

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 120161-WS

ANALYSIS OF UTILITIES, INC.'S
FINANCIAL ACCOUNTING AND
CUSTOMER SERVICE COMPUTER
SYSTEM.

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PROCEEDINGS: PREHEARING

COMMISSIONERS
PARTICIPATING: COMMISSIONER JULIE I. BROWN
PREHEARING OFFICER

DATE: Tuesday, April 29, 2014

TIME: Commenced at 1:30 p.m.
Concluded at 2:04 p.m.

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

1 APPEARANCES:

2 ERIK L. SAYLER, ESQUIRE, Office of Public
3 Counsel, c/o The Florida Legislature, 111 W. Madison
4 Street, Room 812, Tallahassee, Florida 32399-1400,
5 appearing on behalf of the Citizens of the State of
6 Florida.

7 MARTIN S. FRIEDMAN, ESQUIRE, Friedman Law
8 Firm, 766 North Sun Drive, Suite 4030, Lake Mary,
9 Florida 32746, appearing on behalf of Utilities, Inc.

10 MARTHA BARRERA and JULIA GILCHER, ESQUIRES,
11 FPSC General Counsel's Office, 2540 Shumard Oak
12 Boulevard, Tallahassee, Florida 32399-0850, appearing on
13 behalf of the Florida Public Service Commission Staff.

14 MARY ANNE HELTON, Deputy General Counsel,
15 Florida Public Service Commission, 2540 Shumard Oak
16 Boulevard, Tallahassee, Florida 32399-0850, Advisor to
17 the Florida Public Service Commission.

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P R O C E E D I N G S

1
2 **COMMISSIONER BROWN:** Good afternoon. Thank
3 you all for being here on this wonderful weather day.

4 This is Docket Number 120161-WS, analysis of
5 Utilities, Inc.'s financial accounting system.

6 Staff, can you please read the notice and take
7 appearances.

8 **MS. BARRERA:** This is the hearing, analysis of
9 Utilities, Inc.'s financial accounting and customer
10 service computer system, Docket Number 120161-WS. The
11 hearing was noticed for 1:30 p.m., Tuesday, April 29th,
12 2014.

13 **COMMISSIONER BROWN:** And take appearances.

14 **MR. FRIEDMAN:** Marty Friedman on behalf of the
15 subsidiaries of Utilities, Inc.

16 **MR. SAYLER:** Erik Sayler on behalf of the
17 Office of Public Counsel.

18 **COMMISSIONER BROWN:** Staff.

19 **MS. BARRERA:** Martha Barrera, and with me is
20 Julia Gilcher, Commission attorneys.

21 **MS. HELTON:** Mary Anne Helton, advisor to the
22 Commission.

23 **COMMISSIONER BROWN:** Thank you.

24 And, again, this is the prehearing conference
25 for this matter on April 29th, 2014, at 1:30.

1 We are going to go through this prehearing
2 conference, acknowledging that there are some
3 preliminary matters. But I'd like to move through this
4 somewhat swiftly. So, staff, right now let's go to
5 bullet point two. Are there any preliminary matters we
6 need to address?

7 **MS. BARRERA:** Yes, Commissioner. There are
8 three motions to address today as preliminary matters.
9 The first is OPC's request for oral argument filed
10 April 17th, 2014. Second, is OPC's motion for summary
11 final order filed April 17th, 2014. And the third is
12 OPC's motion to strike prefiled testimony filed
13 April 22nd, 2014.

14 **COMMISSIONER BROWN:** Thank you for sharing.

15 I'm going to go through and first address the
16 Office of Public Counsel's motion for oral argument,
17 which in this docket, particularly, I have been generous
18 in allowing. However, I believe the Office of Public
19 Counsel's motion and the response from Utilities, Inc.
20 speak for themselves, and clearly assert the respective
21 reasonings and rationales therein. So at this juncture
22 I do not believe oral argument is necessary. However, I
23 will ask questions, if necessary, during my
24 consideration of these motions.

25 **MR. SAYLER:** Commissioner Brown, when it was

1 going to come up to that point in the hearing,
2 prehearing today, I was going to orally modify our
3 request for oral argument. In my research for preparing
4 for the motion for summary final order, I learned that
5 it's a matter that's usually addressed by the full panel
6 that is assigned to a docketed matter and not the
7 Prehearing Officer. And I in error --

8 **COMMISSIONER BROWN:** The entire oral argument,
9 or the motion itself?

