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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20220069-GU

Petition for rate increase
by Florida City Gas.

_____ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS
PARTICIPATING: CHAIRMAN ANDREW GILES FAY

DATE: Tuesday, November 29, 2022

TIME: Commenced: ~~9:30~~ ^{11:15} a.m. *MAX 12/28/22*
Concluded: 12:01 p.m.

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

REPORTED BY: DEBRA R. KRICK
Court Reporter

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

1 APPEARANCES:

2 JOEL T. BAKER and CHRISTOPHER T. WRIGHT,
3 ESQUIRES, Florida Power & Light Company, 700 Universe
4 Boulevard, Juno Beach, Florida 33408; BETH KEATING,
5 ESQUIRE, Gunster Law Firm, 215 South Monroe Street,
6 Suite 601, Tallahassee, Florida 32301; appearing on
7 behalf of Florida City Gas (FCG).

8 RICHARD GENTRY, PUBLIC COUNSEL; CHARLES
9 REHWINKEL, DEPUTY PUBLIC COUNSEL; MARY ALI WESSLING,
10 ESQUIRE, OFFICE OF PUBLIC COUNSEL, c/o The Florida
11 Legislature, 111 West Madison Street, Room 812,
12 Tallahassee, Florida 32399-1400, appearing on behalf of
13 the Citizens of the State of Florida (OPC.).

14 WALTER TRIERWEILER and MATTHEW JONES,
15 ESQUIRES, FPSC General Counsel's Office, 2540 Shumard
16 Oak Boulevard, Tallahassee, Florida 32399-0850,
17 appearing on behalf of the Florida Public Service
18 Commission (Staff).

19 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE
20 HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service
21 Commission, 2540 Shumard Oak Boulevard, Tallahassee,
22 Florida 32399-0850, Advisor to the Florida Public
23 Service Commission.

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

2 CHAIRMAN FAY: All right. Give everyone a
3 chance to get seated here and then we will call
4 this prehearing to order.

5 All right. It's November 29th. We will call
6 this prehearing conference to order.

7 Mr. Trierweiler, would you please read the
8 notice? Oh, Mr. Trierweiler -- yep, there you go.
9 Oh, really? Okay, let's get -- we'll get --

10 MR. TRIERWEILER: I got it now.

11 By notice issued November 18, 2022, this time
12 and place has been set for this prehearing in
13 Docket No. 20220069-GU regarding the petition for a
14 rate increase by Florida City Gas. The purpose of
15 this prehearing conference is set out more fully in
16 the notice.

17 CHAIRMAN FAY: Great. Thank you.

18 Next we will move to take appearances from
19 legal counsels, so Florida City Gas, you are
20 recognized first.

21 MR. CHRISTOPHER WRIGHT: Good morning,
22 Chairman. Christopher Wright on behalf of Florida
23 City Gas. I would also like to make an appearance
24 for Joel Baker, and I would also like to make an
25 appearance for Beth Keating from the Gunster,

1 Yoakley & Stewart law firm on behalf of Florida
2 City Gas.

3 CHAIRMAN FAY: Okay. Great. Thank you, Mr.
4 Wright.

5 Next Office of Public Counsel.

6 MS. WESSLING: Thank you, and good morning.
7 Ali Wessling with the Office of Public Counsel.
8 And I would also like to enter an appearance for
9 Charles Rehwinkel and Richard Gentry.

10 CHAIRMAN FAY: Okay. Great.

11 Next we will move to the Federal Executive
12 Agencies.

13 MR. JERNIGAN: This is Thomas Jernigan for the
14 Federal Executive Agencies. Also an appearance for
15 Major Buchanan and Captain Marcus Duffy.

16 CHAIRMAN FAY: And I apologize. State your
17 name again. I just --

18 MR. JERNIGAN: Thomas Jernigan.

19 CHAIRMAN FAY: Okay. All right. Thank you,
20 Mr. Jernigan.

21 Next we will move to FIPUG. I believe we have
22 Ms. Putnal on the line.

23 MS. PUTNAL: Thank you. Good morning, Mr.
24 Chairman. This is Karen Putnal appearing been
25 behalf of the Florida Industrial Power Users Group.

1 And I would like to make an appearance also on
2 behalf of Jon Moyle, as well as thank you for the
3 accommodation this morning.

4 CHAIRMAN FAY: Sure. We hope you are doing
5 all right. Thank you, Ms. Putnal.

6 Next we will move to Sugar Cane Growers
7 Cooperative of Florida, Mr. Wright.

8 MR. SCHEF WRIGHT: Thank you, Mr. Chairman.

9 Robert Scheffel Wright of the Gardner Law Firm
10 on behalf the Sugar Cane Growers Cooperative of
11 Florida. I would also like to enter an appearance
12 for my partner, John T. Lavia, III.

13 CHAIRMAN FAY: Great. Thank you.
14 Staff.

15 MR. TRIERWEILER: Walt Trierweiler for
16 Commission staff.

17 MS. CIBULA: Samantha Cibula, Advisor to the
18 Commission. And I would also like to make an
19 appearance for Keith Hetrick, our General Counsel.

20 CHAIRMAN FAY: Great. Thank you so much. Ms.
21 Cibula.

22 Next we will move to any preliminary matters,
23 Mr. Trierweiler.

24 MR. TRIERWEILER: Chairman, staff is not aware
25 of any preliminary matters at this time.

1 CHAIRMAN FAY: Okay. Great. Let me check
2 with the parties and see if we have anything.
3 Nope.

4 With that, we will move into the draft
5 prehearing order. As usual, we will work through
6 each section, some of the first sections being a
7 little bit more expedient to others until we get to
8 contested issues.

9 Just please speak up if there is anything that
10 you see or would like to interject on and we will
11 -- we will take that up at that time.

