

P R O C E E D I N G S

1
2 **CHAIRMAN BROWN:** Thank you all. This is the
3 Special Commission Conference Agenda for Monday, May
4 23rd. The time is 1:30, and this meeting is called to
5 order. We have one item for consideration, and I will
6 ask our staff to lead it off.

7 **MS. BROWNLESS:** Thank you. Good afternoon.
8 My name is a Suzanne Brownless, Senior Attorney with the
9 General Counsel's Office, and we're here today pursuant
10 to a timely filed notice to discuss the Office of Public
11 Counsel's motion for reconsideration of Order No.
12 PSC-16-0182-PCO-EI issued on May 4th, 2016. Several
13 parties are here today to speak on this item, should the
14 Commission grant oral argument as has been requested by
15 the Office of Public Counsel.

16 I would suggest that the Commission decide
17 whether to grant oral argument first, which is Issue
18 No. 1. And if you determine that oral argument
19 would assist you in understanding and evaluating
20 OPC's motion for reconsideration, that each party be
21 given an appropriate amount of time to present their
22 case.

23 **CHAIRMAN BROWN:** Thank you. Commissioners, we
24 have to consider this one issue first, which is whether
25 to grant oral argument or not. I would particularly

1 like to hear from the parties. So if there is a motion
2 with a specific time limit, I would entertain that at
3 this time. Commissioner Edgar.

4 **COMMISSIONER EDGAR:** Thank you. Too many
5 buttons. Thank you, Madam Chair.

6 If it is your will, I would move that we
7 deny the request for oral argument per the staff
8 recommendation based on the analysis that is there;
9 however, once that -- this motion is disposed of, I
10 would request that we hear from the parties on our
11 own decision. And a suggestion would be -- I
12 thought we had three parties, but it sure looks like
13 more people than that. So perhaps five minutes a
14 side, but that's just for discussion and for
15 consideration.

16 **CHAIRMAN BROWN:** We have four parties here.

17 **COMMISSIONER EDGAR:** But first we have a
18 motion.

19 **CHAIRMAN BROWN:** And your motion is to dispose
20 of the --

21 **COMMISSIONER EDGAR:** For Issue 1, to deny oral
22 argument per the legal analysis as is recommended by our
23 staff.

24 **CHAIRMAN BROWN:** Is there a second?

25 (Motion was not seconded.)

1 The motion fails for lack of a second.

2 Is there a motion to grant oral argument
3 with a specific time limit? Commissioner Brisé.

4 **COMMISSIONER BRISÉ:** Thank you. Yes, I would
5 like to move that we provide oral argument with a time
6 limit of about five minutes per -- per side or so, yeah.

7 **CHAIRMAN BROWN:** Five minutes per --
8 clarification, five minutes per side. Ms. Brownless,
9 would that be five minutes for the Office of Public
10 Counsel and five minutes divided by three remaining
11 parties?

12 **MS. BROWNLESS:** The Public Counsel's motion is
13 to grant -- is a request to grant reconsideration of the
14 order. I understand Mr. Moyle is here on behalf of
15 FIPUG, and Mr. Wright is here on behalf of FRF in
16 support of OPC's motion, and Florida Power & Light is
17 here in support of the staff's recommendation to deny
18 the reconsideration. So my suggestion would be that you
19 allow, since there are --

20 **COMMISSIONER BRISÉ:** So I'll modify it.

21 **MS. BROWNLESS:** Five minutes per person.

22 **COMMISSIONER BRISÉ:** I'll modify it. I'll
23 modify it. Thank you. So we'll do 15 minutes per side.

24 **CHAIRMAN BROWN:** Okay. Is there a second?

25 **COMMISSIONER PATRONIS:** Second.

1 **COMMISSIONER GRAHAM:** Second.

2 **CHAIRMAN BROWN:** All those -- okay. We have a
3 motion and a second for 15 minutes per side. All those
4 in favor, say aye.

5 (Vote taken.)

6 Opposed? All right. So we are going to
7 begin with the Office of Public Counsel, since it is
8 your motion. You will have -- thank you.

9 **MS. CHRISTENSEN:** Good afternoon,
10 Commissioners. I'm Patty Christensen with the Office of
11 Public Counsel.

12 First I wanted to thank all the
13 Commissioners for setting this matter for Special
14 Agenda today, May 23rd. It was two weeks after we
15 filed our motion and just a week before testimony is
16 scheduled to be filed, and we appreciate having this
17 opportunity to be heard today.

18 And we wanted to note that due to the time
19 constraints, we felt that filing the motion for
20 reconsideration was our only avenue to pursue on
21 behalf of the ratepayers to place this issue before
22 the Commissioners in order to get a decision as soon
23 as possible. We also appreciate the opportunity to
24 speak today.

25 We're here today on our motion for

1 reconsideration of the bifurcation of testimony
2 portion of the order of reconsideration or order
3 consolidating the depreciation, dismantlement, storm
4 hardening plan, incentive mechanism dockets with the
5 base rate increase docket. We are seeking
6 reconsideration of the bifurcation portion of the
7 consolidated -- of the consolidation order because
8 we'll be adversely affected.

