

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 120015-EI

In the Matter of:

PETITION FOR INCREASE IN RATES
BY FLORIDA POWER & LIGHT COMPANY.

COMMISSION
CLERK

12 NOV 16 AM 10:25

RECEIVED FPSC

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS

PARTICIPATING: COMMISSIONER RONALD A. BRISÉ
PREHEARING OFFICER

DATE: Thursday, November 15, 2012

TIME: Commenced at 1:05 p.m.
Concluded at 1:40 p.m.

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

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

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

APPEARANCES:

R. WADE LITCHFIELD, JOHN T. BUTLER, JORDAN A. WHITE, and MARIA J. MONCADA, ESQUIRES, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408, appearing on behalf of Florida Power & Light Company.

KENNETH L. WISEMAN, MARK F. SUNDBACK, LISA M. PURDY, WILLIAM M. RAPPOLT, J. PETER RIPLEY, and BLAKE R. URBAN, ESQUIRES, Andrews Kurth, LLP, 1350 I Street NW, Suite 110, Washington, DC 20005, appearing on behalf of South Florida Hospital and Healthcare Association.

LIEUTENANT COLONEL GREGORY FIKE, CHIEF; KAREN WHITE; and CAPTAIN SAMUEL MILLER, ESQUIRES, Utility Law Field Support Center, Air Force Legal Operations Agency, 139 Barnes Drive, Suite 1, Tyndall AFB, Florida 32403, appearing on behalf of the Federal Executive Agencies.

JON C. MOYLE, JR., and SERENA MOYLE, ESQUIRES, Moyle Law Firm, P.A., 118 North Gadsden Street, Tallahassee, Florida 32301, appearing on behalf of Florida Power Users Group.

1 APPEARANCES (Continued)

2 ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA, III,
3 ESQUIRES, Gardner, Bist, Wiener, Wadsworth, Bowden,
4 Bush, Dee, LaVia & Wright Law Firm, P.A., 1300
5 Thomaswood Drive, Tallahassee, Florida 32308, appearing
6 on behalf of the Florida Retail Federation.

7 J. R. KELLY, PUBLIC COUNSEL; CHARLES J.
8 REHWINKEL; PATRICIA A. CHRISTENSEN; and JOSEPH A.
9 MCGLOTHLIN, ESQUIRES, Office of Public Counsel, c/o The
10 Florida Legislature, 111 West Madison Street, Room 812,
11 Tallahassee, Florida 32399-1400, appearing on behalf of
12 the Citizens of the State of Florida.

13 WILLIAM C. GARDNER, ESQUIRE, Nabors, Giblin &
14 Nickerson, P.A., 1500 Mahan Drive, Suite 200,
15 Tallahassee, Florida 32308, appearing on behalf of the
16 Village of Pinecrest.

17 THOMAS SAPORITO, 6701 Mallards Cove Road,
18 Apartment 28H, Jupiter, Florida 33458, appearing pro se.

19 JOHN W. HENDRICKS, 367 South Shore Drive,
20 Sarasota, Florida 34234, appearing pro se.

21 KEINO YOUNG, MARTHA CARTER BROWN, LARRY D.
22 HARRIS, and CAROLINE M. KLANCKE, ESQUIRES, Florida
23 Public Service Commission, 2540 Shumard Oak Boulevard,
24 Tallahassee, Florida 32399-0850, appearing on behalf of
25 the Florida Public Service Commission (Staff).

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

APPEARANCES (Continued):
CURT KISER, GENERAL COUNSEL, and MARY ANNE
HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service
Commission, 2540 Shumard Oak Boulevard, Tallahassee,
Florida 32399-0850, Advisors to the Florida Public
Service Commission.

P R O C E E D I N G S

1
2 **CHAIRMAN BRISÉ:** Good afternoon. Today is
3 November 15th, 2012, it is 1:05, and this is a
4 Prehearing Conference, Docket Number 120015-EI. So
5 we'll call this hearing to -- Prehearing Conference to
6 order. Mr. Young, would you read the notice, please?

7 **MR. YOUNG:** Good afternoon. By notice issued
8 on November 7th, 2012, by the Commission Clerk, this
9 time and place has been set for a Prehearing Conference
10 in Docket Number 120015-EI, petition for rate increase
11 by Florida Power & Light.

12 **CHAIRMAN BRISÉ:** Thank you very much. At this
13 time we'll take appearances. We'll start on my left
14 going towards my right.

15 **MR. LITCHFIELD:** Thank you, Chairman Brisé.
16 Wade Litchfield, John Butler, and Maria Moncada here on
17 behalf Florida Power & Light Company.

18 **CHAIRMAN BRISÉ:** Okay.

