

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

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:
DOCKET NO. 20210001-EI
FUEL AND PURCHASED POWER
COST RECOVERY CLAUSE AND
GENERATING PERFORMANCE
INCENTIVE FACTOR.

_____ /

PROCEEDINGS: PREHEARING CONFERENCE
COMMISSIONERS
PARTICIPATING: COMMISSIONER ANDREW GILES FAY
PREHEARING OFFICER
DATE: Wednesday, October 13, 2021
TIME: Commenced: 1:00 p.m.
Concluded: 2:15 p.m.
PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida
REPORTED BY: ANDREA KOMARIDIS WRAY
Court Reporter and
Notary Public in and for
the State of Florida at Large

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

1 APPEARANCES:

2 MATTHEW R. BERNIER, STEPHANIE A. CUELLO,
3 ESQUIRES, 106 East College Avenue, Suite 800,
4 Tallahassee, Florida 32301-7740; and DIANNE M. TRIPLETT,
5 ESQUIRE, 299 First Avenue North, St. Petersburg, Florida
6 33701, appearing on behalf of Duke Energy Florida, LLC.

7 MARIA J. MONCADA, WADE R. LITCHFIELD, and
8 DAVID LEE, ESQUIRES, 700 Universe Boulevard, Juno Beach,
9 Florida 33408-0420, appearing on behalf of Florida Power
10 & Light Company.

11 BETH KEATING, ESQUIRE, Gunster, Yoakley &
12 Stewart, P.A., 215 South Monroe Street, Suite 601,
13 Tallahassee, Florida 32301-1839, appearing on behalf of
14 Florida Public Utilities Company.

15 RUSSELL A. BADDERS, Gulf Power Company, One
16 Energy Place, Pensacola, Florida 32520; and MARIA J.
17 MONCADA, WADE R. LITCHFIELD, DAVID LEE, ESQUIRES, 700
18 Universe Boulevard, Juno Beach, Florida 33408-0420,
19 appearing on behalf of Gulf Power Company.

20 JAMES D. BEASLEY, J. JEFFRY WAHLEN, and
21 MALCOLM N. MEANS, ESQUIRES, Ausley & McMullen, Post
22 Office Box 391, Tallahassee, Florida 32302, appearing on
23 behalf of Tampa Electric Company.

24

25

1 APPEARANCES (Continued):

2 RICHARD GENTRY, THE PUBLIC COUNSEL; CHARLES
3 REHWINKEL, DEPUTY PUBLIC COUNSEL; and PATRICIA A.
4 CHRISTENSEN, STEPHANIE MORSE, MARY WESSLING, ANASTACIA
5 PIRRELLO, ESQUIRES, Office of Public Counsel, c/o The
6 Florida Legislature, 111 West Madison Street, Room 812,
7 Tallahassee, Florida 32399-1400, appearing on behalf of
8 the Citizens of the State of Florida.

9 JON C. MOYLE, JR., and KAREN A. PUTNAL,
10 ESQUIRES, Moyle Law Firm, P.A., 118 North Gadsden
11 Street, Tallahassee, Florida 32301, appearing on behalf
12 of Florida Industrial Power Users Group.

13 JAMES W. BREW AND LAURA WYNN BAKER, ESQUIRES,
14 Stone Mattheis Xenopoulos & Brew, 1025 Thomas Jefferson
15 Street, NW, Eighth Floor, West Tower, Washington, DC
16 20007, appearing on behalf of White Springs Agricultural
17 Chemicals, Inc. d/b/a PCS Phosphate - White Springs.

18 PETER J. MATTHEIS and MICHAEL K. LAVANGA,
19 ESQUIRES, Stone Mattheis Xenopoulos & Brew, 1025 Thomas
20 Jefferson Street, NW, Eighth Floor, West Tower,
21 Washington, DC 20007, appearing on behalf of Nucor Steel
22 Florida, Inc.

23

24

25

1 APPEARANCES (Continued):

2 ROBERT SCHEFFEL WRIGHT, JOHN T. LAVIA, III,
3 and TIMOTHY J. PERRY, ESQUIRES, Gardner, Bist, Bowden,
4 Dee, LaVia, Wright, Perry & Harper, P.A., 1300
5 Thomaswood Drive, Tallahassee, Florida 32308, appearing
6 on behalf of the Florida Retail Federation.

7 SUZANNE BROWNLESS, ESQUIRE, FPSC General
8 Counsel's Office, 2540 Shumard Oak Boulevard,
9 Tallahassee, Florida 32399-0850, appearing on behalf of
10 the Florida Public Service Commission Staff.

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

16

17

18

19

20

21

22

23

24

25

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

2 COMMISSIONER FAY: All right. With that, we
3 will move on to the 01 docket. We've read the
4 notice for this, taken appearances.

5 So, Ms. Brownless, address our preliminary
6 matters.

7 MS. BROWNLESS: Yes, sir. Staff received a
8 revised prehearing statement from TECO on
9 October 8th, which appears to revise Issues 11 and
10 33. These revised positions are reflected on the
11 draft prehearing order that you received yesterday.
12 So, I just wanted to let you know that.