10 **MR. SAYLER:** The motion for summary final
11 order is a dispositive final order that is usually
12 addressed by the panel assigned to any particular
13 docket. And in my oral argument, request for oral
14 argument, I included you or the Commission saying that
15 we thought oral argument would be necessary and proper,
16 but I wanted to orally modify to just reference the
17 panel and not the Prehearing Officer. So I apologize
18 for bringing that up at this time.

19 **COMMISSIONER BROWN:** Well, this is an
20 interesting modification. So does that request -- for
21 clarification, does that request also modify your motion
22 to this Prehearing Officer for summary final order?

23 **MR. SAYLER:** Yes, ma'am. The motion for
24 summary final order should have been addressed to the
25 Commission or the panel. And in our motion we had

1 requested that this be set for an agenda conference on
2 May 8th or, if that's not possible --

3 **COMMISSIONER BROWN:** Why wasn't there a
4 written modification? Utilities, Inc. had to respond to
5 your motion timely, and we have had staff analyze your
6 motion as well as I have put in several hours. Why are
7 you just telling me this at this juncture?

8 **MR. SAYLER:** Last week we were informed by --

9 **COMMISSIONER BROWN:** Last week?

10 **MR. SAYLER:** Last week we were informed by
11 counsel for staff to be prepared to make oral arguments
12 on our motion for final summary -- or summary final
13 order, and I contacted counsel yesterday for
14 clarification whether that's going forward.

15 We are prepared to make arguments for our
16 motion for summary final order. However, we do think
17 procedurally, under the posture of Section 350.01,
18 Subsection 5, that --

19 **COMMISSIONER BROWN:** Say that again, please?

20 **MR. SAYLER:** 350.01, Subsection 5. When I was
21 looking at it yesterday and researching, preparing for
22 oral argument today, I discovered that I was in error in
23 my request for oral argument. And I do apologize, but I
24 just wanted to --

25 **COMMISSIONER BROWN:** I'm just a little, you

1 know, taken by surprise. I would have thought, even if
2 you found it last week or yesterday, I would have liked
3 to have had notice prior to this prehearing conference.
4 We've spent some hours analyzing your motion, and your
5 motions. So to have that at this juncture is not really
6 well received, when you had this information last week.

7 **MR. SAYLER:** Excuse me, ma'am. I understand
8 -- I did not have this information last week. It was
9 information that came as part of my research yesterday.
10 And yesterday at about 4:30 I did call counsel for
11 staff, but it was late in the day and I didn't receive a
12 call back. And this morning I went through, continued
13 researching to find out if I was in error or whatnot.
14 And I did find out that, in my opinion, I may be in
15 error, but I just wanted to bring this to you as a
16 potential procedural hiccup as it relates to our motion
17 for summary final order.

18 **COMMISSIONER BROWN:** It is a hiccup that we
19 need to address.

20 **MR. SAYLER:** Yes, ma'am.

21 **COMMISSIONER BROWN:** So I will look to staff.
22 And I was prepared to make a bench ruling, and
23 discussion here on the bench, but --

24 **MS. HELTON:** You said that 350.01, Subsection
25 5, changed your mind. I've just briefly skimmed through

1 that. If you could direct me to the language that
2 you --

3 **MR. SAYLER:** Yes, ma'am. If you go to
4 Subsection 5, about halfway down, it says, "If more than
5 two Commissioners are assigned to any proceeding," and
6 in this case there's three, "a majority of the members
7 assigned shall constitute a quorum, and the majority
8 vote of the members assigned shall be essential to the
9 final Commission disposition of these proceedings
10 requiring the actual participation by the
11 Commissioners."

12 And that's the language that led me to believe
13 that a panel, a decision by the panel was required. And
14 then in researching the numerous cases related to
15 motions for summary final order, I did not find any
16 motions for summary final order that were disposed of by
17 the prehearing officer alone. Every one had a panel of
18 either three, four, or five Commissioners disposing of
19 those motions.

20 **MS. HELTON:** Madam Chairman?

21 **COMMISSIONER BROWN:** Yes.

