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APPEARANCES:

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behalf of Duke Energy Florida, Inc.

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MATTHEW R. BERNIER, ESQUIRE, Duke Energy,
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JON C. MOYLE and KAREN PUTNAL, ESQUIRES, Moyle
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32301, appearing on behalf of the Florida Industrial
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MARSHA E. RULE, ESQUIRE, Rutledge Law Firm,
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on behalf of NRG Florida, LP.

1 APPEARANCES (continued):

2 RICHARD A. ZAMBO, ESQUIRE, 2336 S.E. Ocean
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4 behalf of NRG Florida, LP.

5 JOHN F. POVILAITIS and ALAN M. SELTZER,
6 Esquires, Buchanan Law Firm, 409 N. Second Street, Suite
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8 behalf of EFS Shady Hills.

9 LINDA LOOMIS SHELLEY, ESQUIRE, Buchanan Law
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11 Florida 32301, appearing on behalf of EFS Shady Hills.

12 ROBERT SCHEFFEL WRIGHT and JOHN T. LaVIA, III,
13 ESQUIRES, Gardner Law Firm, 1300 Thomaswood Drive,
14 Tallahassee, Florida 32301, appearing on behalf of
15 Calpine Construction Finance Company, L.P.

16 JAMES W. BREW, ESQUIRE, Brickfield Law Firm,
17 1025 Thomas Jefferson Street, NW, Eighth Floor, West
18 Tower, Washington, DC 20007-5201, appearing on behalf of
19 White Springs Agricultural Chemicals, Inc. d/b/a PCS
20 Phosphate.

21 CHARLES REHWINKEL, ESQUIRE, Office of Public
22 Counsel, 111 West Madison Street, Room 812, Tallahassee,
23 Florida 32399-1400, appearing on behalf of the Office of
24 Public Counsel.

25

1 APPEARANCES (Continue):

2 MICHAEL T. LAWSON, ESQUIRE, FPSC General
3 Counsel's Office, 2540 Shumard Oak Boulevard,
4 Tallahassee, Florida 32399-0850, appearing on behalf of
5 the Florida Public Service Commission Staff.

6 MARY ANNE HELTON, Deputy General Counsel,
7 Florida Public Service Commission, 2540 Shumard Oak
8 Boulevard, Tallahassee, Florida 32399-0850, Advisor to
9 the Florida Public Service Commission.

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P R O C E E D I N G

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2 **COMMISSIONER BRISÉ:** Okay. We're going to go
3 ahead and call this Prehearing Conference to order. And
4 today is August 13th, it is 9:30 a.m., and for Docket
5 Numbers 140110-EI and 140111-EI.

6 Mr. Lawson, would you read the notice, please.

7 **MR. LAWSON:** Certainly. By notice issued
8 August 2nd, 2014, this time and place was set for this
9 prehearing in Docket Numbers 140110-EI and 140111-EI.
10 The purpose of this prehearing is set forth in that
11 notice.

12 **COMMISSIONER BRISÉ:** Thank you very much. At
13 this time we will take appearances. We'll begin with on
14 my left, your right.

15 **MR. WALLS:** Good morning. Mike Walls with
16 Carlton Fields Jordan Burt on behalf of Duke Energy
17 Florida. And I'd also like to enter an appearance for
18 Blaise Gamba of our firm on behalf of Duke Energy
19 Florida.

20 **COMMISSIONER BRISÉ:** All right. Thank you.

21 **MR. BERNIER:** Good morning, Commissioner.
22 Matt Bernier with Duke Energy Florida. I'd also like to
23 enter an appearance for John Burnett and Dianne Triplett
24 of Duke Energy Florida.

25 **COMMISSIONER BRISÉ:** Okay. Thank you.

1 **MR. MOYLE:** Good morning. Jon Moyle with the
2 Moyle Law Firm on behalf of the Florida Industrial Power
3 Users Group, FIPUG. And I'd also like to enter an
4 appearance for Karen Putnal with our firm.

5 **COMMISSIONER BRISÉ:** All right. Thank you.

6 **MS. RULE:** Marsha Rule with Rutledge & Ecenia
7 on behalf of NRG Florida, LP. Also entering an
8 appearance for Gordon Polozola and Richard A. Zambo.

9 **COMMISSIONER BRISÉ:** Okay. Thank you.

10 **MR. POVILAITIS:** Good morning, Your Honor.
11 John Povilaitis of Buchanan, Ingersoll & Rooney here
12 today on behalf EFS Shady Hills, LLC. I'd also like to
13 enter an appearance on behalf of my colleagues of
14 Buchanan, Alan Seltzer and Linda Shelley.

15 **COMMISSIONER BRISÉ:** All right. Thank you.

16 **MR. WRIGHT:** Good morning, Commissioner.
17 Robert Scheffel Wright, Gardner, Bist, Wiener Law Firm,
18 on behalf of Calpine Construction Finance Company, LP.
19 I'd also like to enter an appearance for my partner John
20 T. LaVia, III.

21 **COMMISSIONER BRISÉ:** All right. Thank you.

22 **MR. BREW:** Good morning, Commissioner. James
23 Brew of the law firm of Brickfield, Burchette, Ritts &
24 Stone for White Springs Agricultural Chemical/PCS
25 Phosphate.

1 **COMMISSIONER BRISÉ:** Okay. Thank you.

2 **MR. REHWINKEL:** Good morning, Commissioner.
3 Charles Rehwinkel with the Office of Public Counsel.

4 **COMMISSIONER BRISÉ:** All right. Thank you.
5 Mr. Lawson.

6 **MR. LAWSON:** Michael Lawson on behalf of
7 Commission staff.

8 **MS. HELTON:** And Mary Anne Helton, advisor to
9 the Commission.

10 **COMMISSIONER BRISÉ:** All right. I recognize
11 that Mr. Cavros is here. They filed a motion to
12 intervene, and so we will deal with that at the
13 appropriate time.

14 All right. Are there any preliminary matters?

15 **MR. LAWSON:** Yes, sir. There are three minor
16 procedural motions which require a ruling.

17 Calpine has filed two motions in Docket Number
18 140111 to accept as timely testimony filed shortly after
19 the close of business, and NRG has filed a motion for
20 clarification of testimony and motion to accept the
21 testimony of NRG witness Jim Dauer. No party has
22 objected to the granting of any of these motions, and
23 the extremely brief delay in the instance of Calpine's
24 motions was unintentional and has not caused any harm or
25 inconvenience to the parties, and staff recommends that

1 we grant these orders.

2 **COMMISSIONER BRISÉ:** Okay. Seeing that there
3 were no objections to any one of these motions, we will
4 go ahead and grant these motions. So just giving you
5 another chance, are there any objections? Okay. Seeing
6 none, so they're granted.

7 All right. Is there anything else?

8 **MR. LAWSON:** No, sir.

9 **COMMISSIONER BRISÉ:** Okay. All right. So
10 let's proceed through the draft Prehearing Order. I'll
11 identify the sections, and I want the parties to let me
12 know if there are any corrections or changes that need
13 to be made. We'll go through this as quickly as
14 possible but give you enough time to say what you need
15 to say.