13 The next thing is we've received a notice of
14 intent to use a demonstrative exhibit from DEF.
15 And I'm going to ask Mr. Bernier to explain what
16 that is; give y'all an opportunity to think about
17 it.

18 MR. BERNIER: Sure. Happy to. Matt Bernier,
19 Duke Energy.

20 The purpose of the notice is to comply with
21 the OEP, the requirement that, by the prehearing
22 conference, you identify demonstrative
23 (unintelligible).

24 COMMISSIONER FAY: We're losing you. Just
25 pull your mic a little bit, Mr. Bernier. Thank

1 you.

2 MR. BERNIER: Is this better? I can shout.

3 So, what we were thinking about doing -- and I
4 do not know for a fact that we will actually do
5 it -- was to bring a picture of the control panel
6 that we've been asked about in discovery, just so
7 that we all have an idea of what we're talking
8 about during the hearing.

9 And that picture, or a very similar picture,
10 will be included in a discovery response that, I
11 believe, we're filing today -- I believe is the due
12 date, but that's the -- that's the idea.

13 COMMISSIONER FAY: Okay. Thank you. We're
14 put on notice. And that's consistent with the OEP,
15 so I appreciate that.

16 MR. BERNIER: Yes, sir.

17 MS. BROWNLESS: And this discovery response
18 would be their response to staff's fifth set of
19 interrogatories, No. 12A. And it has to do with
20 the CR4 December 20 -- 20th outage.

21 MR. MOYLE: And it's a picture of what or a
22 demonstration of what?

23 MR. BERNIER: It's the control panel that is
24 used to sync the unit to the grid that we've been
25 asked about in discovery by staff and, I believe,

1 OPC.

2 It may actually be 14A. If I put 12 in there,
3 it might be an error on my part, but I'll double-
4 check that and get it to you.

5 MS. BROWNLESS: No, it -- it really is 12A.

6 MR. BERNIER: Okay. Good. Thank you.

7 COMMISSIONER FAY: All right. Thank you for
8 that notice, Ms. Brownless. Satisfied that.

9 We'll move on to the prehearing draft order.

10 MS. BROWNLESS: Yes, sir.

11 COMMISSIONER FAY: Okay. Great. Thank you.

12 Just like the previous dockets, Case
13 Background, Conduct of Proceedings, and
14 Jurisdiction.

15 MS. BROWNLESS: I do want to make a note about
16 the Section IV, Procedure for Handling Confidential
17 Information.

18 COMMISSIONER FAY: Go ahead.

19 MS. BROWNLESS: In the prehearing order that
20 was circulated, we did not revise that section to
21 match Attachment A in the electronic-filing
22 procedure that we just discussed. And I just
23 wanted to make you aware that it will be revised to
24 match.

25 COMMISSIONER FAY: So, that final language of

1 the prehearing order won't include the red-folder
2 language in there, obviously.

3 Thank you. Thank you, Ms. Brownless.

4 Section V, Prefiled Testimony and Exhibits.

5 MS. BROWNLESS: Yes, sir. A time will need to
6 be set for witness summaries. And we would
7 recommend that that be set at three minutes.

8 COMMISSIONER FAY: Okay. Anything else?

9 MS. BROWNLESS: No, sir, not at this time.

10 COMMISSIONER FAY: Okay. Section VI, Order of
11 Witnesses.

12 MS. BROWNLESS: We are not aware of any
13 changes to the orders of witnesses at this time.

14 COMMISSIONER FAY: Great.

15 Are there any witnesses that we can -- be
16 excused?

17 MS. BROWNLESS: Well, we have been -- and I
18 will admit to this -- not too diligent in working
19 on stipulations, but we are now. And, as we get
20 those stipulations worked out, we'll be able to
21 notify every one of witnesses that can be excused.

22 COMMISSIONER FAY: Great. Thank you. I'm not
23 aware of anything else you're working on,

24 Ms. Brownless, so --

25 (Laughter.)

1 Thank you.

2 Yeah, and any other witnesses will be
3 stipulated.

4 So, we'll move on to Section VII, Basic
5 Positions -- any changes?

6 Section VIII, Issues and Positions.

7 MS. PIRRELLO: Commissioner?

8 COMMISSIONER FAY: Yes.

9 MS. PIRRELLO: OPC has extensive revisions
10 that we'd be happy to provide in writing by noon
11 tomorrow, or I can walk through them here, if
12 that's your preference.

13 COMMISSIONER FAY: Under the issues and
14 positions, you'll have different language?

15 It's up to you, if you want to present them,
16 but if you submit the language before tomorrow,
17 then we'll make sure they're in- -- those positions
18 are incorporated.

19 MS. PIRRELLO: We'll submit them in writing.

20 COMMISSIONER FAY: Okay. Any other parties?

21 MR. PERRY: Yeah, Commissioner, for Florida
22 Retail Federation, if our motion to intervene is
23 granted, we would like to be able to provide either
24 a prehearing statement or positions on the issues
25 by Friday, please.

