

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. 20220048-EI

Review of Storm Protection Plan,
pursuant to Rule 25-6.030, F.A.C.,
Tampa Electric Company.

_____ /

DOCKET NO. 20220049-EI

Review of Storm Protection Plan,
pursuant to Rule 25-6.030, F.A.C.,
Florida Public Utilities Company.

_____ /

DOCKET NO. 20220050-EI

Review of Storm Protection Plan,
pursuant to Rule 25-6.030, F.A.C.,
Duke Energy Florida, LLC.

_____ /

DOCKET NO. 20220051-EI

Review of Storm Protection Plan,
pursuant to Rule 25-6.030, F.A.C.,
Florida Power & Light Company.

_____ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS
PARTICIPATING: COMMISSIONER MIKE LA ROSA

DATE: Thursday, July 21, 2022

TIME: Commenced: 1:00 p.m.
 Concluded: 2:51 p.m.

1 PLACE: Betty Easley Conference Center
Room 148
2 4075 Esplanade Way
Tallahassee, Florida

3
4 REPORTED BY: DEBRA R. KRICK
Court Reporter

5

6

7

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

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 APPEARANCES:

2 J. JEFFREY WAHLEN and MALCOLM N. MEANS,
3 ESQUIRES, Ausley Law Firm, Post Office Box 391,
4 Tallahassee, Florida 32302; appearing on behalf of Tampa
5 Electric Company (TECO).

6 BETH KEATING, ESQUIRE, Gunster Law Firm, 215
7 South Monroe Street, Suite 601, Tallahassee, Florida
8 32301; appearing on behalf of Florida Public Utilities
9 Company (FPUC).

10 MATTHEW R. BERNIER and STEPHANIE A. CUELLO,
11 ESQUIRES, 106 E. College Avenue, Suite 800, Tallahassee,
12 Florida 32301; appearing on behalf of Duke Energy
13 Florida, LLC (DEF).

14 CHRISTOPHER T. WRIGHT, ESQUIRE, 700 Universe
15 Boulevard, Juno Beach, Florida 33408-0420; appearing on
16 behalf of Florida Power & Light Company (FPL).

17 RICHARD GENTRY, PUBLIC COUNSEL; CHARLES J.
18 REHWINKEL, STEPHANIE MORSE, PATTY CHRISTENSEN, and MARY
19 WESSLING, ESQUIRES, OFFICE OF PUBLIC COUNSEL, c/o The
20 Florida Legislature, 111 West Madison Street, Room 812,
21 Tallahassee, Florida 32399-1400; appearing on behalf of
22 the Citizens of the State of Florida (OPC).

23

24

25

1 APPEARANCES CONTINUED:

2 JON C. MOYLE, JR. and KAREN A. PUTNAL,
3 ESQUIRES, Moyle Law Firm, 118 North Gadsden Street,
4 Tallahassee, FL 32301; appearing on behalf of Florida
5 Industrial Users Group (FIPUG).

6 JAMES W. BREW and LAURA W. BAKER, Stone Law
7 Firm, 1025 Thomas Jefferson Street NW, Suite 800 West
8 Washington, DC 20007; appearing on behalf of Florida
9 White Springs Agricultural Chemicals, Inc., d/b/a PCS
10 Phosphate - White Springs (PCS).

11 PETER J. MATTHEIS, MICHAEL K. LAVANGA, and
12 JOSEPH R. BRISCAR, ESQUIRES, Stone Mattheis, Xenopoulos
13 & Brew, 1025 Thomas Jefferson Street, NW, Suite 800
14 West, Washington, DC 20007; appearing on behalf of Nucor
15 Steel (NUCOR).

16 GEORGE CAVROS, ESQUIRE, 120 E. Oakland Park
17 Boulevard, Suite 105, Fort Lauderdale, Florida 33334;
18 appearing on behalf of Southern Alliance for Clean
19 Energy (SACE).

20 STEPHANIE U. EATON, ESQUIRE, 110 Oakwood
21 Drive, Suite 500, Winston-Salem, North Carolina 27103,
22 and DERRICK PRICE WILLIAMSON and STEVEN W. LEE,
23 ESQUIRES, 1100 Bent Creek Boulevard, Suite 101,
24 Mechanicsburg, Pennsylvania 17050, appearing on behalf
25 of Walmart Inc. (Walmart).

1 APPEARANCES CONTINUED:

2 WALT TRIERWEILER and JACOB IMIG, ESQUIRES,
3 FPSC General Counsel's Office, 2540 Shumard Oak
4 Boulevard, Tallahassee, Florida 32399-0850, appearing on
5 behalf of the Florida Public Service Commission (Staff).

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

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

P R O C E E D I N G S

COMMISSIONER LA ROSA: I appreciate everyone's patience, and I think we are ready to get going.

So good afternoon. Today is July 21st, 2022. A little bit after one o'clock, and we will go ahead and call this prehearing conference to order.

Mr. Trierweiler, will you please read the notice?

MR. TRIERWEILER: By notice issued on July 5th, 2022, this time and place has been set for a prehearing conference in Dockets No. 20220048, 49, 50 and 51. The purpose of the hearing is more fully set out in the notice.

COMMISSIONER LA ROSA: Excellent. Thank you. Let's move on to appearances.

MR. TRIERWEILER: Staff notes that there are four dockets today in this consolidated proceeding. Staff suggests that all appearances be taken at once. All parties should enter their appearance and declare their dockets that they are entering an appearance for. After the parties have made their appearances, staff will make theirs.

COMMISSIONER LA ROSA: Excellent.

We will now take appearances, beginning with Tampa Electric Company.

1 MR. MEANS: Good afternoon, Commissioner.
2 Malcolm Means with the Ausley McMullen Law Firm
3 appearing on behalf of Tampa Electric in Docket No.
4 20220048.

5 Thank you.

6 COMMISSIONER LA ROSA: Florida Public
7 Utilities Company.

8 MS. KEATING: Good afternoon, Commissioner.
9 Beth Keating with the Gunster Law Firm here on
10 behalf of Florida Public Utilities in Docket
11 20220049.

12 COMMISSIONER LA ROSA: Thank you.
13 Duke Energy of Florida?

14 MS. CUELLO: Good afternoon. Stephanie Cuello
15 on behalf of Duke Energy Florida. And I would also
16 like to make an appearance for Matt Bernier in
17 Docket 20220050.

18 COMMISSIONER LA ROSA: Thank you.
19 Florida Power & Light.

20 MR. WRIGHT: Good afternoon, Commissioner.
21 Christopher Wright on behalf of Florida Power &
22 Light in the 51 docket.

23 COMMISSIONER LA ROSA: Thank you.
24 Office of Public Counsel.

25 MR. REHWINKEL: Thank you. Good afternoon,

1 Commissioner. Charles Rehwinkel and Richard
2 Gentry, the Public Counsel, in all dockets. In the
3 48 docket, Mary Ali Wessling. In the 49 docket,
4 Patty Christensen. In the 50 docket, Charles
5 Rehwinkel. And in 51, the FPL docket, Stephanie
6 Morse and Charles Rehwinkel.

7 COMMISSIONER LA ROSA: Thank you.

8 Florida Industrial Power Users Group. FIPUG.

9 MR. MOYLE: Thank you, Mr. Chair. Jon Moyle
10 on behalf of the Florida Industrial Power Users
11 Group. I would like to enter an appearance for
12 Karen Putnal with our firm as well. And we are
13 appearing and representing FIPUG, as my client is
14 commonly known, in the 48 docket, the 50 docket and
15 the 51 docket.

16 COMMISSIONER LA ROSA: Excellent. Thank you.

17 PCS Phosphate.

18 MR. BREW: Good morning, Commissioner. For
19 White Springs Agriculture Chemicals, I am James
20 Brew. I would like to note an appearance as well
21 for Laura Wynn Baker, and we are appearing in the
22 50 docket.

23 COMMISSIONER LA ROSA: Thank you.

24 Nucor Steel.

25 MR. BRISCAR: Good afternoon, Commissioner.

1 Joseph Briscar with the law firm Stone Mattheis,
2 Xenopoulos & Brew, on behalf of Nucor. I would
3 like to enter an appearance for Peter Mattheis and
4 Michael Lavanga in Docket 20220050.

5 COMMISSIONER LA ROSA: Excellent. Thank you.
6 Southern Alliance for Clean Energy.

7 MR. CAVROS: Good afternoon, Commissioner.
8 George Cavros on behalf of Southern Alliance for
9 Clean Energy in the 20220051 docket.

