BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION FOR RATE INCREASE BY
FLORIDA POWER & LIGHT COMPANY.

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DOCKET NO. 160021-EI

PETITION FOR APPROVAL OF
2016-2018 STORM HARDENING
PLAN, BY FLORIDA POWER & LIGHT
COMPANY.

_________________________________

DOCKET NO. 160061-EI

2016 DEPRECIATION AND
DISMANTLEMENT STUDY BY FLORIDA
POWER & LIGHT COMPANY.

_________________________________

DOCKET NO. 160062-EI

PETITION FOR LIMITED
PROCEEDING TO MODIFY AND
CONTINUE INCENTIVE MECHANISM,
BY FLORIDA POWER & LIGHT
COMPANY

_________________________________

DOCKET NO. 160088-EI

PROCEEDINGS: SPECIAL COMMISSION CONFERENCE AGENDA

COMMISSIONERS PARTICIPATING:
CHAIRMAN JULIE I. BROWN
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER JIMMY PATRONIS

DATE: Monday, May 23, 2016
TIME: Commenced at 1:30 p.m.
Concluded at 2:23 p.m.
PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida
REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
CHAIRMAN BROWN: Thank you all. This is the Special Commission Conference Agenda for Monday, May 23rd. The time is 1:30, and this meeting is called to order. We have one item for consideration, and I will ask our staff to lead it off.

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

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

CHAIRMAN BROWN: Thank you. Commissioners, we have to consider this one issue first, which is whether to grant oral argument or not. I would particularly
like to hear from the parties. So if there is a motion
with a specific time limit, I would entertain that at
this time. Commissioner Edgar.

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

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

CHAIRMAN BROWN: We have four parties here.

COMMISSIONER EDGAR: But first we have a
motion.

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

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

CHAIRMAN BROWN: Is there a second?

(Motion was not seconded.)
The motion fails for lack of a second.

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

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

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

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

COMMISSIONER BRISÉ: So I'll modify it.

MS. BROWNLESS: Five minutes per person.

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

CHAIRMAN BROWN: Okay. Is there a second?

COMMISSIONER PATRONIS: Second.
COMMISSIONER GRAHAM: Second.

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

(Vote taken.)

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

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

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

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

   We're here today on our motion for
reconsideration of the bifurcation of testimony portion of the order of reconsideration or order consolidating the depreciation, dismantlement, storm hardening plan, incentive mechanism dockets with the base rate increase docket. We are seeking reconsideration of the bifurcation portion of the consolidated -- of the consolidation order because we'll be adversely affected.

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

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

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

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

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

Nevertheless, OPC agrees with Commissioner Edgar that the storm hardening plan and incentive mechanism issues are so intertwined with the base case issues that it is appropriate to consolidate...
these dockets. We think that due to this interconnectedness of these issues that a hardship is created by bifurcating the testimonies. At this point, we do not have an order that identifies the specific issues that have been -- have to be addressed in the May 31st testimony.

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

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

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

As noted in staff's recommendation, we issued storm hardening discovery requests on May 6th
that will not be due until May 31st. And prior to that, we sent out discovery requests pertaining to incentive mechanism issues on April 27th, which is due eight days before the May 31st testimony date, which includes a weekend and holiday. Moreover, we have sent out more discovery requests on the incentive mechanism issues after these dates.

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

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

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

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

CHAIRMAN BROWN: No. You have one minute.
(Laughter.)

COMMISSIONER BRISÉ: I second that.

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

CHAIRMAN BROWN: Fifteen.

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

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

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

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

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

You know, a lot of these issues have been settled in previous dockets, and just because an issue is settled in a case, you know, we would contend, doesn't mean that it makes it live for a rate case. I mean, a rate case statutorily has pretty strict guidelines about when and things like that. So I guess I just wanted to make that comment
that we are a little worried that this docket is
getting particularly heavy.

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

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

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

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

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

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

    This case is on the same hearing schedule,
same hearing dates. It makes logical sense to me anyway that the same testimony dates would apply for all dockets. There doesn't appear to be any prejudice to any party from granting the Public Counsel's motion for reconsideration and having all the testimony due on the same dates in all the dockets, and, accordingly, the Retail Federation would respectfully ask you and -- ask you to grant and support the Public Counsel's motion for reconsideration. Thank you.

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

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

First of all, I just wanted to note that the meeting of the parties to discuss the revision to the schedules that's been referred to several times, that was before the motion to consolidate was even filed. So we understood it, as FPL, specifically to be applying to the rate case and the testimony filing schedule for the rate case. So not
to say that something couldn't have come out of a
meeting if we were discussing, you know, a schedule
for all of the dockets, but that clearly wasn't
before us in the meeting that led to OPC's motion
that we agreed with for the schedule applicable to
the rate case testimony.

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

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

While it's true that the staggered
schedule reduces time for the intervenors to prepare
their direct testimony, it appropriately addresses
the burden on FPL that would result from putting all 
four consolidated dockets on the same filing 
schedule. Specifically, without a staggered 
schedule, FPL would have to review, seek discovery, 
and evaluate intervenor direct testimony covering 
four dockets, then prepare and file rebuttal 
testimony in just 25 days, and we would be doing so 
while continuing to respond to a massive volume of 
discovery. We've already received over 
2,100 requests, including subparts. The staggered 
schedule simply spreads the burden of tight time 
tables.