16 And so if I'm going through something and, and
17 we've gone to the next section but you need us to go
18 back, please let me know quickly so that we can go back
19 to it.

20 All right. Case background, Section I.

21 **MR. MOYLE:** Mr. Chairman, I guess just before
22 we get there, kind of an administrative type item. On
23 the appearances there are, for a number of parties
24 they're only listed as one entity. I assume that, given
25 the appearances we announced today, that can be changed

1 and we don't need to do anything further with respect to
2 like, for example, Karen Putnal in our firm.

3 **COMMISSIONER BRISÉ:** Sure.

4 **MR. MOYLE:** She may be here for some of it, so
5 I just wanted to make sure we're clear.

6 **MR. LAWSON:** That's correct. And if you'd
7 like your appearances to appear a certain way, just
8 email me and we'll make sure those changes are
9 incorporated.

10 **COMMISSIONER BRISÉ:** All right. Section I,
11 case background.

12 Okay. Section II, conduct of proceedings.

13 Section III, jurisdiction.

14 Section IV, procedure for handling
15 confidential information.

16 **MR. LAWSON:** Commissioner, at this time I'd
17 just like to remind everyone that even though -- that
18 one thing we want to stress is that all parties shall
19 need to prepare 25 copies of any confidential exhibits
20 or testimony used during direct or cross-examination or
21 at any time during the hearing, and please during the
22 hearing to remember to coordinate with staff to assist
23 in the distribution and collection of confidential
24 documents. And if anyone has any questions about
25 preparing or handling or making copies of confidential

1 exhibits, please contact me or Shalonda Hopkins and
2 we'll be happy to assist.

3 **MR. REHWINKEL:** Commissioner, one other
4 question along those lines. The testimony, especially
5 of Mr. Borsch, who I think will be a central witness,
6 has a lot of confidential information in it. And I
7 would just ask that for the hearing that all the
8 Commissioners are provided with the full confidential
9 version so that the cross-examination may occur on the
10 full breadth of the testimony and the exhibits.

11 **MR. LAWSON:** For Mr. Borsch we can, since you
12 made a request, we'll be happy to work to make that
13 happen.

14 **COMMISSIONER BRISÉ:** Mary Anne.

15 **MS. HELTON:** Well, Mr. Lawson has agreed to
16 have the testimony for Mr. Borsch available. But I just
17 want to reiterate that if you want to use any
18 confidential information other than the testimony for
19 Mr. Borsch that staff has already agreed to provide, you
20 must bring copies of that for distribution and to be
21 picked up during the breaks. That's been stated in the
22 Prehearing Order and that's actually been our practice
23 for quite a while.

24 **MR. REHWINKEL:** Just on that point, that has
25 always applied to evidence that parties wish to enter

1 that is not part of the, either the stipulated record or
2 especially the testimony that's been filed. In my 29
3 years I've never had to bring prefiled testimony for
4 distribution. And so in an abundance of caution, I'm
5 just putting the Commission on notice that
6 cross-examination will likely occur for Mr. Borsch's
7 exhibits. And I think if there are any other parties
8 that want to cross from prefiled testimony and exhibits,
9 then they can, they should notify the Commission.

10 **COMMISSIONER BRISÉ:** Let me just say this for
11 ease. I think we need to coordinate with staff so that
12 that material could be available whether you're
13 providing the material or we're sort of providing the
14 unvarnished documents to Commissioners. What, what I'm
15 concerned about is trying to avoid having a lapse in
16 time as a result of not having the appropriate documents
17 available.

18 **MR. REHWINKEL:** Yeah.

19 **COMMISSIONER BRISÉ:** So that we will need to
20 coordinate, each party will need to coordinate with
21 staff with respect to prefiled testimony that they would
22 like to cross-examine from that is confidential.

23 But I will say this, it's a lot easier -- if
24 there's a section of the prefiled testimony that, that
25 one wants to, to cross-examine from and have that in

1 the, in the red folders and so that that could be
2 handled that way.

3 **MR. REHWINKEL:** I think from my experience
4 though that could be problematic if reference has to be
5 made to another part that's not somehow identified. So
6 I -- my suggestion is the better practice is that the
7 prefiled testimony that a party that is submitting it
8 wants the Commission to consider is best viewed in whole
9 so that all the parts that relate to each other can be
10 smoothly traversed in the cross-examination. That's
11 just a suggestion on my part. I think that if it's, if
12 it's known ahead of time and the, the information can be
13 provided, then it would probably in the long run make a
14 smoother hearing. But that's my advice.

15 **COMMISSIONER BRISÉ:** Okay. Thank you.

16 **MR. MOYLE:** And could I -- since we're, since
17 this conversation has been brought up and it came up in
18 a recent proceeding, I, I was kind of under the
19 impression that you all as Commissioners had access to
20 all of the testimony, both the, you know, the
21 confidential stuff and nonconfidential stuff, because
22 you all may have questions about some of the stuff. And
23 so it's been a little confusing -- at least, you know,
24 we had a few questions on it. But, I mean, we'll work
25 with staff and figure it out. But it seems -- I had

1 always thought that you all had before you all of the
2 information that included both confidential as well as
3 nonconfidential material.

4 **MS. HELTON:** Mr. Chairman, may I speak to
5 that?

6 **COMMISSIONER BRISÉ:** Sure.

7 **MS. HELTON:** Yes, the Commissioners do have,
8 you know, access to the confidential information but,
9 because of logistical reasons and the safekeeping of the
10 confidential information, it is not brought down here
11 for the Commissioners or for the staff, for that matter,
12 during the hearing. So if there is confidential
13 information that a party wants to use for
14 cross-examination purposes, or the staff for that
15 matter, it's my understanding and the way we've had it
16 written in the Prehearing Order is that our expectation
17 was that if you're going to use confidential information
18 for cross-examination purposes, you will have it here to
19 distribute for everyone to look at and use and then to
20 pick up during a break. So it will be your
21 responsibility to maintain the confidentiality of the
22 information.

23 **MR. BREW:** Commissioner?

24 **COMMISSIONER BRISÉ:** Mr. Brew.

25 **MR. BREW:** Just to add to this. It's been my

1 understanding from past practice, particularly for a
2 party that comes a considerable distance, that there was
3 no need to bring 25 copies of materials that had already
4 been prefiled.

5 **MS. HELTON:** That is true, with the exception
6 of confidential information.

7 **COMMISSIONER BRISÉ:** Okay. So what we're
8 going to do -- Mr. Wright, go ahead.

9 **MR. WRIGHT:** Thank you, Commissioner. What
10 we're going to do is whatever you tell us to do.

11 **COMMISSIONER BRISÉ:** Understood. That I know.

12 (Laughter.)

