

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 160186-EI

PETITION FOR RATE INCREASE BY
GULF POWER COMPANY.

DOCKET NO. 160170-EI

PETITION FOR APPROVAL OF 2016
DEPRECIATION AND DISMANTLEMENT
STUDIES, APPROVAL OF PROPOSED
DEPRECIATION RATES AND ANNUAL
DISMANTLEMENT ACCRUALS AND
PLANT SMITH UNITS 1 AND 2
REGULATORY ASSET AMORTIZATION,
BY GULF POWER COMPANY.

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER
PARTICIPATING: COMMISSIONER JIMMY PATRONIS
PREHEARING OFFICER

DATE: Monday, March 6, 2017

TIME: Commenced at 1:30 p.m.
Concluded at 4:03 p.m.

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

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

1 APPEARANCES:

2 JEFFREY A. STONE, RUSSELL A. BADDERS, STEVEN
3 R. GRIFFIN, ESQUIRES, and CHARLES WIGGINS, ESQUIRES,
4 Beggs & Lane, P.O. Box 12950, Pensacola, Florida
5 32591-2950; and CHARLES A. GUYTON, ESQUIRE, Yoakley &
6 Stewart, P.A., 215 South Monroe Street, Suite 601,
7 Tallahassee, Florida, 32312; and RICK MELSON, ESQUIRE,
8 705 Piedmont Drive, Tallahassee, Florida 32312,
9 appearing on behalf of Gulf Power Company.

10 J.R. KELLY, PUBLIC COUNSEL; CHARLES REHWINKEL,
11 DEPUTY PUBLIC COUNSEL; and STEPHANIE A. MORSE, ESQUIRES,
12 Office of Public Counsel, c/o the Florida Legislature,
13 111 W. Madison Street, Room 812, Tallahassee, Florida
14 32399-1400, appearing on behalf of the Citizens of the
15 State of Florida.

16 MAJOR ANDREW J. UNSICKER and LIEUTENANT
17 COLONEL CHRIS COLCLASURE, ESQUIRES, Federal Executive
18 Agencies, AFCED/JA-ULFSC, 139 Barnes Drive, Suite 1,
19 Tyndall Air Force Base, Florida 32403, appearing on
20 behalf of the Federal Executive Agencies.

21 BRADLEY MARSHALL and ALISA COE, ESQUIRES,
22 Earthjustice, 111 South Martin Luther King Jr.
23 Boulevard, Tallahassee, Florida 32301, appearing on
24 behalf of the League of Women Voters of Florida and
25 Southern Alliance for Clean Energy.

1 DIANA CSANK, ESQUIRE, 50 F Street, NW, 8th
2 Floor, Washington, DC 20001; and LANE JOHNSON, ESQUIRE,
3 Law Office of Lane Johnson, 1722 Newton Street, N.W.,
4 Washington, DC 20010, appearing on behalf of Sierra
5 Club.

6 ROBERT SCHEFFEL WRIGHT and JOHN T. LaVIA III,
7 ESQUIRES, Gardner Law Firm, 1300 Thomaswood Drive,
8 Tallahassee, Florida 32308, appearing on behalf of
9 Wal-Mart Stores East, LP, and Sam's East, Inc.

10 JON C. MOYLE, JR., and KAREN PUTNAL, ESQUIRES,
11 Moyle Law Firm, P.A., 118 North Gadsden Street,
12 Tallahassee, Florida 32301, appearing on behalf of the
13 Florida Industrial Power Users Group.

14 KELLEY CORBARI, BIANCA LHERISSON, STEPHANIE
15 CUELLO, LEE ENG TAN, and KEINO YOUNG, ESQUIRES, FPSC
16 General Counsel's Office, 2540 Shumard Oak Boulevard,
17 Tallahassee, Florida 32399-0850, appearing on behalf of
18 the Florida Public Service Commission staff.

19 KEITH HETRICK, GENERAL COUNSEL, and MARY ANNE
20 HELTON, DEPUTY GENERAL COUNSEL, ESQUIRES, Florida Public
21 Service Commission, 2540 Shumard Oak Boulevard,
22 Tallahassee, Florida 32399-0850, Advisors to the Florida
23 Public Service Commission.

P R O C E E D I N G S

COMMISSIONER PATRONIS: Good afternoon.

(Greetings from audience.)

Thank you. Mr. Rehwinkel, I notice your Gator colors you're wearing today. Kind of standing out like a sore thumb there. Just bringing that for my notice.