9 Currently, testimony on the rate -- the
10 base rate case and the depreciation issues are due
11 to be filed July 7th; however, the testimony for the
12 storm hardening plan and the incentive mechanism
13 issue are due to be filed one week from today,
14 May 31st. We believe that this bifurcation of the
15 testimony filing dates in the order on consolidation
16 is a mistake because it overlooked the fact that the
17 parties met on April 5th, 2016, and agreed to
18 testimony filing dates for the base rate case, which
19 we -- which includes all the dockets consolidated
20 into the base rate case and which we later submitted
21 to the prehearing officer for her consideration.

22 And while we acknowledge that the setting
23 of the schedule is within the prehearing officer's
24 discretion, we believe that mistakenly the fact that
25 the parties not only agreed to the testimony dates

1 but that we presumed those dates would be used for
2 all of the dockets was overlooked.

3 To arrive at this agreed testimony
4 schedule, all the parties had already shortened the
5 time frame for filing testimony. When the motion to
6 consolidate these dockets was filed, it was assumed
7 that the agreed upon base rate schedule would be
8 applied uniformly to all the dockets. This included
9 the incentive mechanism where the motion said that
10 the parties would have three months to review and
11 conduct discovery on the issue.

12 Second, we believe that the bifurcation of
13 testimony dates in the order on consolidation was a
14 mistake of law because the rule on consolidation
15 says that consolidation should be granted if it
16 would not unduly prejudice the rights of a party.
17 We agree with staff that our motion addresses the
18 hardship, i.e., the prejudice that's created because
19 of the bifurcation of testimony. And we believe for
20 these reasons that we have met the standard for
21 reconsideration.

22 Nevertheless, OPC agrees with Commissioner
23 Edgar that the storm hardening plan and incentive
24 mechanism issues are so intertwined with the base
25 case issues that it is appropriate to consolidate

1 these dockets. We think that due to this
2 interconnectedness of these issues that a hardship
3 is created by bifurcating the testimonies. At this
4 point, we do not have an order that identifies the
5 specific issues that have been -- have to be
6 addressed in the May 31st testimony.

7 Since these issues are interrelated with
8 the base rate case issues, we expect that there will
9 be an overlapping between the issues and the fallout
10 on other issues such as tree trimming, level of
11 expense, and the appropriate tree trimming time
12 frame.

13 In addition, the shortening of the
14 discovery periods for the storm hardening and
15 incentive mechanism will reduce our ability to
16 submit a fully vetted testimony which will be used
17 by the Commission to make the best informed decision
18 in these dockets.

19 We have previously sent out numerous
20 discovery requests. After reviewing the first round
21 of discovery, we routinely send out a second round
22 of discovery and many times a third to thoroughly
23 and appropriately vet these issues.

24 As noted in staff's recommendation, we
25 issued storm hardening discovery requests on May 6th

1 that will not be due until May 31st. And prior to
2 that, we sent out discovery requests pertaining to
3 incentive mechanism issues on April 27th, which is
4 due eight days before the May 31st testimony date,
5 which includes a weekend and holiday. Moreover, we
6 have sent out more discovery requests on the
7 incentive mechanism issues after these dates.

8 While we think we've met the standard for
9 the motion for reconsideration, nevertheless we
10 agree with staff and believe that the Commission has
11 the ability to adopt the agreed to testimony filing
12 dates for all these dockets, and we respectfully
13 would urge the Commission to adopt the agreed to
14 testimony dates: July 7th for intervenor testimony,
15 July 18th for staff testimony, and August 1st for
16 rebuttal.

17 Approving the same testimony filing dates
18 for the entire consolidated dockets should not
19 prejudice any party since these dates were agreed to
20 back on April 5th. Thank you.

21 **CHAIRMAN BROWN:** Thank you. I believe we'll
22 go with Mr. Moyle first, followed by Mr. Wright. You
23 have 9 minutes and 30 seconds left.

24 **MR. MOYLE:** I'm sorry. How much time?

25 **CHAIRMAN BROWN:** No. You have one minute.

1 (Laughter.)

2 **COMMISSIONER BRISÉ:** I second that.

3 **MR. MOYLE:** We did five minutes, right, five
4 minutes per?

5 **CHAIRMAN BROWN:** Fifteen.

6 **MR. MOYLE:** Okay. All right. Well, I'll try
7 to -- I'll try to --

8 **CHAIRMAN BROWN:** You've got 9 minutes and 30
9 seconds left. Leave some for your buddy over there.

10 **MR. MOYLE:** I'll try to be judicious. And I
11 guess I would just make the point whether it's done
12 through reconsidering the issue or, you know, on your
13 own volition, I think that -- and I, you know, read the
14 staff recommendation. The point to me that was
15 particularly compelling is the assertion by the Office
16 of Public Counsel that they don't believe that they
17 would have enough time to be prepared. And that's on
18 page 9 of your testimony. It suggests that they will
19 potentially be prevented from being able to competently
20 prepare the testimony in the two dockets. And when
21 attorneys make that representation, particularly if the
22 others are not in opposition, I would suggest that
23 that's meaningful and ought to be considered. You know,
24 they're charged obviously statutorily with representing
25 all the ratepayers, and they need to be prepared in this

1 matter.