13 **MR. WRIGHT:** Yes, sir. My, my closely related
14 question is what about direct testimony? I don't
15 know -- two of our witnesses, two of Calpine's witnesses
16 have confidential information in their testimony. We,
17 frankly, I think, would probably want you to have copies
18 of those available when our witnesses take the stand.
19 Just putting that on the table, if we are to provide
20 them with, you know, five copies there plus 20 others,
21 just tell us and that is what we will do. Or if
22 something, some other arrangement is going to be made,
23 tell us and we will govern ourselves accordingly.

24 **COMMISSIONER BRISÉ:** Sure.

25 **MR. WRIGHT:** Thank you.

1 **COMMISSIONER BRISÉ:** All right. So what we're
2 going to do is this. I want the parties to coordinate
3 with our staff and sort of identify what is most crucial
4 for you in terms of the confidential information or
5 documents. And if it's prefiled testimony, then -- my
6 staff is not going to like this, but we are going to
7 make sure that the Commissioners have access to that
8 from the beginning. Okay? So then you will not be
9 required to bring that, but you need to coordinate with
10 staff so that they are clear as to what it is that you
11 intend to use from the confidential file that is in the
12 prefiled testimony. Okay?

13 All right. Is everybody clear on that? All
14 right.

15 Section V, prefiled testimony and exhibits,
16 witnesses.

17 **MR. LAWSON:** Staff would briefly like to
18 suggest that we ask if the parties are willing to
19 shorten or dispense with their witness summaries. At
20 the moment we've initially suggested five minutes would
21 typically be provided in this, for this.

22 **COMMISSIONER BRISÉ:** Okay.

23 **MR. WRIGHT:** What's the question? Whether we
24 would dispense with witness summaries?

25 **COMMISSIONER BRISÉ:** Yes. If you want to

1 inquire of that. You're not required to.

2 **MR. WRIGHT:** We would really like to have our
3 witnesses present their summaries, Mr. Chair.

4 **COMMISSIONER BRISÉ:** Sure.

5 **MR. WRIGHT:** Thank you.

6 **COMMISSIONER BRISÉ:** Okay. We just throw it
7 out there and make sure that, you know, if you wanted
8 to, you're welcome to do so.

9 Okay. We are providing five minutes. And,
10 Mr. Lawson, before we even talk about the five minutes
11 and make that solid, let's go over the next, the next
12 section so that --

13 **MR. LAWSON:** What we propose -- and I believe
14 most of you saw the email that I sent out on this the
15 other day -- for witnesses who appear in both dockets,
16 since we are doing a, essentially both hearings in
17 tandem, in order to save time and to prevent a lot of
18 duplication what we are proposing is that witnesses who
19 appear in both dockets shall be called for a single
20 appearance for direct examination and cross and then, of
21 course, a single appearance for rebuttal. How you
22 present the evidence or the witness summary or, or
23 handle the cross-examination for each witness is
24 entirely up to you, but ideally we would like everyone
25 to make one appearance as if this was a single docket

1 hearing. This, of course, would not impact anyone's
2 ability to recall a witness or object to testimony or
3 any of the normal procedural rules that we have for
4 witnesses.

5 **COMMISSIONER BRISÉ:** Okay. Is that clear?

6 All right. So with that, we will provide five
7 minutes for the witness summaries. Okay.

8 Section VI, order of witnesses.

9 **MR. LAWSON:** Two brief points. One, there
10 have been some changes that have been made. If everyone
11 will please double-check the prehearing order and make
12 sure they're happy with the order of their witnesses.
13 And if there's any changes, of course, get those to us
14 as quickly as possible. But I believe we have the final
15 iteration.

16 Second, of course, is just a quick inquiry as
17 to whether any of the parties are ready to stipulate
18 witnesses at this time. I don't believe that's the
19 case, but it is worth asking the question.

20 **COMMISSIONER BRISÉ:** Okay. Any of the parties
21 willing to stipulate to any witnesses at this time?

22 Okay. No takers. Thank you.

23 All right. Section VII, basic positions. Do
24 you have any corrections or additions or so forth?

25 Mr. Rehwinkel.

1 **MR. REHWINKEL:** Yes, Commissioner. I think
2 I'll only have to say this one time. I sent an email
3 out to parties' counsel yesterday. The Public Counsel
4 has modified our basic position and our positions on
5 each of the issues. I will submit that in the right
6 format at the correct time.

7 **COMMISSIONER BRISÉ:** Okay.

8 **MR. REHWINKEL:** But that applies to, I think,
9 just about every position that we took so I won't have
10 to repeat it anymore.

11 **COMMISSIONER BRISÉ:** Okay. Thank you.

12 All right. Anyone else on basic positions?

13 Yes, ma'am.

14 **MS. RULE:** NRG has a change to its basic
15 position on pages 20 and 21. I have it in writing and
16 can provide it to staff and the court reporter. And I
17 can read it into the record, if you would like.

18 **COMMISSIONER BRISÉ:** Okay.

19 **MR. LAWSON:** If it's -- if they provide it to
20 us, we'll be able to make those changes in a subsequent
21 draft and circulate it for your approval.

22 **COMMISSIONER BRISÉ:** Right. Okay. Anyone
23 else with changes to the basic positions?

24 All right. Moving on to Section VIII, issues
25 and positions.

1 Mr. Lawson.

2 **MR. LAWSON:** Just an administrative reminder.
3 Issues 1 through 16 were established in the Third Order
4 Establishing Procedure with Issues 1 through 8 assigned
5 to Docket Number 140110 and Issues 9 through 16 assigned
6 to Docket Number 140111.

7 Skipping ahead briefly, we'll be discussing a
8 proposed legal issue in a moment. For administrative
9 purposes we would like to have that issue assigned Issue
10 Number 17 and note that it is appearing in Docket Number
11 140111. So in the future when we, if we need any, need
12 to write to that or prepare anything for it, that will
13 be Issue 17, please.

14 **COMMISSIONER BRISÉ:** Okay. So let's go
15 through the issues.

16 All right. Issue 1. If you have any changes
17 on your positions on the issues, recognizing that the
18 Office of Public Counsel has stated that they have many
19 changes and they're going to send that in. All right.
20 Anyone else with changes to Issue 1?

21 Okay. Issue 2. Okay. Issue 3. Issue 4.
22 Issue 5. Issue 6.

23 **MR. BREW:** Excuse me.

24 **COMMISSIONER BRISÉ:** Yes.

25 **MR. BREW:** Mr. Chairman, for PCS Phosphate's

1 position on Issue 5, the word "No." should begin that
2 response.

3 **COMMISSIONER BRISÉ:** Okay. So on Issue 5
4 you're adding the word "no" at the beginning before "at
5 this time."

6 **MR. BREW:** Yes. Correct.

7 **COMMISSIONER BRISÉ:** Okay. Issue 6.

8 **MR. BREW:** Commissioner, PCS Phosphate's
9 position on Issue 6 should read the same as it does for
10 Issue 5.

11 **COMMISSIONER BRISÉ:** Okay. Okay. Issue 7.
12 Issue 8.