Call this hearing to order. If staff will please read the notice.

MS. CORBARI: By notice issued on February 14th, 2017, by the Commission Clerk, this time and place has been set for a prehearing conference in Docket 160186-EI, petition for rate increase by Gulf Power Company, and 160170-EI, petition for approval of 2016 depreciation and dismantlement studies, approval of proposed depreciation rates and annual dismantlement accruals in Plant Smith Units 1 and 2, regulatory asset amortization by Gulf Power. The purpose of the hearing is more fully set out in the notice.

COMMISSIONER PATRONIS: Okay. Let's go ahead and take appearances.

MR. BADDERS: Good afternoon, Commissioner Patronis. Russell Badders on behalf of Gulf Power. I would also like to enter appearances for the attorneys listed for Gulf Power in the prehearing order.

MR. MELSON: And I'm Richard Melson, one of

1 those attorneys listed for Gulf Power.

2 **COMMISSIONER PATRONIS:** Okay.

3 **MR. MOYLE:** Good afternoon. Jon Moyle with
4 the Moyle Law Firm on behalf of the Florida Industrial
5 Power Users Group, FIPUG. And Karen Putnal is also
6 listed on the pleadings, and an appearance should be
7 entered for her as well.

8 **MR. WRIGHT:** Thank you, Commissioner. Robert
9 Scheffel Wright and John T. LaVia III of the Gardner Law
10 Firm on behalf of Wal-Mart and Sam's. Thank you.

11 **MR. REHWINKEL:** Good afternoon, Commissioner.
12 Charles Rehwinkel and Stephanie Morse on behalf of the
13 Office of Public Counsel on behalf of Gulf's ratepayers.
14 And I'd also like to enter an appearance for J.R. Kelly,
15 the Public Counsel.

16 **MS. JOHNSON:** Good afternoon, Commissioner. I
17 am Lane Johnson appearing on behalf of the Sierra Club,
18 and I would also like to enter an appearance for Diana
19 Csank with the Sierra Club.

20 **MR. MARSHALL:** Bradley Marshall with
21 Earthjustice representing the Southern Alliance for
22 Clean Energy and the League of Women Voters of Florida.

23 **COMMISSIONER PATRONIS:** Okay.

24 **MS. COE:** Good afternoon. I'm Alisa Coe, and
25 I also represent the Southern Alliance for Clean Energy

1 and the League of Women Voters of Florida.

2 **COMMISSIONER PATRONIS:** Okay. And then we've
3 got Federal Executive Agencies on the phone; correct?

4 **MAJOR UNSICKER:** Correct. Yes, sir. This is
5 Major Unsicker, Major Andrew J. Unsicker representing
6 the Federal Executive Agencies. Additionally, I'd like
7 to enter an appearance of Lieutenant Colonel Chris
8 Colclasure. The last name is C-o-l-c-l-a-s-u-r-e.

9 **COMMISSIONER PATRONIS:** Okay. Thank you very
10 much.

11 **MAJOR UNSICKER:** Thank you, sir.

12 **MS. CORBARI:** Kelley Corbari, and Lee Eng Tan,
13 Bianca Lherisson, Stephanie Cuello, and Keino Young on
14 behalf of Commission staff.

15 **MS. HELTON:** And Mary Anne Helton. I'm here
16 as your advisor today. I'd also like to make an
17 appearance for Keith Hetrick, your General Counsel.

18 **COMMISSIONER PATRONIS:** Y'all are, like, in
19 other time zone over there. Thank you very much.

20 Staff, are there any preliminary matters we
21 need to address before we get to the draft prehearing
22 order?

23 **MS. CORBARI:** Yes, Commissioner. Staff has a
24 few items to address, beginning with the comprehensive
25 exhibit list. A copy of the draft comprehensive exhibit

1 list was provided to the parties by email on Friday and
2 provided in hard copy today. Staff requests that the
3 parties review the draft comprehensive exhibit list and
4 be prepared to state whether they can stipulate to the
5 list or will object to a specific exhibit by close of
6 business, Friday, March 10th.

7 Exhibit cover sheet. Staff has prepared an
8 example exhibit cover sheet that can be used for
9 exhibits at the hearing. If a party has not already
10 prepared its own cover sheet for an exhibit, we have
11 copies here today.

12 Hearing exhibits. Staff recommends that the
13 parties bring 25 copies of all exhibits they wish to
14 introduce into evidence at the hearing.