10 COMMISSIONER LA ROSA: Thank you.
11 Walmart.

12 MS. EATON: Hi. Stephanie Eaton appearing on
13 behalf of Walmart in the dockets 48, 50 and 51.

14 COMMISSIONER LA ROSA: Great. Thank you.
15 Commission staff.

16 MR. TRIERWEILER: Walt Trierweiler and Jacob
17 Imig for Commission staff.

18 MS. HELTON: And Mary Anne Helton is here as
19 your Advisor in all of the dockets. I would also
20 like to enter an appearance for your General
21 Counsel, Keith Hetrick.

22 COMMISSIONER LA ROSA: Excellent. Thank you
23 to all.

24 Mr. Trierweiler, are there any other
25 preliminary matters we need to address before we

1 get to the draft prehearing order?

2 MR. TRIERWEILER: Yes, Commissioner.

3 OPC has identified four issues that it wants
4 to revise and five newly proposed issues for
5 inclusion in these dockets that are contested by
6 the parties. Staff recommends that we address
7 these matters when we get to Section VII, Issues
8 and Positions, of the draft prehearing order in the
9 contested issues section.

10 Staff has no other matters at this time.

11 COMMISSIONER LA ROSA: And agreed. We'll
12 address the contested issues at the appropriate
13 time in the review of the draft prehearing order.

14 Does any other parties have any preliminary
15 matters they wish to address? Seeing none, let's
16 go through the draft prehearing order now.

17 I will identify sections, and I want the
18 parties to let me know if you have any corrections
19 or changes that ultimately need to be made. We may
20 go quickly through some of these sections, so
21 please speak up if you have any changes or
22 corrections.

23 Start with Section 1, case background. Seeing
24 none.

25 Section II, conduct and proceedings. Seeing

1 none.

2 Section III, jurisdiction. Seeing none.

3 Section IV, procedural for handling of
4 confidential information. Seeing none --

5 MR. TRIERWEILER: I am sorry. Staff notes --
6 and this is a change. Due to some software upgrade
7 that we are participating in, if you intend to use
8 confidential material at the hearing, please have
9 copies for the Commissioners, necessary staff and
10 the court reporters in red envelopes clearly
11 marking the nature of the contents.

12 Any party wishing to examine the confidential
13 material that is not subject to an order granting
14 confidentiality shall be provided a copy in the
15 same fashion as provided to the Commissioners
16 subject to the execution of any appropriate
17 proprietary protective agreement with the owner of
18 the material.

19 COMMISSIONER LA ROSA: Thank you for bringing
20 that up I had it in mind. Seeing no other
21 changes --

22 MR. REHWINKEL: Commissioner.

23 COMMISSIONER LA ROSA: Yes, sir.

24 MR. REHWINKEL: Charles Rehwinkel. I am kind
25 of curious as to what the change was there. It was

1 obscure to me.

2 COMMISSIONER LA ROSA: Staff, your --

3 MS. HELTON: May I address this that?

4 COMMISSIONER LA ROSA: Please.

5 MS. HELTON: It's not really a change. We are
6 kind of reverting back from digital exhibits
7 temporarily. We are in the process of vetting and
8 negotiating with a vendor so that we can have
9 digital exhibits at the hearing, but that process
10 is taking much longer than I had ever envisioned.
11 We hope to be there soon -- sooner rather than
12 later, but we are not there yet.

13 MR. REHWINKEL: Okay. Understood. I -- so we
14 are -- we are only providing paper. There is not
15 going to be a hybrid of paper and electronic?

16 MS. HELTON: Exactly.

17 MR. REHWINKEL: Okay. Thank you,
18 Commissioner.

19 COMMISSIONER LA ROSA: Awesome.

20 MR. TRIERWEILER: I would like to point out,
21 though, that the nonconfidential materials will be
22 parked on the T drive as normal according to the
23 clerk.

24 MS. HELTON: That is actually not the case.

25 That has not been -- we will have paper throughout.

1 Thank you.

2 COMMISSIONER LA ROSA: Paper on everything?

3 MR. TRIERWEILER: I simply meant if you wanted
4 to see it there, but that's not where we will be
5 taking evidence or exhibits?

6 COMMISSIONER LA ROSA: Okay. I think we
7 are --

8 MR. MOYLE: Clarification if I could, Mr.
9 Chair?

10 COMMISSIONER LA ROSA: Go ahead. You are
11 recognized.

12 MR. MOYLE: Essentially what I understand is,
13 is if we have an exhibit and it's confidential,
14 like we did previously, and it would be in a red
15 folder and you would have copies for everybody. If
16 it's a cross exhibit and it's not confidential,
17 then just bring copies for everybody, and that's
18 how we are going to handle it?

19 MS. HELTON: Yes. And I think that Mr.
20 Trierweiler is about to explain to you that we
21 would appreciate those paper copy exhibits being
22 collated and ready to go when each witness takes
23 the stand.

24 COMMISSIONER LA ROSA: Any other questions
25 relating to Section IV?

1 All right. We will go on to Section V,
2 prefiled testimony and exhibits, the witnesses, I
3 know we have a little bit there from staff.

4 MR. TRIERWEILER: Witness summary testimony.
5 Staff suggests that the witness summary testimony
6 be no longer than three minutes. If a witness has
7 filed both direct and rebuttal testimony, staff
8 recommends that he or she receive three minutes for
9 both direct and three minutes for rebuttal.

10 Cross-examination exhibits. For the purposes
11 of this hearing, the parties shall use paper copies
12 of exhibits. Each party shall bring 25 paper
13 copies of each nonconfidential cross-examination
14 exhibit they plan to proffer.

15 The parties must also provide 25 paper copies
16 of all confidential exhibits to be used during
17 cross-examination in red folders with the
18 confidential information highlighted in yellow.

19 Prior to each witness taking the stand,
20 parties must provide Commission staff with collated
21 copies of their cross-examination exhibits for
22 distribution to the parties and hearing
23 participants.

24 COMMISSIONER LA ROSA: Any more questions or
25 concerns on that? Okay. Seeing none, the parties'

1 witnesses will have three minutes each to present
2 their direct and three minutes for their rebuttal.
3 OPC witnesses will have five minutes for their
4 direct and five minutes for their rebuttal?

5 MR. REHWINKEL: Can I -- just so I understand.
6 This gets to kind of how we are going to conduct
7 the hearing.

8 COMMISSIONER LA ROSA: Uh-huh.

9 MR. REHWINKEL: So is the order of witnesses
10 the way that testimony will be presented? So you
11 will have each -- so you will have the four
12 companies and go and present their testimony?

13 COMMISSIONER LA ROSA: It's my understanding.
14 Mr. Trierweiler?

15 MR. TRIERWEILER: That's correct.

16 MR. REHWINKEL: And then the Public Counsel
17 has filed four sets of expert testimony by Mr.
18 Kollen and four by Mr. Mara. Is -- and -- and some
19 of the issues raised by the Mr. Mara especially
20 differ by company; some of Mr. Kollen's do, but
21 less.

22 Is -- is each -- I am just trying to get at
23 whether Mr. Mara gets up and gives his summary for
24 48, and he does it for 49, and he does it for 50,
25 and then he does it for 51, is that what's

1 contemplated?

2 MR. TRIERWEILER: That's what's contemplated.

3 MR. REHWINKEL: Okay. So it's not five
4 minutes for all four companies. It's five minutes
5 per docket?

6 MR. TRIERWEILER: No. It is -- it's five
7 minutes. If you would like to make a request, but
8 it was five minutes is what we had planned.

9 COMMISSIONER LA ROSA: Yeah, the intention is
10 five minutes in total.

11 MR. REHWINKEL: He couldn't hardly get his
12 name out. I mean, in all due respect,
13 Commissioner, I believe that's not fair. Each
14 utility is responsible for their own cubby hole.
15 They put their case on. We have to -- since the
16 case is consolidated, we have to put on for four
17 different companies. And for -- for the witness to
18 talk about -- to summarize their testimony in five
19 minutes for four companies, I believe puts that one
20 point to five minutes per company. I just -- I
21 don't -- I just don't think that works.