13 Okay. Moving on to Issue 9, which is part of
14 Docket Number 140110 -- I mean, sorry, 111, rather.

15 Issue 9. Issue 10. Issue 11. Issue 12.
16 Issue 13. Issue 14. Issue 15.

17 **MR. BREW:** Commissioner, on Issue 15 PCS
18 Phosphate agrees with FIPUG.

19 **COMMISSIONER BRISÉ:** Okay. And Issue 16.

20 All right. Thank you very much. So now that
21 we have dealt with those issues as we know them, it is
22 my understanding that NRG has proposed a new legal issue
23 for Docket Number 140111-EI for the purposes of
24 identification, as Mr. Lawson mentioned before. This
25 issue would be identified as Issue 17. So, Mr. Lawson.

1 **MR. LAWSON:** Yes. NRG proposed a new legal
2 issue. We have some copies of it available if you need
3 to take a look at it. It is our understanding at this
4 time that the issue itself may be opposed by Duke
5 Energy. All other parties have taken no position or do
6 not object. We would recommend that we take a few
7 moments for interested parties to present their
8 arguments in support or in, or opposed to the inclusion
9 of this issue.

10 **COMMISSIONER BRISÉ:** Okay. And so we will go
11 ahead and do that, and so we will let NRG, since it's
12 their issue, to make their statements. Go ahead.

13 **MS. RULE:** Thank you. As you know, NRG has
14 proposed what we believe to be an important legal issue
15 in the Commission's consideration of Docket 140111, and
16 that's whether the Commission has jurisdiction in this
17 docket to grant Duke's request for a determination that
18 its proposed projects are the most cost-effective
19 generation alternatives to meet Duke's need prior to
20 2018.

21 First, I'd like to invite you to take a look
22 at Duke's petition. Duke hasn't cited any statutory
23 authority for this action. The only authority that I
24 see is on page 1 where Duke relies on Rules
25 25-22.080 and 25-22.081, *Florida Administrative Code*.

1 And, of course, as you know, rules cannot grant
2 jurisdiction to the Commission, but let's take a look at
3 the rules and see what they say.

4 By the terms, neither rule is applicable to
5 Duke's petition. Rule 25-22.081 states that it relates
6 to a petition for a fossil integrated gasification
7 combined cycle or nuclear fuel electric plants and that
8 it has to do with petitions submitted to commence the
9 proceeding to determine a need for one of those
10 proceedings. And, of course, those proceedings are
11 governed by Sections -- or the need is governed by
12 Section 403.519, which specifically grants the
13 Commission jurisdiction, but this isn't one of those
14 rules -- or one of those cases.

15 Rule 25-22.082, selection of generating
16 capacity, again says that the intent of the rule is to
17 provide the Commission with the information to evaluate
18 a public utility's decision regarding additional -- the
19 addition of generating capacity pursuant to Section
20 403.519, *Florida Statutes*. Duke's proposed projects in
21 this docket, 140111, are not eligible for review under
22 403.519. That statute simply cannot grant the
23 jurisdiction to review those projects. That's the very
24 same statute that Duke relies upon in Docket 140110 and,
25 in fact, that statute does grant the Commission specific

1 jurisdiction to consider the need and consider prudence
2 in connection with those generation alternatives.

3 It appears to NRG that the Commission's
4 jurisdiction in 403.519 was given to the Commission by
5 the Legislature specifically and limited to the types of
6 plants that are eligible for review under the Power
7 Plant Siting Act.

8 In the absence of any specific authority, it
9 would seem that the Commission should be conducting a
10 limited proceeding or perhaps a rate case to review the
11 prudence of Duke's decision to build these two plants.
12 Apparently Duke relies upon a stipulation that the
13 Commission approved originally in a 2012 limited
14 proceeding and revised in a 2013 limited proceeding.
15 And as you know, the Commission and parties cannot
16 stipulate to the Commission's jurisdiction. They can't
17 grant something that was not granted by the Legislature.
18 And it's telling, I think, that the Commission and Duke
19 thought it important to consider the original and
20 revised stipulations in limited proceedings. Had Duke
21 sought a limited proceeding in this case, I think the
22 Commission would have jurisdiction to consider the
23 generation builds, but they didn't do that.

24 There are a couple of other things I think are
25 important to the Commission's review of its

1 jurisdiction. Both of those prior limited proceedings
2 were based on a test year ending December 13 -- 31,
3 2013. The plants that Duke now seeks to build will
4 begin service in 2017 and '18, which is far beyond the
5 2000 test year in which the limited proceedings were
6 based. And rather than submit some new time appropriate
7 test year, Duke plans to use its Ten-Year Site Plan,
8 which, for which Duke isn't accountable and which will
9 likely be revised a couple of times before these
10 proposed projects would be operational.

11 We also believe that there's a serious
12 question as to whether the Commission is authorized or
13 was authorized by law to grant the generation-based rate
14 adjustment for the Citrus County projects outside the
15 confines of a timely rate case, but that's not the
16 thrust of our issue in Docket 140111.

17 We believe that, contrary to Duke's apparent
18 assertion, the Commission cannot, under the guise of
19 approving a settlement, extend its jurisdiction beyond
20 that which was specifically granted by the Legislature.
21 The settlement agreement cannot confer jurisdiction and
22 doesn't consider -- doesn't confer authority on the
23 Commission to consider or grant Duke's request in this
24 docket. And I believe staff indicated we may have
25 approximately five minutes, so I'd like to reserve, if

1 possible, another minute.

2 **COMMISSIONER BRISÉ:** Sure. Thank you.

3 Duke.

4 **MR. WALLS:** Well, I'll be brief in response.

5 We do oppose the issue because we believe it's
6 clear the Commission has jurisdiction. We will fully
7 brief it if it is included as an issue in the case.

8 In response, I would say that we have
9 petitioned this Commission to exercise its jurisdiction,
10 and the Commission always has the power to determine its
11 own jurisdiction in this matter. And the statute,
12 Chapter 366, is replete with the Commission's authority
13 to review the matters that are raised in our petition
14 about whether this plant, the simple cycle and the
15 highest chiller little GBRA plants, are needed and
16 cost-effective. That was the basis of the settlement
17 agreement that was approved by this Commission. The
18 Commission certainly had jurisdiction to take up that
19 settlement agreement and improve it. It was publicly
20 noticed. Everyone in this room could have appeared, and
21 some did, in that proceeding and objected to the
22 Commission's jurisdiction. They did not. That order
23 became final. It was not appealed. And it was a
24 recognition of the Commission's existing jurisdiction
25 under Chapter 366, which is what we are invoking in

1 reference to the 2013 settlement agreement in our
2 petition in this matter. And the Commission has that
3 subject matter jurisdiction and can determine it
4 regardless of these arguments about procedural matters.

5 And we would point the Commission to this
6 simple fact. The Commission always has the jurisdiction
7 to determine whether a plant that DEF or any other
8 public utility builds in this state is needed and
9 cost-effective. If it qualifies under the Power Plant
10 Siting Act, that determination is made upfront because
11 the Legislature said it should be. If it does not
12 qualify for the Power Plant Siting Act, the
13 determination is usually made after the fact in a rate
14 case when the Commission will review the company's
15 petition in a rate case, including the power plant, and
16 determine whether it was needed and cost-effective at
17 that time.