1 COMMISSIONER FAY: Okay. I think that would
2 be appropriate.

3 So -- so, Ms. -- Ms. Brownless -- or maybe
4 this is for Ms. Helton. If intervention is
5 granted, they would be required to submit a
6 prehearing statement, thus including those
7 positions?

8 MS. BROWNLESS: Yes, sir.

9 COMMISSIONER FAY: Okay. And we'll address
10 that in the rulings, but I think Friday should be
11 fine, but let me -- we'll just look at that to make
12 sure that lines up.

13 I know the other parties would have time to --
14 or the rule allows them time to respond. I think
15 it allows them, actually, up to seven days, but
16 we'll look at that when we go to the rulings and
17 decide when that date will be.

18 MR. PERRY: Thank you.

19 COMMISSIONER FAY: Sure. Thank you.

20 Any other --

21 MR. LAVANGA: Commiss- --

22 COMMISSIONER FAY: Yes.

23 MR. LAVANGA: Just real -- real quick. We may
24 be reconsidering some of our positions --

25 COMMISSIONER FAY: Just pull -- pull your mic

1 a little bit closer to you. You've got to talk
2 right into it or the --

3 MR. LAVANGA: Got it.

4 I -- I was saying that -- we are -- we may
5 reevaluate our positions on a handful of the
6 questions, but if we do that, we will submit a
7 change in writing by tomorrow.

8 MS. BROWNLESS: And --

9 COMMISSIONER FAY: Okay. Great. Thank you.
10 Yes, Ms. Brownless, go ahead.

11 MS. BROWNLESS: May I just follow up with OPC?
12 You're saying that you have substantial
13 changes to the issues and positions that have been
14 listed?

15 MS. PIRRELLO: To our positions, yes.

16 MS. BROWNLESS: Yes, ma'am, okay, and that
17 you're going to get those to us in writing by noon
18 tomorrow?

19 MS. PIRRELLO: Yes. We would ask for more
20 time regarding Issue 2J, given that there is a
21 deposition pending on the 20th.

22 COMMISSIONER FAY: So -- yeah, and so, we
23 will -- Ms. Brownless, is this consistent with what
24 you're thinking?

25 I think we'll get to some of the specific

1 issues where, when we walk through those, you can
2 state on those your specific change or what -- or
3 what your position will be, at that time.

4 For the others, they would just be submitted
5 in writing, so you would have them. Does that make
6 sense?

7 MS. BROWNLESS: Right.

8 COMMISSIONER FAY: Okay. Great.

9 So, when we get to the -- and we're almost to
10 those, but when we get to those, you'll be able
11 to -- to state your change in the position on each
12 one of those.

13 Any other parties?

14 Yes, Mr. Moyle.

15 MR. MOYLE: Just -- just one point to make
16 crystal clear on the record, given that we have
17 spent a lot of time over the years advocating
18 against hedging.

19 FIPUG has said we adopt the position of OPC in
20 a number of places. And I think OPC, at one point
21 said, they support hedging, which I understand it
22 will be changed to they do not, but we don't want
23 to, by adopting OPC's position, be viewed as
24 supporting hedging in any way, shape, or form. So,
25 just want to make that clear for the record.

1 COMMISSIONER FAY: Okay. Noted for the
2 record. Thank you.

3 Any others?

4 Ms. Brownless, do you want to -- do you want
5 to read the language regarding the OEP and --

6 MS. BROWNLESS: Sure.

7 COMMISSIONER FAY: Yeah, go ahead.

8 MS. BROWNLESS: Let me just read what I'm
9 suppose to here. Okay. The OEP requires that each
10 party take a position at the prehearing conference,
11 unless good cause can be shown why they can't do
12 so.

13 If a party's position in the draft prehearing
14 order is listed as "no position at this time", that
15 party must change it today or show good cause why
16 it can't take a position. Absent a showing of good
17 cause, the prehearing order will reflect "no
18 position" for that party on that issue.

19 If parties have not taken a position or wish
20 to change a position, staff suggests they be
21 allowed to do so tomorrow by noon. And I think
22 that's what we've all agreed to here.

23 I want to mention that a "no position" on an
24 issue prohibits any party from cross-examining
25 witnesses with regard to those issues or briefing

1 those issues.

2 COMMISSIONER FAY: Great. Thank you.

3 So, now we'll move in the company-specific
4 issues. Do you want to just sort of lay out each
5 issue, Ms. Brownless?

6 MS. BROWNLESS: Sure.

7 COMMISSIONER FAY: And then I'll allow the
8 parties to address --

9 MS. BROWNLESS: Okay. Issue 1A -- as Jon has
10 mentioned, OPC's position on this issue has been
11 changed to "no." This change is reflected on the
12 prehearing statement that was provided to you
13 yesterday.

14 So, to the extent that your position,
15 Mr. Moyle, was agree with OPC, with this change,
16 does that square you up?

17 MR. MOYLE: I now really agree with them, yes.

18 COMMISSIONER FAY: Okay.

19 MS. BROWNLESS: All right.

20 COMMISSIONER FAY: Ms. Brownless, go ahead.
21 You can move on to the next one.

22 MS. BROWNLESS: Issue 1C. And my
23 understanding is that DEF would like to litigate
24 this issue this year, and that OPC does not wish to
25 do so.