22 **MS. HELTON:** I think that the typical practice
23 for the Commission has been if there is going to be a
24 final disposition of a matter where you are actually
25 granting a motion to dismiss or granting a motion for

1 summary final order, that that would -- and you are
2 ultimately issuing a final order or a final decision in
3 the case, that is something that should be done by the
4 full Commission. But if you are denying a request for a
5 dispositive motion such as a motion to dismiss or a --

6 **COMMISSIONER BROWN:** Which this is not a
7 motion to dismiss.

8 **MS. HELTON:** This is not a motion to dismiss,
9 or a motion -- I don't know that it has ever happened
10 with a motion for final summary order, but, in effect,
11 if you deny that, that is not dispositive, the case does
12 go on.

13 **COMMISSIONER BROWN:** I agree. Thank you.

14 Ms. Helton, so in your legal opinion, I have
15 the ability to procedurally rule on this particular
16 motion?

17 **MS. HELTON:** Where it becomes difficult is
18 when the timing is at issue. If this had been something
19 that had been filed at the beginning of the case, I
20 think it would have been easier for the full Commission
21 to address it. Because, however, we are at a juncture
22 now where I'm assuming that witnesses are --
23 transportation is being arranged, where people are
24 preparing for hearing, and so to know whether they need
25 to prepare or not, if they are not going to have to --

1 well, let me strike that.

2 I think that because of the timing, where we
3 are now, if you were planning to deny the motion, I
4 don't think that would be an error. And if Mr. Sayler
5 were going to take issue with that, he could always seek
6 reconsideration from the full panel.

7 **COMMISSIONER BROWN:** That was my
8 understanding, too. Okay.

9 Well, thank you, Mr. Sayler, for pointing that
10 out. And I really would have appreciated a little heads
11 up prior to this prehearing conference. But that being
12 said, I would like to make a clarification on the record
13 based on your motion for summary final order, which I
14 read it to be almost a motion for -- a motion to
15 dismiss. But that being said, a clarification. I'd
16 like this on the record about Order PSC-14-0143-PCO-WS
17 which you cite in your motion for summary final order.

18 You emphasize while referencing the
19 2010 Utilities, Inc. Florida PAA order that all
20 subsequent orders of Utilities, Inc. utilities are
21 subject to the principle of administrative finality,
22 with regard to the issue of allocating costs is on
23 Paragraph 15, Page 6, of that order that I cited.

24 And so you reference that, you took that
25 sentence out and you said that all of those subsequent

1 orders of Utilities, Inc.'s utilities are subject to the
2 principle of administrative finality with regard to the
3 issue of allocating costs for surviving utilities as a
4 result of the divestiture of those entities.

5 **MR. SAYLER:** Yes, ma'am.

6 **COMMISSIONER BROWN:** And I'm aware of that.
7 This clearly was intended to apply to those orders that
8 cost-recovery has already been approved by the
9 Commission, but for those cases where the regulatory
10 assets has been established. And that sentence in the
11 order was taken out of context, it's incorrect, and --

12 **MR. SAYLER:** Excuse me, which --

13 **COMMISSIONER BROWN:** -- your motion for
14 summary final order -- I'm not asking a question --

15 **MR. SAYLER:** Oh.

16 **COMMISSIONER BROWN:** And I just wanted to make
17 that clarification.

18 That being said, I've looked at the motion;
19 I've looked at the response; I have discussed it with
20 our legal staff. I have spent some considerable time
21 analyzing it. I did think it was more akin to a motion
22 to dismiss, which would be untimely at this juncture, or
23 even a motion for reconsideration of the prior motion
24 that you raised. But the summary final order is quite
25 -- a motion for summary final judgment is quite high.

1 There's clearly an issue of material fact
2 there, as you know. Based on the depositions, the discovery,
3 the extensive discovery that has already been conducted,
4 which clearly we have, to me the issues are evident in
5 the prefiled testimony. I can go on and on, but it's
6 clear that we have prefiled testimony by staff, by
7 Utilities, Inc. that differ. But the Office of Public
8 Counsel hasn't prefiled any testimony. Which I believe
9 you said, Mr. Saylor, back in March that you were ready
10 to prepare, but that has not occurred.

11 So based on the fact that to me that standard
12 is clearly not met, there are issues of material fact in
13 dispute, the motion is denied.