22 COMMISSIONER LA ROSA: Mary Anne?

23 MS. HELTON: I agree with Mr. Rehwinkel, that
24 I think that five minutes is probably not
25 sufficient for him to address -- for his witnesses

1 to address summaries for all four companies. I
2 think that he has made a rational reason to provide
3 extra time for his witnesses to give an expanded
4 summary that would address all four companies when
5 he takes -- first takes the stand.

6 So I don't know if seven minutes, eight
7 minutes, would that be enough for -- because I
8 think there is some -- it's my understanding there
9 is some common ground. I mean, there are some
10 differences between each utility.

11 COMMISSIONER LA ROSA: Correct. I mean, there
12 is -- there is an overlap. Is there a timeframe
13 that you are suggesting?

14 MR. REHWINKEL: Quite frankly, until we got
15 here, I didn't consider that that was going to be
16 the option, so I don't -- I don't know. We would
17 have to probably huddle and talk about that. It --
18 I just don't want to have a number.

19 COMMISSIONER LA ROSA: Okay.

20 MR. REHWINKEL: I mean, each utility is going
21 to get six minutes to beat up on our guy, so to
22 speak, and, you know -- and I don't mean it that
23 way, I am just -- so I think there has -- there has
24 got to be a balance here. We hadn't really parsed
25 out whether -- I mean, if there is some novel

1 issues with the smallest company that might need a
2 little extra attention. So I just don't know.

3 Commissioner, if -- if we could, on a break or
4 something, huddle, or if we -- if we had some time
5 to get back to you before you made a ruling on it
6 in the order, we would appreciate a little bit
7 of --

8 COMMISSIONER LA ROSA: Okay. So I am going to
9 suggest eight minutes. I will rule on that, but I
10 would like it to be at eight minutes if we could.
11 We will take a break at some point and -- and we
12 will come back and readdress it then, is that fair
13 enough?

14 MR. REHWINKEL: Sure. Thank you.

15 COMMISSIONER LA ROSA: Any other questions,
16 concerns?

17 MR. MOYLE: This isn't really my issue, but
18 just from a process standpoint, I am curious as to
19 whether -- maybe it's the preference of the OPC --
20 whether the first witness gets up and whether the
21 OPC witness gets up right behind him and says,
22 well, he says this, and that's not right because of
23 that, and then does that four times, or whether OPC
24 just waits until the very end after all four go and
25 then say, okay, now you are going to hear from our

1 person for eight minutes. I mean, I think that's
2 probably, I guess whatever OPC wants to handle it,
3 but I think it's something that should be probably
4 thought of before we are calling the witnesses to
5 the stand.

6 COMMISSIONER LA ROSA: Okay. Well, I will
7 note that and we will come back in a few.

8 Any other questions or thoughts, concerns?
9 None.

10 Are there any witnesses that can be
11 stipulated?

12 MR. TRIERWEILER: There are no stipulations at
13 this time.

14 MR. WRIGHT: Commissioner La Rosa, Chris
15 Wright on behalf of Florida Power & Light. I would
16 like to go on the record that Florida Power & Light
17 is willing to waive cross of OPC's witnesses and,
18 subject to our pending motion to strike, happy to
19 stipulate their testimony and exhibits into the 51
20 docket.

21 COMMISSIONER LA ROSA: Okay. Anybody else?

22 Given the number of documents and the wealth
23 of information a week to get through the hearing, I
24 would encourage that the parties certainly take a
25 look and appreciate that, already noted, whether

1 any witnesses can be stipulated, that would be
2 great, if possible.

3 Do parties have -- we will move on now to
4 basic positions. Do the parties have any changes
5 to their basic positions? Seeing none. None.

6 We will now move on to issues, which I can
7 take up in numerical order before discussing the
8 contested issues.

9 MR. TRIERWEILER: Commissioner, if I could
10 just backtrack a little bit, encouraging
11 stipulations, further stipulations of witnesses --
12 and thank you, FPL, for the proffer.

13 If the parties advise staff of any witnesses
14 that they have stipulations for in the docket,
15 staff will confirm with the Commissioners that any
16 identified witness can, indeed, be excused before
17 they are excused, and I will work with counsel on
18 that issue.

19 If Commissioners do not have any questions of
20 the witnesses sought to be excused, the witnesses
21 may be excused from the hearing and his or her
22 testimony and exhibits entered into the record at
23 the hearing as though read.

24 Now moving on to contested issues.

25 COMMISSIONER LA ROSA: Yes.

1 MR. TRIERWEILER: Yes, Commissioner, OPC has
2 raised four revised issues and five proposed
3 issues. But before we get to that, I would like to
4 read this announcement that counsel are well
5 familiar with.

6 There are parties who have not taken a
7 position on some of these issues, and staff would
8 note, as captured in the OEP, that each party is
9 required to take a position at the prehearing
10 conference unless good cause is shown as to why
11 that party cannot take a position at this time.

12 Accordingly, if a party's position in the
13 draft prehearing order is currently no position at
14 this time, that party must change its position, or
15 show good cause why it cannot take a position.

16 Staff will also suggest that the parties who
17 have not yet taken a position, or wish to change
18 their position, be allowed to submit their position
19 in writing no later than the close of business
20 tomorrow, July 22nd.

21 If a party pales -- I am sorry. If a party
22 fails to take a position by that time, the
23 prehearing order will reflect no position for that
24 party for such issue.

25 COMMISSIONER LA ROSA: Are all the parties in

1 agreement? Seeing a bunch of nods, I am assuming
2 yes.

3 Mr. Trierweiler, are there any contested
4 issues?

5 MR. REHWINKEL: Commissioner, before you get
6 to the contested issues, the Public Counsel, in
7 considering the motion to strike and responding to
8 it, and preparing for oral argument here today on
9 the motion, we have considered the staff's advice
10 on the issues that they had given earlier, and we
11 are willing to drop our wording changes on the --
12 the staff's issues -- I call it the staff's issues,
13 the ones they proposed -- so that you don't have to
14 render a decision on that today. On our proposed
15 Issues A, B and C, likewise, we are willing to
16 concede that those issues are subsumed in the
17 docket.

18 That leaves Issues D and E, which the
19 contention is that they are more appropriately
20 dealt with in the CRC, or the Cost Recovery Clause
21 aspect of the Storm Protection Plan.

22 We would ask you to consider this, which is,
23 is to hold ruling on those in abeyance until after
24 you hear our argument on -- in response to the
25 motion to strike so that you don't have to deal

1 with it right now. There may be some efficiency in
2 listening to our argument on the motion so you only
3 have to hear it once. And we would suggest that
4 the resolution there is something that we would --
5 that we propose in our response, if that makes
6 sense.

7 COMMISSIONER LA ROSA: Yeah, and I -- I
8 appreciate the suggestion. I want to get with
9 staff, because this would then change a few things,
10 so if you just maybe give me five minute --

11 MR. REHWINKEL: Sure.

12 COMMISSIONER LA ROSA: -- let me -- let me
13 chat with them.

14 MR. REHWINKEL: Okay. Mr. Trierweiler, did
15 you understand?

16 MR. TRIERWEILER: I did.

17 MR. REHWINKEL: Okay.

18 MR. TRIERWEILER: And do you want the five
19 minutes or do you want our recommendation?

20 COMMISSIONER LA ROSA: Let's chat for five
21 minutes and go from there. We will be back in
22 five.

23 (Brief recess.)

24 COMMISSIONER LA ROSA: Thank you.

25 MR. REHWINKEL: I was hoping to save time.

1 COMMISSIONER LA ROSA: No. No. No. No. I
2 think we are getting there.

3 So then let me start with this: Did you have
4 a chance to discuss, in the little extended time we
5 had, the timing for summaries with -- with your
6 folks?

7 MR. REHWINKEL: Yes, Commissioner. We would
8 ask that we be given an aggregate per witness of
9 Kollen and Mara of 10 minutes that we are allowed
10 to -- he can -- they can allocate more or less --
11 they can make that disaggregation between dockets
12 at their discretion based on the emphasis that they
13 want to put on various points in their testimony.

14 COMMISSIONER LA ROSA: Okay. So 10 minutes is
15 what you are asking for?

16 MR. REHWINKEL: Yes, sir.

17 COMMISSIONER LA ROSA: Okay. And that's fine.
18 So -- so let the record show 10 minutes.

19 MR. REHWINKEL: Thank you.

20 COMMISSIONER LA ROSA: And then let's move on
21 -- and I know we just had a sidebar discussion, but
22 do you mind clearing on the record, just clarifying
23 your request to make sure we are all on the same
24 page?