19 **LIEUTENANT COLONEL FIKE:** Lieutenant Colonel
20 Greg Fike for the Federal Executive Agencies. Also
21 entering appearances for Ms. Karen White and Captain Sam
22 Miller.

23 **CHAIRMAN BRISÉ:** Okay.

24 **MS. MOYLE:** Serena Moyle from Moyle law firm
25 on behalf of FIPUG, and making an appearance for Jon

1 Moyle as well.

2 **CHAIRMAN BRISÉ:** Okay.

3 **MR. WISEMAN:** Kenneth Wiseman from Andrews
4 Kurth for the South Florida Hospital and Healthcare
5 Association. And I also would like to enter the
6 appearances of Mark Sundback, Lisa Purdy, Bill Rappolt,
7 Peter Ripley, and Blake Urban.

8 **CHAIRMAN BRISÉ:** Okay.

9 **MR. HENDRICKS:** Yes. John Hendricks appearing
10 pro se.

11 **CHAIRMAN BRISÉ:** Thank you.

12 **COMMISSIONER EDGAR:** Bill Garner from Nabors,
13 Giblin & Nickerson appearing on behalf of the Village of
14 Pinecrest.

15 **CHAIRMAN BRISÉ:** All right.

16 **MR. SAPORITO:** Thomas Saporito appearing pro
17 se.

18 **CHAIRMAN BRISÉ:** All right.

19 **MR. WRIGHT:** Robert Scheffel Wright and
20 John T. Lavia, III, of the Gardner, Bist, Wiener law
21 firm, appearing on behalf of the Florida Retail
22 Federation. Thank you.

23 **CHAIRMAN BRISÉ:** All right. Thank you.

24 **MR. REHWINKEL:** Charles Rehwinkel appearing on
25 behalf of the citizens of the State of Florida. I also

1 would like to enter an appearance for Joe McGlothlin,
2 Patty Christensen, and J. R. Kelly.

3 **CHAIRMAN BRISÉ:** All right. Thank you.

4 **MR. YOUNG:** Keino Young, Caroline Klancke,
5 Martha Carter Brown, and Larry Harris on behalf of
6 Commission staff.

7 **MS. HELTON:** And Mary Anne Helton, advisor to
8 the Commission. I'd also like to make an appearance for
9 our General Counsel, Curt Kiser.

10 **CHAIRMAN BRISÉ:** All right. Thank you. Did
11 we miss anyone in terms of appearances? Okay. Seeing
12 none. All right.

13 Are there any preliminary matters?

14 **MR. YOUNG:** Yes, sir. Staff would note that
15 Algenol Biofuels has withdrawn from these proceedings.

16 **CHAIRMAN BRISÉ:** Okay. Thank you.

17 **MR. YOUNG:** Also, staff has prepared a cover
18 sheet that can be used for exhibits at the hearing if a
19 party has not already prepared its cover sheet for an
20 exhibit, and that's the one page.

21 **CHAIRMAN BRISÉ:** All right. I'm going to put
22 emphasis on the use of the cover sheet. It makes it a
23 lot easier for us to, to deal with it. It's more
24 efficient and effective for us if all the parties use a
25 cover sheet that looks like this. Okay?

1 Anything else, Mr. Young?

2 **MR. YOUNG:** Yes, sir. Staff recommends that
3 if the, if the presiding officer wishes to hear oral
4 arguments on any particular issue, said arguments be
5 taken up during the issues and positions section of the
6 Prehearing Conference.

7 **CHAIRMAN BRISÉ:** All right. Thank you. And
8 if there, just to let you know, if there are any issues
9 that, that require any oral argument, we'll limit those
10 to five minutes apiece. Okay. I mean five minutes per
11 side on, on the issue.

12 All right. I think we'll proceed through the
13 draft Prehearing Order now. We'll sort of go through
14 this by section, and I want the parties to let me know
15 if there are any corrections or changes to be made. We
16 may go through this a bit quickly, so speak up if you
17 have a change or any corrections that you need to have
18 made.

19 Section I, case background.

20 Section II, conduct of proceedings.

21 Section III, jurisdiction.

22 **MR. REHWINKEL:** Commissioner, I, I don't know
23 where the right place to say this, and I'm not going to
24 do it at this procedural process, proceeding here, but I
25 just wanted to advise the Commission that I will make

1 objections without arguments at the beginning of the
2 hearing on Monday, as I have done in several other of
3 the processes. It's -- I don't think it's unexpected.
4 I'm not objecting to this process here today but the
5 overall process, and I just wanted to alert the
6 Commission for planning.

7 **CHAIRMAN BRISÉ:** Sure. Understood.

8 **MR. YOUNG:** I think Mr. Saporito has the same
9 objection.

10 **CHAIRMAN BRISÉ:** Mr. Saporito?

11 **MR. SAPORITO:** That's correct, I do.