14 So I'm going to go to your third motion, which
15 was the motion to strike prefiled testimony.

16 **MR. SAYLER:** For the record, we would lodge an
17 objection as it relates to your ability to rule on this
18 motion, even considering the guidance that Ms. Helton
19 provided, just to preserve it for the possibility of
20 raising it in rehearing before --

21 **COMMISSIONER BROWN:** Noted.

22 **MR. SAYLER:** -- the panel.

23 **COMMISSIONER BROWN:** The third motion that you
24 have is to strike prefiled testimony of two of
25 Utilities, Inc.'s witnesses, Mr. Danielson, Ms.-- and I

1 apologize for incorrectly pronouncing her name --
2 Wiorek.

3 **MR. FRIEDMAN:** Wiorek.

4 **COMMISSIONER BROWN:** Say it again?

5 **MR. FRIEDMAN:** Wiorek, W-I-O-R-E-K.

6 **COMMISSIONER BROWN:** I'm never going to get
7 it, never.

8 **MR. FRIEDMAN:** Her boss can't, either.

9 **COMMISSIONER BROWN:** So with regard -- let's
10 go to Mr. Danielson, your motion to strike his
11 testimony. And I would like to note that there is no
12 oral argument requested on this motion.

13 **MR. SAYLER:** Yes, ma'am.

14 **COMMISSIONER BROWN:** And I am prepared to rule
15 on it after discussion with our legal staff, review of
16 your motion and opposing counsel's motion. So I'm
17 prepared. So I'm going to go with each witness and the
18 reason for each.

19 With regard to Mr. Danielson, the statement
20 that Office of Public Counsel is raising is trying to
21 paraphrase the exact quote of the issue that is at stake
22 in this docket. To me that testimony of Mr. Danielson,
23 which I have reviewed, goes to the heart of the issue
24 that is the subject of this generic docket. So the
25 motion to strike is denied.

1 With regard to Ms. -- I can't say her, I can't
2 do it -- Wiorek?

3 **MR. FRIEDMAN:** Wiorek.

4 **COMMISSIONER BROWN:** I'm so sorry, if she's
5 listening -- which, again, I have spent considerable
6 time reviewing the testimony, discussing it with our
7 staff, and reviewing opposing counsel's response. The
8 issue with regard to rate case expense was originally
9 raised as part of the petition, and is partly the
10 reason, my understanding, that this generic docket was
11 even created and established and spun off from the Eagle
12 Ridge docket in the first place. None of the parties
13 wanted a single utility's customer base shouldering the
14 cost of this issue of rate case expenses alone, so it
15 was spun off to a generic docket, as well.
16 Additionally, staff even sent out discovery requests on
17 this issue which is in the testimony. I mean, in the
18 discovery, so the motion will be denied.

19 So I'm going to move through the rest of the
20 prehearing conference agenda at this juncture. We are
21 going to go through the draft prehearing order. I will
22 identify the sections. I want the parties to let me
23 know if there is anything that needs to be changed,
24 corrected, modified, et cetera. We are going to try to
25 run through this pretty swiftly. You know I talk fast,

1 so jump in.

2 All right. Section I is the case background.
3 Any changes? All right.

4 Seeing none, Section II, conduct of
5 proceedings. Any changes?

6 Section III, jurisdiction. Any changes?

7 Section IV, procedure for handling
8 confidential information. Changes? All right.

9 Section V, prefiled testimony, exhibits and
10 witnesses. Please be reminded that the parties and
11 staff are to bring sufficient copies of any
12 cross-examination exhibits which they intend to sponsor
13 at the hearing.

14 I know you have to talk, so hold on one
15 second.

16 If a party intends to sponsor confidential
17 exhibits, either in the direct prefiled testimony or in
18 cross-examination, that party is responsible for making
19 a sufficient number of copies, highlighted copies in red
20 folders for distribution to the Commissioners -- there
21 are going to be three on this panel -- parties,
22 necessary staff, and court reporter, consistent with
23 requirements of the OEP.

24 Staff.

25 **MS. BARRERA:** Yes, Commissioner. We note that

1 the OEP does provide that when confidential information
2 is used in the hearing, the parties must have copies for
3 the Commissioners, necessary staff, and the court
4 reporter in the red envelopes clearly marked with the
5 nature of the contents. Any party wishing to examine
6 the confidential material that is not subject to an
7 order granting confidentiality shall be provided a copy
8 in the same fashion as provided to the Commissioners,
9 subject to execution of any appropriate protective
10 agreement with the owner of the material.