25 MR. REHWINKEL: Yes.

1 So what the Public Counsel proposes, staff has
2 advised that our wordings on the various issues
3 that they have proposed are subsumed in the issue
4 and we accept that. Also, Issues A, B and C, our
5 new stands alone issues, we withdraw those because
6 of their -- the ability to argue the points there
7 within the issues that are structured.

8 Issues -- new Issues D and E, we are asking
9 you to let travel along with the motion to strike,
10 and that you consider those within your decision
11 about how you handle the motion to strike after
12 hearing arguments.

13 COMMISSIONER LA ROSA: Okay. So that we are
14 on the same page, that -- thank you. Let's -- I
15 want to move then, we are going to stip around then
16 to Section XI, the pending motions. And we may end
17 up having a small break at some point at the end of
18 this, but I am going to throw it over to Mr.
19 Trierweiler.

20 MR. TRIERWEILER: We have several pending
21 motions. We have FPL's motion to strike certain
22 portions of the testimony of the Office of Public
23 Counsel Witness Kollen that was filed on July 13,
24 2022. We have DEF's motion to strike incorporating
25 FPL's motion and arguments that was filed on July

1 19, 2022. We have TECO's motion to strike certain
2 portions of the testimony of the Office of Public
3 Counsel Witness Kollen, which was filed on July 20,
4 2022. And FPUC filed a letter on July 20, '22,
5 requesting certain portions of the testimony of the
6 Office of Public Counsel Witness Kollen to be
7 stricken as was requested in the similar motions
8 filed by FPL, DEF and TECO to accomplish the same
9 result. On July 20, '22, OPC filed its response in
10 opposition to FPL's motion to strike.

11 COMMISSIONER LA ROSA: Thank you.

12 Do the parties wish to speak on their motions?
13 You have three minutes, OPC.

14 MR. REHWINKEL: Commissioner, before we get
15 into that, let me say that we have just received
16 the motions filed by the other companies and the
17 letter. Technically, we have seven days to respond
18 to that, and we responded to FPL's. To the extent
19 there is me too's involved with the others, I am
20 prepared in my argument, which I would like to make
21 to you, to address all issues, because my -- I
22 think my response covers what the other companies
23 request.

24 But I would ask you this: There is an element
25 to the motion to strike that is essentially

1 striking a portion of the Public Counsel's case.
2 It's a serious thing, and I have prepared remarks,
3 they are more than three minutes long, but I would
4 prefer to give all of that to you so that you, or
5 the rest of the Commission has those remarks before
6 you in advance of the hearing.

7 Technically, a motion to strike like this goes
8 at the heart of a party's case that should be
9 decided by the full Commission. A motion to deny a
10 motion to strike can be decided by the hearing
11 officer. I would prefer to kind of navigate those
12 waters and give our full response to you if -- if
13 you can give me some leeway to make all of my
14 remarks now on all four companies.

15 COMMISSIONER LA ROSA: Okay. I am -- I would
16 like to start with the companies and then I will
17 come back.

18 So let's start with FPL. Do you have a
19 comment?

20 MR. WRIGHT: Thank you, Commissioner. I am
21 sorry, how long do we get?

22 COMMISSIONER LA ROSA: Three minutes, please.

23 MR. WRIGHT: Okay. FPL has filed a motion to
24 strike certain portions of Witness Kollen's
25 testimony, not all of it, certain portions that we

1 believe go too far in this case. Certain portions
2 of his testimony, as outlined in our motion, seek
3 to ask the Commission to adopt and retroactively
4 apply criteria and standards that are simply not in
5 the plain language of the SPP rule. It's quite
6 easy. We can look at the rule, look at the
7 language. There is nothing in the rule -- the
8 language of the rule that says the comparison must
9 be a cost benefit analysis, a cost-effectiveness or
10 a cost -- a cost justification or a
11 cost-effectiveness threshold.

12 Witness Kollen admits, he states three times
13 in his testimony that he is asking this commission
14 to adopt and apply. And, in fact, on page 20, line
15 seven through page 21 line six of his testimony,
16 where he summarizes his overall recommendations
17 that he is asking this commission to adopt and
18 apply, it's clear that he is asking this commission
19 to adopt and apply something in this proceeding,
20 not in a formal rule-making proceeding.

21 We submit moreover, it's clear that he is
22 asking that this commission adopt new standards
23 that are not in the rule today. He recommends a
24 cost benefit analysis economic justification, a
25 cost-effectiveness threshold or test. That's not

1 in the rule. It's a comparison. It doesn't
2 specify what that comparison is. Witness Kollen is
3 trying to add something that is not in the rule
4 today.

5 He recommends that the SPP programs -- I am
6 sorry, the SPP program benefits must be quantified
7 and monetized. That's not what the rule says. It
8 says simply that we must provide the description of
9 the benefits which includes restoration of outage
10 costs -- outage costs and reduction in outage
11 times.

12 He also recommends that SPP only include new
13 or expanded storm hardening programs. The rule
14 defines what SPP -- what programs are eligible to
15 be in the SPP. It doesn't state only new and
16 expanded programs. Again, he is trying to add
17 something that does not exist today.

18 Witness Kollen also recommends various
19 methodologies that he asks the Commission to adopt
20 with respect to calculating the revenue requirement
21 and rate impacts. Those are not in the rule today.
22 Moreover, those are cost recovery issues. That's a
23 matter to be addressed in the SPP/CRC docket. This
24 commission has already ruled on that very issue in
25 the 2020 SPP dockets.

1 The fundamental flaw is Witness Kollen's
2 recommendation that the Commission adopt and
3 retroactively apply these standards and criteria in
4 this proceeding is outside of a rule-making.
5 That's unlawful under Chapter 120.54 Florida
6 Statutes.

7 Witness Kollen also makes several
8 recommendations and repeatedly asserts SPP projects
9 and costs must be incremental to base rates, what
10 he's included in base rates. Again, the Commission
11 has ruled on that. Whether the SPP costs are
12 incremental or being covered in base rates is a
13 matter to be decided in the SPP/CRC docket. The
14 Commission ruled on that in Order 2020-0162-PCO-EI.

15 Witness Kollen also contends that the SPP
16 should reflect O&M savings and reductions in
17 depreciation expense from retired plant. This,
18 again, is a cost recovery issue. This is not --
19 the Commission is not making the final decision on
20 the actual project costs or -- or the rates in this
21 case. That's going to be decided in a separate
22 docket, a docket that's ongoing now.

23 I have already briefly mentioned his proposal
24 regarding methodologies for calculating revenue
25 requirements. Again, that's a cost -- cost

1 recovery issue.

2 Witness Kollen spends a lot of time and
3 reliance on the reasonable and prudent standard.
4 We submit that that is not the appropriate
5 statutory standard in this case. The Legislature
6 has expressly prescribed what this commission shall
7 consider. The Commission is not free to then
8 disregard that and apply a completely different
9 standard here.

10 The reasonable and prudent standard, we are
11 not saying that it's been abandoned or disallowed.
12 It applies, but it applies when we seek cost
13 recovery of the actual costs when the actual
14 project is completed, and that's done in the
15 SPP/CRC docket. They are misapplying the rules
16 applicable to the SPP/CRC docket to this docket.

17 And then finally on the comment about striking
18 OPC's direct testimony and whether they are
19 prejudiced. Again, we are only striking certain
20 portions of their testimony. We are not asking all
21 of it be stricken. We are not moving to strike any
22 portion of Witness Mara's testimony. And I
23 think -- I find it difficult that a party can claim
24 that if their testimony is improper, or it's not in
25 the right docket or form, or it's unlawful, that

1 they can claim they are somehow prejudiced by not
2 allowing that in this docket.

3 FPL submits that the Legislature and the
4 Commission knew what it was doing, knew what they
5 were doing when they adopted the SPP statute, the
6 SPP rule and the SPP/CRC rule. We have filed our
7 plan consistent with those expressed requirements.
8 We think it's inappropriate to attempt to
9 relitigate the requirements of the SPP rule in this
10 docket, and therefore, we respectfully request that
11 those portions of Witness Kollen's testimony
12 identified as attachments 1 through 3 to FPL's
13 motion to strike be stricken from this record and
14 not admitted to the record.