18 The settlement agreement provided for the
19 generation base rate adjustment in that determination
20 upfront. Clearly the Commission had the power. It's
21 just a matter of timing. And the Commission always has
22 jurisdiction to make this determination. We will
23 certainly brief that and point to the vast number of
24 sections in Chapter 366 that provide that jurisdiction,
25 and would point out that if you read the Power Plant

1 Siting Act, you will not find one place where it
2 excludes or limits the Commission's existing
3 jurisdiction under Chapter 366. It's simply a timing
4 issue. The Florida Legislature carved out certain
5 plants primarily to determine new power plant sites,
6 which is not implicated by these two projects because
7 they're on existing power plant sites, and said for
8 those types of power plants we want you to do it
9 upfront. They never said -- and left in place the
10 Commission's jurisdiction to still look at our need and
11 cost-effectiveness for other power plants, which the
12 Commission has always done. Thank you.

13 **COMMISSIONER BRISÉ:** All right. Thank you.

14 You have about a minute left.

15 **MS. RULE:** Thank you. Briefly I'd like to
16 echo something Mr. Walls said. He's correct, the
17 Commission -- the Legislature carved out certain plants
18 for pre-approval. The Suwannee plant and the Hines
19 chiller uprate are not those plants. If the Legislature
20 specifically gave the Commission the authority and, in
21 fact, required them to preapprove certain types of
22 plants and did not grant the authority or require the
23 Commission to preapprove other types of plants, I think
24 that raises a question of your jurisdiction.

25 Duke has failed to cite any specific statute

1 in its petition. Duke has known this issue has been
2 proposed for several days, and still I have not heard a
3 single statute that supports the Commission's authority
4 to preapprove these plants outside the confines of a
5 rate case or a limited proceeding. I think this is an
6 important issue; it should be briefed. Thank you.

7 **COMMISSIONER BRISÉ:** Thank you very much.

8 **MR. WRIGHT:** Commissioners?

9 **COMMISSIONER BRISÉ:** Yes, sir.

10 **MR. WRIGHT:** May I be heard briefly?

11 **COMMISSIONER BRISÉ:** Sure.

12 **MR. WRIGHT:** Thank you. I'll say I don't have
13 a position, I don't think Calpine has a position on
14 whether the issue is included. If it's included, we
15 will brief it. If it's not, it's not.

16 I will say that I do believe that the
17 Commission does have the jurisdiction to approve this.
18 The Commission had the jurisdiction to approve the
19 mechanism and the process when it approved the 2013
20 settlement among the, among the company and the
21 signatory parties, the consumer parties, and which, you
22 know, I represented the Retail Federation. I think they
23 had the jurisdiction to approve it then. I believe that
24 order is fully valid, it's final. And the Commission
25 has the jurisdiction to go forward under that, as well

1 as under its general statutory authority. Thank you.

2 **COMMISSIONER BRISÉ:** Thank you.

3 **MS. RULE:** That sure sounds like a position to
4 me.

5 **MR. WRIGHT:** It was, Mr. Chairman, no position
6 on including the issue or not. I was addressing the
7 substance of the position.

8 **COMMISSIONER BRISÉ:** Understood. Anyone else?
9 Mr. Brew.

10 **MR. BREW:** Mr. Chairman, PCS fully supports
11 the parties' ability to raise jurisdictional questions
12 that they think should be brought forward, and it's
13 generally better to address them sooner rather than
14 later. But at the same time, we fully support the terms
15 of the 2013 settlement agreement.

16 **COMMISSIONER BRISÉ:** Thank you.
17 Mr. Rehwinkel.

18 **MR. REHWINKEL:** Yes, Commissioner. What
19 Mr. Brew said, we agree with every word. Thank you.

20 **COMMISSIONER BRISÉ:** All right. Thank you.

21 **MS. RULE:** If I may briefly respond.

22 **COMMISSIONER BRISÉ:** Sure.

23 **MS. RULE:** Briefing the jurisdictional issue I
24 think will assist the Commission. But, more
25 importantly, the stipulation did not require a separate

1 pre-approval. The approval could have been sought after
2 the fact, as would normally be the case, and that would
3 be consistent with the stipulation as well.

4 **COMMISSIONER BRISÉ:** All right. Thank you.

5 **MR. MOYLE:** Mr. Chairman.

6 **COMMISSIONER BRISÉ:** Sure.

7 **MR. MOYLE:** FIPUG is not going to take a
8 position on this issue, but would make an observation
9 that to the extent that this issue is going to move
10 forward for administrative efficiency, it might make
11 sense to try to get it resolved prior to the hearing so
12 people know, you know, whether it's in or out. Because
13 obviously if it's out, then half the case goes away and
14 we wouldn't have to spend a lot of time with witnesses
15 who ultimately, you know, their testimony -- if the
16 decision is no jurisdiction, you know, they will have
17 spent a lot of time and subject to cross-examination
18 really for no reason, so.

19 **COMMISSIONER BRISÉ:** All right. Thank you.
20 So we will take this issue under advisement and
21 hopefully will provide a ruling no later than Friday on
22 this issue. Okay?

23 Yes.

24 **MR. REHWINKEL:** Are -- I'm prepared to submit,
25 in whatever time frame the staff wants, a position on

1 the issue if you require one. But I would just listen
2 for your guidance on whether you want a position on this
3 issue as it is under consideration or do we wait until
4 you decide and then provide a position?

5 **COMMISSIONER BRISÉ:** I think it might be in
6 your best interest to wait until I decide.

7 **MR. REHWINKEL:** Okay.

8 **COMMISSIONER BRISÉ:** Okay.

9 **MR. BREW:** Commissioner?

10 **COMMISSIONER BRISÉ:** Yes.

11 **MR. BREW:** The handout from staff has a
12 partial sentence on the bottom regarding staff's
13 outlook, and I was wondering could we have the entire,
14 the benefit of the entire statement?

15 **COMMISSIONER BRISÉ:** What's that?

16 **MR. LAWSON:** I'm sorry. That was -- this is
17 an older version. Staff does not have any position on
18 this. And I do apologize. This is not something we
19 intended to release.

20 **COMMISSIONER BRISÉ:** Yes, ma'am.

21 **MS. RULE:** If I may briefly respond to
22 Mr. Moyle's comment. I believe he suggested that, and
23 I'm not clear on this, that the issue should be decided
24 before hearing as opposed to the inclusion of the issue.
25 Is that correct?

1 **MR. MOYLE:** Well, I guess there's a two-step
2 process. One is is the issue in or out? And if it's
3 in, then it seems that it would make administrative
4 sense to not waste judicial resources to have that
5 decided even if it's briefed and decided, you know, as a
6 first preliminary matter. Because if it's decided that
7 there's no jurisdiction, you know, you have a lot of,
8 you would save a lot of time by not having to put
9 witnesses on. If it's decided there is jurisdiction,
10 then you continue along. But it seems to make more
11 sense to do it that way than to say, oh, we'll decide
12 this at the very end and then have everybody go on. And
13 if the decision is we have no jurisdiction, you will
14 have spent a lot of time listening to witnesses who, you
15 know, who are testifying about something for which the
16 Commission doesn't have jurisdiction.