11 **COMMISSIONER BROWN:** Mr. Saylor.

12 **MR. SAYLER:** Yes, ma'am. We did have one
13 modification to our prehearing statement. I notified
14 the parties yesterday concerning that. I wasn't sure
15 where in the draft prehearing order, but it best fits
16 probably under witnesses.

17 Yesterday, as you know, Ms. Wiorek was deposed
18 by staff and cross-noticed by Public Counsel.

19 **COMMISSIONER BROWN:** How did you say her name?

20 **MR. SAYLER:** Wiorek.

21 **COMMISSIONER BROWN:** See, that's different
22 than you said it. Okay.

23 **MR. SAYLER:** And when it came to the
24 deposition, it became apparent that she was not an
25 expert on rate case expense, or on the material that she

1 sponsored for her testimony, so we would object to her
2 qualification as being considered an expert witness.

3 **COMMISSIONER BROWN:** Mr. Friedman.

4 **MR. FRIEDMAN:** I don't think we've proffered
5 her as an expert witness. We've just proffered her as
6 similar to what we have done in other cases, which is
7 she compiled -- we need to have somebody to sponsor the
8 compilation of the rate case expense by the various
9 professionals, and that's really all she's doing. I
10 don't think she's giving a professional opinion about
11 them. We have each put in our rate case expense and
12 described what we do, and I think it's for the
13 Commission to decide if it needs any further
14 explanation. But she's not testifying as an expert.

15 **COMMISSIONER BROWN:** Okay.

16 Ms. Gilcher or Ms. Barrera.

17 **MS. BARRERA:** Yes, Commissioner.

18 If she is not testifying as an expert witness,
19 I don't think that is relevant or irrelevant, and I
20 don't think it would preclude the witness from
21 testifying or submitting her testimony, or even
22 submitting for us to proffer into evidence her
23 deposition that was taken yesterday, and the
24 Commissioner panel can always give the weight of the
25 evidence.

1 **COMMISSIONER BROWN:** And the Office of Public
2 Counsel is not precluded from objecting to the testimony
3 at that time.

4 **MS. BARRERA:** As the questions are being
5 asked, et cetera.

6 **MR. SAYLER:** Certainly. We agree that she is
7 not an expert. The deposition was noticed as being one
8 taken to produce expert witness testimony. And after
9 the deposition, we just wanted to be clear on the
10 record, we are not -- after looking at her deposition
11 transcript, once it's received from the court reporter,
12 you know, we may be willing to potentially stipulate to
13 that going into the record in lieu of live testimony or
14 cross-examination of the witness, but that may --

15 **COMMISSIONER BROWN:** Did you just stipulate to
16 her testimony?

17 **MR. SAYLER:** Yes. So, anyhow, I just wanted
18 to make that aware, just for clarification of the
19 process, that she is not an expert.

20 **COMMISSIONER BROWN:** All right. Thank you.
21 Let's go to, I believe, Section VI, order
22 of witnesses. Talking about stipulated witnesses, I'll
23 start with Office of Public Counsel. Mr. Sayler, any
24 witnesses that can be stipulated at this time?

25 **MR. SAYLER:** Based upon your ruling today

1 denying our request that the testimony of Mr. Danielson
2 and Ms. Wiorek be struck, we are prepared to stipulate
3 that their testimony can go into the record along with
4 their exhibits to their testimony. We still want to
5 review Ms. Wiorek's deposition transcript to make sure
6 there's nothing in there that concerns us.

7 And as it relates to Mr. Hoy's testimony as
8 well as his deposition and one exhibit to that
9 deposition, we're prepared to stipulate to that.
10 Essentially, once we receive the deposition, we are able
11 to potentially stipulate to all witnesses to make a
12 very, very short hearing on May 14th.

13 **COMMISSIONER BROWN:** Beautiful.

14 Mr. Friedman, though?

15 **MR. FRIEDMAN:** I understand why Public Counsel
16 wants to do that. And certainly with regard to
17 Ms. Wiorek, I would hope that we could stipulate -- you
18 know, she has got her exhibits, she has got her
19 deposition, and, you know, we've got one other
20 late-filed exhibit we've got to file. Once that's done,
21 I think -- I would like to stipulate her testimony and
22 the deposition, if that's what staff wants to do, in
23 lieu of her coming down from Chicago just to say, you
24 know, I compiled all this stuff and here it is.