1 I'd like to hear from OPC and DEF on whether
2 this item should be deferred or taken up this year.

3 COMMISSIONER FAY: Okay. Great.

4 Assuming those positions are still the -- the
5 same, I'll allow Duke to present their position,
6 and then OPC can do so.

7 MR. BERNIER: Thank you, Commissioner.

8 I guess our position is that this is an issue
9 regarding an outage that occurred this year. It
10 has been teed up in testimony. It has been the
11 subject of discovery. Everybody has had ample time
12 to take a look at it, and it is ripe for a decision
13 this year.

14 I don't -- I don't know why there's any reason
15 why it couldn't be adjudicated this year.

16 COMMISSIONER FAY: Okay. Thank you,
17 Mr. Bernier.

18 Office of Public Counsel?

19 MS. PIRRELLO: Our position is that this issue
20 should be deferred because there are extensive
21 other issues related to this outage, and we just
22 believe that it would be better taken up next year.

23 COMMISSIONER FAY: Okay. And I -- I think we
24 are -- there is still some discovery process going
25 on here. So, I think what I'll do for this is I

1 will -- I'll take this under advisement and then
2 include the decision for this in the -- the
3 prehearing order.

4 Ms. Brownless, does that make sense?

5 MS. BROWNLESS: Yes, sir, and --

6 MR. BERNIER: Commiss- -- Commissioner Fay, if
7 I may?

8 COMMISSIONER FAY: Yes, Mr. Bernier. Go
9 ahead.

10 MR. BERNIER: With all due respect, I'm not
11 really sure on what the other extensive discovery
12 is that needs to be done. Following the normal
13 cadence, this has been filed. It has been opened
14 for discovery for any party to ask any questions
15 they wanted to.

16 I'm -- I'm kind of at a loss as to why
17 additional time would be needed. Nobody has asked
18 for additional time. Nobody has filed any
19 additional discovery. I'm -- I'm kind of confused.

20 COMMISSIONER FAY: Yeah, well, Mr. Bernier,
21 there are issues where I believe it might take a
22 little more thought to put in a prehearing order
23 exactly what we should or shouldn't be doing as a
24 Commission. And so, we're going to take it under
25 advisement and then make that decision.

1 MR. BERNIER: Fair enough.

2 COMMISSIONER FAY: Thank you.

3 Ms. Brownless, next issue?

4 MS. BROWNLESS: Yes, sir, the next issue is
5 1E. And my understanding is that DEF and OPC
6 believe that this issue is not ripe for litigation
7 at this time and should be deferred.

8 And I'd just like to ask the parties -- the
9 other parties their position regarding that.

10 COMMISSIONER FAY: And the positions for Duke
11 and OPC are the same with that?

12 MR. BERNIER: Yes, sir.

13 COMMISSIONER FAY: Yes. Okay.

14 Any issues from other parties?

15 This is on 1E, correct, Ms. Brownless?

16 MS. BROWNLESS: Yes, sir.

17 MR. BREW: PCS agrees with OPC and DEF on
18 this.

19 COMMISSIONER FAY: Okay. With that,
20 Ms. Brownless, we would defer -- I'm not sure it's
21 exactly a deferral, but it won't be included as an
22 issue in this --

23 MS. BROWNLESS: Right. We'll just punt it --

24 COMMISSIONER FAY: This docket.

25 MS. BROWNLESS: -- to next year.

1 COMMISSIONER FAY: Yep. Great. Thank you.

2 Next is Issue 2J.

3 MS. BROWNLESS: Yes, sir. Issue 2J is the
4 issue that involves the North Florida Transmission
5 Line. And my understanding is that a deposition
6 will be held on October 20th, of Mr. Yupp, and that
7 OPC would like to wait until after that time to
8 take a position; is that correct?

9 MS. PIRRELLO: Yes, that's correct.

10 COMMISSIONER FAY: Okay.

11 MS. BROWNLESS: Is there anyone who has a
12 problem with that? Or how does Florida Power &
13 Light feel?

14 MS. MONCADA: That's fine.

15 COMMISSIONER FAY: Ms. Moncada, go ahead.

16 MS. MONCADA: We have no problem with waiting
17 until after the deposition for OPC to state its
18 position.

19 COMMISSIONER FAY: Okay. So, then, if we
20 allow for -- OPC, if we allow for noon on the
21 21st -- which would not require you to do it the
22 day of the deposition, but just to have it in the
23 next day so we could get the prehearing order out
24 on the 21st -- would that work?

25 MS. PIRRELLO: Yes, that's fine.

1 COMMISSIONER FAY: Okay. Great.

2 Ms. Brownless, 2K. Go ahead.

3 MS. BROWNLESS: Next issue is 2K. And my
4 understanding is that the Office of Public Counsel
5 and Florida Power & Light have also determined that
6 this issue should be deferred.