15 Thank you.

16 COMMISSIONER LA ROSA: Thank you.

17 Duke Energy.

18 MS. CUELLO: Duke Energy has reviewed FPL's
19 motion and exhibit, and have determined the
20 arguments made apply equally to Witness Kollen's
21 testimony in this docket. It is DEF's position
22 that if FPL's motion is granted, the ruling should
23 be consistently applied in the dockets that contain
24 Witness Kollen's testimony.

25 COMMISSIONER LA ROSA: Thank you.

1 TECO.

2 MR. MEANS: Thank you, Commissioner.

3 We just -- we stand behind our motion that we
4 filed. It speaks for itself. And really would
5 just highlight it as the counterpart for Duke just
6 did, that Mr. Kollen's testimony is functionally
7 identical across all four dockets. We just ask
8 that you treat it as it accidentally across all four
9 dockets.

10 Thank you.

11 COMMISSIONER LA ROSA: Thank you.

12 FPUC.

13 MS. KEATING: Thank you, Commissioner.

14 To be clear, FPUC hasn't taken a position on
15 the motions to strike, nor has FPUC filed its own
16 motion. But with that said, the arguments put
17 forth regarding Mr. Kollen's testimony are
18 consistent with the arguments regarding the issues
19 that OPC proposed for this proceeding, and upon
20 which FPUC has taken a position.

21 In our letter, we have just noted that these
22 proceedings have been consolidated for hearing, and
23 any addition on what's appropriate for the record
24 in one docket should, for purposes of clarity,
25 consistency, precedent, as well as appellate

1 review, apply to the other dockets. The rules and
2 statutes applicable to each utility's SPP are the
3 same. And it's within the Commission's authority
4 to exclude evidence that's irrelevant, immaterial
5 or undue repetitious, and also it would not be
6 inconsistent for a prehearing officer to rule on
7 this matter.

8 COMMISSIONER LA ROSA: Any other party other
9 than OPC?

10 FIPUG.

11 MR. MOYLE: FIPUG, when all of the parties,
12 FPL I believe said, what's your position on this
13 motion, we said that we objected to it. But if you
14 would prefer, I can share those objections with you
15 now or go after OPC.

16 MS. HELTON: Mr. Chairman, it might be more
17 appropriate if you let OPC go and then Mr. Moyle
18 follow.

19 COMMISSIONER LA ROSA: Okay. Yeah, let's do
20 it that way. So, OPC, you are recognized.

21 MR. REHWINKEL: Thank you, Commissioner La
22 Rosa. And I appreciate the opportunity to address
23 you on this.

24 At the very outset, I want to state that while
25 this motion is superficially directed at the Public

1 Counsel and our expert Witness Lane Kollen is
2 really a motion aimed at the very heart of your
3 authority to set rates and protect customers. The
4 movants want you to advocate your authority and
5 make the consideration of the SPP and the resulting
6 cost impacts a ministerial administrative function
7 and have you waive them through. For this reason
8 alone, it should undergo heightened scrutiny and
9 ultimately it should fail.

10 I am not going to delve into the minutiae of
11 the pleadings like a tennis match, but rather give
12 you the high level reasons why the motions make no
13 sense.

14 In 2020, all the utilities with pending SPP
15 and SPP/CRC petitions, except FPUC, who was dealing
16 with Hurricane Michael, settled their issues and
17 the interpretation of the statute and rule were not
18 litigated.

19 Most plans, programs and projects were nascent
20 or pilot projects at the impacts were minimal, and
21 resulted from efforts to get -- to get the base
22 rate clause split right in advance of the looming
23 2021 rate cases. Now, here we are in 2022, all the
24 utilities are in with updated plans emanating from
25 that settlement and FPUC is filing its first plan.

1 Before the Commission now is the first true
2 test, or true opportunity to grapple with the full
3 blown costs and rate impacts of the SPP plans. For
4 the next 10 years, the utilities have told you that
5 they intend to spend \$23 billion in capital on
6 incremental storm hardening. They have told
7 investors about this too, touting their shareholder
8 lucrative returns on these enormous capital spends.

9 While the Legislature, in its wisdom, focused
10 on encouraging the highly capital intensive
11 undergrounding and hardening projects for the
12 overall public benefit, they did not do so in a
13 vacuum. Instead, they challenged this commission
14 with more than a ministerial task. They required
15 you to seriously evaluate the plans, and to make
16 serious determinations about three substantive
17 areas that have the potential to moderate what
18 would otherwise be uncontrolled and heavily
19 shareholder oriented spending.

20 They required that you should consider the
21 extent to which these capital expenditures are
22 expected to reduce the cost impact of storm damage
23 and to bolster the system's ability to resist the
24 impact of storms. The plain reading of this
25 language is that there is some analysis and

1 subjective comparison to undertake. The Public
2 Counsel provided evidence for you to consider on
3 this front.

4 As a part of that consideration, the
5 Legislature required the Commission shall consider
6 the estimated costs and benefits to the company and
7 the customers of undertaking the plans. You have
8 interpreted this to mean that these costs shall be
9 compared. The Public Counsel has also provided you
10 expert testimony on this element on your mandate.

11 Finally the Legislature required that the
12 Commission shall consider the estimated annual rate
13 impacts caused by the plan. This is the bottom
14 line, and it is a broad area of discretion that is
15 consistent with your broad ratemaking authority.
16 The Public Counsel's experts have provided
17 testimony to assist you in making this penultimate
18 determination, taking together the Legislature
19 required you the powerful economic regulator that
20 oversees much of the costs of electric generation
21 that affects the daily lives of customers, and even
22 affects the factors contributing to inflation to
23 apply your significant expertise and experience to
24 make these determinations and control costs where
25 you deem it in the public interest to do so.

1 What is before you in the utility motions are
2 unfortunately an effort to neuter this agency and
3 reduce you to merely giving your ascent to the
4 filings. They want you to accept what they told
5 Wall Street and completely ignore the impact on
6 customers.

7 If you grant the motion, you will be limiting
8 your broad ratemaking discretion to no more than
9 the ability to agree with their numbers. If you
10 deny the motion, you preserve your ability to
11 regulate fully and fairly in the public interest.
12 Clearly, you should reject the utility approach to
13 striking testimony.

14 The Public Counsel provided expert testimony
15 in the areas of engineering, accounting and overall
16 regulatory principles. Certainly, we are advocates
17 for the customers. We want the benefits that the
18 Legislature has put in motion. There is no denying
19 that. There is merit to undergrounding and
20 hardening. But if you accept the utility approach,
21 there will be zero limit on spending that builds up
22 year after year. That is what we are advocating
23 for -- against for our clients.

24 In undertaking this SPP effort, the
25 Legislature did not say there should be

1 uncontrolled spending in this area. They required
2 balance, and they asked you to provide that
3 balance. Our witnesses give you options to provide
4 the balance.

5 Returning to the issue of the cost comparison,
6 what we think is the heart of the dispute, I am not
7 going to argue the substance of our view and the
8 company view. The testimonies have done that. But
9 I want to emphasize a point that costs and benefits
10 should be compared. You put in your rule that
11 costs and benefits should be compared. Your rule
12 interpreted the statute appropriately on this point
13 and is not a box to check.

14 All we are asking you to do through Mr.
15 Kollen's testimony is to consider that comparison
16 on a fairly rational basis. Apples to apples. Not
17 apples to ice cream. We have provided expert
18 testimony from witnesses who have extensive
19 credentials in this area. We give you a way to
20 look at it and have a basis for moderation on
21 customer rates. The utilities have filed direct
22 and rebuttal testimony in opposition to this view.

23 And while we strongly agree that the analysis
24 required by the Legislature should be relatively
25 objective, your discretion is rather broad in this

1 area. Nothing in the SPP statute undermine that
2 broad grant of ratemaking authority that is to be
3 liberally construed that is contained in 366.01
4 along with the broad powers of 366.04, among
5 others.

6 You have an extensive record before you, Mr.
7 Commissioner, that allows you to sift through the
8 evidence and make your determination in the public
9 interest whether to approve, modify or deny the
10 plans. This agency has a long history of weighing
11 expert testimony and giving it the proper weight.
12 There are significant public policy issues and
13 realtime issues about customer bills. This case is
14 no different in that regard, but the stakes are
15 high.

16 We have just entered into a series of base
17 rate increases in 2022, and more are on the way in
18 2023. It is no secret that there is a large fuel
19 correction looming given what is publically known
20 about natural gas prices. Inflationary pressures
21 are everywhere from the gas pump to the crease
22 grocery store. You cannot discharge the
23 legislative mandate of considering the SPP impacts
24 on customer rates in a vacuum. At the end of the
25 day, it is the bill's bottom line that matters.