25 But as far as Mr. Danielson, you know, this

1 issue has been -- and gosh knows we'd love to not have
2 him come, because, you know, he's not an inexpensive
3 consultant. But that's the crux of this case. It has
4 been rising in every case since Mr. Fletcher first
5 raised this issue years ago.

6 And I don't think anybody -- I certainly
7 didn't have any concept of what was involved in
8 developing the type of computer system that was
9 developed for a company this size. I mean, I had
10 nothing, until I started talking to Mr. Danielson, I had
11 no clue. And maybe it's just me, and maybe the panel up
12 there are going to say, Friedman, you're stupid, all of
13 us already know all that stuff. But I think it's
14 important to have somebody like Mr. Danielson to really
15 explain, you know, what the process is and how it works.
16 Because as I have been preaching, and nobody listens to
17 me, it really doesn't make any difference whether
18 there's 10 percent less customers, they would have done
19 what they did exactly the same.

20 I have been telling y'all that for years, and,
21 of course, I'm just me telling you. It's different than
22 having an expert who is in this business all the time
23 telling you. And I think it's important to have
24 Mr. Danielson, to hear him say it, and to give y'all an
25 opportunity to challenge him on what he says, and the

1 staff an opportunity to challenge him.

2 **COMMISSIONER BROWN:** Thank you, Mr. Friedman.
3 Thank you. And I hear what you're saying. There has
4 been an extensive amount of discovery, which the whole
5 purpose of the investigatory period was to narrow down
6 the issues and avoid this, these excessive costs that
7 are associated with this Phoenix Project.

8 So, you know, I mean, I'm aware of the fact of
9 what you are saying here, and there has been a lot of
10 discovery that has already occurred. So with that, I'm
11 going to turn to staff and have Ms. Barrera or
12 Ms. Gilcher address the issue of the comments that were
13 raised.

14 **MS. BARRERA:** I don't believe staff has any
15 problem with the utility wanting to put forth any
16 witness that it has sponsored. My understanding at this
17 time, it appears that the only stipulation that staff
18 would take to the other Commissioners for their approval
19 or disapproval would be to Ms. Wiorek.

20 **COMMISSIONER BROWN:** Okay. Which,
21 Mr. Friedman, are you acknowledging you concede?

22 **MR. FRIEDMAN:** (Inaudible; microphone off.)

23 **COMMISSIONER BROWN:** Yes. Thank you. All
24 right. Okay.

25 So staff will note, it will check with the

1 other Commissioners to see if there are any other -- if
2 they have questions of that one witness. If the parties
3 are willing to stipulate to any additional witnesses --
4 yes.

5 **MR. SAYLER:** We are also willing to stipulate
6 to the staff witness. I left Mr. Fletcher off the list.

7 **COMMISSIONER BROWN:** Mr. Friedman?

8 **MR. FRIEDMAN:** Absolutely not.

9 **COMMISSIONER BROWN:** Okay.

10 Staff?

11 **MR. FRIEDMAN:** I have been waiting for five
12 years to talk to him about that under oath.

13 **MS. BARRERA:** Bart probably doesn't want to
14 speak, but we would like him to.

15 **COMMISSIONER BROWN:** Okay. So we're going to
16 move on. So we have one witness that may be stipulated,
17 and staff will get back in touch with the parties and
18 let you know if that has been approved by the other
19 Commissioners, if they don't have any other questions,
20 and they can be excused.

21 So Section VII, basic positions. Any changes,
22 modifications? No.

23 All right. Section VIII, issues and
24 positions.

25 **MR. SAYLER:** Excuse me, we have one typo on

1 our basic position.

2 **COMMISSIONER BROWN:** Sure, if you could direct
3 me to the page.

4 **MR. SAYLER:** Sure. Page 5, the last paragraph
5 of OPC's basic position, the second to the last sentence
6 that starts off with why the company had to hire
7 witnesses. The last word "of" should be "at." It's a
8 bit of an awkwardly phrased position, and I figure with
9 changing "of" to "at" might make it more clear. It's
10 still a little unclear, and it's actually somewhat of a
11 moot position, considering your ruling earlier today.

12 **COMMISSIONER BROWN:** I think that probably
13 makes a little bit more sense than of. But, Mr.
14 Friedman, do you have any objections?