12 **CHAIRMAN BRISÉ:** Okay. Thank you very much.

13 **MR. WRIGHT:** Just to be clear, we do too.

14 **CHAIRMAN BRISÉ:** Understood.

15 **MR. WRIGHT:** But we won't burden the
16 Commissioner with timely argument.

17 **CHAIRMAN BRISÉ:** Understood. Understood. So
18 those objections, if they're more appropriate for
19 Monday, then you can go ahead and we'll deal with that
20 on Monday. All right? Thank you.

21 And just for, for efficiency purposes,
22 recognizing the posture where we're at and so forth, if
23 you need to make the objection so that it's part of the
24 record, you know, we understand that and we can move
25 forward with the process as, as laid out.

1 **MR. REHWINKEL:** That's all my intent is to
2 state it.

3 **CHAIRMAN BRISÉ:** I'm just saying that for all
4 the parties to be clear on that. Okay?

5 So Section IV, procedure for handling
6 confidential information.

7 Okay. Section V, prefiled testimony and
8 exhibits and witnesses. Staff?

9 **MR. YOUNG:** Staff recommends that witnesses'
10 summaries be limited to no more than five minutes per
11 witness. If the witness has filed both direct and
12 rebuttal testimony, staff recommends that he or she
13 receive five minutes for direct and five minutes for
14 rebuttal.

15 If both direct and rebuttal testimonies are
16 taken up together, staff recommends that the witness be
17 given ten minutes total.

18 **CHAIRMAN BRISÉ:** All right. Thank you.

19 **MR. REHWINKEL:** Mr. Chairman, the Public
20 Counsel would ask that due to the unusual nature of this
21 proceeding and the limited number of witnesses, that
22 the, that our witnesses be allowed seven minutes instead
23 of five.

24 Most of the company witnesses, they will be
25 either -- if taken, not taken together, they will have a

1 cumulative amount of ten, ten minutes together. And,
2 and we think that we, we can do with less than seven for
3 some, but we would, we would ask leave to be given
4 seven minutes for this unusual circumstance.

5 **CHAIRMAN BRISÉ:** Okay. And you're suggesting
6 just for the OPC witnesses?

7 **MR. REHWINKEL:** Yes, sir.

8 **CHAIRMAN BRISÉ:** Okay. All right. Any
9 comments, anybody else?

10 **MR. LITCHFIELD:** FPL really has no objection
11 to that. We're comfortable with five. We think five is
12 frankly sufficient. But if it's the Commission's will
13 that OPC be given additional minutes, we have no
14 objection.

15 **CHAIRMAN BRISÉ:** Okay. I'm just trying to
16 make sure I understand the request properly. So for OPC
17 witnesses only --

18 **MR. REHWINKEL:** Yes.

19 **CHAIRMAN BRISÉ:** -- seven minutes would be
20 provided for --

21 **MR. REHWINKEL:** Each.

22 **CHAIRMAN BRISÉ:** -- for each. And are your
23 witnesses providing -- your witnesses are only providing
24 direct?

25 **MR. REHWINKEL:** Yes.

1 **CHAIRMAN BRISÉ:** Okay. And so you're
2 suggesting because your witnesses are only providing
3 direct and not rebuttal, that they should be provided an
4 additional two minutes.

5 **MR. REHWINKEL:** It's, it's really more -- this
6 is going to be a rather compact hearing, and it's more
7 the unusual nature, it's almost an ad hoc process that's
8 been rather accelerated, testimony was prepared on a
9 fairly short turnaround, and, and we believe that these
10 circumstances would call for that.

11 We would not seek to use this as a precedent
12 for future proceedings to say, well, you gave us
13 seven minutes there, we'd like seven minutes in future
14 proceedings. It's just because of the very unusual
15 nature of this.

16 **CHAIRMAN BRISÉ:** Understood.

17 **MR. LITCHFIELD:** Mr. Chairman, actually now I
18 do have a question or a comment. I -- honestly,
19 seven minutes in the case of some witnesses would be
20 sufficient virtually to read through their entire
21 prefiled direct testimony. But if that's what the
22 Chairman would be inclined to do, we're not going to
23 object. What we would object to, and now I'm a little
24 concerned based on some things that I just heard from
25 Mr. Rehwinkel, that, that his witnesses may be prepared

1 to go beyond the four corners of their prefiled direct
2 testimony. And that we --

3 **MR. REHWINKEL:** Absolutely not.

4 **MR. LITCHFIELD:** -- that we would object to.
5 Okay. I just wanted to clarify that.

6 **CHAIRMAN BRISÉ:** All right. I'll just tell
7 you my, my general inclination and I'll, and I'll rule
8 in a second. My general inclination would be if I were
9 to move that time frame to seven, I would do it across
10 the board rather than just for one particular party. So
11 I think we're going to go ahead and keep it at the five
12 and just avoid that altogether. Okay.