12 With that, we will start with Section I, Case
13 Background.

14 Section II, Conduct of Proceedings.

15 MR. CHRISTOPHER WRIGHT: Chairman, I am sorry.

16 CHAIRMAN FAY: Yeah, go ahead.

17 MR. CHRISTOPHER WRIGHT: Section I, I am
18 already going to get things off the rails here.

19 I just -- the second paragraph in Section I,
20 the rate increase numbers are the as-filed rate
21 increase, the 29 million on the first line in the
22 seconds paragraph in Section 1.

23 CHAIRMAN FAY: Okay.

24 MR. CHRISTOPHER WRIGHT: The corrected
25 numbers, including the notified -- notice of

1 identified adjustments that were submitted with
2 rebuttal, it's now 28.3 million.

3 CHAIRMAN FAY: Okay. And we can -- Mr.
4 Trierweiler, we can reflect those numbers just in
5 the updated summary which, as usual, we will, as of
6 the close of business, we will take information --

7 MR. CHRISTOPHER WRIGHT: Okay. And then --

8 CHAIRMAN FAY: -- until tomorrow to update.
9 And so if you can just make sure -- we've got it
10 for the record, but just to make sure Mr.
11 Trierweiler has it in writing.

12 MR. CHRISTOPHER WRIGHT: Right. And then on
13 the fifth line down in that same paragraph, 19.4
14 million for the incremental increase should be
15 18.8.

16 CHAIRMAN FAY: Okay.
17 Any others, Mr. Wright?

18 MR. CHRISTOPHER WRIGHT: No. Thank you.

19 CHAIRMAN FAY: Okay. Great. No problem.

20 All right. Next we will move to Conduct of
21 Proceedings.

22 Jurisdiction.

23 Procedure for Handling Confidential

24 Information.

25 Prefiled Testimony and Exhibits and Witnesses,

1 Mr. Trierweiler.

2 MR. TRIERWEILER: Staff suggests that for any
3 witness who is not excused, that the summary of
4 their testimony be no longer than three minutes.

5 CHAIRMAN FAY: Okay. Any comments from the
6 parties?

7 MR. CHRISTOPHER WRIGHT: Chairman, FCG,
8 Florida City Gas, they only have seven witnesses in
9 this case. That's quite, you know, it's a very
10 small number of witnesses for, you know, a base
11 rate case. We do have a couple of witnesses that
12 are as a result of the small number of witnesses
13 that are covering a large number of topics. I just
14 don't think three minutes is going to be
15 sufficient. With respect, we would request that we
16 get five minutes for -- five minutes for witnesses
17 Howard, Campbell, Fuentes and Nelson.

18 CHAIRMAN FAY: Okay. And let me check with
19 the intervenors if there is -- you have sort of the
20 same thought maybe for your witnesses.

21 MS. WESSLING: Sure. We would ask that for
22 Mr. Schultz and Mr. Garrett, that they also be
23 allowed at least five minutes.

24 CHAIRMAN FAY: Okay. And any comments from
25 any of the other intervenors? Okay. Great.

1 Okay. Well, I am inclined, and we will make
2 sure this is reflected in the hearing order, to
3 allow that five minutes for those witnesses. This
4 is a rate case. This is a significant case, and I
5 want to make sure we get what we need to get on the
6 record. So with that, we would approve and reflect
7 in the order that will allow for five minutes of
8 testimony. And Mr. Trierweiler will just make sure
9 we reflect that in this section and then, of
10 course, in the rulings, too, if we need to.

11 Okay, with that, any -- oh, yes.

12 MR. JERNIGAN: I am sorry, Mr. Chairman.

13 CHAIRMAN FAY: That's okay.

14 MR. JERNIGAN: Is that five minutes for all
15 witnesses, or the ones that were specifically
16 mentioned?

17 CHAIRMAN FAY: The ones that were specifically
18 mentioned?

19 MR. JERNIGAN: If I may ask for the Federal
20 Executive Agencies as well to have five minutes?

21 CHAIRMAN FAY: Sure. Yeah, that leaves a
22 handful that aren't, and I would allow the
23 discretion of those that are set at three, but to
24 your point, to simplify things, we will allow at
25 five for every witness to make sure we encompass

1 them all, and then if somebody doesn't need to use
2 all five minutes, that's fine on our end, they are
3 welcome to do so in a shorter amount of time. I
4 have never seen anyone object to doing it in a
5 shorter amount of time, so we will allow that on
6 our end.

7 All right. With that, Mr. Trierweiler, let me
8 make sure that we have -- we don't have anything
9 else under prefiled testimony and exhibits.

10 We do have the OEP, which establishes the use
11 of exhibits. We will make sure that they are
12 identified appropriately if there is anything else
13 on that.

14 Any other issues by the parties?

15 MS. WESSLING: And this is sort of an issue
16 that's already addressed later in the pending
17 motions section, and I believe you have already
18 approved OPC's motion, but just since we are
19 talking about witnesses here, I just wanted to
20 confirm that Mr. Schultz is going to be allowed to
21 testify via GoToMeeting.

22 CHAIRMAN FAY: Yes. So -- that's fine. We
23 can confirm that now for procedural perspective.

24 We -- you know, we do -- I do allow some
25 adaptation, especially when it comes to health

1 things, and so we have approved that for them, so
2 he will be virtually providing his testimony.

3 MS. WESSLING: We appreciate that.

4 CHAIRMAN FAY: Yeah, we totally understand
5 things come up. So we will do that, and I will
6 just -- I want to make a note. I will make sure
7 our staff is just prepared like they were today,
8 when we had something come up and somebody has to
9 be virtual, we do the best that we can to adapt.