7 And does anyone have an objection to that?

8 COMMISSIONER FAY: Is this still the positions
9 of OPC and FPL?

10 MS. MONCADA: Yes.

11 MS. PIRRELLO: Yes.

12 COMMISSIONER FAY: And any other parties?

13 Nope. Okay.

14 Ms. Brownless.

15 MS. BROWNLESS: Okeydoke. And that squares us
16 up for that set of issues.

17 COMMISSIONER FAY: Okay. Then, what we'll do
18 next, Ms. Brownless, if it's okay with you, we'll
19 just move on to the contested issues for -- we'll
20 start with 1F.

21 MS. BROWNLESS: Okay.

22 COMMISSIONER FAY: So, I -- I guess to make it
23 easy, the two -- the two maybe you could address
24 together that the parties could, then, speak to
25 would be 1F and 1G?

1 MS. BROWNLESS: Yes, sir. And --

2 COMMISSIONER FAY: Okay.

3 MS. BROWNLESS: But if we could just quickly
4 go through the other issues and make sure there's
5 no --

6 COMMISSIONER FAY: Okay.

7 MS. BROWNLESS: -- other changes.

8 COMMISSIONER FAY: Sure. You want to walk
9 through each one?

10 MS. BROWNLESS: Sure. Generic fuel issues --
11 anybody got any problems with those?

12 Company-specific generating performance
13 incentive factor issues?

14 Generic generating performance incentive
15 factor issues, 16 and 17; fuel factor calculation
16 issues, 18 through 22; company-specific capacity
17 cost recovery factor, Issue --

18 COMMISSIONER FAY: Oh, Ms. Brownless, hold on
19 one quick second.

20 Go ahead, OPC. Ms. Pirrello.

21 MS. PIRRELLO: On Issue 19, OPC would be
22 willing to agree to a Type 1 stipulation. We agree
23 with FPL, FPUC, TECO, and DEF's positions.

24 MS. BROWNLESS: Okay.

25 MR. BREW: Commissioner?

1 COMMISSIONER FAY: Okay. Yes, Mr. Brew, go
2 ahead.

3 MR. BREW: Thank you.

4 I just actually have a clarifying question for
5 Duke, if I may, on Issue 10. Is the reference to
6 123- -- 123 million under-recovery -- is that for
7 2022?

8 COMMISSIONER FAY: Mr. Brew, are you
9 suggesting that number might be for the wrong year?

10 MR. BREW: No. No. The -- the question is
11 for 2022, and then there's a number, and then
12 there's a statement about the net true-up, which
13 applied, I think, for the prior period. So, I'm
14 just confused as to the dates and the number.

15 COMMISSIONER FAY: Okay. That's something --
16 you could potentially address that position, if
17 it's something you think may need to be addressed.
18 Otherwise, if you're comfortable and you can
19 confirm --

20 MR. BERNIER: I very much appreciate the extra
21 time to confirm that. I appreciate that.

22 COMMISSIONER FAY: Sometimes it's nice to have
23 extra time.

24 MR. BERNIER: Very much.

25 COMMISSIONER FAY: Thank --

1 MR. BERNIER: Sometimes.

2 COMMISSIONER FAY: Thank you, Mr. Bernier.

3 MR. BREW: Thank you. Appreciate it.

4 COMMISSIONER FAY: Yep. Sure. Thank you,
5 Mr. Brew.

6 Ms. Brownless, go ahead.

7 MS. BROWNLESS: And I just want to make sure
8 I've got OPC's statement about Issue No. 19
9 correct. And that is that you'd be willing to
10 enter into a Type 1 stipulation as stated by DEF?

11 MS. PIRRELLO: Yes, we would agree with all of
12 the companies.

13 MS. BROWNLESS: Okay.

14 MS. PIRRELLO: Also, if I may --

15 MS. BROWNLESS: Sure.

16 MS. PIRRELLO: On Issue 22, we would change
17 our position to simply "no position".

18 MR. MOYLE: And FIPUG should be a Type 2 on
19 Issue 19, not a Type 1.

20 COMMISSIONER FAY: Okay. So, Mr. Moyle, for
21 No. 19, you're saying it's a Type 2, FIPUG?

22 MR. MOYLE: That's -- that's right.

23 COMMISSIONER FAY: Even though their -- their
24 adoption is a Type 1.

25 MR. MOYLE: (Indicating.)

1 COMMISSIONER FAY: Gotcha.

2 MR. MOYLE: Correct.

3 COMMISSIONER FAY: Okay.

4 MR. BERNIER: Commissioner?

5 COMMISSIONER FAY: Yes.

6 MR. BERNIER: I appreciate --

7 COMMISSIONER FAY: Mr. Bernier.

8 MR. BERNIER: On -- back on Issue 10,

9 Mr. Brew, that is correct as stated.

10 MR. BREW: The 123 million refers to 2022.

11 MR. BERNIER: No. Excuse me. It refers to
12 2021 to be collected or refunded in 2022.

13 MR. BREW: Oh, okay. So, it's half of the
14 247.

15 MR. BERNIER: No, it's the 123 under the rate
16 mitigation plan.

17 MR. BREW: Okay.

18 COMMISSIONER FAY: Does that satisfy you,
19 Mr. Brew?

20 MR. BREW: Yes, sir.

21 COMMISSIONER FAY: Okay. So, then, we've
22 addressed 19.

23 And then, Ms. Pirello, you mentioned 21?

24 MS. PIRRELLO: 22, sir.

25 COMMISSIONER FAY: 22. Okay. And we've

1 addressed that by moving your -- your position to
2 "no position"?