2 A couple of other points, if I could. OPC
3 talked about this docket has a lot of issues in it.
4 We had an issues identification meeting the other
5 day here, and there are a lot of issues in the rate
6 case alone. And we are adding three other dockets,
7 you know, to it: depreciation and storm hardening
8 and the incentive mechanism. It's getting really
9 heavy.

10 I think just from a standpoint of trying
11 to manage it, having the same dates for all makes
12 sense as compared to having different dates for
13 different dockets. But I guess also we did not take
14 a position on the consolidation, but I think to the
15 extent that this, when we're working up the case,
16 starts getting really tough to manage all the
17 disparate issues, it may be something to consider as
18 well.

19 You know, a lot of these issues have been
20 settled in previous dockets, and just because an
21 issue is settled in a case, you know, we would
22 contend, doesn't mean that it makes it live for a
23 rate case. I mean, a rate case statutorily has
24 pretty strict guidelines about when and things like
25 that. So I guess I just wanted to make that comment

1 that we are a little worried that this docket is
2 getting particularly heavy.

3 Well, I want -- I don't want -- I took the
4 good-natured ribbing to heart, and so I will
5 conclude my comments and just ask that the relief
6 requested by OPC be provided. Thank you.

7 **CHAIRMAN BROWN:** Thank you, Mr. Moyle. You
8 know I say that in jest.

9 Hello, Mr. Wright. You've got seven
10 minutes.

11 **MR. WRIGHT:** Thank you, Madam Chairman and
12 Commissioners. I shall not take anywhere close to that,
13 leaving Ms. Christensen some time at the end, if she
14 wants it.

15 Just very briefly, Schef Wright on behalf
16 of the Florida Retail Federation. Thank you for
17 allowing me to address you today. Very briefly,
18 here's what it looks like to me.

19 Public Counsel and all the parties agreed
20 on the dates. Public Counsel shortened dates.
21 Public Counsel apparently reasonably assumed and
22 understood that all dates -- the same date would
23 apply in all the dockets. The order does not
24 reflect that.

25 This case is on the same hearing schedule,

1 same hearing dates. It makes logical sense to me
2 anyway that the same testimony dates would apply for
3 all dockets. There doesn't appear to be any
4 prejudice to any party from granting the Public
5 Counsel's motion for reconsideration and having all
6 the testimony due on the same dates in all the
7 dockets, and, accordingly, the Retail Federation
8 would respectfully ask you and -- ask you to grant
9 and support the Public Counsel's motion for
10 reconsideration. Thank you.

11 **CHAIRMAN BROWN:** Thank you. And,
12 Ms. Christensen, you have five minutes reserved, if
13 you'd like to use it at the end. And I will -- just one
14 second before I get to you, Mr. Butler -- reset it. I
15 don't think you're going to use up 15 minutes, but we'll
16 reset it for you.

17 **MR. BUTLER:** I will try to leave you at least
18 13 of the minutes, see how I can do with that.

19 First of all, I just wanted to note that
20 the meeting of the parties to discuss the revision
21 to the schedules that's been referred to several
22 times, that was before the motion to consolidate was
23 even filed. So we understood it, as FPL,
24 specifically to be applying to the rate case and the
25 testimony filing schedule for the rate case. So not

1 to say that something couldn't have come out of a
2 meeting if we were discussing, you know, a schedule
3 for all of the dockets, but that clearly wasn't
4 before us in the meeting that led to OPC's motion
5 that we agreed with for the schedule applicable to
6 the rate case testimony.

7 The staggered filing schedule, we think,
8 is a reasonable response to challenging deadline
9 issues in this particular rate case. So far as FPL
10 is aware, the Commission has not previously had to
11 fashion a schedule to address a base rate
12 proceeding, depreciation dismantlement studies, and
13 a storm hardening plan in the same time frame
14 because the filing requirements for those three
15 separate matters haven't fallen in the same year.
16 Just by coincidence, it's not happened before that
17 you have all three of those in the same year.

18 Consolidation of those three matters as
19 well as the incentive mechanism petition is
20 reasonable and appropriate in our view, but having
21 four separate matters on the same filing schedule
22 would create a real logjam.

23 While it's true that the staggered
24 schedule reduces time for the intervenors to prepare
25 their direct testimony, it appropriately addresses

1 the burden on FPL that would result from putting all
2 four consolidated dockets on the same filing
3 schedule. Specifically, without a staggered
4 schedule, FPL would have to review, seek discovery,
5 and evaluate intervenor direct testimony covering
6 four dockets, then prepare and file rebuttal
7 testimony in just 25 days, and we would be doing so
8 while continuing to respond to a massive volume of
9 discovery. We've already received over
10 2,100 requests, including subparts. The staggered
11 schedule simply spreads the burden of tight time
12 tables.

13 One of OPC's principal objections to the
14 staggered schedule is that OPC won't have time to
15 take FPL's responses to outstanding storm hardening
16 and incentive mechanism discovery into account in
17 preparing its direct testimony. FPL is taking steps
18 to address that concern. FPL's responses to OPC's
19 April 27 incentive mechanism testimony are being
20 filed today or served today, although they aren't
21 due until May 27th, and FPL plans to serve its
22 responses to OPC's May 6th storm hardening discovery
23 tomorrow, although they aren't due until May 31.