15 **MR. FRIEDMAN:** I couldn't find it.

16 **COMMISSIONER BROWN:** It's Page 5. It's right
17 before staff's.

18 **MR. FRIEDMAN:** I got you. Thank you.

19 **COMMISSIONER BROWN:** It's one word, "of" to
20 "at."

21 **MR. SAYLER:** Commissioner Brown, in light of
22 your rulings earlier, would you like us to kind of
23 revise our positions on some of these things, like rate
24 case expense and things of that nature?

25 **MR. FRIEDMAN:** He submitted alternatives, I

1 thought, already on those positions.

2 **MR. SAYLER:** Right, I did, so --

3 **COMMISSIONER BROWN:** Uh-huh.

4 **MS. BARRERA:** Commissioner, normally for
5 positions, the positions should be here by the hearing.
6 Staff is -- I mean, the parties are allowed to state
7 their positions should --

8 **COMMISSIONER BROWN:** Could you please let them
9 know when their revisions, though --

10 **MS. BARRERA:** We would like it in writing,
11 just to facilitate it, by close of business tomorrow is
12 our suggestion.

13 **COMMISSIONER BROWN:** So I hope that will be
14 timely enough?

15 **MR. SAYLER:** Yes, ma'am.

16 **COMMISSIONER BROWN:** Thank you. All right.
17 So --

18 **MR. SAYLER:** And if they could provide us a
19 Word copy of the draft prehearing order, that would be
20 helpful, too.

21 **COMMISSIONER BROWN:** Definitely. We would
22 like to get this out as soon as possible, so hence the
23 close timing. All right. So we don't have any other
24 modifications to basic statements, correct?

25 Positions. We are going to move to issues and

1 positions, Section VIII.

2 Ms. Barrera.

3 **MS. BARRERA:** Commissioner, the OEP requires
4 that a party take a position at the prehearing
5 conference unless good cause is shown as to why that
6 party cannot take a position at this time. Utilities,
7 Inc. has proposed Issue 2. Staff has no objection to
8 the issue. Staff will note that discussion is expected
9 on this issue.

10 Depending upon the resolution of the issue,
11 staff will request that OPC state its position at the
12 time, at this time for inclusion into the prehearing
13 order. And as we've stated, we've recommended by close
14 of business tomorrow.

15 **COMMISSIONER BROWN:** Uh-huh, okay. Parties,
16 any changes or modifications?

17 **MR. SAYLER:** Are you talking about our
18 position under Issue 2, the rate case expense?

19 **COMMISSIONER BROWN:** Well, we acknowledge the
20 fact that you will be --

21 **MR. SAYLER:** Yes, ma'am. I'll provide that by
22 COB tomorrow.

23 **COMMISSIONER BROWN:** Excellent. And you can
24 work with staff to incorporate those changes, the final
25 order.

1 **MR. SAYLER:** Absolutely.

2 **COMMISSIONER BROWN:** Mr. Friedman?

3 **MR. FRIEDMAN:** I'm fine.

4 **COMMISSIONER BROWN:** Okay. You're good. All
5 right. We're moving.

6 Section IX, exhibit list. Staff.

7 **MS. BARRERA:** Staff will note that it is
8 preparing a Comprehensive Exhibit List which will
9 include all the prefiled exhibits as well as
10 cross-examination exhibits that staff intends to sponsor
11 at the hearing. We will be distributing the list and
12 checking with the parties prior to the hearing to
13 determine if there are any objections to the
14 Comprehensive Exhibit List and its exhibits, or any of
15 staff's proposed exhibits being entered into the record.

16 **COMMISSIONER BROWN:** Thank you. Any issues?

17 **MR. SAYLER:** When will we receive that?

18 **MS. BARRERA:** As soon as practicable.

19 **MR. SAYLER:** Thank you.

20 **COMMISSIONER BROWN:** Soon.

21 **MR. FRIEDMAN:** Can I ask one question that
22 kind of goes back to something before, too, about having
23 a number of copies -- a sufficient number of copies for
24 blah, blah, blah. Is there any idea how many that
25 number is? Can somebody just --

1 **COMMISSIONER BROWN:** That's a very good
2 question.

3 **MR. FRIEDMAN:** We've got Commissioners, we
4 have got --

5 **COMMISSIONER BROWN:** That's a great question.