13 **MR. REHWINKEL:** Thank you.

14 **CHAIRMAN BRISÉ:** Yes, Mr. Wright.

15 **MR. WRIGHT:** Mr. Chairman, I just wanted to
16 say this is a multibillion dollar case.

17 **CHAIRMAN BRISÉ:** Understood.

18 **MR. WRIGHT:** And even if you did it across the
19 board, you're talking about adding maybe 30 minutes to
20 the totality. If you gave all the FPL witnesses, you
21 know, seven minutes apiece for each testimony, they'd
22 have 14. If you gave Mr. Hendricks seven minutes and if
23 you gave OPC's four witnesses two extra minutes, that's
24 eight minutes, two for Hendricks and whatever it is.
25 Frankly, I think an extra half hour at the outside for

1 y'all to hear from, from witnesses in a, in a
2 multibillion dollar case is a reasonable request. But
3 your call, of course.

4 **CHAIRMAN BRISÉ:** Thank you.

5 All right. Order of witnesses.

6 **MR. YOUNG:** Staff would note that FIPUG and
7 South Florida Hospital requests that each of their
8 respective witnesses' direct and rebuttal testimony be
9 taken up together.

10 **CHAIRMAN BRISÉ:** Okay. Any objections to
11 that?

12 **MR. REHWINKEL:** Public Counsel doesn't object.
13 We would assume that -- are these to be taken up in the,
14 at the rebuttal time frame?

15 **MR. WISEMAN:** Mr. Chairman? No, the order of
16 the witnesses is set forth -- we intend to present them
17 in the order set forth in the Prehearing Order. So as
18 it's currently structured, Mr. Pollock would come up
19 number four, Mr. Kollen would come up number six. And
20 so it would be in the, in the direct phase, if you will,
21 of the cross-examination.

22 And I don't know if this is the appropriate
23 time to raise it, you may want to have this taken up
24 separately, at a separate time, but I also had an
25 inquiry about the extent to which any party intended to

1 cross-examine Mr. Kollen and some timing issues of when
2 they would expect to get to him just so we, so we can
3 make appropriate travel arrangements.

4 **MR. REHWINKEL:** The reason I asked is that
5 there was an e-mail sent out about Mr. Pollock's --

6 **CHAIRMAN BRISÉ:** Right.

7 **MR. REHWINKEL:** -- ability to not be here
8 sooner, and I was willing to agree to have him go kind
9 of in his rebuttal slot and do those two pieces of
10 testimony together so there would be no issue about it.
11 But that was kind of what my thinking was along that
12 line.

13 **CHAIRMAN BRISÉ:** Sure. FIPUG?

14 **MS. MOYLE:** It's my understanding that he's
15 just going to go at the time that he gets here. He'll
16 remain in the same order that is through the prefiled
17 testimony, and he's going to have his direct and
18 rebuttal together, if that's okay.

19 **CHAIRMAN BRISÉ:** So you're suggesting that he
20 would just go at the time that he gets here?

21 **MR. LITCHFIELD:** And, Mr. Chairman --

22 **CHAIRMAN BRISÉ:** Let's say we get to him
23 before, before that time.

24 **MS. MOYLE:** Then we ask if we can just slip
25 him in at the time that he does get here in the direct

1 listing.

2 **CHAIRMAN BRISÉ:** Okay. Mr. Rehwinkel.

3 **MR. REHWINKEL:** Well, I have a problem with
4 Mr. Pous. He can be here -- he'll be traveling from
5 Montana on Monday.

6 **CHAIRMAN BRISÉ:** Sure.

7 **MR. REHWINKEL:** And he's available any time
8 after the start of business on Tuesday. So I just
9 thought it would be rational for, if Mr. Pollock had
10 travel constraints, to be taken up in his rebuttal slot
11 with those two pieces of testimony taken together. But
12 I really don't care where he does it together, just I
13 think it could be awkward to just put him in whenever he
14 got here.

15 **CHAIRMAN BRISÉ:** Right.

16 **MR. WRIGHT:** Mr. Chairman?

17 **CHAIRMAN BRISÉ:** Yes, Mr. Wright.

18 **MR. WRIGHT:** We don't care, except that we
19 would sure like to know today preferably how it's going
20 to work, you know. And I would just --

21 **CHAIRMAN BRISÉ:** Sure. You'll get that today.

22 **MR. WRIGHT:** I would offer that we would have
23 no problem with, with Jeff going during the
24 pro-settlement parties' direct, even if he comes not
25 fourth, but, let's say, sixth after Mr. Forrest or

1 somebody on Monday. But all we need to know is is he
2 going to testify before the OPC witnesses.