10 Okay. With that, Order of Witnesses. Are
11 there any witnesses, I guess, stipulated at this
12 time? No?

13 Mr. Trierweiler, go ahead.

14 MR. TRIERWEILER: Staff would like to ask
15 whether the parties are willing to stipulate to the
16 prefiled testimony and exhibits for staff witness
17 Angie Calhoun at this time.

18 CHAIRMAN FAY: Any objections to stipulating
19 Ms. Calhoun and her testimony and exhibits?

20 MS. WESSLING: I would say no objection as of
21 right now, but if I could have through the 30th to
22 get back with you and give you a final confirmation
23 on that.

24 CHAIRMAN FAY: Okay. We will reflect then
25 that there are no objections other than by close

1 business tomorrow, OPC will respond if for some
2 reason they do have an objection to stipulating
3 Ms. Calhoun. Mr. Trierweiler, does that work?

4 MR. TRIERWEILER: Yes, Chairman, and thank
5 you.

6 CHAIRMAN FAY: Okay. Great. Go ahead.

7 MR. TRIERWEILER: If the parties know of any
8 witnesses whom they can stipulate to, staff will
9 confirm with each Commissioner that any identified
10 witness can be excused.

11 If the Commissioners do not have any questions
12 for these witnesses, the witnesses may be excused
13 from the hearing and their testimony and exhibits
14 entered into the record at hearing as though read.

15 CHAIRMAN FAY: Okay. With that, we will move
16 on to Basic Positions. Let's see here. Let me go
17 ahead and turn to that in our Prehearing Order.

18 So I guess let's first just make sure any of
19 the parties don't have any changes to any of their
20 basic positions that they want to reflect in the
21 draft prehearing order at this time. Showing none.

22 Okay. And as stated before, we will make sure
23 that we have until close of business if there is
24 some language that you feel you want changed, we
25 can do so by close of business tomorrow, and then

1 it will be reflected in the final prehearing order.

2 Next we will move to issues and positions.

3 Let's think of the best way maybe to go through
4 this. So, Mr. Trierweiler, you want to get us in
5 the right posture for this before I go into the
6 issues?

7 MR. TRIERWEILER: Yes, Chairman.

8 The OEP requires that each party take a
9 position at the prehearing conference unless good
10 cause can be shown why it can't do so. Absent
11 either taking a position or showing good cause why
12 it cannot, the prehearing order will reflect no
13 position for that party on that issue.

14 If parties have not taken a position, or wish
15 to change a position, staff suggests that they be
16 allowed to do so by Wednesday, which is tomorrow,
17 November 30th, close of business.

18 A no position on an issue prohibits any party
19 from cross-examining witnesses with regard to those
20 issues, or briefing on those issues.

21 Issues and positions are included in the draft
22 prehearing order, which will be finalized to show
23 the results of the hearing. The order right now in
24 its current draft, which has been shared with the
25 parties, shows that the parties accepted OPC's

1 proposed Issue E with modification, and it is now
2 renumbered as Issue 74. The parties may want to
3 provide additional comment upon OPC's proposed
4 Issues A through D and F through I, and SCGC's J
5 and K, after we finish with the numbered issues.

6 CHAIRMAN FAY: Okay. So we will just confirm,
7 Mr. Trierweiler, I have Issue 74 reflects what was
8 Issue E at the time, and then we have position from
9 each party stated in that updated Issue 74. So is
10 that -- that's accurate, and the parties -- that's
11 the accurate position for Issue 74 for each of you?
12 Okay. With that, we will show that incorporated as
13 Issue 74.

14 We will go through the issues, and what we
15 will do for the parties, what take them up in
16 blocks as they are -- they are obviously correlated
17 as they are numbered into different topics. But
18 instead of going one by one, we will make sure we
19 give each counsel the opportunity to change what
20 they need to. I will do them in chunks here.

21 So what we will do is start taking up Issues 1
22 through 3. And just speak up if you have any
23 changes at that time, and we will make sure we have
24 those for discussion and reflects those changes in
25 what you have.

1 So with that, Issues 1 through 3.

2 Next we will move to quality of service, Issue
3 4.

4 Depreciation study, Issues 5 through 9.

5 Issue 10 is withdrawn.

6 Okay. Next we will move to rate base, 11
7 through 24. I will give you a minute here just to
8 review those, 11 through 24 rate base.

9 Okay. Next would be cost of capital, 25
10 through 32.

11 All right. Net operating income, 33 through
12 55.

13 That's a big chunk. So I will give you a
14 second here to work through those.

15 Next we will move to revenue requirements,
16 Issues 56 and 57.

17 Cost of service and rate design, which is
18 encompassed in 58 through 66.

19 All right. And then other issues, which is he
20 essentially 68 through 72.

21 MR. CHRISTOPHER WRIGHT: Chairman.

22 CHAIRMAN FAY: Yes, Mr. Wright.

23 MR. CHRISTOPHER WRIGHT: On Issue 73,
24 regarding the FIPUG standing.

25 CHAIRMAN FAY: Okay. Hold on one second.

1 Okay. Mr. Wright, you are recognized.

2 MR. CHRISTOPHER WRIGHT: Per confidential
3 discussions between counsel for Florida City Gas
4 and FIPUG regarding their membership, FCG
5 acknowledges that FIPUG has met the requirements
6 for associational standing in Florida Home Builders
7 Association and the Greco Chemical Company cases.
8 We, therefore, no longer have any objection to
9 FIPUG's standing in this case.

10 CHAIRMAN FAY: Okay. We will reflect that --
11 as you know, I put out the order essentially
12 allowing that standing on a provisional basis.
13 Seeing no objection at this time from the utility,
14 make sure the intervenors don't have anything to
15 add on that? We can reflect that in the prehearing
16 order going forward.

17 I will -- I will work with our legal counsel
18 to make sure that's reflected properly in the
19 prehearing order. So thank you for that update. I
20 appreciate that. And that will essentially resolve
21 that issue.