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

So, in conclusion, FPL believes that a 
staggered schedule is a workable way to share the
burden of these tight timetables and deadlines in this proceeding. Thank you.

CHAIRMAN BROWN: Thank you, Mr. Butler.

Ms. Christensen, would you like to respond?

MS. CHRISTENSEN: Yes --

CHAIRMAN BROWN: Five minutes.

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

The asset optimization was filed a month later, completely within FPL's control. I think that was something that probably they would have filed with the normal rate case, but that was apparently something that got caught later and so they filed for a limited type proceeding. And obviously since it was heard in the last rate case with the last rate case issues, it made sense to consolidate it again with the rate case. And that's why our understanding was that when we set out this schedule, that all of these issues would be heard at
the same time. And I think the staff's motion kind
of bears out as well that that was kind of the
understanding because they talk about having three
months to review discovery specifically related to
the incentive mechanism in their motion, and the
only way that would happen is if you were still
looking at the July dates.

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

And for those reasons, we would ask that
you grant our motion for reconsideration. And if
you feel that we haven't met that standard, to take
it upon the Commission's own motion to go ahead and set those dates for the same schedule as the base rate case. Thank you.

CHAIRMAN BROWN: Thank you. And thank you, Commissioners, for allowing oral argument to occur. Back to staff.

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

What I would also note is that the Office of Public Counsel has filed to date 13 sets of interrogatories and production of response -- production of documents responses. They have
received responses to -- let's see. Today they will be getting responses, as I understand it, to their 9th set of interrogatories and their 8th set of PODs and will shortly, based upon what Mr. Butler is saying, have received responses to everything up through their 11th set of interrogatories and production of documents responses, and those 11th set of interrogatories specifically deal with the incentive mechanism. All of the previous discovery and the discovery that was filed, by the way, beginning on April 17th talks about depreciation, decommissioning, storm hardening.

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

So while I understand what the Public Counsel is arguing, I think, given the procedures at the Commission, there has been adequate time to develop testimony. And I would also say that as you are all aware, their responses to discovery can be included as exhibits in the case. They can use their responses to discovery to cross-examine
witnesses at hearing. So they are not in any way unable, in my opinion, to fully develop their case.
They're not limited to simply what they put in prefiled testimony in order to develop these issues.

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

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

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

MS. CHRISTENSEN: Yes. I believe on page 4 of our motion we do talk about Rule 28-106.108, and that's the rule on consolidation and that it would not unduly
prejudice the parties. And then we specifically
describe that, in the instant case, the mistake of fact
or law is that the consolidation overlooks an
intervenor's ability to adequately prepare meaningful
testimony that's significantly adversely impacted by the
manner in which the matters have been consolidated for
hearing and placed on separate, in some cases
accelerated testimony filing tracks. And there's more
discussion and further detail also addressing some of
the discussion that I've made points to today. So I
think that we did raise it in our motion.

    CHAIRMAN BROWN: Thank you.

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

    Commissioner Edgar.

    COMMISSIONER EDGAR: Thank you, Madam Chair.

    A couple of thoughts. First off, you have
all heard me say before, and I will say it again,
that if I were ever to issue an order on behalf of
this Commission that contained an error of fact or
law, I would want that to be brought to my
attention, and I would want the opportunity to try
to address it, and would ask each of you for your
support to do so in whatever manner would be
appropriate.
I can assure you that nobody in this room has pored over the calendar, the varying dates, the array of potential issues by consolidating the case more than I have.

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

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

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

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

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

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

Now let me take a little walk through the

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

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

Now I would challenge anybody here to find a motion that was submitted to me for consideration that was not timely acted upon in the almost 11 and a half years that I have been here. I purposely did not act on that motion because I was informed by staff that the parties were discussing potential consolidation and that there was a strong likelihood that a motion to consolidate with some other dockets would be filed, would be forthcoming. It made great sense to me that, therefore, to respond to a motion to modify dates and a motion to consolidate in one order that then would address the full case as it would become made sense. I also was aware that by rule there were seven days that needed to wait before that motion to consolidate could be acted
upon so that any party could submit comments, requests, concerns. Nobody was more surprised than I that during those seven days no motion, no request, no comment was filed. So I have two dockets before me: the motion to request consolidation of four -- of three additional dockets and the motion to modify dates.

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

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

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

Order granting consolidation and establishing dates, again which was issued with the
exact dates that were requested. After that, a motion for an extension of time or to modify dates could have been filed. One was not, and I would put forth that no motion to modify dates is pending before this Commission. If one had been filed, I can assure you that it would have been reviewed, the rationale for a request would have been analyzed, and it would have been acted on timely. However, that did not occur. Three bites at the apple.