24 So, in conclusion, FPL believes that a
25 staggered schedule is a workable way to share the

1 burden of these tight timetables and deadlines in
2 this proceeding. Thank you.

3 **CHAIRMAN BROWN:** Thank you, Mr. Butler.
4 Ms. Christensen, would you like to
5 respond?

6 **MS. CHRISTENSEN:** Yes --

7 **CHAIRMAN BROWN:** Five minutes.

8 **MS. CHRISTENSEN:** -- just real briefly. When
9 we had our meeting back on April 5th, the storm
10 hardening and depreciation cases were already filed, and
11 I think it was our understanding and, I think, the
12 understanding of the parties that they would be tracking
13 at the same time and be heard at the same hearing, and
14 that's where our assumption came in.

15 The asset optimization was filed a month
16 later, completely within FPL's control. I think
17 that was something that probably they would have
18 filed with the normal rate case, but that was
19 apparently something that got caught later and so
20 they filed for a limited type proceeding. And
21 obviously since it was heard in the last rate case
22 with the last rate case issues, it made sense to
23 consolidate it again with the rate case. And that's
24 why our understanding was that when we set out this
25 schedule, that all of these issues would be heard at

1 the same time. And I think the staff's motion kind
2 of bears out as well that that was kind of the
3 understanding because they talk about having three
4 months to review discovery specifically related to
5 the incentive mechanism in their motion, and the
6 only way that would happen is if you were still
7 looking at the July dates.

8 So, you know, we respond to FPL's filing
9 of a rate case, and we're operating on the
10 eight-month time frame. And we do understand that
11 this is a tight schedule, but the filing of all
12 these cases together is not OPC's choice but rather
13 the company's choice. So we would respectfully
14 request that all of the filing dates be heard on the
15 same schedule. And while we appreciate that FPL is
16 taking steps to respond to some of our discovery
17 early, I don't think that mitigates the necessity of
18 being able to do maybe a second round of discovery
19 on these issues or possibly a third to follow up and
20 fully vet these issues. So it helps get the first
21 set done, but that doesn't help us with looking at
22 the second set.

23 And for those reasons, we would ask that
24 you grant our motion for reconsideration. And if
25 you feel that we haven't met that standard, to take

1 it upon the Commission's own motion to go ahead and
2 set those dates for the same schedule as the base
3 rate case. Thank you.

4 **CHAIRMAN BROWN:** Thank you. And thank you,
5 Commissioners, for allowing oral argument to occur.

6 Back to staff.

7 **MS. BROWNLESS:** Hi. With regard to the motion
8 for reconsideration, the legal standard is that -- is to
9 bring to the attention of the administrative agency some
10 point of fact or law that the hearing officer overlooked
11 or failed to consider when it rendered its order. And
12 in looking at the motion for reconsideration pleading
13 that was filed by the Office of Public Counsel, while we
14 believe they have made a general allegation as to
15 inconvenience or prejudice that it would cause them to
16 have the filing time for the incentive mechanism and the
17 storm hardening moved up to May 31st, they have not
18 alleged with any specificity any point of fact or law
19 that was overlooked or not taken into account by the
20 prehearing officer when she issued her bifurcated
21 schedule.

22 What I would also note is that the Office
23 of Public Counsel has filed to date 13 sets of
24 interrogatories and production of response --
25 production of documents responses. They have

1 received responses to -- let's see. Today they will
2 be getting responses, as I understand it, to their
3 9th set of interrogatories and their 8th set of PODs
4 and will shortly, based upon what Mr. Butler is
5 saying, have received responses to everything up
6 through their 11th set of interrogatories and
7 production of documents responses, and those 11th
8 set of interrogatories specifically deal with the
9 incentive mechanism. All of the previous discovery
10 and the discovery that was filed, by the way,
11 beginning on April 17th talks about depreciation,
12 decommissioning, storm hardening.

13 So they have had a copy of the storm
14 hardening materials, the depreciation materials, and
15 the testimony associated with it since March 15th.
16 They've had a copy of the incentive mechanism, which
17 is one very narrow and very specific issue, since
18 April 15th.

19 So while I understand what the Public
20 Counsel is arguing, I think, given the procedures at
21 the Commission, there has been adequate time to
22 develop testimony. And I would also say that as you
23 are all aware, their responses to discovery can be
24 included as exhibits in the case. They can use
25 their responses to discovery to cross-examine

1 witnesses at hearing. So they are not in any way
2 unable, in my opinion, to fully develop their case.
3 They're not limited to simply what they put in
4 prefiled testimony in order to develop these issues.

5 **CHAIRMAN BROWN:** Thank you. And,
6 Ms. Brownless, we're dealing with a very specific legal
7 standard for a motion for reconsideration here, and I
8 think you went a little bit more to the hardship
9 argument here. And I appreciate you doing that, but
10 really let's just address the legal standard for a
11 motion for reconsideration. The Office of Public
12 Counsel alluded that there was a mistake of law with
13 regard to the rule on consolidation.

14 **MS. BROWNLESS:** In my -- no, they're saying
15 there was a mistake of law or fact with regard to the
16 motion for reconsideration. Today is the first time
17 they have alleged that there was a mistake of law or
18 fact with regard to the motion for consolidation.