3 **CHAIRMAN BRISÉ:** Right. Understood.
4 Understood.

5 I think that if that is the sentiment as well,
6 I think I agree with that. If he is testifying for the
7 pro-settlement side, I think if we could put him in as
8 time becomes available, then we will do so. Okay? Does
9 that, does that work for everybody? Okay. I see heads
10 nodding yes, so I think that works.

11 **MR. WISEMAN:** Mr. Chairman?

12 **CHAIRMAN BRISÉ:** Yes, sir.

13 **MR. WISEMAN:** That works for me as well. But
14 I just, on that question, I still have the question
15 regarding timing, whether the parties opposing the
16 settlement think that they are -- if they could give us
17 some estimate of the cross that they have for these
18 witnesses, it would allow us to better determine when
19 Mr. Pollock will likely take the stand, when Mr. Kollen
20 would take the stand, if at all. We've got -- and they
21 just mentioned that I think Mr. Pous wouldn't be
22 available until Tuesday morning. I don't see that as
23 a -- I don't see that as a problem. I assume we
24 wouldn't get to Mr. Pous until Tuesday at the earliest.
25 But I don't know, maybe -- I mean, obviously the parties

1 opposing the settlement have a much better idea of how
2 much cross they intend for these witnesses, and at some
3 point in this, during this Prehearing Conference I'd
4 like to explore that.

5 **MR. REHWINKEL:** I can, I can kind of cut to
6 the chase on that.

7 **CHAIRMAN BRISÉ:** Sure.

8 **MR. REHWINKEL:** We have cross for all the
9 witnesses and I don't know that we have an estimate.
10 And I just -- we're not in that position today. We
11 won't be before the end of this session.

12 **CHAIRMAN BRISÉ:** Understood.

13 Colonel.

14 **LIEUTENANT COLONEL FIKE:** Just, just a
15 follow-up to that, I guess. I was going to propose or
16 request that -- FEA has one witness, Mr. Ryan Allen,
17 four and a half pages of direct testimony in a very
18 limited matter regarding the impact to Patrick Air Force
19 Base in Cape Canaveral of the utility rates. I was
20 going to request if there were not any questions for
21 him, that he would be excused and his testimony would be
22 offered into the case as though read. You know, but I
23 just didn't know if anybody had any questions for him
24 and maybe that would just answer it for me.

25 **CHAIRMAN BRISÉ:** Okay. Well, I think we'll

1 get to, to excusing witnesses.

2 **MR. YOUNG:** That's next.

3 **CHAIRMAN BRISÉ:** Okay.

4 **MR. REHWINKEL:** We have questions for him, so
5 that's a moot point.

6 **CHAIRMAN BRISÉ:** Okay. There will be
7 questions for him, so.

8 **LIEUTENANT COLONEL FIKE:** All right.

9 **CHAIRMAN BRISÉ:** All right. On, on, on this
10 issue of the timing, I think all witnesses need to be
11 prepared to, to be here, and for the, at least for maybe
12 a day after they're up. So if, if the assumption is
13 that a witness would be timed to be up on Monday, then
14 they need to be prepared to be here on Tuesday as well
15 so that --

16 **MR. LITCHFIELD:** Until kickoff on Thursday;
17 right?

18 **CHAIRMAN BRISÉ:** Until what?

19 **MR. LITCHFIELD:** Kickoff on Thursday.

20 **CHAIRMAN BRISÉ:** Hopefully not. But they need
21 to be prepared for at least the next day. And I think
22 that that at least covers that, Mr. Wiseman.

23 **MR. WISEMAN:** My, my concern was not so much
24 with them staying over in the event that we don't get to
25 them. My concern was more at the front end. But I

1 wouldn't want to have them travel needlessly on a day
2 when they're simply not, we won't get to them. So, you
3 know, we've worked with all the parties cooperatively in
4 the past to try to schedule witnesses to give us some
5 idea and that's all I was trying to find out.

6 **CHAIRMAN BRISÉ:** Sure. Sure. And you all can
7 do that. You all can do that on your own. We're not
8 going to -- I'm not going to get involved in, in trying
9 to micromanage that.

10 **MR. WISEMAN:** That's -- thank you.

11 **CHAIRMAN BRISÉ:** All right. So --

12 **MR. YOUNG:** Mr. Chairman, just to clarify, the
13 witnesses, FIPUG, FIPUG and South Florida Hospital's
14 direct and rebuttal will be taken up together.

15 **CHAIRMAN BRISÉ:** Yes. Okay. Are we done with
16 order of witnesses? I believe so.

17 Moving on to basic positions. Okay. Any
18 changes to basic positions?

19 All right. Issues and positions. I will go
20 through the issues. If there are any issues within the
21 section that I wish to hear oral argument about, I will
22 ask for oral argument. Otherwise, I just want to know
23 whether there are any changes to your position.