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

So why did I make the decision that I did? The role of the prehearing officer is to manage the case prior to hearing in the most efficient manner possible to get the case ready for hearing. I take that very seriously. Now having been at the Commission over the years through multiple FPL rate cases and multiple other complex technical rate cases and other cases over the years, I have seen firsthand how the moving pieces of a rate case and
how other issues outside the purview of the Commission or a rate case can become messy and distracting.

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

So, Commissioners, that was my thinking at the time to try to manage the case. Many different moving pieces, many different moving parts. It was to absolutely respond timely to the documents that were before us. And any assumptions that were being made, I, quite frankly, do not know what they were based upon nor has anything been submitted. I will point out that in the motion for reconsideration that alleges a fact of -- an error of fact or law,
it state, "Some cases were placed on an accelerated track." Well, accelerated from what, I would ask?
There had been no dates set for those two dockets. I don't know what they were accelerated from because three had been no dates set. It says that there was a shortening of the time period. Again, of what time period? No dates had been set; no dates had been requested.

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

So, again, the error of fact or law is that the order overlooked the fact that all parties had agreed. Nothing was submitted that says all parties have agreed to any set of dates for three additional dockets that were being requested for consolidation. It also, in paragraph 11, says, "No specific issues have been identified for the incentive mechanism and storm hardening, which makes it difficult to extricate those issues." I find this particularly curious when you'll note that on the preliminary list of issues, which is not set yet because, of course, issues are not established until
the prehearing conference and the order establishing procedure is issued. However, storm hardening issues are identified very clearly on the preliminary list, Issues 1 through 12; wooden pole inspection program, Issue 13; 10-point storm preparedness initiatives, Issue 14, 15; asset optimization program, Issue 95. So how it can be said that no specific issues have been identified and would be difficult to extricate is a curious statement.

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

CHAIRMAN BROWN: Thank you, Commissioner Edgar. And it appears that you have spent a great amount of time on this docket thus far, and we thank you.
for your service in that regard.

Commissioner Graham.

COMMISSIONER GRAHAM: Thank you, Madam Chair.

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

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

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

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

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

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

MS. CHRISTENSEN: Yes. In the sense it was already scheduled to be heard before the Commission, we felt that -- and the recommendation said that the Commission had that discretion, we felt that that could
be addressed today, at today's agenda.

**CHAIRMAN BROWN:** Commissioner Brisé.

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

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

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

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

**COMMISSIONER BRISÉ:** Okay. Just -- to staff, just to follow up on Commissioner Graham's question to make sure I understand it properly, so if we decide as a
Commission not to grant reconsideration, the Commission, on its own motion, can modify the schedule moving forward if that is the Commission's desire.

MS. BROWNLESS: Yes, sir.

COMMISSIONER BRISÉ: Okay. Thank you.

CHAIRMAN BROWN: Thank you.

Commissioner Graham.

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

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

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

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

CHAIRMAN BROWN: Is there a second?

COMMISSIONER BRISÉ: Second.

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

(Vote taken.)

Opposed? The motion passes.

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

Commissioner Graham.

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

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

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

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

**COMMISSIONER GRAHAM:** Thank you. Thank you.

Commissioner Edgar.

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

The -- I think for just another piece of information again from the calendar is that for the storm hardening and the incentive mechanism, I set a testimony due date for intervenors of May 31st, which clearly is approaching. I would point out again that the order granting consolidation was
issued on May 4th, and a request to modify dates
certainly could have been filed between May 4th and
now. It was not. It still has not been. However,
I would also challenge anybody here to come up with
an example of anybody ever requesting more time for
anything that I did not either grant or support
because often I'm the one who wants more time, but I
would point out that request was not made. And I
continue to hear and read that I should have made
assumptions, and I challenge that. And I think that
that is not the way decisions in very technical,
complex cases should be made, whether it be the
calendar, a number of pages, a number of paragraphs,
et cetera.

So once again, I have pored over the
calendar, and I would point out that the reason I
set the storm hardening and incentive mechanism
dockets on the earlier dates is because the asset
optimization incentive mechanism in the past has
been one very narrow issue. It could expand to
more, but it is a very specific request that will
need to be addressed. And the storm hardening has
been pretty much the same issues for many, many
years and discovery has already been in process. So
I believe that there is still merit, again, in, as
Mr. Moyle said, having an organized and orderly process to keep two separate timelines for the testimony. Again, no dates along those lines have been submitted or requested.

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

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

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

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

CHAIRMAN BROWN: Thank you, Commissioner Brisé. I absolutely agree with you, and I agree with Commissioner Graham's earlier comments. And if there is
no further discussion, this meeting is adjourned. Thank
you. Oh --

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

CHAIRMAN BROWN: Is there a motion on Issue 3?

COMMISSIONER EDGAR: Move staff.

COMMISSIONER PATRONIS: Second.

CHAIRMAN BROWN: All those in favor, say aye.

(Vote taken.)

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

(Special Commission Conference Agenda
adjourned at 2:23 p.m.)
STATE OF FLORIDA  )
   : CERTIFICATE OF REPORTER
COUNTY OF LEON   )

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

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

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

DATED THIS 26th day of May, 2016.

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

FLORIDA PUBLIC SERVICE COMMISSION