1 Now is not the time to handcuff yourself and
2 raise the white flag on company rates. The
3 companies have given you perspective and a
4 proposal, and the Public Counsel has given you a
5 range of alternative, tools, if you will, to
6 consider in setting rates.

7 We ask you to preserve your authority, deny
8 these motions, hear the evidence and, importantly,
9 give it the weight it deserves, both ours and
10 theirs. Hear the case that the customers are
11 putting on, listen to your staff and act in the
12 public interest. At the end of the day, and in the
13 hearing and post hearing, you can sort through this
14 and make a determination that you think is in the
15 public interest.

16 I should also note that we contend that there
17 is not a bright line between SPP and SPP/CRC, and
18 that part of your rate impact analysis you have a
19 broad authority to consider the evidence before
20 you. And accordingly, you can disregard any
21 evidence that is irrelevant. You do not need to
22 decide that today. Any evidence that is
23 preemptively stricken can be proffered for
24 appellate review purposes. Striking testimony is
25 not going to shorten the hearing.

1 We would also note that pursuant to Article V,
2 Section 21, the Florida Supreme Court is the final
3 authority on interpretation of the SPP statute.

4 In 2018, the Constitution was amended to
5 prohibit the Court from giving deference to an
6 agency's interpretation of this statute. So it's
7 important to get it right now and not create a
8 problem in an appellate environment.

9 The Legislature never said that you must
10 approve the tens of billions of dollars that the
11 companies submitted just because they filed a paper
12 with numbers on it. They required some rigor in
13 the process, and for you to seriously consider
14 those who pay the bills. And we ask you to keep
15 this in mind. Keep your powder dry. Deny the
16 motion.

17 Thank you.

18 COMMISSIONER LA ROSA: Thank you.

19 Let's go on to FIPUG and any other parties.

20 MR. MOYLE: Thank you, Mr. Chairman, for the
21 opportunity to share some arguments against the
22 motion to strike.

23 I am going to start by quoting what is before
24 you in the draft prehearing order with respect to
25 positions taken by the utilities that I think are

1 relevant to this argument.

2 TECO basic position, page six, the Commission
3 should find that it is in the public interest to
4 approve TECO Electric Company's 2022-2031 Storm
5 Protection Plan without modification because that
6 plan meets all the requirements or and will further
7 all of the objectives of Section 366.96 of Florida
8 Statutes and 25-6, the rule, the Florida
9 Administrative Rule. The first line: The
10 Commission shall find that it is in the public
11 interest.

12 Duke, in their statement of basic position,
13 DEF's SPP, which includes all elements required by
14 the SPP rule, is in the public interest and should
15 be approved by the Commission. That's on page
16 seven.

17 And FPL, their statement of basic position at
18 the end, and I will paraphrase briefly, but for all
19 the reasons explained, and they cite a couple of
20 witnesses, quote, "FPL's proposed 2023 SPP is in
21 the public interest and should be approved."

22 Clearly, the public interest is at issue in
23 this case. What is the public interest? There is
24 not a legislative description that says, here's the
25 test for the --

1 COMMISSIONER LA ROSA: We are talking about
2 the motion, though, right?

3 MR. MOYLE: I am sorry?

4 COMMISSIONER LA ROSA: We are talking about
5 the motion?

6 MR. MOYLE: Right. Right. And the motion is
7 to strike this testimony of these expert witnesses
8 who are saying you got to consider the rates. And
9 our argument is, well, aren't rates a key part of
10 determining the public interest? Absolutely.

11 So if you grant the motion and you strike all
12 this testimony that relates to rates, we don't
13 think that's appropriate, because the public
14 interest is a broad consideration that you all make
15 when you consider a case. What's in the public
16 interest? You weigh. You balance. Your lawyers
17 have told the Supreme Court recently in a case that
18 it's the Commission's job to consider the public
19 interest and to weigh all facts that are before it.
20 And I think it is putting you on perilous ground,
21 respectfully, to grant this motion and deny the
22 whole rule of evidence that OPC argues should be
23 considered in relates to the public interest.

24 So, you know, I think that's the key point
25 that should not be overlooked. And I would note

1 that the Supreme Court recently sent a case back to
2 you and said, we need a little more. You know, you
3 can reopen the case and take more evidence or
4 explain your rationale. So to be striking
5 testimony at this point, we don't think is
6 appropriate.

7 In administrative hearings, I have found over
8 the years that the practice generally, if there is
9 a fairly debatable issue about whether something is
10 relevant or material, that often -- oftentimes DOAH
11 judges will say, you know, let's let it in. Less
12 harm letting it in. We can consider it. If we
13 don't think we should give any weight to it we
14 won't. But to come in and preemptively strike
15 something now that talks about rates and how it's
16 going to impact ratepayers, we don't think that it
17 is warranted.

18 And finally I would note -- I heard FPL's
19 argument. It's kind of like, well, the rule this
20 and the rule that, and they are basing it largely,
21 as I understand it, on the context of the rule.
22 But if you look at the statute, it's one statute.
23 You all have gone in and said, well, there is going
24 to be two proceedings.

25 And I think you served in the Legislature for

1 a number of years. Drawing lines in statutes or
2 rules, sometimes there is overlap. There is some
3 ambiguity. And I think it doesn't serve the
4 process well for you to come in and say, you know,
5 we are going to -- we are going to interpret it
6 this way, strict bright line and not allow this
7 evidence in. If it comes in and they want to say
8 this is completely off base, they can renew a
9 motion and say, you know, we would ask this
10 testimony be stricken as irrelevant, but to do it
11 at this stage in the proceeding we don't think is
12 appropriate, and we think all the motions should be
13 denied.

14 I am sorry if I got you going down a wrong
15 direction when I started, but I hope I have
16 clarified why we believe that this evidence should
17 be allowed in, because it goes and has something
18 that should be considered when making a decision as
19 to the public interest, which I think everyone
20 agrees is an issue before you in this case.

21 Thank you.

22 COMMISSIONER LA ROSA: Thank you for bringing
23 it back around.

24 Any other parties?

25 Go ahead.

1 MR. BREW: Thank you, Commissioner.

2 Having seen the motions and the responses, we
3 don't see how the Commission can lawfully grant the
4 motions at this time. The SPPs are spending. The
5 basic issue presented here in these dockets, what
6 is the proper scope, costs, consumer benefits and
7 impacts. That's both in the statute and the rule.
8 So the plans, and their scope, and their costs are
9 not unbounded.

10 It's critical to recognize that you are
11 approving the plan, the statute says that the
12 prudence of a utility moving forward with the
13 programs approved in the plan is not subject to
14 prudence challenge, thus bringing in cost and rate
15 consequences to consumers.

16 What OPC's testimony is proposing to do is
17 address those issues in a systematic way, which is
18 well within the bounds of the rule and the clear
19 intent of the statute. The statute talks about
20 what are the costs and benefits. What should be
21 areas of priorities? All language that goes to
22 doing what's necessary, but being mindful of the
23 cost to the bottom line and consumer bills. So we
24 think that the OPC's testimony falls well within
25 the scope of what needs to be addressed in these

1 dockets.

2 Thank you.

3 COMMISSIONER LA ROSA: Any other parties?

4 You are recognized.

5 MR. CAVROS: Thank you, Commissioner.

6 We registered to FPL when we were informed
7 that they were going to file the motion that we
8 opposed the motion, and let me explain why.

9 Parties often make recommendations to the
10 Commission on how to interpret a rule provision.
11 This is not unusual. Those recommendations are
12 often part factual determination, part legal
13 argument, and are presented in the case of a party
14 to the Commission, and this issue is no different.
15 This has happened a number of times before this
16 commission, you know, when -- when we engaged in
17 the 20, I want to say the 2013, 2014 timeframe in
18 the nuclear cost recovery proceeding -- that was a
19 fairly new statute, and you ruled at the time, and
20 there was a provision in their related to
21 feasibility studies that had a requirement that the
22 utility provide evidence that the utility intends
23 to build the nuclear unit.