24 Staff, anything that you need to --

25 **MR. YOUNG:** Yes, sir. Staff would note that

1 Mr. Saporito has proposed a new issue, Issue 6. The
2 issue states: Is the settlement agreement which
3 increases the customer late fee amount in the public
4 interest?

5 **CHAIRMAN BRISÉ:** Okay. All right.

6 Mr. Saporito.

7 **MR. SAPORITO:** I have no objection to that.

8 (Laughter.)

9 **CHAIRMAN BRISÉ:** Okay. That's fair. That's
10 fair that you wouldn't have an objection to your own
11 issue. That's good. That's a good place to start.

12 Does anyone else have any objections to, to
13 that particular issue?

14 **MR. LITCHFIELD:** Mr. Chairman, we do in the
15 respect that we thought that everyone had been very
16 clear with regard to the issues that were going to be
17 specifically addressed for purposes of resolving this
18 settlement agreement. And as I recall, in fact,
19 Mr. Saporito pitched this issue during that debate and
20 the Commission decided at that time not to include it.
21 It is an element of the settlement agreement. I think
22 our impression at the time was that, that staff and the
23 Commission and others felt that the issue and the record
24 evidence in the first phase of the technical proceeding
25 was adequate and/or the discovery that had, had been

1 asked was adequate. So that's, that's my only concern
2 is that if we let this issue in, are we then going to
3 identify a seventh and an eighth and an 18th?

4 But it is an issue in the settlement
5 agreement. We would defer to the Commission,
6 recommendation of staff as to whether it deserves at
7 this point a separate standalone issue. We do have a
8 little bit of incremental testimony on it. I would note
9 that in fairness.

10 **CHAIRMAN BRISÉ:** All right. Thank you.

11 Mr. Saporito.

12 **MR. SAPORITO:** Mr. Chairman, the attorney for
13 FPL is certainly correct; it's, it's definitely a part,
14 a distinct part of the settlement agreement. It affects
15 a significant amount of revenue for the company, and I
16 think it should be a standalone issue because I don't
17 feel it was sufficiently addressed in the original rate
18 case. And now we're having a -- I guess this is a
19 supplemental rate case where there's going to be witness
20 testimony as to the terms and conditions of this
21 proposed settlement and it's part of that settlement
22 agreement. I think that issue needs to be addressed at
23 this, at this time going forward.

24 **CHAIRMAN BRISÉ:** All right. Thank you. I
25 agree with you, it's an important issue, but I think it

1 falls under the umbrella of public interest. Okay? And
2 so I think that it can be addressed through that issue,
3 so my ruling is that it's subsumed in that issue.

4 **MR. SAPORITO:** All right. Mr. Chairman, I
5 just want to go on the record with a strenuous
6 objection.

7 **CHAIRMAN BRISÉ:** Sure.

8 **MR. SAPORITO:** Because all these issues are
9 under that umbrella, every single issue that's in this
10 Prehearing Order.

11 **CHAIRMAN BRISÉ:** All right. Thank you. Duly
12 noted.

13 Section IX, exhibit list.

14 **MR. YOUNG:** Staff would note for the record
15 that it's prepared a Comprehensive Exhibit List that
16 consists of all prefiled exhibits for the purpose of
17 numbering, identifying the exhibits at the hearing.
18 Staff has provided the exhibit list to the parties along
19 with a CD. Staff has prepared a proposed stipulated
20 exhibit list, which was provided to the parties in
21 advance of the hearing. An additional stipulated
22 exhibit list containing discovery responses may be added
23 during the course of the hearing, if the parties agree.

24 **CHAIRMAN BRISÉ:** Okay. All right. So we can
25 move on to the next issue. Are there issues with the

1 exhibit list?

2 All right. Section X, proposed stipulation.

3 **MR. YOUNG:** Staff is not aware of any proposed
4 stipulations at this time.

5 **CHAIRMAN BRISÉ:** Okay. Are there any proposed
6 stipulations at this time? All right. Seeing none.

7 Section XI, pending motions.

8 **MR. YOUNG:** Staff is not aware of any other
9 pending motion at this time.

10 **CHAIRMAN BRISÉ:** Okay. Section XII, pending
11 confidentiality motions.

12 **MR. YOUNG:** Yes. There are two pending
13 motions for temporary protective order and three pending
14 motions for intent to seek confidential treatment, which
15 will be addressed by separate order.

16 **CHAIRMAN BRISÉ:** Right. We're going to
17 address those issues separately. Okay?

18 **MR. LITCHFIELD:** Mr. Chairman, we -- it's come
19 to my attention that the Prehearing Order did not pick
20 up a couple of changes that, that FPL had submitted
21 relative to a description of the, the exhibits offered
22 by a couple of its witnesses. And if it's appropriate,
23 we could go through those at this time.