19 **CHAIRMAN BROWN:** Ms. Christensen, would you
20 like to clarify what -- in your earlier oral argument, I
21 believe you made a comment that there was a mistake of
22 law.

23 **MS. CHRISTENSEN:** Yes. I believe on page 4 of
24 our motion we do talk about Rule 28-106.108, and that's
25 the rule on consolidation and that it would not unduly

1 prejudice the parties. And then we specifically
2 describe that, in the instant case, the mistake of fact
3 or law is that the consolidation overlooks an
4 intervenor's ability to adequately prepare meaningful
5 testimony that's significantly adversely impacted by the
6 manner in which the matters have been consolidated for
7 hearing and placed on separate, in some cases
8 accelerated testimony filing tracks. And there's more
9 discussion and further detail also addressing some of
10 the discussion that I've made points to today. So I
11 think that we did raise it in our motion.

12 **CHAIRMAN BROWN:** Thank you.

13 Commissioners, any questions for staff or
14 the parties or discussion?

15 Commissioner Edgar.

16 **COMMISSIONER EDGAR:** Thank you, Madam Chair.

17 A couple of thoughts. First off, you have
18 all heard me say before, and I will say it again,
19 that if I were ever to issue an order on behalf of
20 this Commission that contained an error of fact or
21 law, I would want that to be brought to my
22 attention, and I would want the opportunity to try
23 to address it, and would ask each of you for your
24 support to do so in whatever manner would be
25 appropriate.

1 I can assure you that nobody in this room
2 has pored over the calendar, the varying dates, the
3 array of potential issues by consolidating the case
4 more than I have.

5 Now I'm going to jump ahead and then I'm
6 going to come back, if I may. First off, if I were
7 trying to do a defense of my order, I could not have
8 written a better one than the arguments that I just
9 heard from the intervenors.

10 Mr. Moyle said that this case was getting
11 heavy and that there really should be an effort to
12 manage it. Mr. Wright said there is no harm in
13 granting a motion for reconsideration; however, I
14 would put forth that granting a motion on
15 reconsideration that does not meet the legal test
16 could potentially harm the work of this Commission.

17 And Ms. Christensen said that there was an
18 error by not granting an assumption that was made by
19 the parties, and I'll come back to this point;
20 however, that assumption was never presented in any
21 of the information that was filed with this
22 Commission. So apparently the error of fact or law
23 is that as prehearing officer, the order on
24 consolidation did not comply with unknown
25 assumptions that were made by unknown people at

1 unknown times in some unknown location. I, for my
2 membership in the Bar, do not understand where that
3 is an error of fact or law, nor do I believe that it
4 is the path that this Commission should be taking or
5 that we should ask other Commissioners, current and
6 future, to use in issuing orders and setting
7 prehearing schedules.

8 Now a motion for consolidation -- excuse
9 me -- a motion for reconsideration, as Ms. Brownless
10 has told us and is clearly articulated in the staff
11 recommendation, has a well-known, time-tested legal
12 requirement.

13 Within the motion for reconsideration, no
14 error of fact or law is articulated. Instead, it
15 clearly appears to me to be, for lack of a better
16 proverbial phrase, a wolf in sheep's clothing. In
17 other words, it is a thinly veiled effort to force
18 the full Commission to review a prehearing calendar
19 schedule, a distraction that, quite frankly, this
20 heavy case does not need. A motion for
21 reconsideration filed for other purposes than to
22 correct an error or fact of law is probably not
23 unprecedented, but it surely should not be
24 encouraged.

25 Now let me take a little walk through the

1 timeline. A lot of dates have been thrown out and
2 there are many dates with this case. As I said, I
3 have pored over the calendar.

4 April 8th, the Citizens' motion to modify
5 dates and time frames. If you have read it closely,
6 as I have, it refers only to Docket 21, the FPL
7 request to increase rates. There is nothing in that
8 motion to modify dates and time frames that refers
9 to, implies, alludes, states anything about a future
10 consolidation or any other dockets.

11 Now I would challenge anybody here to find
12 a motion that was submitted to me for consideration
13 that was not timely acted upon in the almost 11 and
14 a half years that I have been here. I purposely did
15 not act on that motion because I was informed by
16 staff that the parties were discussing potential
17 consolidation and that there was a strong likelihood
18 that a motion to consolidate with some other dockets
19 would be filed, would be forthcoming. It made great
20 sense to me that, therefore, to respond to a motion
21 to modify dates and a motion to consolidate in one
22 order that then would address the full case as it
23 would become made sense. I also was aware that by
24 rule there were seven days that needed to wait
25 before that motion to consolidate could be acted

1 upon so that any party could submit comments,
2 requests, concerns. Nobody was more surprised than
3 I that during those seven days no motion, no
4 request, no comment was filed. So I have two
5 dockets before me: the motion to request
6 consolidation of four -- of three additional dockets
7 and the motion to modify dates.

8 On May 4th I granted the motion for
9 consolidation and established the dates that OPC had
10 requested for Docket 21, which is what their motion
11 referred to, in exact detail as to their request.
12 No dates were requested specifically for the other
13 three dockets in either of the only two documents
14 filed before me for information and for action.

15 Now for the motion to modify dates and
16 time frames, if indeed there are agreements through
17 the parties on potential consolidation, that
18 certainly could have been included in that motion.
19 One bite at the apple to request specific dates.