17 **MS. RULE:** I would like to respond. I
18 disagree with that position. Either way somebody is
19 going to be unhappy with the decision and that means
20 either way there's a possibility of appeal. I suspect
21 the parties who have put a lot of time and effort into
22 getting their witnesses ready, including NRG, would
23 rather go forward, put their testimony on -- the
24 Commission has already had the hearing dates, the
25 testimony, the issues are intertwined -- and let it sort

1 itself out on appeal, as opposed to hold off on the
2 decision and then have to go back and do it later,
3 depending on who's wrong.

4 **COMMISSIONER BRISÉ:** All right. As I stated
5 before, we will provide a decision on, on this issue by
6 Friday.

7 Okay. Moving forward to exhibit list.

8 **MR. LAWSON:** Staff would note that we will be
9 preparing a draft Comprehensive Exhibit List consisting
10 of all prefiled exhibits for the purpose of numbering
11 and identifying the exhibits at the hearing. We'll
12 provide this to the parties as soon as possible. And we
13 also intend to prepare a proposed stipulated exhibit
14 composed of certain discovery responses and deposition
15 transcripts which would also be provided to the parties
16 in advance of the hearing. And as soon as we're able to
17 circulate that, if you folks could please take a look at
18 it, respond accordingly so we can get everything
19 prepared and hopefully simplify the process.

20 **COMMISSIONER BRISÉ:** Okay. Any questions or
21 issues with respect to Item 9 -- or Section IX? Okay.

22 Moving on to Section X, proposed stipulations.

23 **MR. LAWSON:** We don't have any proposed
24 stipulations at this time.

25 **COMMISSIONER BRISÉ:** Okay. Section XI,

1 pending motions.

2 **MR. LAWSON:** We have one. As mentioned,
3 yesterday afternoon SACE has filed a motion to
4 intervene. Once all the parties have had an opportunity
5 to respond to the motion and the Commission has had an
6 opportunity to review the position we'll be able to
7 address this in a separate order.

8 **COMMISSIONER BRISÉ:** Okay. Yes.

9 **MR. MOYLE:** Can we just go back briefly to
10 proposed stipulations and I'll follow up? But I believe
11 that FIPUG and Duke have entered into a stipulation or
12 have an understanding with respect to standing, that
13 FIPUG has standing for the purposes of this proceeding
14 and for appellate purposes.

15 **MR. WALLS:** That's correct.

16 **COMMISSIONER BRISÉ:** Okay. Okay. Anything
17 else? All right. Moving forward to Section XII,
18 pending confidentiality motions.

19 **MR. LAWSON:** Yes. As of late yesterday we now
20 have 19 pending confidentiality requests. A number of
21 these have been filed within the, before the ten-day
22 response time has been, has run. So as soon as those
23 are complete, we should be able to respond to them. The
24 handful that are, that are ready, we should have those
25 responses out prior to the hearing.

1 **COMMISSIONER BRISÉ:** Okay. Section XIII,
2 post-hearing procedures.

3 **MR. LAWSON:** We'd recommend that parties
4 will -- as we're doing this in tandem, we are suggesting
5 that parties shall prepare separate post-hearing briefs,
6 one for each docket. Parties may ask to modify the
7 number of words in the post-hearing position statements,
8 but we are recommending 120 words for the post-hearing
9 positions.

10 And on the number of pages in the post-hearing
11 briefs, we are recommending 40. Briefs would be due on
12 September 10th, 2014.

13 **COMMISSIONER BRISÉ:** Okay. Is that clear?

14 Mr. Wright.

15 **MR. WRIGHT:** Thank you, Mr. Chairman. I'm
16 confident that we could do it in 80 pages total. I
17 would rather not be constrained to 40 pages per docket,
18 if that might be all right.

19 **COMMISSIONER BRISÉ:** Staff?

20 **MR. WRIGHT:** Alternately, Mr. Chairman, I
21 would, I would ask for 50 papers per docket.

22 **MR. LAWSON:** Is the question that you'd like
23 80 pages in total, how you distribute them between your
24 two briefs is discretionary?

25 **MR. WRIGHT:** That's alternate one. The other,

1 the other option would be 50 pages per docket. But if I
2 could have 80 pages total, I could, I could handle it.
3 Other parties can speak for themselves, of course.

4 **MR. LAWSON:** Staff doesn't have any, with
5 either proposal, whether it's -- if they want to
6 basically have 80 pages in total and allocate them
7 between the two post-hearing briefs, that would be,
8 would be acceptable.

9 **COMMISSIONER BRISÉ:** Okay. That sounds like a
10 good plan. So 80 pages total, and you can distribute
11 them as you deem necessary.

12 **MR. MOYLE:** Mr. Chair, just one procedural
13 point. I think, I think it's implicit, but just to
14 avoid any question, I want to make sure that everyone is
15 on the same page that, you know, this is consolidated
16 for hearing purposes and the record in this case will be
17 consolidated as well. We won't have two separate
18 records even though we're submitting two separate
19 briefs. Everything that comes in will be available for
20 both briefs for briefing purposes.

21 **COMMISSIONER BRISÉ:** Okay. Mr. Lawson.

22 **MR. LAWSON:** To the extent that the hearing
23 itself is not -- is in tandem and so there will be one
24 record, there will be one hearing transcript, and
25 hopefully we will be able to have everything in one

1 docket entered into the other.

2 At the moment, however, evidence entered in
3 one docket will need to be entered into both pending a
4 stipulation from the parties that everyone would agree
5 that subject to the right to object on normal grounds,
6 that evidence entered in one docket is automatically
7 deemed entered in the other. And we're happy to work
8 with you folks on that. But for the moment there will
9 be one appearance, one hearing transcript, one hearing
10 record. But as for the actual evidence right now, it is
11 marked as being entered in one or the other. But if the
12 parties are ready to stipulate, we can certainly say
13 that subject to anyone's grounds for objection that
14 anything during the hearing entered into one docket is
15 deemed entered into the other docket. Exhibits, yes.
16 Exhibits, yes.

17 **COMMISSIONER BRISÉ:** Okay.

18 **MS. RULE:** Clarifying question.

19 **COMMISSIONER BRISÉ:** Yes.

20 **MS. RULE:** I'm not -- I'm trying to understand
21 how that would work. Because if we have one hearing
22 record and the witnesses, you know, present their direct
23 and rebuttal prefiled testimony and it's entered into
24 the record, I'm not sure what would not be entered into
25 the record at the end of that time, particularly if

1 staff is going to have a large staff exhibit consisting
2 of discovery in both cases.