24 **CHAIRMAN BRISÉ:** Okay. All right. What was
25 not picked up?

1 **MR. LITCHFIELD:** On Mr. Barrett's testimony,
2 this would be in, we're back in Section IX on page 33,
3 Mr. Barrett's testimony, his Exhibit REB-13 would be --
4 it's now page 32. I'm sorry. Striking ROE calculation
5 reflecting proposed settlement agreement and inserting
6 instead expanded OPC Witness Ramas' Exhibit DR-8-
7 adjusted earned ROE for REB-14, adding in the third line
8 to the existing description the term, the words
9 "excluding new generation."

10 And then a little bit further down the page
11 with regard to Mr. Dewhurst's exhibit MD-11, adding a
12 left parentheses in front of the last word there,
13 "note," and it would read Exhibits A and B to proposed
14 settlement agreement cosponsored by FPL Witness Renae
15 Deaton, close paren.

16 **CHAIRMAN BRISÉ:** Okay. Is there anything
17 else?

18 **MR. LITCHFIELD:** No, sir.

19 **CHAIRMAN BRISÉ:** All right. Mr. Rehwinkel.

20 **MR. REHWINKEL:** I was just wondering, what
21 we're talking about here is just making sure the order
22 reflects the way he presented his exhibits?

23 **MR. LITCHFIELD:** Right.

24 **CHAIRMAN BRISÉ:** That's correct.

25 Okay. All right. Back to Section XII, we've

1 dealt with the, the idea of the pending confidentiality
2 motions. There's some outstanding motions that we're
3 going to deal with by separate order.

4 Post-hearing procedures.

5 **MR. REHWINKEL:** Mr. Chairman, the Public
6 Counsel would ask that again since there are only five
7 issues, that the 75-word position statement be, that we
8 be allowed to use 180 for that. It didn't seem to
9 present a problem in the prior part of the case.

10 **CHAIRMAN BRISÉ:** 180?

11 **MR. REHWINKEL:** Just for the position
12 statement, yes. I think we were given seven to select
13 in the last round, but we only have five total here. It
14 doesn't seem like that would add a lot of length to the,
15 to the process.

16 **MR. YOUNG:** No objection from staff.

17 **CHAIRMAN BRISÉ:** Okay. All right. Staff has
18 to really go through it. So, yeah, we'll accommodate on
19 that.

20 Okay. Mr. Young, any --

21 **MR. YOUNG:** With that, Mr. Chairman,
22 post-hearing positions will be limited to 180 words.
23 Also, staff recommends that post-hearing briefs be
24 limited to 40 pages.

25 **CHAIRMAN BRISÉ:** Okay. All right. Section

1 XIV.

2 **MR. REHWINKEL:** Mr. Chairman, the, we would
3 ask that the Public Counsel be allocated 15 minutes for
4 our presentation. I don't know -- it says ten minutes
5 per side. I don't know if that's the pro and the con
6 and the expectation is that all of us share just ten
7 minutes.

8 **CHAIRMAN BRISÉ:** Yes, that's the expectation.
9 It would be that each side share ten minutes. So the
10 pro side shares ten. So if they split it 2.5 minutes
11 per, per, per entity, and on the opposing side the same
12 thing.

13 What I, what I -- I gave that some thought,
14 and we'll make it 20 minutes per side and the sides will
15 determine how to manage that time. Okay?

16 **MR. REHWINKEL:** Assuming we can work things
17 out the way we did last time, because I think we have
18 four witnesses and I think we have the lion's share of
19 the conversation to have on that.

20 **CHAIRMAN BRISÉ:** Understood. And that is --
21 you will manage that with, with, with your side. Okay?
22 So we'll work that -- you all will work that out. Okay?
23 So that one I can accommodate you on.

24 Mr. Young.

25 **MR. YOUNG:** With that, 20 minutes per side. A

1 summary of each position on each issue shall generally
2 be limited to no more than 180 words. If a party has,
3 if a party's position has not changed since the issuance
4 of the Prehearing Order, the post-hearing statements may
5 simply restate the prehearing position.

6 However, if the prehearing position is longer
7 than 180 words, it must be reduced to no more than 180.
8 If a party has failed to file post-hearing briefs,
9 statements of that party shall be waived on all issues
10 and may be dismissed from the proceeding. Staff notes
11 that the failure of a party to adhere to the word
12 limitation will result in a reduction of the words in
13 their post -- in their, in their position statements to
14 the first 180 words.

15 **CHAIRMAN BRISÉ:** All right. Thank you. Any
16 other matters?