3 MS. PIRRELLO: Yes.

4 COMMISSIONER FAY: Okay.

5 MS. BROWNLESS: Okay.

6 COMMISSIONER FAY: Ms. Brownless, do you have
7 those?

8 MS. BROWNLESS: Yes, sir. Thank you.

9 COMMISSIONER FAY: Okay. Sure. Go ahead.

10 MS. BROWNLESS: All right. So, now, we're at
11 Issues 23A through 24D, the company-specific
12 capacity cost recovery factors.

13 Okay. Generic capacity cost recovery factor,
14 Issues 27 through 33.

15 The effective date, Issue 34.

16 The tariff approval issue, Issue 5- -- 35.

17 And for Issue No. 36, that is, I thought,
18 based upon e-mails I received, a Type 1 stipulation
19 where everybody agreed to the exact language. Does
20 that sound right?

21 Mr. Moyle, is that --

22 MR. MOYLE: We would rather go Type 2.

23 MS. BROWNLESS: Okay.

24 COMMISSIONER FAY: Okay. Ms. Brownless, does
25 that address all the -- the --

1 MS. BROWNLESS: Well, we'll just have two
2 notations there: Type 1 for everybody except for
3 FIPUG; and, FIPUG --

4 COMMISSIONER FAY: Okay --

5 MS. BROWNLESS: -- Type 2. Sound good, Jon?

6 MR. MOYLE: Yeah, or you can just put "no
7 position" and it washes out that way.

8 MS. BROWNLESS: Okay.

9 COMMISSIONER FAY: Okay. Ms. Brownless, good?

10 MS. BROWNLESS: (Indicating.)

11 COMMISSIONER FAY: Sure. Go ahead.

12 MS. BROWNLESS: I'm --

13 COMMISSIONER FAY: No?

14 MS. BROWNLESS: And we will put the language
15 in there that we have been including for Type 2
16 stipulations and what it means, consistent with
17 what we've done in the past.

18 Is that going to be okay with OPC?

19 MS. PIRRELLO: Yes.

20 MS. BROWNLESS: Okay. Now --

21 COMMISSIONER FAY: Any- -- anymore before we
22 move on to 1F, 1G?

23 Mr. Rehwinkel?

24 MR. REHWINKEL: Yeah, I just w- -- I think

25 Ms. Pirrello, at the outset, said we were going to

1 send you an extensive list of revisions.

2 I just want to make it clear -- and we're
3 going to try to do that sooner rather than later
4 because there are people who depend on what we say
5 to know whether they're going to agree or take a
6 different position.

7 We have a lot of "no position" at this time.
8 We could take an interim position in opposition and
9 then enter into a Type 2, but what we're gonna do
10 is offer to facilitate a Type 2 and cut out the
11 middle step.

12 So, our "no positions" at this time are just
13 going to revert to an offer of facilitating a
14 Type 2 stipulation.

15 COMMISSIONER FAY: Okay. I -- I think the
16 Type 2 stipulation is -- is fairly clear at this
17 point as to how it's been used, and so, I think
18 what you're saying is you're not deviating from
19 that; you just perceive it as being one step
20 instead of two; is that --

21 MR. REHWINKEL: Right, because we're required,
22 under the rules, to take a position by noon, but we
23 just don't think it makes sense to take a position
24 and then go and do a Type 2 when we're gonna signal
25 to everybody we're going to facilitate a Type 2,

1 right.

2 MS. BROWNLESS: So --

3 COMMISSIONER FAY: Sure.

4 MR. REHWINKEL: Yeah.

5 COMMISSIONER FAY: And all the way up to the
6 hearing, you can, obviously, stipulate anything out
7 that might come up that you want to stipulate out.

8 MR. REHWINKEL: Yeah.

9 MS. BROWNLESS: So, Charles, I just want to
10 make sure I understand. Are you simply gonna have
11 your prehearing statement reflect "no position",
12 which will automatically trigger a Type 2?

13 MR. REHWINKEL: It -- I'll call you and
14 we'll -- whatever is the easiest way to do it.

15 MS. BROWNLESS: All right. We can work that
16 out.

17 MR. REHWINKEL: Yeah.

18 COMMISSIONER FAY: Anything else,
19 Mr. Rehwinkel?

20 Thank you.

21 Okay. Ms. Brownless?

22 MS. BROWNLESS: Just --

23 COMMISSIONER FAY: Sure.

24 MS. BROWNLESS: Okay. Now, we're to Issue 1F
25 and 1G.

1 COMMISSIONER FAY: All right. Go ahead,
2 Ms. Brownless, if you want to just --

3 MS. BROWNLESS: Sure.

4 COMMISSIONER FAY: -- sort of lay a foundation
5 for these.

6 MS. BROWNLESS: Yes, sir. These issues are
7 associated with the Bartow Unit 4 DOAH case that is
8 currently on appeal at the Florida Supreme Court.