20 After the motion to consolidate,
21 seven days, opportunity to file a request for dates,
22 a desire or a need for more time. Second bite of
23 the apple.

24 Order granting consolidation and
25 establishing dates, again which was issued with the

1 exact dates that were requested. After that, a
2 motion for an extension of time or to modify dates
3 could have been filed. One was not, and I would put
4 forth that no motion to modify dates is pending
5 before this Commission. If one had been filed, I
6 can assure you that it would have been reviewed, the
7 rationale for a request would have been analyzed,
8 and it would have been acted on timely. However,
9 that did not occur. Three bites at the apple.

10 But instead we have a motion for
11 reconsideration alleging an error of fact or law.
12 We're told that the case is weighty, we are told
13 that it needs to be managed, we are told that there
14 was an agreement amongst the parties that should
15 have been addressed in an order, yet no agreement or
16 request for that was submitted for action.

17 So why did I make the decision that I did?
18 The role of the prehearing officer is to manage the
19 case prior to hearing in the most efficient manner
20 possible to get the case ready for hearing. I take
21 that very seriously. Now having been at the
22 Commission over the years through multiple FPL rate
23 cases and multiple other complex technical rate
24 cases and other cases over the years, I have seen
25 firsthand how the moving pieces of a rate case and

1 how other issues outside the purview of the
2 Commission or a rate case can become messy and
3 distracting.

4 So my desire, intent was and is to keep
5 the process moving, to keep it in good order, to do
6 everything that is appropriate in the role of
7 prehearing officer to help ready the case for
8 hearing. So in an effort to facilitate an efficient
9 and focused process and with only one request for
10 one docket for specific dates, I made the decision,
11 looking at the calendar, to set a two-track schedule
12 to help keep the process moving and keep the focus
13 on the issues for the now four dockets that were
14 being consolidated into one per the request of
15 staff, with no disagreement or concern raised by any
16 party.

17 So, Commissioners, that was my thinking at
18 the time to try to manage the case. Many different
19 moving pieces, many different moving parts. It was
20 to absolutely respond timely to the documents that
21 were before us. And any assumptions that were being
22 made, I, quite frankly, do not know what they were
23 based upon nor has anything been submitted. I will
24 point out that in the motion for reconsideration
25 that alleges a fact of -- an error of fact or law,

1 it state, "Some cases were placed on an accelerated
2 track." Well, accelerated from what, I would ask?
3 There had been no dates set for those two dockets.
4 I don't know what they were accelerated from because
5 three had been no dates set. It says that there was
6 a shortening of the time period. Again, of what
7 time period? No dates had been set; no dates had
8 been requested.

9 It says that there was -- that litigation
10 preparation assumed a certain set of dates. Well,
11 again, that may be true, but I certainly don't know
12 what schedule was assumed nor, again, was a request
13 made.

14 So, again, the error of fact or law is
15 that the order overlooked the fact that all parties
16 had agreed. Nothing was submitted that says all
17 parties have agreed to any set of dates for three
18 additional dockets that were being requested for
19 consolidation. It also, in paragraph 11, says, "No
20 specific issues have been identified for the
21 incentive mechanism and storm hardening, which makes
22 it difficult to extricate those issues." I find
23 this particularly curious when you'll note that on
24 the preliminary list of issues, which is not set yet
25 because, of course, issues are not established until

1 the prehearing conference and the order establishing
2 procedure is issued. However, storm hardening
3 issues are identified very clearly on the
4 preliminary list, Issues 1 through 12; wooden pole
5 inspection program, Issue 13; 10-point storm
6 preparedness initiatives, Issue 14, 15; asset
7 optimization program, Issue 95. So how it can be
8 said that no specific issues have been identified
9 and would be difficult to extricate is a curious
10 statement.

11 So, Commissioners, what I want more than
12 anything is for this case to go smoothly,
13 efficiently, effectively. I do believe that it is
14 the role of the prehearing officer to manage to the
15 degree appropriate that process. I do believe that
16 in consolidating four separate dockets, that to give
17 consideration to how to manage that complex
18 discovery and prehearing process is logical. And if
19 we are going to find that there was an error of fact
20 or law in the consolidation order, I certainly want
21 that to be fixed. And I'm glad to answer questions
22 from my colleagues.

23 **CHAIRMAN BROWN:** Thank you, Commissioner
24 Edgar. And it appears that you have spent a great
25 amount of time on this docket thus far, and we thank you

1 for your service in that regard.

2 Commissioner Graham.

3 **COMMISSIONER GRAHAM:** Thank you, Madam Chair.

4 I -- from what I've seen so far and what I've read, I
5 have not seen an error of fact or law, so I don't see
6 any reason why we should grant the motion for
7 reconsideration.

8 But that being said, my question is, I
9 guess, to staff. Is it possible to deny the motion
10 for reconsideration but yet still make changes to
11 time? Because one of the issues I have is when OPC
12 comes back looking for more time, and I'm probably
13 worse than most, the first answer is going to be no,
14 unless you can justify to me why you need more time,
15 and then usually I can give them more time or do
16 what we can to find more time. Is it possible to
17 deny the reconsideration and then yet turn around
18 and find more time?

