Issue B under
12 advisement. Also taken into account the additional
13 proposed issues by Casa Devon as part of that
14 consideration. And that Contested Issue C, you
15 will also take under advisement. And you made a
16 ruling that oral argument will be five minutes.

17 I think that is it.

18 COMMISSIONER POLMANN: I believe the -- I
19 apologize for my confusion, the five minutes
20 applies to the opening statement, is that --

21 MS. COWDERY: Correct.

22 COMMISSIONER POLMANN: -- is that correct?

23 MS. COWDERY: That is correct.

24 COMMISSIONER POLMANN: Okay.

25 MS. COWDERY: Oh, yes, I am sorry, opening

1 statement.

2 COMMISSIONER POLMANN: Yeah, we help each
3 other from being a little confused and being a
4 little more correct. So is there any question, any
5 remark from any party, or any additional
6 information to be added -- well, first, are the
7 parties clear on everything that Ms. Cowdery has
8 indicated concerning clarification that's required?

9 MR. RUBIN: Commissioner Polmann, the only
10 question I had, I thought during our earlier
11 discussion that there was a date by which the
12 parties would, I guess, identify final
13 identification of the witnesses they intended to
14 call. I may have been mistaken there, but I
15 thought that we discussed a date for that.

16 COMMISSIONER POLMANN: Okay, Ms. Cowdery,
17 could you -- could you also identify the discovery
18 deadline and the final list of witnesses due date?
19 There is a list of witnesses --

20 MS. COWDERY: Yes. All known witnesses --

21 COMMISSIONER POLMANN: -- that there are
22 potential -- yeah, go ahead.

23 MS. COWDERY: Yes. All known witnesses need
24 to be identified by tomorrow, November 3rd. Then
25 during the course of working with the parties and

1 trying to achieve stipulations as to exhibits that
2 may be entered into the record, it may be
3 determined that witnesses will be, you know, paired
4 off of the list and we will, after the -- after
5 November 13th, staff will prepare a prehearing --
6 draft prehearing order for the prehearing officer
7 that will include the final list of witnesses. So
8 that will be put together as part of the draft
9 prehearing order after all the exhibits have been
10 submitted to the Commission.

11 So the final list that we need to get for sure
12 is tomorrow, and that will have all the witnesses
13 that a party may be calling. That is tomorrow.
14 And we will see, you know, what kind of
15 stipulations we can enter into after that time.

16 COMMISSIONER POLMANN: Okay. So in order for
17 us to prepare the prehearing order, that will come
18 after close of discovery, after all of the exhibits
19 and the witnesses that you propose to include on
20 the list that will come to hearing, so that we
21 establish the order of witnesses and so forth; but
22 for tomorrow, we need all of the witnesses who may
23 participate. Anybody not on that list will be
24 excluded.

25 Okay, any other questions or comments with

1 regard to summary from Ms. Cowdery? And that will
2 include any other comments or anything else from
3 any other staff that we want to wrap up here,
4 please.

5 Okay. That's all -- I am sorry, anybody else?
6 All right. Hearing none, I believe we have
7 concluded today's business and prehearing for
8 Docket No. 20200175-EU. I have got 11:17 on my
9 clock, and hearing no other business, that will
10 conclude today's prehearing and adjourn this
11 meeting.

12 Thank you everybody for participating.

13 (Proceedings concluded.)

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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
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attorney or counsel connected with the action, nor am I
financially interested in the action.

DATED this 16th day of November, 2020.



DEBRA R. KRICK
NOTARY PUBLIC
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EXPIRES AUGUST 13, 2024