9 My understanding is that oral argument has
10 been requested, but not yet been granted in this
11 case. Is that --

12 MR. BERNIER: If I may, it has been granted.

13 MS. BROWNLESS: It has been? Oh.

14 MR. BERNIER: It has been set for
15 December 7th, which is what I was going to bring up
16 as showing that it's not going to be ripe for a
17 decision in this docket. I don't like handicapping
18 what courts do at all, but I'm pretty sure they
19 won't render a decision that quickly.

20 MS. BROWNLESS: You're pretty sure there's no
21 bench decisions, sir?

22 MR. BERNIER: Fairly sure. It would be a
23 first, I think.

24 MS. BROWNLESS: And so, that's kind of where
25 we stand on that one. And based upon that

1 representation, I guess I would recommend that
2 these be deferred.

3 COMMISSIONER FAY: And then -- and just for
4 clarity, that -- that would the same case for PCS
5 Phosphate?

6 MR. BREW: Yes, sir.

7 COMMISSIONER FAY: Okay. All right.
8 Ms. Brownless, confirm both of those -- or we will
9 not include those in this -- this docket, I should
10 say.

11 Next we'll move on to Section -- any -- any
12 others, Ms. Brownless, or --

13 MS. BROWNLESS: No, sir, that's --

14 COMMISSIONER FAY: Okay. Any others from the
15 parties?

16 All right. With that, we'll move on to
17 Section IX, the Exhibit List.

18 MS. BROWNLESS: Staff has prepared a
19 comprehensive exhibit list which includes all
20 prefiled exhibits and also includes exhibits staff
21 wishes to introduce into the record.

22 Staff will work with the parties to determine
23 if there are any objections to the comprehensive
24 exhibit list or if any of staff's exhibits -- or
25 any objection to any of staff's exhibits being

1 entered into the record.

2 And, at this time, I wonder if y'all have had
3 an opportunity to look at it and if you have any
4 objections.

5 COMMISSIONER FAY: Any objections from the
6 parties?

7 MS. MONCADA: I -- I need more time. I'm
8 pretty sure that we have no objection. I can
9 probably let you know by tomorrow at noon.

10 MS. BROWNLESS: That would be lovely.

11 MS. MONCADA: Thank you.

12 COMMISSIONER FAY: Great. Thank you,
13 Ms. Moncada.

14 Section X, Proposed Stipulations.

15 MS. BROWNLESS: As we've discussed, there is a
16 proposed Type 1 stipulation for Issue 36, which is
17 the close-the-docket issue, and we'll recognize for
18 Mr. Moyle that he is a Type 2.

19 And we'll continue to work with all the
20 parties to reach stipulations on the outstanding
21 issues. If stipulations are entered into after the
22 prehearing order is issued, they will be provided
23 to all of the parties and the Commissioners prior
24 to hearing.

25 COMMISSIONER FAY: Great. Thank you.

1 Ms. Pirello?

2 MS. PIRRELLO: I would also like to note that
3 Tampa Electric and OPC have a proposed stipulation
4 on Issue 5B.

5 COMMISSIONER FAY: Ms. Brownless, do you have
6 that one?

7 MS. BROWNLESS: Let me see.

8 MS. PIRRELLO: Page 20.

9 MS. BROWNLESS: Okay. And what is the
10 stipulation?

11 COMMISSIONER FAY: Are you going to provide
12 the language for the specific stipulation between
13 TECO and --

14 MS. PIRRELLO: I believe the language is --

15 COMMISSIONER FAY: Yes?

16 MS. PIRRELLO: -- provided --

17 COMMISSIONER FAY: Go ahead.

18 MS. PIRRELLO: Yes.

19 MS. BROWNLESS: Okay. So, I see. It's
20 written on Page 20.

21 MS. PIRRELLO: Yes.

22 MS. BROWNLESS: And the stipulation is as
23 stated there.

24 MS. PIRRELLO: Yes.

25 MS. BROWNLESS: And, at this time, does

1 anybody have a problem with this? This would be a
2 Type 1 stipulation.