19 **MS. BROWNLESS:** Certainly. The motion for
20 reconsideration can be denied because it does not meet
21 the criteria to support a motion, but at the same time,
22 the Commission, on its own motion, could grant an
23 extension of filing dates in your discretion. That's
24 discretionary with the Commission. You have the
25 authority to do that.

1 **COMMISSIONER GRAHAM:** Okay.

2 **CHAIRMAN BROWN:** And I have a follow-up
3 question before I get to Commissioner Brisé to the
4 Office of Public Counsel. And if you could just clarify
5 why you didn't file, even today, why we don't have a
6 motion, at least to the prehearing officer, a motion to
7 extend dates and you just went straight to the full body
8 for reconsidering the timetable.

9 **MS. CHRISTENSEN:** I think, as I addressed in
10 my comments, we felt that this was the best way to get
11 it before the Commission. And since this was scheduled
12 to be heard -- and we also read staff's recommendation
13 that stated clearly that the Commission could, on its
14 own motion, reconsider the dates, at this point, since
15 we saw the recommendation and we were going to be before
16 you, we thought we would have the opportunity, if the
17 Commission were to ask us, to maybe make an oral motion
18 to support the Commission changing the dates.

19 **CHAIRMAN BROWN:** So you do believe that time
20 is of the essence even with all that has been discussed
21 today?

22 **MS. CHRISTENSEN:** Yes. In the sense it was
23 already scheduled to be heard before the Commission, we
24 felt that -- and the recommendation said that the
25 Commission had that discretion, we felt that that could

1 be addressed today, at today's agenda.

2 **CHAIRMAN BROWN:** Commissioner Brisé.

3 **COMMISSIONER BRISÉ:** Thank you. So that just
4 struck a question in my mind. So the Office of Public
5 Counsel didn't come to the prehearing officer after the
6 order was put out and request an extension of dates to
7 rectify whatever issues it found with the order. That
8 was an option; right?

9 **MS. CHRISTENSEN:** Certainly. But as we had
10 noted, we felt that we wanted to get it before the full
11 Commission. And, yes, we could have requested an
12 extension of dates and we probably could still after
13 today's date. But since the recommendation said that
14 the Commission could address that on its own motion, we
15 felt that it was appropriate to wait to see what the
16 Commission determined at this Agenda Conference.

17 **COMMISSIONER BRISÉ:** But the recommendation is
18 in direct response to your motion?

19 **MS. CHRISTENSEN:** Correct. And at the time we
20 felt that was the quickest way to get it before the full
21 Commission, and that was the choice that we had to make
22 that decision and that was the choice that we made.

23 **COMMISSIONER BRISÉ:** Okay. Just -- to staff,
24 just to follow up on Commissioner Graham's question to
25 make sure I understand it properly, so if we decide as a

1 Commission not to grant reconsideration, the Commission,
2 on its own motion, can modify the schedule moving
3 forward if that is the Commission's desire.

4 **MS. BROWNLESS:** Yes, sir.

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

6 **CHAIRMAN BROWN:** Thank you.

7 Commissioner Graham.

8 **COMMISSIONER GRAHAM:** All right. So this is,
9 I guess, where I'm getting a little confused. So you
10 did not go before the prehearing officer and look for
11 the modifying schedule -- modified schedule. Is that
12 what I'm hearing you saying?

13 **MS. CHRISTENSEN:** Let me give you a little bit
14 more thought process. If we had filed a motion for
15 modification of the dates and at that point we decided
16 that, for sake of argument, and I'm not saying that this
17 would happen, but if we were still not satisfied with
18 whatever the dates were that came out of that, then we
19 would had to have filed for a motion for reconsideration
20 on that order and then we would be here in front of the
21 full Commission today. And since we had already filed
22 for reconsideration on the order that had been issued,
23 this was the quickest way to get here. Procedurally
24 that's our thought process.

25 We were trying to, because time is of the

1 essence, get it, you know, just get it before the
2 full Commission as soon as possible. You know, and
3 truthfully we don't know what the prehearing
4 officer -- what dates would have come out of that,
5 but we did want the full Commission to consider
6 taking us to the base rate case dates. So, you
7 know, if something other had been proposed, we
8 probably would have been back asking for those
9 dates, so we felt that this was the most efficient
10 use of time.

11 **COMMISSIONER GRAHAM:** Madam Chair, then I
12 guess fully understanding this, I've got a little bit of
13 an issue of trying to, let's just say, dance around the
14 prehearing officer. If they can still go before the
15 prehearing officer, who clearly is more on top of the
16 game than we are -- and I can't speak for everybody --
17 than I am sitting right here, then I think this motion
18 should go back to the prehearing officer and then at
19 that point maybe come back to us. So I would like to
20 make a motion that we move to deny the reconsideration.

21 **CHAIRMAN BROWN:** Is there a second?

22 **COMMISSIONER BRISÉ:** Second.

23 **CHAIRMAN BROWN:** Okay. We have a motion to
24 deny the motion for reconsideration and a second. Is
25 there any discussion on it? All those in favor, say

1 aye.

2 (Vote taken.)