24 So what does the word intend mean? You know,
25 the parties presented evidence in their case and

1 argued it in their briefs, and the Commission, at
2 the end of the day, weighed that evidence and
3 issued an order, you know, effectively, you know,
4 it was a decision by the Commission in that case.
5 I have seen this same thing play out in the 2008
6 timeframe with -- in the energy efficiency goal
7 setting proceedings. That law was amended in 2008,
8 and there was a lot of back and forth between the
9 parties on what the amended of what the provisions
10 actually meant. So, you know, there are different
11 interpretations on what the provisions mean here,
12 and that's okay.

13 No one side has a monopoly on what the rule
14 provisions mean. You know, the argument that the
15 OPC witness testimony here is a de facto request
16 for rule-making really rings hollow. Really it's
17 the witness' recommendation. It's OPC putting on
18 their case relative to the rule provisions. And
19 that's something that every party has a right to do
20 before this commission.

21 The recommendations related to cost and
22 cost-effectiveness are absolutely relevant, and go
23 to the core of this proceeding and the Section III
24 provisions in your rule, Commissioner. So there
25 really is no basis for striking the testimony. The

1 better course of action, we believe, is for the
2 Commission to deny the motion. Let the parties
3 make their factual findings and legal arguments as
4 part of their case, make those arguments in their
5 briefs as well. Let the Commission staff and the
6 Commissioners weigh the evidence as they see fit
7 and render a decision.

8 Thank you.

9 COMMISSIONER LA ROSA: Any other parties?

10 Okay. I am going to go -- I am going to go
11 back to FPL since it was their motion.

12 Is there any rebuttal?

13 MR. WRIGHT: Yeah, just briefly, Commissioner,
14 and thank you.

15 I just want to be clear. OPC opened saying
16 that we are taking something away from the
17 Commission here. That's not what we are doing. We
18 are simply trying to follow the rules of the game
19 that have been established by the Legislature and
20 this commission. If the Commission were to adopt
21 the recommendations by Witness Kollen, you would be
22 changing those rules in the middle of the game.
23 That's unfair everybody. All the parties here.
24 It's unfair to stakeholders that would have an
25 interest to the extent you are amending the SPP

1 rule that are not in this docket.

2 We are not asking the Commission, we are not
3 suggesting the Commission does not have the ability
4 to do its prudence review. The Legislature has
5 expressly said how the SPP is to be reviewed. It
6 is a public interest standard, and I know Mr. Moyle
7 said that they have not articulated that. They
8 have, in fact. They've listed four criteria that
9 are to be considered in Section 4 of the SPP
10 statute.

11 OPC cannot address the fact that they are, in
12 fact, asking the Commission to adopt and apply your
13 standards. We submit that the Commission is not
14 able to do that. It's not a question of
15 interpretation. It's an issue of changing what's
16 required be provided in our SPP.

17 The SPP rule expressly lays out what's to be
18 submitted in our -- the SPP rule expressly lays out
19 what's to be included with the storm protection
20 plans. The recommendations of Witness Kollen are
21 not included in that rule. It would change what we
22 are required to file.

23 COMMISSIONER LA ROSA: Thank you.

24 I hope that you can see that I am certainly
25 taking, you know, a lot of weight on this, and I

1 wanted to hear as much as I could from everyone
2 here. I think the best thing for me to do, I kind
3 of alluded to this at the start of this section,
4 was to maybe take a few more minutes. So I am
5 going to say five minutes, but that may end up
6 being 10 minutes. I am going to look over my
7 notes. I have made a few notes, I've written a few
8 things down from what was already submitted, and
9 then we will pick up from there. So if you can
10 give me five to 10 minutes, we will reconvene then.

11 Thank you.

12 (Brief recess.)

13 COMMISSIONER LA ROSA: Excellent. Thank you.
14 Thank you all for your patience on this. And like
15 I said before the break, I certainly wanted to kind
16 of revisit some of my notes, some of the things I
17 jotted down from what was said.

18 First, I would be reluctant if I didn't say
19 thank you, acknowledging the company for filing the
20 motion early enough so that the Office of Public
21 Counsel to be able to provide their written
22 response on both the motion and the response before
23 the prehearing was extremely helpful to myself.

24 I understand the legislative process, the
25 legislative intent. I understand the rule-making

1 process. If I were to deny the motion, I would
2 ultimately be changing the rules to the game. For
3 That reason, and for others, I find that parts of
4 Mr. Kollen's testimony are beyond the scope of this
5 hearing and ultimately will be stricken.

6 For the utilities that did not provide a typed
7 or strike-through -- I am sorry, strike of the
8 testimony, please file by the close of business
9 tomorrow. And if -- you know, I will issue an
10 order and have additional information ultimately
11 within my ruling.

12 So with that said, and with skipping around, I
13 am going to throw it back to staff. I think we are
14 going back to Section VIII, if I am correct on my
15 agenda here.

16 MR. REHWINKEL: Commissioner, if I might --

17 COMMISSIONER LA ROSA: Please.

18 MR. REHWINKEL: -- state for the record. The
19 OEP requires motions to strike to be filed prior to
20 the prehearing conference. So in light of your
21 ruling, there is now a basis for the Public Counsel
22 to move to strike testimony that responds to
23 portions that will be stricken. Now, we would
24 probably try to work that out with the company in
25 advance, but barring that, we would be put in the

1 position of filing an out-of-time motion to strike,
2 but we would, for the record, ask to preserve our
3 opportunity to make a good-cause shown argument
4 that we wouldn't have known what to strike until we
5 knew what your ruling was.

6 So we will ask that there be any re --
7 testimony that responds to stricken portions be
8 stricken or withdrawn at that point. So just
9 something for down the road. Nothing you need to
10 do today, but I just need to preserve that on the
11 record.

12 COMMISSIONER LA ROSA: Sure. And that was
13 discussed, and I point to staff, any comment on
14 that?

15 MS. HELTON: I am going to agree with Mr.
16 Rehwinkel again today. I think that makes good
17 sense.

18 COMMISSIONER LA ROSA: Excellent. All right.
19 Thank you, noted.

20 Let's -- Mr. Trierweiler, let's go to you and
21 I think we are back on Section VIII, if I am not
22 mistaken.

23 MR. TRIERWEILER: I want to make sure that
24 it's OPC's intent that we move ahead with proposed
25 Issues D and E at this time?

1 MR. REHWINKEL: I guess it would make sense
2 for the Commissioner to rule on that. Yes.

3 MR. TRIERWEILER: Commissioner, OPC proposes
4 new Issue D, and states: Should a return on
5 construction work-in-progress, CWIP, be included in
6 the company's annual rate impacts for deferred and
7 included in the rate impacts only after a project
8 is completed and determined to be prudent?

9 And in E, if we are going to take them up
10 together, OPC's proposed new Issue E states:
11 Should credits be reflected in the company's annual
12 rate impacts for savings and depreciation on base
13 rate assets that are retired when replaced with EC
14 -- with SPP project assets and savings and base
15 rate operation and maintenance and other operating
16 expenses that are avoided due to SPP programs and
17 projects?

18 Staff believes that the proposed issues are
19 necessary, and that the issues, both issues, will
20 be determined in the SPP/CRC, that is the Cost
21 Recovery Clause docket.

22 FPL, TECO and FPUC all oppose the proposed
23 Issue D as captured in the prehearing statements
24 and the draft prehearing order for a variety of
25 reasons relating to that the language seeks to

1 expand the scope of this docket to examine whether
2 SPP revenue requirements and associated rates
3 should be included in CWIP, and that these are
4 matters to be considered in a cost recovery docket
5 such as the SPP/CRC docket.

6 PCS and Nucor support OPC's Issues D and E as
7 it relates to DEF's SPP.

8 COMMISSIONER LA ROSA: OPC, do you wish to be
9 heard on either issue?

10 MR. REHWINKEL: I will make the argument for
11 both D and E.

12 We believe that there is a gray area and an
13 overlap between consideration of rate impacts and
14 then the actual rate impacts that will be
15 determined in the 10 docket, the CRC docket.

16 That's all I would say. We would urge you to
17 leave the issues in. What I don't know is to the
18 extent that your granting of the motion impacts
19 these. If you have stricken testimony that relates
20 to these issues, then I think these issues would
21 naturally fall with that testimony. To the extent
22 that's not in the scope of your ruling, we would
23 ask that you keep the issues in.

24 COMMISSIONER LA ROSA: Okay. I am going to --
25 I am going to convene with staff real quick just to

1 make sure that we are on the same page if that's
2 okay.

3 (Brief recess.)