6 **MS. FARLEY:** We will e-mail that information
7 along with an exhibit cover page.

8 **COMMISSIONER BROWN:** Excellent. There will be
9 an e-mail and an exhibit cover page, as well, to the
10 parties.

11 **MR. FRIEDMAN:** Thank you.

12 **COMMISSIONER BROWN:** All right. I think I
13 have lost track. I think we are on the proposed
14 stipulation, Section X. There are no proposed
15 stipulations at this time, is that correct?

16 **MS. BARRERA:** Yes, Commissioner. There are no
17 proposed stipulations.

18 **COMMISSIONER BROWN:** All right. Section XI.
19 There were pending motions. The three have already been
20 addressed as preliminary matters. Under Section XII
21 there is a pending Utilities, Inc. motion for protective
22 order, which an order will be issued prior to the
23 hearing.

24 With regard to post-hearing proceedings, I'm
25 going to set the post-hearing briefs to 20 pages,

1 barring any objections of the parties. I hope that's
2 sufficient, given the limited scope of this proceeding.

3 I was willing to go to 25, but I think
4 20 should be sufficient. If you want to push 25, I
5 will -- okay. Are the parties willing to waive opening
6 statements? Really?

7 **MR. SAYLER:** No, not for opening statements.
8 Well, let me think about that and I will give you an
9 answer.

10 **COMMISSIONER BROWN:** Okay. No?

11 **MR. FRIEDMAN:** I mean, if OPC is willing to --
12 I mean, you know, the panel is going to read the
13 prefiled testimony. I mean, I could drone on forever in
14 an opening statement, but I'm prepared to waive it if
15 Public Counsel is going to waive it. If they want to
16 have one, then I will have one, as well.

17 **COMMISSIONER BROWN:** Uh-huh. Staff has
18 recommended opening statements be limited to five
19 minutes. Again --

20 **MR. FRIEDMAN:** Plenty of time.

21 **COMMISSIONER BROWN:** Yes, given the limited
22 scope of this proceeding.

23 **MR. SAYLER:** Plenty of time. Five minutes.

24 **COMMISSIONER BROWN:** Thank you. Okay.

25 Are there any other matters, Ms. Barrera, to

1 address at this conference?

2 **MS. BARRERA:** Staff is aware of no other
3 matters, Commissioner.

4 **COMMISSIONER BROWN:** Parties, any other
5 matters?

6 **MR. FRIEDMAN:** The company is aware of no
7 other matters, either.

8 **MR. SAYLER:** What were the witness summaries
9 of their testimony, how long? I think it was five
10 minutes.

11 **COMMISSIONER BROWN:** I do not have that
12 recommendation. Witness summaries?

13 **MS. BARRERA:** What is witness --

14 **COMMISSIONER BROWN:** Five minutes, as well?
15 Three or five?

16 **MS. BARRERA:** Oh.

17 **COMMISSIONER BROWN:** It's in the order, isn't
18 it?

19 **MR. SAYLER:** Page 3, summaries shall be
20 limited to five minutes.

21 **COMMISSIONER BROWN:** Read the order.

22 **MR. SAYLER:** I just got it today, ma'am.

23 **COMMISSIONER BROWN:** Any other questions or
24 matters that you'd like to raise to my attention?

25 **MR. SAYLER:** Yes, ma'am. Starting off,

1 getting back to our earlier motion for summary final
2 order. Again, apologies. I didn't mean to bring this
3 to you at such a late juncture. And I know you have put
4 a tremendous amount of work into reviewing our motions
5 and things of that nature, and on behalf of the
6 customers we do appreciate it. It was just that at a
7 very late juncture we became aware of what we thought
8 was potentially a procedural issue, and we felt that it
9 was important and incumbent upon us to raise that to
10 make you aware of that at that time. So --

11 **COMMISSIONER BROWN:** Thank you, Mr. Saylor.

12 **MR. SAYLER:** So, again, our apologies for
13 being belated in that.

14 **COMMISSIONER BROWN:** I appreciate it. Thank
15 you.

16 Seeing no additional matters, this prehearing
17 is adjourned. Thank you.

18 (The prehearing concluded at 2:04 p.m.)
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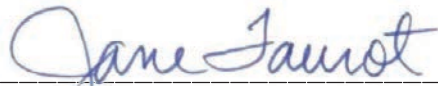
STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, 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 May, 2014.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
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