22 MR. TRIERWEILER: Chairman?

23 CHAIRMAN FAY: Yes, Mr. Trierweiler.

24 MR. TRIERWEILER: I just want to clarify.

25 Since we just added it as an issue, do you want to

1 reflect it as stipulated or can we just strike the
2 issue with everyone's agreement?

3 CHAIRMAN FAY: I think what we will do is just
4 strike the issue knowing that we don't have any
5 objections to it at this time, but I would like a
6 minute just to sort of think of how we need to put
7 it in here as far as papering it. So we don't have
8 to reflect that, I guess, specifically right now,
9 but it might be the best resolution, to your point,
10 to go ahead and remove it.

11 Mr. Hetrick, anything you want to add?

12 MR. HETRICK: I would like just like time to
13 figure out how to properly legally handle this,
14 because I cannot stipulate to standing, so --

15 CHAIRMAN FAY: Sure.

16 MR. HETRICK: Thank you.

17 CHAIRMAN FAY: Yeah, absolutely. We -- we
18 knew, when you were covering here, that we were
19 going to throw some curveballs at you. So, Mr.
20 Wright, we appreciate your work on that, and I am
21 sure we will get it resolved appropriately for the
22 prehearing order.

23 So with that, we will move on to Issues, let's
24 see, 74 and 75.

25 All right. Next what we will do is take up

1 the OPC proposed issues, which I have labeled draft
2 prehearing order essentially A through D, and then
3 F through I.

4 What I would like to do is allow OPC the
5 opportunity to provide some background on these.
6 And if you want, Ms. Wessling, would it be your
7 preference to essentially holistically kind of
8 provide why these issues would be included in here,
9 and then we can review that and make a decision, or
10 would you -- do you feel that each one individually
11 would be better discussed?

12 MS. WESSLING: Well, there is three that I
13 think can be argued simultaneously.

14 CHAIRMAN FAY: Okay.

15 MS. WESSLING: And then each of the others I
16 have separate arguments for. So maybe we will
17 start with the first three, which are A, B and G --

18 CHAIRMAN FAY: Okay.

19 MS. WESSLING: -- and then go from there, if
20 that's okay with you.

21 CHAIRMAN FAY: Yeah. As long as the other
22 parties don't have any objection, we will take up
23 those three for efficiency purposes from that
24 perspective, and then I will allow, obviously, the
25 utility and any of the intervenors to apply.

1 I just ask you to be mindful of some brevity
2 as we are going to try to get through all of these,
3 and I believe, Mr. Wright, your client has some
4 additional issues, too, that we are going to
5 incorporate after these, or have discussions and
6 incorporation.

7 Okay. So with that, Ms. Wessling, then what
8 we will do is we will take up your positions for
9 issues -- including Issues A, B and G, correct?

10 MS. WESSLING: Yes, sir. Thank you.

11 CHAIRMAN FAY: Okay. You are recognized.

12 MS. WESSLING: Thank you.

13 And just preliminarily on those three issues,
14 we do -- OPC does view those as legal issues, and
15 pursuant to Florida Statutes 120.57, as well as
16 prior Commission precedent and practice, we do
17 believe that we should be entitled to have these
18 issues included.

19 The issue of whether or not something can be
20 done is a threshold issue before you can get to
21 whether or not something should be done. And
22 although they are correlating should, you know,
23 things be done in other issues, we do believe that
24 the issue of whether or not the Commission has the
25 jurisdiction and authority to approve the RSAM, the

1 four-year rate plan and the related issue in G, we
2 do believe that that's something that should be
3 addressed in and of itself prior to determining
4 whether or not it should be done.

5 And additionally, which is a related point,
6 the affect -- and it does appear that the issue of
7 whether or not something has previously been
8 approved in a settlement grants the Commission
9 authority to therefore do something ab initio, such
10 as these issues, we believe is interrelated with
11 all three of these. We think that there is prior
12 Commission precedent, specifically but not
13 including -- or including but not excluding
14 anything else, 2019-0225-FOF-EI, which, again, is
15 what we believe is precedent for the fact that the
16 Commission -- just because something -- the
17 Commission has approved something in a settlement
18 does not necessarily mean that they can do it
19 outside of a settlement. And those are the main
20 issues that we would argue for the inclusion of A,
21 B and G.

22 CHAIRMAN FAY: Okay. Great. Any of the other
23 intervenors have anything they want to add to that?

24 With that, I will allow the utility to
25 respond.

1 MR. CHRISTOPHER WRIGHT: Thank you, Chairman.

2 FCG objects to the inclusion of OPC's proposed
3 Issues A, B and G. With respect to proposed Issues
4 A and B, they are unnecessary and overly-broad.
5 Issue A, does the Commission have the statutory
6 authority to grant FCG's proposed rate increase?
7 The Commission undoubtedly as the exclusive
8 authority and jurisdiction to hear and rule upon
9 FCG's proposed base rate increase in this
10 proceeding pursuant to sections 366.02, 366.04,
11 366.04(1), 366.05 and 366.06 of Florida Statutes.

12 The Commission's authority to set base rates
13 in this proceeding has already been determined by
14 the Florida Legislature and, therefore, OPC's
15 overly-broad proposed Issue A is entirely
16 unnecessary.

17 To the extent that OPC or other parties
18 contend that certain discrete proposals included in
19 FCG's proposed base rate increase are beyond the
20 Commission's statutory jurisdiction and authority,
21 any such issues are subsumed and more appropriately
22 addressed in the individual issues we've addressed
23 above here today.

24 For these reasons, FCG objects to proposed
25 Issues A and B and respectfully request that they

1 be denied as separate issues in this proceeding.