3 **MR. LAWSON:** Well, we believe at the end of
4 the day this would not be a significant issue. However,
5 there are situations where someone might enter an
6 exhibit into, into Docket, for Docket Number 110, and
7 someone could raise the argument that, no, that wasn't
8 actually entered into the record for the purposes of
9 Docket 111. I believe that's the question. I don't see
10 this as being a significant issue, but, you know,
11 Mr. Moyle did raise it and I just wanted to take a
12 moment to clarify it.

13 **MR. WALLS:** That does raise a, just a sort of
14 procedural question of handling the witnesses. And
15 we're not opposed to doing it this way. I just want to
16 clarify. So when a witness takes the stand and he's in
17 both dockets, when he's questioned, can we set it up so
18 their questions are for one docket, then move to the
19 next docket so they're not interspersed questions?

20 **MR. LAWSON:** If that's more administratively
21 convenient, by all means say we'd like to address some
22 questions for Docket 110. And then when you're done,
23 say we'd like to move on to the questions for Docket
24 111 if that's how you believe is the best way to present
25 it. Yes.

1 **MR. MOYLE:** Well, since I raised the question,
2 I just want to understand it in my head. I think that
3 that at least presents a lot of challenges because then
4 you're going to say, well, I asked this question. Did I
5 ask it in the 110 or the 111? And I think we had this
6 conversation in another docket recently. You know, we
7 kind of agreed everything would be in on both dockets
8 and I would almost be more comfortable with that.
9 Because what you don't want is to have some evidence
10 that you think is in and then somehow, well, it's only
11 in one docket. You can't use it in the other docket.
12 That plus also making a record, if you're going to take
13 all your staff exhibits and, you know, have them in one
14 docket and then have the same exhibits in the other
15 docket, that seems to be somewhat cumbersome.

16 **MR. LAWSON:** And that's why I was recommending
17 that once we have that agreement that everything in one
18 record, for record purposes only, that everything in one
19 record is in both dockets. Then you're absolutely
20 right, that makes it easier.

21 I believe Duke's point was that when the
22 witness is on the stand can we divvy them up between the
23 two dockets if that's the better way to present our
24 evidence or present our witness?

25 But as to your point, once we have an

1 agreement that everything in one docket is in the other,
2 you're absolutely right, that's the way to do it. It's
3 just today we don't have that agreement among the
4 parties to do that. Hopefully we'll get there in the
5 not too distant future. But, yes.

6 **MR. MOYLE:** Well, if we want to try to have
7 that agreement, FIPUG doesn't have any objection to
8 having it apply to both dockets throughout.

9 **MR. LAWSON:** Well, if no one objects -- I'm
10 sorry.

11 **COMMISSIONER BRISÉ:** Mr. Wright.

12 **MR. WRIGHT:** Thank you, Commissioner. I just
13 wanted to chime in and say we support having one
14 consolidated record such that in a brief, say,
15 addressing the 111 issues, one can cite an exhibit that
16 was introduced in 110. And, conversely, and in
17 addressing the 111 issues, a party can address testimony
18 that was presented in the 110 and cite to it in their
19 brief for 111 without fear of being, of having that
20 argument rejected because it was relying on evidence in
21 another record. I think having a consolidated
22 evidentiary record, all the testimonies, all the
23 exhibits from both dockets in one record can be cited in
24 either one as, as we go forward writing our briefs, I
25 think that's the right way to go. We support the

1 suggestion. Thank you.

2 **COMMISSIONER BRISÉ:** Okay. Mr. Brew.

3 **MR. BREW:** I absolutely agree with Mr. Wright.
4 It makes more sense to do it that way.

5 **COMMISSIONER BRISÉ:** Okay. Mr. Rehwinkel.

6 **MR. REHWINKEL:** The Public Counsel concurs.

7 **COMMISSIONER BRISÉ:** Okay. NRG.

8 **MS. RULE:** Given the consolidated hearing, I'm
9 not sure it could work any other way.

10 **COMMISSIONER BRISÉ:** Okay. All right. Any
11 comments?

12 **MR. SELTZER:** We really don't have a comment
13 because at this point, Mr. Commissioner, we're only in
14 the 110 docket. So the consolidation is not directly
15 relevant to us as we sit here today.

16 **COMMISSIONER BRISÉ:** Sure. All right.

17 Duke.

18 **MR. WALLS:** Since it's been proposed to do it
19 as a consolidated matter, we think it makes sense to
20 have a consolidated record. I mean, we're not opposed
21 to that. I was talking more in the sense of
22 procedurally once the witness is on the stand, and if
23 you're actually trying to go back and look in the
24 transcript later for your post-hearing brief, it may
25 make more sense to actually have the witness answer

1 questions about one docket and then move to the other.

2 That was just a suggestion.

3 **COMMISSIONER BRISÉ:** Okay.

4 **MR. LAWSON:** I believe we have a consensus.

5 **COMMISSIONER BRISÉ:** Yes.

6 **MR. LAWSON:** And we can draft the Prehearing
7 Order accordingly. And just to be clear, we'll be
8 saying that there will be a consolidated record. But as
9 Duke pointed out, on an individual basis for how you
10 wish to present things is entirely up to you. And, of
11 course, if anyone has any objections to any individual
12 parts of testimony or exhibits, please feel free to
13 raise those.

14 **MR. WRIGHT:** Mr. Chairman, just for clarity
15 with regard to Mr. Walls' comments. I think reasonably
16 and rationally in the ordinary flow of things, let's say
17 when Mr. Borsch is on the stand, I would most likely
18 conduct my cross-examination of him starting with the
19 111 docket first and then going to the 110 docket.
20 However, I would not stipulate to be constrained not to
21 go back later in my cross-examination and ask him a
22 question about his 111 testimony. I just want it clear
23 that we would not agree to that.

24 **COMMISSIONER BRISÉ:** I think that's the -- I
25 think the idea is that if you are dealing with 111, you

1 sort of notice everybody that you're dealing with
2 111 primarily, and then if you go back to 110 and so
3 forth so that it's sort of clear for everyone. Okay?
4 So I think we have an understanding. Okay.

5 **MR. LAWSON:** Yes.

6 **COMMISSIONER BRISÉ:** Moving on to rulings.

7 **MR. LAWSON:** I believe we addressed this, but
8 we would also note that for opening statements, as we
9 just sort of discussed, should be combined. We've
10 suggested that opening statements for Duke Energy should
11 not exceed ten minutes and that all of the parties
12 should have a combined total of 20 minutes to be
13 allocated amongst the parties as they mutually agree.

14 **COMMISSIONER BRISÉ:** All right.

15 Mr. Rehwinkel.

16 **MR. REHWINKEL:** My concern about that is I
17 think you really have three types of parties here.
18 You've got the utility, you've got the proponents of the
19 competitive offers, and then you have the customers.
20 And I would be willing to work with Mr. Brew and
21 Mr. Moyle, and assuming Mr., assuming SACE is
22 intervened, on a block of time or I would just, I would
23 be happy with three minutes. But I don't really -- I
24 don't consider our interests are aligned with the other
25 two segments, so that would be my concern.

1 **MR. MOYLE:** And, Mr. Chairman, if I could
2 weigh in on that.