17 **MR. REHWINKEL:** Mr. Chairman, there were two
18 additional matters that Public Counsel would like to
19 raise. I don't think there is any controversy about the
20 first one that I would like to raise, and this would
21 be -- I think as a corollary to the friendly cross
22 prohibition, because of the posture of this case, I
23 think that even though there are joint signatories that
24 kind of have a side, that each party, individual party
25 should be responsible for redirect of their witness and

1 that there would be no additional -- there absolutely
2 should be no cross-examination or questioning from any
3 attorney on the signatory side other than by the
4 attorney for that witness. And I don't think that's --

5 **CHAIRMAN BRISÉ:** On redirect.

6 **MR. REHWINKEL:** Yes, on redirect.

7 **CHAIRMAN BRISÉ:** Yeah. I think we, we did
8 that in the, in the last part of the hearing.

9 **MR. REHWINKEL:** That was a little muddled
10 because of the -- yes, but I agree. And I think that
11 process should, should carry over here.

12 **CHAIRMAN BRISÉ:** Sure.

13 **MR. REHWINKEL:** The other is -- and this is
14 not related to the witness summaries -- Mr. Pollock
15 filed some corrections to his testimony and there was
16 two types of corrections: Ones that, that kind of fix
17 some numbering issues that was ministerial, and there
18 was a correction made on his rebuttal that amended an
19 exhibit to his direct, JP, what's now numbered JP-15.
20 And we would ask that Witness Ramas, who did not have an
21 opportunity to file testimony in response to that
22 amended exhibit of the direct testimony, be allowed a
23 very brief opportunity to address that on the stand.
24 I'm not even sure she's going to need to do that, but we
25 would like to put the Commission on note that we may ask

1 for that at the time that she comes on to the stand. I
2 don't know that it necessarily has to be taken care of
3 right here. We would be glad to advise the staff and
4 the parties if we intend to ask for that leave prior to
5 the beginning of the hearing.

6 **CHAIRMAN BRISÉ:** Okay. So in essence what
7 you're saying is that you will ask -- if that is the
8 inclination, that you would ask for Witness Ramas to
9 address Exhibit J-13.

10 **MR. REHWINKEL:** JP-15.

11 **CHAIRMAN BRISÉ:** JP-13.

12 **MR. REHWINKEL:** 15.

13 **CHAIRMAN BRISÉ:** 15.

14 **MR. REHWINKEL:** It's what's now 15.

15 **CHAIRMAN BRISÉ:** Okay.

16 **MR. REHWINKEL:** Yeah.

17 **MR. LITCHFIELD:** And, Mr. Chairman, I, then I
18 assume that we would simply reserve our objections for
19 now until Public Counsel decides whether that's
20 something they would like to request.

21 **MR. REHWINKEL:** Yeah.

22 **MR. LITCHFIELD:** Okay.

23 **MR. REHWINKEL:** Yeah. I don't think we need
24 to go and spin our wheels if we're not ultimately going
25 to do that.

1 **CHAIRMAN BRISÉ:** All right. Perfect. Thank
2 you for, for the heads-up.

3 Okay. Anything else in other matters?

4 **MR. SAPORITO:** Mr. Chairman.

5 **CHAIRMAN BRISÉ:** Mr. Saporito, sorry. Go
6 ahead.

7 **MR. SAPORITO:** That's all right. Yes, I want
8 to take this opportunity to exercise my right under the
9 rules to engage the full panel members on the new,
10 introduction of the new issue in this matter.

11 And the second point I wanted to put on the
12 record is I strenuously object to all the exhibits
13 introduced by staff into this proceeding on the grounds
14 that I don't consider this proceeding to be legal, and I
15 would like to have that as a standing objection going
16 forward.

17 **CHAIRMAN BRISÉ:** Understood. Thank you.

18 So on Monday you can, you can address the, the
19 full panel on that issue. Okay.

20 All right. Are there anything -- are there
21 any other things on other matters?

22 All right. Mr. Young.

23 **MR. YOUNG:** Staff would request that to the
24 extent the parties' positions change or are added due to
25 discussion at this Prehearing Conference, that they

1 provide any such changes by 10:00 a.m. tomorrow, Friday,
2 November 16th, 2012, with no exceptions or extensions.
3 This is necessary for the Prehearing Order to be
4 completed before the hearing.

5 **MR. REHWINKEL:** Mr. Chairman, to the extent
6 that Mr. Saporito's issue is accepted by the full
7 Commission, our position would be no. I just want to
8 state that for the record.

9 **CHAIRMAN BRISÉ:** Understood. Thank you.

10 All right. Seeing no additional issues, thank
11 you for your participation today. We stand adjourned.

12 (Proceeding adjourned at 1:40 p.m.)
13
14
15
16
17
18
19
20
21
22
23
24
25

1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, RPR, CRR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

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

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

18 DATED THIS 16th day of November, 2012.

19
20
21
22
23
24
25


LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734