2 Also, with respect to proposed Issue B, it's
3 fully subsumed under Issue No. 71.

4 Finally, with respect to Issue No. G, it's
5 already fully subsumed under Issue 77, which
6 addresses the RSAM.

7 Additionally, proposed Issue G is not neutral
8 to all parties and, instead, improperly suggested
9 that the Commission and parties have already
10 accepted OPC's contested position on the use of
11 alternative depreciation parameters.

12 For these reasons, we submit that OPC's
13 proposed Issues A, B and G should be rejected as
14 separate issues in this proceeding.

15 CHAIRMAN FAY: Okay. With that, Mr.
16 Trierweiler, I will let you provide some feedback
17 on these.

18 I do -- just, if it's helpful for staff, based
19 on some of this precedent that's cited and then
20 some of these issues being subsumed in some of the
21 other issues, I am more than likely going to take
22 these under advisement to review that before we put
23 out to the final prehearing order, but with that,
24 Mr. Trierweiler, I want to give you the opportunity
25 to provide anything you think is appropriate.

1 MR. TRIERWEILER: As far as A is concerned,
2 and B, counsel for FCG perfectly captured staff's
3 comments shared earlier in the development stage,
4 and we concur with the statements that FCG made
5 regarding A and B just now.

6 CHAIRMAN FAY: Okay. That's probably likely
7 where I will fall, but I do want to take the time
8 to review those issues that are -- that encompass
9 these, or subsume these other issues presented.

10 So with that, we have A, B and G presented --

11 MR. TRIERWEILER: Chairman, I am sorry.

12 CHAIRMAN FAY: Yes.

13 MR. TRIERWEILER: I omitted G, which I had
14 separately.

15 We also concur with FCG's comments as to
16 proposed Issue G.

17 CHAIRMAN FAY: Okay. Okay. So we have A, B
18 and G as presented by the parties.

19 Ms. Wessling, we will move now Issue C. You
20 are recognized.

21 MS. WESSLING: Thank you.

22 With regard to Issue C, which relates to the
23 amount of directors and officers liability
24 insurance expense, we believed that this issue is
25 one that has traditionally and historically been a

1 separate issue from just the overarching insurance
2 expense issue.

3 We also -- again, I believe that's consistent
4 with Commission practice to have this separate.
5 Since this is a benefit -- an expense that only
6 benefits shareholders, it's important that this be
7 addressed separately from the overall insurance
8 expense issue, and that's why we are requesting
9 Issue C be included separate and apart from the
10 insurance expense issue.

11 CHAIRMAN FAY: Okay. Anything from the
12 intervenors? No?

13 With that, Mr. Wright, you are recognized.

14 MR. CHRISTOPHER WRIGHT: We may disagree with
15 the characterization of the benefits of the
16 directors and officers liability insurance, but we
17 do not have an objection to including this as a
18 separate issue, and we can provide our position to
19 the staff by the 30th.

20 CHAIRMAN FAY: Okay. That would resolve that.

21 Mr. Trierweiler, do you want to add anything
22 to this issue being included?

23 MR. TRIERWEILER: Yes, Chairman.

24 Staff has consistently stated that its belief
25 is that this issue is subsumed in Issue 42, and

1 does not need to be broken out, and will be
2 sufficiently handled as part of Issue 42.

3 CHAIRMAN FAY: Okay. And I would like to look
4 at that recognizing that, at this time, there is no
5 objection to that issue being included in here. I
6 don't have any problem with doing so. But I do
7 want to look at 42 maybe, and how that's included.

8 So with that, that's Issue C as presented.
9 Ms. Wessling, we will move on to issue D.

10 MS. WESSLING: Thank you.

11 With regard to Issue D, which relates to the
12 AMI O&M expense being removed from the projected
13 test year, we believe that the issue of whether or
14 not the expense should be removed is absolutely
15 separate from the issue -- the rate base issue
16 that's presented as Issue 12. These are not things
17 -- Issue D is not subsumed in Issue 12. They are
18 very separate issues, and we believe that it's
19 procedurally inappropriate to include or subsume
20 Issue D under Issue 12.

21 CHAIRMAN FAY: Okay. Thank you, Ms. Wessling.
22 Showing nothing from other the intervenors,
23 next we move to you, Mr. Wright.

24 MR. CHRISTOPHER WRIGHT: FCG, I -- mean, this
25 is probably subsumed in one of the expense issues

1 above, but we have no objection to the inclusion of
2 this issue.

3 CHAIRMAN FAY: Okay. Mr. Trierweiler,
4 anything to add?

5 MR. TRIERWEILER: Yes, Chairman.

6 Staff would assert that, as it has, that Issue
7 D is subsumed in Issue 12.

8 CHAIRMAN FAY: Okay. Next we will move on to
9 Issue F.

10 MS. WESSLING: Thank you.

11 With regard to Issue F, the appropriate amount
12 of incentive compensation expense to include, I
13 have arguments but then also an alternative to
14 make.

15 The main reasons that OPC believes this should
16 be a separate issue is that there have been
17 problems in the past where a lack of specificity
18 within the incentive compensation expense has led
19 to problems for either the consumers or the
20 utilities in the past; which is, again, why we
21 believe that this is appropriate to be its own
22 separate issue.

23 We are talking about over \$1 million here as
24 far as the OPC recommendation, and this is a major
25 focus of our expert's testimony.

1 The recommendation or alternative that I
2 mentioned would be to possibly break out this issue
3 with an A, B, C, D, where there is separate
4 requests -- or separate positions regarding
5 executive, nonexecutive, short-term and long-term
6 incentive compensation programs. Again, we just
7 feel that more specificity on this issue would be
8 better.

9 CHAIRMAN FAY: Okay. Mr. Wright, any
10 objection to this?

11 MR. CHRISTOPHER WRIGHT: Thank you, Chairman.

12 Yes, FCG objects to OPC's proposed Issue F.
13 Incentive compensation expense is a key component
14 of the salaries of benefits expense that is already
15 fully subsumed in Issue No. 39. We feel it can be
16 fully addressed, whether in subparts or not, but it
17 can be fully addressed under Issue No. 39.