3 COMMISSIONER FAY: And that's consistent with
4 TECO's position?

5 MR. MEANS: Yes.

6 COMMISSIONER FAY: Okay.

7 MR. MEANS: I believe so.

8 COMMISSIONER FAY: Okay.

9 MS. BROWNLESS: Anybody else?

10 Mr. Moyle, you're "no position"; so, you're in
11 good shape.

12 MR. MOYLE: That's fine.

13 COMMISSIONER FAY: Okay.

14 MS. BROWNLESS: Okay. We will list that as a
15 Type 2 stipulation.

16 MS. MONCADA: Commissioner Fay --

17 COMMISSIONER FAY: We'll --

18 MS. MONCADA: -- and Ms. Brownless?

19 COMMISSIONER FAY: Go ahead, Ms. Moncada. Go
20 ahead.

21 MS. MONCADA: I can confirm we have no
22 objection to the list.

23 COMMISSIONER FAY: The exhibit list?

24 MS. BROWNLESS: The exhibit -- thank you.

25 MS. MONCADA: You're welcome.

1 COMMISSIONER FAY: Ms. Brownless, you ready
2 for Section XI?

3 MS. BROWNLESS: We're ready.

4 COMMISSIONER FAY: All right. Pending
5 motions, go ahead.

6 MS. BROWNLESS: Okay. DEF has filed an
7 unopposed motion to approve rate mitigation
8 agreement on September 3rd, 2021, in this docket
9 and in Docket Nos. 20210097-EI and 20210010-EI.

10 The unopposed motion has been assigned Docket
11 No. 20210158-EI, and has been set for a separate
12 hearing on November 2nd, 2021, prior to the
13 commencement of the final hearing in this docket.

14 So, although this is an outstanding motion in
15 this docket, my understanding is it will be
16 resolved in the 20210158 docket, so that we need to
17 take no action at this time.

18 COMMISSIONER FAY: Okay.

19 MS. BROWNLESS: Okay. Now, the next thing
20 that's happened is that a motion for intervention
21 has been filed by the Florida Retail Federation,
22 and it was filed yesterday.

23 I understand, from your previous comments,
24 that you would be willing to provide a statement of
25 your positions on the identified issues by Friday;

1 is that correct?

2 MR. PERRY: Yeah, that's correct.

3 MS. BROWNLESS: Does anyone, at this time,
4 object to the intervention? Because we all know
5 that the rules allow up to five days to file an
6 objection. Does anybody object?

7 COMMISSIONER FAY: Yeah, Ms. Brownless, I
8 think they have -- they have up to seven days to
9 respond to that --

10 MS. BROWNLESS: Yes.

11 COMMISSIONER FAY: -- to your point, but yeah,
12 assuming -- do any parties have any objection to
13 that intervention?

14 MR. MOYLE: FIPUG does not.

15 COMMISSIONER FAY: Okay. If not, I'd like to
16 go ahead and allow that -- grant that intervention
17 and we'll include that in the prehearing order,
18 Ms. Brownless.

19 MS. BROWNLESS: Yes, sir.

20 COMMISSIONER FAY: Thank you.

21 Now, let me know you're when you're ready and
22 we'll go to --

23 MS. BROWNLESS: I'm ready, now. Thank you.

24 COMMISSIONER FAY: All right. Section XII,
25 Confidentiality Orders.

1 MS. BROWNLESS: There are a bunch of pending
2 confidentiality orders at this time. And these
3 orders are now in the process of being written and
4 reviewed.

5 So, we're hoping to have all of those orders
6 issued by the time of the November 7th hearing.

7 COMMISSIONER FAY: Okay. Good with the
8 parties?

9 Section XIII, Post-hearing Procedures.

10 MS. BROWNLESS: I don't know if any parties
11 wish to file briefs or know whether they want to
12 file briefs at this time or not, but if the parties
13 agree to waive briefs, the Commission may make a
14 bench -- a bench decision; however, if not, then we
15 would suggest that briefs be limited to 40 pages,
16 be due on November 15th, and that they be taken up
17 at the December 7th agenda conference.

18 COMMISSIONER FAY: Any objections from the
19 parties?

20 MS. BROWNLESS: The last thing we would ask is
21 that opening statements, if any, should not exceed
22 three minutes per party. And that would be our
23 recommendation, unless you choose to waive your
24 opening statement.

25 COMMISSIONER FAY: Any objections?

1 Mr. Brew, go ahead.

2 MR. BREW: I was just going to give all my
3 time to Mr. Moyle.

4 (Laughter.)

5 COMMISSIONER FAY: Very kind of you.

6 So, we'll set those at three minutes,

7 Ms. Brownless?

8 MS. BROWNLESS: Yes, sir.

9 COMMISSIONER FAY: Thank you.

10 Any other matters?

11 MS. BROWNLESS: Not that I'm aware, no, sir.

12 COMMISSIONER FAY: Any other issues from the
13 parties?

14 With that, we will adjourn the -- the 01
15 docket. And that -- that concludes our hearings
16 for today -- thank you.

17 Oh, I apologize. Mr. Brew. Mr. Brew, I think
18 you just like doing that when I get to the end.

19 MR. BREW: Just to be clear, we've covered it
20 before, but with respect to Attachment A and this
21 order, we repeat the objection that we gave
22 earlier.

23 COMMISSIONER FAY: Noted. Thank you,

24 Mr. Brew.

25 All right. That concludes these hearings.

1 Thank you.

2 (Docket concluded.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, ANDREA KOMARIDIS WRAY, 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 27th day of October, 2021.



ANDREA KOMARIDIS WRAY
NOTARY PUBLIC
COMMISSION #HH 089181
EXPIRES February 9, 2025