3 **COMMISSIONER BRISÉ:** Sure.

4 **MR. MOYLE:** I think in some recent proceedings
5 it has been allocated where each party has X minutes,
6 and I don't have strong feelings about what the X is.
7 But rather than trying to have us who are getting ready
8 for trial, got a lot of things going on, to also say
9 you're going to take two, I'm going to take one, and
10 then invariably you get to the end and somebody is kind
11 of like I've got 30 seconds. We would rather have a
12 certain amount allocated on a per party basis to the
13 intervenors, at least speaking on behalf of FIPUG.

14 **COMMISSIONER BRISÉ:** Sure. As a matter of
15 fact, in my discussion with Mr. Lawson that was -- we
16 sort of had that discussion in terms of potentially
17 allocating a specific amount of minutes per party,
18 recognizing that the interests are, are varied, unlike
19 in other dockets. So the, the block of time will remain
20 the same. In other words, Duke will have ten. And the
21 block of 20, we will divide that 20 per, per party,
22 we'll try to do it equally. We may move it up to maybe
23 25 or so. But we will try to do that in the final
24 Prehearing Order.

25 **MS. RULE:** If I may respond.

1 **COMMISSIONER BRISÉ:** Sure.

2 **MS. RULE:** I would suggest that the parties
3 who file testimony get the bulk of that time. Parties
4 who are stating positions but not trying to give an
5 overview of their witnesses' case probably would not
6 need as much time. I can't speak for them. But since
7 NRG has gone to the time and expense of putting
8 witnesses out, we would sure like the opportunity to
9 explain our case to you in a little more than three
10 minutes.

11 **COMMISSIONER BRISÉ:** Okay. Mr. Wright.

12 **MR. WRIGHT:** Commissioner, I would say
13 essentially the same thing. I don't believe 20 minutes
14 is adequate honestly for seven parties now counting
15 SACE, who have petitioned to intervene now. And like
16 NRG, Calpine has put on a substantial substantive case
17 and, frankly, we want more than, you know, two minutes
18 and 50 seconds to give an opening statement. I would
19 ask for five minutes per party. That would put the
20 total in this end up to 35 minutes. And I would
21 certainly be amenable to, we would certainly be amenable
22 to increasing Duke's time correspondingly if they want
23 it. But I would respectfully ask for five minutes for
24 our opening statement. Thank you.

25 **COMMISSIONER BRISÉ:** Okay. I hear you.

1 Mr. Brew.

2 **MR. BREW:** I would support that. I would
3 suggest five minutes per party. There aren't that -- so
4 many parties that it wouldn't take so long, and even
5 parties that haven't provided, submitted testimony still
6 need time to lay out their positions on what is an
7 extremely expensive proposition before the Commission.

8 **COMMISSIONER BRISÉ:** Okay. So I will think
9 about that and that will be offered in the Prehearing
10 Order.

11 Other matters. Are there any other matters
12 that we need to deal with?

13 **MR. LAWSON:** Just a few brief housecleaning
14 items. We would request that with the exception of the
15 issues that parties have decided to take no position, to
16 the extent the parties' positions change due to
17 discussions at today's conference, that they provide any
18 such changes to staff by close of business August 15th,
19 2014. That would be this Friday.

20 **COMMISSIONER BRISÉ:** Okay.

21 **MR. LAWSON:** And we'd also ask that if parties
22 wish to use demonstrative items at the hearing
23 conference, to please make a request through staff, and
24 that'll give the Prehearing Officer, you, yourself, a
25 chance to review and grant those on a case-by-case

1 basis.

2 **COMMISSIONER BRISÉ:** Okay. Mr. Moyle, you had
3 a question?

4 **MR. MOYLE:** Yeah. Just to be clear on that
5 legal issue. We had said we don't have a position, we
6 don't have a position today whether it's in or out. But
7 it seems from a timing perspective I think the decision
8 will be made. If it's made that the issue is in, we'd
9 like to have the ability to state a position on the
10 issue.

11 **COMMISSIONER BRISÉ:** Sure.

12 **MR. MOYLE:** So I just want to make sure when I
13 said we don't have a position, I didn't want that to be
14 misconstrued.

15 **COMMISSIONER BRISÉ:** Understood.

16 **MR. LAWSON:** No. Certainly once that, once a
17 decision is made, we'll make sure everyone has ample
18 time for that.

19 **COMMISSIONER BRISÉ:** All right. Anything
20 else?

21 Other matters. I just want to remind everyone
22 that no friendly cross, you know, and no discovery on
23 cross-examination either. So please stick to, to what's
24 in the testimony and no far afield stuff. Okay? And so
25 we'd like to conduct a hearing that's, that's efficient,

1 that we're able to get whatever information that we need
2 to get but that stays within the bounds and the
3 parameters of what our field is comprised of.

4 Okay. Is there anything else?

5 Mr. Moyle.

6 **MR. MOYLE:** I have a question. I don't know
7 whether it can be answered or commented upon. But, you
8 know, recently we had, I think it was the energy
9 efficiency docket that was scheduled for two weeks and
10 it was a three-day and a two-day and everybody worked
11 hard to get it done in three days. I think this is
12 scheduled for two days followed by one day in the next
13 week. And for planning purposes and otherwise I was
14 trying to get a sense as to whether there might be a
15 sense of similarly trying to move it along as was done
16 in the energy efficiency docket. And, you know, we
17 worked until 7:00 I think one night and we worked long
18 hours, but I didn't know if there had been thought with
19 respect to, you know, timing.

20 **COMMISSIONER BRISÉ:** Sure. That is the
21 Chairman's prerogative and his, his decision as to
22 whether he wants to go long or not. If I know the
23 Chairman well enough, my assumption will be that we're
24 going to go, probably go long on Monday and try to do as
25 much as we can on Monday and try to see if we can be

1 done in a day and a half. And so that is, that would be
2 my assumption. But, you know, the Chairman handles
3 everybody's schedules and recognizes if people have
4 different things that are going on and so forth, and so
5 he's privy to information that I'm not necessarily privy
6 to. And so those decisions are made by the Chairman.

7 **MR. MOYLE:** Thank you.

8 **MS. RULE:** If I may support the going long,
9 NRG's witnesses, we have three witnesses, the very best
10 day for their travel plans and their other schedules
11 would be August 27th. So we would support going long if
12 it meant we could get our witnesses in on that day.

13 **COMMISSIONER BRISÉ:** Sure. Sure. All right.

14 Mr. Lawson.

15 **MR. LAWSON:** I don't believe we have any other
16 business today.

17 **COMMISSIONER BRISÉ:** All right. Is there
18 anything else from any of the parties?

19 All right. Let's prepare to have a really
20 good hearing. So with that, we stand adjourned.

21 (Prehearing Conference adjourned at 10:31
22 a.m.)

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

3
4 I, LINDA BOLES, CRR, RPR, 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 stenographically
9 reported the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript constitutes a true transcription of my notes
12 of said proceedings.

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

18 DATED THIS 19th day of August, 2014.

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