18 CHAIRMAN FAY: Okay. Thank you.

19 Mr. Trierweiler, you are recognized.

20 MR. TRIERWEILER: Staff agrees that this issue
21 is subsumed in Issue 39.

22 CHAIRMAN FAY: Okay. All right. Next we will
23 move to Issue G, Ms. Wessling. You are recognized.

24 MS. WESSLING: In Issue G, we address --

25 CHAIRMAN FAY: Oh, we already took up Issue G.

1 We will go to Issue H.

2 MS. WESSLING: Thank you.

3 Again, Issue H, excuse me, is regarding the
4 LNG facility. This is similarly -- excuse me, with
5 H and I, similar to my last argument, we just
6 believe that more specificity would be better than
7 less with regard to this issue. It's another main
8 area where our experts disagree with FCG and the
9 proposals made by FCG. And I think probably all
10 the parties would agree that this is a major asset
11 and feature of this case. So we just think that
12 more specificity with regard to the issues would be
13 better.

14 CHAIRMAN FAY: Okay. And if you are okay, Ms.
15 Wessling, we will accept that as your argument for
16 Issue H and I.

17 MS. WESSLING: Yes. Thank you.

18 CHAIRMAN FAY: Okay. Mr. Wright. You are
19 recognized.

20 MR. CHRISTOPHER WRIGHT: Thank you, Chairman.

21 FCG objects to OPC's proposed Issues H and I.
22 We believe they are already fully subsumed and can
23 be fully addressed under Issue No. 13.

24 CHAIRMAN FAY: Okay. Mr. Trierweiler, you are
25 recognized.

1 MR. TRIERWEILER: Staff agrees that both H and
2 I are subsumed in 13.

3 CHAIRMAN FAY: Okay. Let's see. With that,
4 Ms. Wessling, did we address all of your issues at
5 this time?

6 MS. WESSLING: Yes, sir.

7 CHAIRMAN FAY: Your proposed issues, issues
8 should say. Okay.

9 All right. Next we will move, Mr. Wright, to
10 your proposed issues. And I have J and K here in
11 front of me. Does that sound accurate?

12 MR. SCHEF WRIGHT: Yes, sir. Thank you.

13 CHAIRMAN FAY: Okay. You are recognized.

14 MR. SCHEF WRIGHT: Thank you, Mr. Chairman.

15 Briefly, these are pure legal issues. They
16 are essentially the same issues based on the same
17 statutes that were litigated in the recent FPL rate
18 case, and that are currently pending on appeal to
19 the Florida Supreme Court. We submit that it's
20 pure legal issues. They are completely appropriate
21 here, just as they were completely appropriate in
22 docket 20210015.

23 CHAIRMAN FAY: Okay. And that would be your
24 position for both J and K?

25 MR. SCHEF WRIGHT: J and K. Yes, sir. Thank

1 you.

2 CHAIRMAN FAY: Okay. Mr. Wright, you are
3 recognized.

4 MR. CHRISTOPHER WRIGHT: Thank you, Chairman.

5 FCG objects to proposed Issues J and K. We
6 believe Issue J is fully subsumed and can be
7 briefed under Issue 67, and it's already addressed
8 by the Sugar Grower Co-op's position stated
9 therein.

10 Likewise, Issue K is fully subsumed in Issue
11 No. 68, can be fully briefed and addressed under
12 Issue No. 68, and is already addressed in the
13 Co-op's position stated therein?

14 CHAIRMAN FAY: Okay. And, Mr. Trierweiler, go
15 ahead.

16 MR. TRIERWEILER: Staff concurs with FCG.

17 CHAIRMAN FAY: Okay. All right. Okay. With
18 that, we have all the proposed issues. So I --
19 recognizing that a good amount of these issues may
20 be subsumed in other issues, I will likely -- well,
21 I will review them and see where they land.

22 So with that, let me make sure we don't have
23 anything else, Mr. Trierweiler. So we have covered
24 all of OPC and Sugar Coalition's issues.

25 I just realized, there is no relationship,

1 right, Mr. Wright, like, the --

2 MR. SCHEF WRIGHT: Very distant as far as we
3 know. Thanks.

4 MR. CHRISTOPHER WRIGHT: As long as two
5 Wrights don't make a wrong.

6 CHAIRMAN FAY: Yeah. Fair enough. I guess I
7 teed that up for you, Mr. Wright.

8 All right. Next we will move to exhibits, Mr.
9 Trierweiler, unless we have anything else under the
10 issues, the contested issues.

11 Go ahead. You are recognized,
12 Mr. Trierweiler.

13 MR. TRIERWEILER: Staff has prepared and
14 circulated to the parties a comprehensive exhibit
15 list, which includes all prefiled exhibits and also
16 includes those exhibits staff wishes to include in
17 the record.

18 CHAIRMAN FAY: Okay.

19 MR. TRIERWEILER: We had requested as to
20 whether or not there were any objections to the
21 comprehensive exhibit list, and we received some
22 comments back to include a correction by FCG.

23 And so with the understanding that this would
24 incorporate the change that was recently submitted
25 by FCG, I am asking the parties whether or not they

1 have any objections to the comprehensive exhibit
2 list, or the entry of staff's exhibits into the
3 record at this time.

4 CHAIRMAN FAY: Okay. So we have both the
5 comprehensive exhibit list with the change as
6 proposed from FCG. And, Mr. Trierweiler, is that a
7 substantive change that the intervenors would want
8 to review, or is it just more of an administrative
9 technical.