4 COMMISSIONER LA ROSA: Thank you.

5 Just simply stated, Issue D and E are outside
6 the scope of this hearing, in my opinion.

7 MR. REHWINKEL: Okay.

8 MR. TRIERWEILER: At this time, I would like
9 to move on to the Section IX, the exhibit list.

10 Staff has prepared a comprehensive exhibit
11 list which lists all prefiled exhibits and those
12 exhibits staff wishes to include in the record.
13 The draft list was provided to the parties to see
14 if there were any changes or objection to the CEL
15 or to the introduction of any of staff's exhibits
16 being entered into the record.

17 At this time, we would like to see if there
18 are any changes that need to be made to the
19 parties' exhibits, and if there are any objections
20 to the entry of the proposed exhibits into the
21 record.

22 COMMISSIONER LA ROSA: Seeing no objections.

23 MR. REHWINKEL: I don't know that at this
24 point in time that we are in a position to
25 stipulate this in, but we don't have any

1 corrections or changes.

2 COMMISSIONER LA ROSA: Okay. Noted.

3 Anyone else, FIPUG?

4 MR. MOYLE: We would just state the same
5 position.

6 COMMISSIONER LA ROSA: Okay. Noted.

7 MR. MOYLE: We are not -- by not saying
8 anything, we are not stipulating everything in. We
9 will take a look and probably stipulate later, but
10 not today.

11 COMMISSIONER LA ROSA: Understood.

12 You are recognized.

13 MS. KEATING: I was just going to say that OPC
14 and FPUC have been having some conversations about
15 a couple of exhibits that may impact our decision
16 on stipulation of all the issues, so I just wanted
17 to point that out.

18 COMMISSIONER LA ROSA: Okay. Noted.

19 Any other parties?

20 Okay. Mr. Trierweiler, let's move on to
21 Section X, proposed stipulations.

22 MR. TRIERWEILER: There are no approved or
23 proposed stipulations, and there are no further
24 pending motions.

25 And that brings us to Section XIII,

1 post-hearing procedures.

2 COMMISSIONER LA ROSA: Okay.

3 MR. TRIERWEILER: Staff recommends that
4 post-hearing briefs be limited to 40 pages should
5 the briefs be necessary.

6 Staff recommends that a summary of each
7 position of 50 words, set off with asterisks, shall
8 be included in each post-hearing statement. If a
9 bench decision is not made, post-hearing briefs
10 will be due on September 1st, 2022.

11 COMMISSIONER LA ROSA: Are the parties in
12 agreement? OPC?

13 MR. REHWINKEL: The only question I have is
14 just it's sort of like the witness summary
15 timeframe. When it comes to this, are we back to
16 individual dockets, such that for Duke, it's 40
17 pages, for FPL, it's 40 pages, is that -- is that
18 how it's contemplated?

19 COMMISSIONER LA ROSA: Staff, for clarity?

20 MS. HELTON: For the companies, yes, I would
21 say 40 pages, that they would be limited to 40
22 pages. Maybe once you get closer to a due date, we
23 could talk about, with your permission, how many
24 pages you needed to address all four companies in
25 your brief, but I don't know that it should be that

1 much more than 40 pages, because how many issues
2 are there now? There is --

3 MR. REHWINKEL: Commissioner, to be fair, in
4 the Office, we've treated these as independent
5 dockets. We have different attorneys assigned to
6 each one. They will be responsible for conducting
7 cross-examination and litigation for the respective
8 witnesses for each. So I don't know that it's
9 appropriate, just because these are consolidated
10 for administrative efficiency, that we lose the
11 ability to have an appropriate amount of pages to
12 deal with the brief, because they are stand-alone
13 determinations for each company so --

14 MS. HELTON: And I do think the order on
15 consolidation did say that they were -- the cases
16 were consolidated just for the purposes of hearing.
17 So I think Mr. Rehwinkel is saying they would like
18 to file four separate briefs, and I am not hearing
19 any objections from the parties, I don't think.

20 MR. REHWINKEL: And also, Mr. Chairman, the
21 50-word limit here, I am so old, I think they had a
22 horse and buggy the last time -- the first time I
23 came out, and it wasn't here at the building.

24 The 50 words was more because things had to be
25 typed up, and it was very paper intensive. Now, in

1 this highly electronic world, I don't know that a
2 word length -- the word count in the positions is
3 that significant. But as an offer of compromise, I
4 would ask can we get four issues that we can go up
5 to 75 if you want to adhere to the 50-word limit?

6 COMMISSIONER LA ROSA: Four issues, 75 words,
7 is that --

8 MR. REHWINKEL: Yes, on the position summary
9 there.

10 COMMISSIONER LA ROSA: I am okay with that.
11 Staff? I am seeing head nod, so --

12 MR. REHWINKEL: Thank you.

13 COMMISSIONER LA ROSA: In a world, I would
14 think we are limiting our number of words, but I am
15 fine.

16 MR. REHWINKEL: At least it's not 40
17 characters, right?

18 COMMISSIONER LA ROSA: Exactly. Exactly.

19 Are all parties in agreement to that? No
20 other concerns, questions?

21 Okay. So I think we are good. So I will go
22 back over to Mr. Trierweiler for rulings.

23 MR. TRIERWEILER: Commissioners, staff
24 recommends that we -- that the -- I think that --
25 let me try to capture these rulings.

1 Staff recommended that the prehearing officer
2 make a ruling that all parties shall be provided
3 five minutes for opening statements, and that OPC
4 be provided seven minutes for opening statement; is
5 that correct?

6 COMMISSIONER LA ROSA: No. Did we not agree
7 to 10 minutes or -- Mr. Rehwinkel?

8 MR. TRIERWEILER: This is opening statements.

9 COMMISSIONER LA ROSA: I am sorry.

10 MR. TRIERWEILER: And as far as witness
11 summaries, we had determined that three minutes for
12 the parties, other than OPC, and that OPC would
13 receive 10 minutes to aggregate between each one of
14 their two witnesses as they determine between -- or
15 as they determine, am I correct? I captured that
16 one accurately?

17 COMMISSIONER LA ROSA: It's correct on my end.
18 Any concerns? I think we are good.

19 Are there any other matters to address before
20 this prehearing conference?

21 MR. TRIERWEILER: Staff is not aware of any
22 other matters at this time.

23 COMMISSIONER LA ROSA: Any other parties have
24 any additional matters that need to be addressed?

25 MR. MEANS: Commissioner, I would just offer

1 that I spoke with my client. My client is willing
2 to waive cross-examination of OPC's witnesses, so I
3 just wanted to let everybody know that.

4 Thank you.

5 COMMISSIONER LA ROSA: Thank you. Noted.

6 MS. CUELLO: Duke Energy is also willing to
7 waive cross of OPC's witnesses.

8 COMMISSIONER LA ROSA: Thank you. Noted.

9 MS. KEATING: FPUC as well.

10 COMMISSIONER LA ROSA: Noted.

11 MR. WRIGHT: I believe we waived cross
12 earlier. We still waive cross.

13 COMMISSIONER LA ROSA: Okay. Excellent.
14 Thank you.

15 MR. REHWINKEL: Just for the record, we will
16 be conducting cross with selected witnesses. If
17 there are witnesses to stipulate, we will certainly
18 talk to the companies as we go forward to see if
19 that could be accomplished. At this point in time,
20 we don't have any witnesses to stipulate.

21 COMMISSIONER LA ROSA: Okay. Thank you.

22 PCS Phosphate, do you have something?

23 MR. BREW: Yes. Just to be clear, PCS waives
24 cross of all of the non-Duke witnesses.

25 COMMISSIONER LA ROSA: Okay. Excellent.

1 Thank you. Seeing no further comments, this
2 prehearing conference is now adjourned.

3 Thank you.

4 (Proceedings concluded.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

CERTIFICATE OF REPORTER

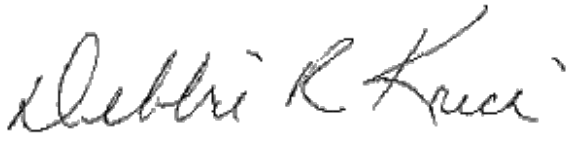
STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
certify that the foregoing proceeding was heard at the
time and place herein stated.

IT IS FURTHER CERTIFIED that I
stenographically reported the said proceedings; that the
same has been transcribed under my direct supervision;
and that this transcript constitutes a true
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

DATED this 27th day of July, 2022.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024