3 Opposed? The motion passes.

4 Okay. Thank you. And I don't -- I --

5 Commissioner Graham.

6 **COMMISSIONER GRAHAM:** Thank you. I guess this
7 question is to staff. So, staff, if at this point the
8 parties want to come in to alter the schedule, what
9 needs to happen and how does that happen?

10 **MS. BROWNLESS:** Then they can file a motion
11 for extension of time of the testimony with the -- and
12 the prehearing officer. It'll be a procedural motion
13 that the prehearing officer will rule upon.

14 **COMMISSIONER GRAHAM:** And there's still plenty
15 of time to make that happen; correct?

16 **MS. BROWNLESS:** Well, there's time.

17 **COMMISSIONER GRAHAM:** Thank you. Thank you.
18 Commissioner Edgar.

19 **COMMISSIONER EDGAR:** Thank you, Madam Chair.
20 The -- I think for just another piece of
21 information again from the calendar is that for the
22 storm hardening and the incentive mechanism, I set a
23 testimony due date for intervenors of May 31st,
24 which clearly is approaching. I would point out
25 again that the order granting consolidation was

1 issued on May 4th, and a request to modify dates
2 certainly could have been filed between May 4th and
3 now. It was not. It still has not been. However,
4 I would also challenge anybody here to come up with
5 an example of anybody ever requesting more time for
6 anything that I did not either grant or support
7 because often I'm the one who wants more time, but I
8 would point out that request was not made. And I
9 continue to hear and read that I should have made
10 assumptions, and I challenge that. And I think that
11 that is not the way decisions in very technical,
12 complex cases should be made, whether it be the
13 calendar, a number of pages, a number of paragraphs,
14 et cetera.

15 So once again, I have pored over the
16 calendar, and I would point out that the reason I
17 set the storm hardening and incentive mechanism
18 dockets on the earlier dates is because the asset
19 optimization incentive mechanism in the past has
20 been one very narrow issue. It could expand to
21 more, but it is a very specific request that will
22 need to be addressed. And the storm hardening has
23 been pretty much the same issues for many, many
24 years and discovery has already been in process. So
25 I believe that there is still merit, again, in, as

1 Mr. Moyle said, having an organized and orderly
2 process to keep two separate timelines for the
3 testimony. Again, no dates along those lines have
4 been submitted or requested.

5 I have three or four options in front of
6 me that I certainly have considered, and would have
7 considered any request that was made. If the
8 Commission wants to support having two different
9 timeline tracks, there are a couple of different
10 ways to go. Intervenors' testimony and exhibits
11 could be submitted, I would say, June 10th. That
12 takes it from -- let's see, one, two, three, four,
13 five, six, seven, eight, nine -- ten additional days
14 on, again, those very narrow and -- issues, set of
15 issues. In that case, the rebuttal could --
16 testimony could stay the same, or I would suggest
17 sliding it from the 5th to the 8th. Regardless, I
18 think the issue is is there value in keeping the two
19 different time frames, whatever those dates are, or
20 is there not? And if there is, do we want to set
21 those dates now or -- again, I certainly can
22 continue to pore over the information and make
23 reasoned decisions. And it is your will.

24 **CHAIRMAN BROWN:** Thank you, Commissioner
25 Edgar.

1 Commissioner Brisé.

2 **COMMISSIONER BRISÉ:** Thank you, Madam Chair,
3 and thank you, Commissioner Edgar, for showing, as
4 always, your willingness to work with all the parties to
5 ensure that our process is not only seamless, but it's
6 also a process that provides ample time, considering all
7 the constraining time frames that are moving and all the
8 different moving parts to how we do what we do here.

9 You know, I think it would be challenging
10 to make the schedule right now unless there were a
11 clear layout of all of those dates, and we can have
12 that conversation with everyone here or allow the
13 prehearing officer to do what the prehearing
14 officer's role is in the process, and that is to
15 work with all the parties to ensure that there is a
16 schedule that is manageable by all the parties.

17 So from my perspective, it would make
18 sense to allow the prehearing officer to continue to
19 do so and move forward that way, considering that we
20 know that the prehearing officer is willing to work
21 with the parties in ensuring that the dates moving
22 forward are ones that make sense to the process.

23 **CHAIRMAN BROWN:** Thank you, Commissioner
24 Brisé. I absolutely agree with you, and I agree with
25 Commissioner Graham's earlier comments. And if there is

1 no further discussion, this meeting is adjourned. Thank
2 you. Oh --

3 **MS. BROWNLESS:** We need to do Issue No. 3,
4 which is close the docket.

5 **CHAIRMAN BROWN:** Is there a motion on Issue 3?

6 **COMMISSIONER EDGAR:** Move staff.

7 **COMMISSIONER PATRONIS:** Second.

8 **CHAIRMAN BROWN:** All those in favor, say aye.

9 (Vote taken.)

10 All right. The motion passes. Now this
11 meeting is adjourned. Thank you.

12 (Special Commission Conference Agenda
13 adjourned at 2:23 p.m.)

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

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

6
7 IT IS FURTHER CERTIFIED that I
stenographically reported the said proceedings; that the
8 same has been transcribed under my direct supervision;
and that this transcript constitutes a true
transcription of my notes of said proceedings.

9
10 I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties, nor
11 am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
12 financially interested in the action.

13 DATED THIS 26th day of May, 2016.

14
15 

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