10 MR. TRIERWEILER: I would rather have FCG
11 address it as it was their change.

12 CHAIRMAN FAY: Okay. Well, why don't we start
13 there.

14 Mr. Wright, go ahead and give us some context
15 of this change.

16 MR. CHRISTOPHER WRIGHT: Yeah, I think we sent
17 a number of changes, and perhaps some omissions and
18 corrections. We circulated that to the parties.
19 We received an updated comprehensive exhibit list
20 yesterday. Unfortunately I was traveling and was
21 unable to get to it until late last night. I did
22 send that out this morning. It probably would be
23 best for parties to review that before making a
24 ruling, or asking about any objections here today.

25 CHAIRMAN FAY: Okay. I will agree. We will

1 allow the time to do that.

2 And then, Mr. Trierweiler, the staff exhibits
3 were your oral proposed entry at this time?

4 MR. TRIERWEILER: Yes.

5 CHAIRMAN FAY: Okay. Do the parties have any
6 objection to staff's exhibits?

7 MR. CHRISTOPHER WRIGHT: I think FCG would
8 prefer to wait to see how everything shakes out on
9 the rest of the comprehensive exhibit list before
10 we agree. We are still reviewing. There is a
11 large number of staff exhibits. We just want to
12 make sure everything is right.

13 CHAIRMAN FAY: Okay.

14 MR. TRIERWEILER: Chairman, that's fair.
15 Staff has a question about one of the changes --

16 CHAIRMAN FAY: Okay.

17 MR. TRIERWEILER: -- so I think if we caucus
18 later on today, we can --

19 CHAIRMAN FAY: Okay. Let's give it the time
20 and we will get it right. I am fine with that.

21 Next, Mr. Trierweiler, we want to move into,
22 unless there is anything else in the exhibits, next
23 we will move into the proposed stipulated issues.

24 MR. TRIERWEILER: Chairman, staff has
25 identified issues that appear to be undisputed, and

1 we have forwarded a list of these issues that may
2 form the basis for proposed stipulations. However,
3 we do not have any proposed stipulations at this
4 time.

5 CHAIRMAN FAY: Okay. And seeing that to be
6 the case, it doesn't seem like any of that will
7 change in our current posture, but let me just make
8 sure with the parties there weren't further
9 discussions in anything that we would be
10 stipulating at this time. Mr. Wright?

11 Okay. All right. With that, we will move to
12 pending motions. Mr. Trierweiler.

13 MR. TRIERWEILER: You have already discussed
14 the one pending motion.

15 I got word that another one of the witnesses
16 may have some technical difficulties in appearing
17 at the hearing. I am waiting for all of the
18 parties to concur and agree as to that witness, and
19 we will take that up sometime later this week with
20 you when I have all the facts.

21 CHAIRMAN FAY: Okay. So with that, we will
22 just address, to your point, the decision on OPC's
23 witness, which we've granted that accommodation.
24 And seeing another one might come down the pipe, we
25 will assess it when that occurs.

1 So at this time, no other pending motions,
2 right, Mr. Trierweiler?

3 MR. TRIERWEILER: That's correct.

4 Pending confidentiality motions. There is one
5 pending confidentiality order, and staff will see
6 that it gets addressed in advance of the hearing.

7 CHAIRMAN FAY: Okay. That works for me.

8 Mr. Trierweiler, you want to move into -- oh,
9 Ms. Wessling, go ahead.

10 MS. WESSLING: I am sorry. I didn't know if
11 this is the right time or not. I apologize for
12 interrupting. But just regarding OPC's proposed
13 issues, if I could just touch on that briefly. I
14 understand you are going to take all of that under
15 advisement and issue a ruling and everything. OPC
16 just wanted to make sure that we put on the record
17 that we would like to request the ability to still
18 brief the jurisdictional issues in order to
19 preserve any appellate rights we may need in the
20 future.

21 CHAIRMAN FAY: Okay. I will recognize that
22 that's stated for the record. Obviously, within
23 the jurisdiction of the docket, and what's approved
24 or not approved, you can brief what you believe is
25 an appropriate issue in there, and so I can't grant

1 or deny that now, but recognize you just want to
2 state that for the record.

3 MS. WESSLING: Thank you.

4 CHAIRMAN FAY: Okay. With that, Mr.
5 Trierweiler, we can move on -- unless there is
6 anything from other parties, we will move on to
7 post-hearing procedures.

8 MR. TRIERWEILER: Staff recommends that
9 post-hearing briefs be no longer than 50 pages.

10 Staff also recommends no longer than 75 words
11 for post-hearing position summaries.

12 And staff recommends that briefs should be due
13 on January 9, 2023.

14 CHAIRMAN FAY: Okay. Let's check with the
15 parties on those recommendations.

16 MR. CHRISTOPHER WRIGHT: Chairman.

17 CHAIRMAN FAY: Mr. Wright.

18 MR. CHRISTOPHER WRIGHT: Just looking at some
19 of the parties' positions on some of these issues,
20 some of these are pretty lengthy, and there is a
21 lot of meat to some of them. I am concerned 75
22 words on the positions may be a little short, may
23 be a little difficult to do. And I am afraid if we
24 cut too much, the position statement may be a
25 little meaningless.

1 I do recognize that in FPL's last base rate
2 case, in Docket 20210015, the parties were afforded
3 the opportunity no more than 100 words for their
4 position statements. Obviously, we will do our
5 best to limit that, but I think 100 words would
6 allow us the opportunity to maintain our full
7 positions and not render it meaningless by trying
8 to cut it down to 75.

9 CHAIRMAN FAY: Okay. And seeing, once again,
10 that it's a rate case, that makes perfect sense to
11 me, but let me see if there is any objection, Ms.
12 Wessling --

13 MS. WESSLING: OPC concurs --

14 CHAIRMAN FAY: -- or the intervenors.

15 MS. WESSLING: -- with 100 word.

16 CHAIRMAN FAY: Okay. Great. We will reflect
17 that in the prehearing order. Mr. Trierweiler, we
18 will set that at 100.

19 And with Ms. Keating there, I thought you were
20 going to ask more pages in the brief, so I was a
21 little bit concerned.

22 MR. CHRISTOPHER WRIGHT: I am not finished
23 yet.

24 CHAIRMAN FAY: Go ahead, Mr. Wright. You are
25 recognized.

1 MR. CHRISTOPHER WRIGHT: Yeah. So again,
2 recognizing this as rate case, I do acknowledge
3 that staff did bump up the page number slightly
4 from 40 to 50 pages. I just don't think we are
5 going to be able to do it. The drat prehearing
6 order itself is 70 pages, and there is no
7 conclusions of law or findings of fact, and no
8 argument or brief.

9 You know, I suspect nobody wants to read a
10 brief that's 10 point font with half-inch margins
11 single-spaced with your -- if would you please
12 allow us to exceed that. I think 100 pages would
13 be -- you know, obviously, again, we will endeavor
14 to keep it as short as possible, but I would hate
15 to have to cut off an argument just for a page
16 limit. But with your -- with respect, we would
17 like and request 100 pages for the brief.

18 CHAIRMAN FAY: Okay. I will check with the
19 intervenors in the issue, and then probably more
20 appropriately I will check with Mr. Trierweiler.
21 Any thoughts on that?

22 MR. TRIERWEILER: I feel like a curmudgeon
23 just pushing it from 40 to 50. However, it may
24 grant some relief to any intervenors who were
25 concerned about being able to fully address the

1 issues that we already have numerically, but 100
2 pages, my boss tells me it's fine.

3 CHAIRMAN FAY: All right. Mr. Trierweiler,
4 well, I have a boss at home, and I also agree with
5 whatever she says, and so I think 100 would be
6 appropriate.

7 And I just -- you know, I just want to
8 recognize this is essentially allowing some
9 lengthening of what could be provided on these
10 issues in what is a complex comprehensive rate
11 case. It's not requiring the parties to all use
12 that limit. It's essentially just a ceiling that
13 would be provided. And so with that, I think if
14 needed and appropriate, I am fine reflecting that
15 100-page limit only the briefs.

16 And, Mr. Wright, do you have anything else?

17 MR. CHRISTOPHER WRIGHT: Yes. Thank you,
18 Chairman.

19 Opening statements, again, recognizing this is
20 a complex base rate case, we would respect 10
21 minutes, but we will make best efforts to keep it
22 much shorter than that, but we would appreciate 10
23 minutes for opening statements.

24 CHAIRMAN FAY: Okay. I feel like Mr. Wright
25 is stealing your request over there, Ms. Wessling.

1 Would you also agree that that would be
2 appropriate?

3 MS. WESSLING: For fear of I am concurring
4 with FCG on too many things, we would agree that 10
5 minutes would be preferable.

6 CHAIRMAN FAY: I would agree, and I have no
7 objection, but let me make sure. Mr. Trierweiler,
8 any thoughts on that? Nope, okay.

9 MR. TRIERWEILER: No thought.

10 CHAIRMAN FAY: Okay. With that, I recognize
11 that these are significant exemptions to the times.
12 And for fear of offending my colleague Commissioner
13 Graham, I am not stating that these should always
14 be the numbers that are presented in every docket,
15 but I do think with a rate case this complex, it's
16 appropriate to get what we need for the Commission
17 to make an appropriate decision.

18 So with that, we are reflecting the request by
19 the parties for the 100-word adjustment in the post
20 position, the 100-page limit on the pages.

21 And with that, does that mean you have a date
22 extension also, Mr. Wright or are you done?

23 MR. CHRISTOPHER WRIGHT: My brief is done. I
24 am ready. Let's go.

25 CHAIRMAN FAY: Okay. Great.

1 Anything for post-hearing proceedings,
2 post-hearing decisions from you, Ms. Wessling, Mr.
3 Wright?

4 MR. SCHEF WRIGHT: We're good. Thank you.

5 CHAIRMAN FAY: Okay. All right. With that,
6 then, Mr. Trierweiler, we would set post-hearing
7 briefs due on January 9th? Okay.

8 All right. With that, let me make sure we
9 don't have any other matters to address at this
10 time before we adjourn this prehearing, Mr.
11 Trierweiler?

12 MR. TRIERWEILER: Staff would note that at the
13 hearing, the parties, Commissioners, staff, already
14 have access to all prefiled testimony and exhibits.
15 You do not have to bring copies of those items for
16 other parties. However, all exhibits that you wish
17 to use at the hearing for the purpose of
18 cross-examination or impeachment must be provided
19 in the following manner:

20 Each exhibit you intend to sponsor, you must
21 bring 20 paper copies, with each copy having a
22 cover sheet that staff will provide to you.

23 For each exhibit, you will need to fill out
24 everything on the cover sheet except for the
25 exhibit number. That will be provided at the time

1 the exhibit is identified at the hearing.

2 Please be sure that each exhibit has a brief
3 title describing what the exhibit is.

4 CHAIRMAN FAY: Okay. Great. And let me make
5 sure the parties don't have anything else.

6 All right. With that, seeing no additional
7 matters, this prehearing is adjourned. Thank you
8 so much.

9 MR. SCHEF WRIGHT: Thank you.

10 (Proceedings concluded.)

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CERTIFICATE OF REPORTER

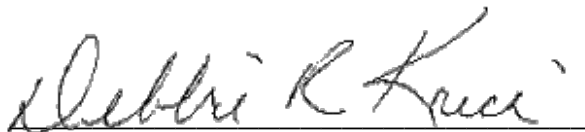
STATE OF FLORIDA)
COUNTY OF LEON)

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

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

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor 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 5th day of December, 2022.



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