15 Issues, proposed additional issues and
16 arguments on including or excluding additional issues.
17 Staff will note there are three proposed additional
18 issues, which we can address now or as we proceed
19 through the draft prehearing order. Staff recommends
20 that if the prehearing officer wishes to hear oral
21 argument on the inclusion of any particular issue, said
22 arguments be taken up during the issue and position
23 section of the prehearing order.

24 **COMMISSIONER PATRONIS:** Does any party have
25 any other preliminary matters? Mr. Moyle.

1 **MR. MOYLE:** Thank you. I just wanted to make
2 you aware and ask for your permission to potentially not
3 be here 24/7 during the hearing itself. I have some
4 obligations downtown with respect to legislative
5 obligations. And as you know from serving in the
6 legislature, sometimes committees notice things that
7 require you to be in two places at once. So I just
8 wanted to put that out there and make sure that didn't
9 present any issues for you or any of the parties.

10 **COMMISSIONER PATRONIS:** And you understand
11 that the Chairman will be in charge once that hearing
12 starts. The schedule process, once it's out, won't be
13 modified due to your absence.

14 **MR. MOYLE:** I understand that.

15 **COMMISSIONER PATRONIS:** Okay. So it may
16 result in y'all having to waive some of your --

17 **MR. MOYLE:** Right. If I'm not here to conduct
18 cross-examination, you know, I'm not here to --

19 **COMMISSIONER PATRONIS:** Exactly. Raise
20 objections and all that.

21 **MR. MOYLE:** Right. But, yeah, if that is
22 okay, then that will help me with my planning.

23 **COMMISSIONER PATRONIS:** Okay. Thanks.

24 Expert testimony.

25 **MS. CORBARI:** Section VI(A)(8) of the order

1 establishing procedure issued on October 20th, 2016, in
2 this proceeding requires parties to identify witnesses
3 they wish to voir dire and give page and line citations
4 of testimony they believe is in question for lack of
5 witness expertise. No party indicated in its prehearing
6 statement that it desired to voir dire witnesses.

7 **COMMISSIONER PATRONIS:** Because there's -- no
8 party has met the requirements of the OEP, there will be
9 no voir dire at this hearing.

10 Let's go to the draft prehearing order now.

11 **MR. MOYLE:** Can I just bring something up on
12 that? I don't mean to throw a wrench here.

13 **COMMISSIONER PATRONIS:** Mr. Moyle.

14 **MR. MOYLE:** Yeah. So we -- FIPUG, I think in
15 the prehearing statement we said, you know, we want
16 people to be listed and qualified as experts. We've had
17 a running discussion about this, you know, for some
18 time. I understand, you know, voir dire is a process
19 where you ask them a series of questions. At this
20 point, I'm not 100 percent sure with respect to
21 witnesses which ones are expert and which ones are not
22 expert. So I think -- even though you can't voir dire,
23 I would think I should be able to say, "Are you
24 testifying as an expert?" And they can say, "Yes or
25 no." And if they say, "Yes," and just say, "What

1 areas?" And they say, "One, two, three," then that
2 gives me information. Because an expert, when you're
3 asking them questions, you have a little more latitude
4 with respect to the ability to ask them things like
5 hypothetical questions and things like that.

6 So I just wanted to lay that out there so
7 we're not at hearing and getting into the weeds on
8 something like that. I don't intend to voir dire them,
9 but I do think I should be able to just ask them if
10 they're testifying as an expert, and, if so, what areas.

11 **COMMISSIONER PATRONIS:** Understood.

12 Mary Anne, you don't have anything to add, do
13 you?

14 **MS. HELTON:** I think we should give the other
15 parties, and especially Gulf, the opportunity to respond
16 to that before I maybe or maybe not respond.

17 **COMMISSIONER PATRONIS:** Sure. Gulf?

18 **MR. BADDERS:** Yes, Commissioner.

19 **COMMISSIONER PATRONIS:** Turn your mike on.
20 There you go.

21 **MR. BADDERS:** I'm sorry. It seems odd that
22 we're now hearing that he wants to more or less voir
23 dire our witnesses. I mean, there's the formal way of
24 doing it, and then, of course, now he wants to do it
25 more of an informal.

1 Each of our witnesses testify to facts and
2 provide expert testimony for the areas covered in their
3 testimony. No one at this point has raised any issue
4 with regard to that, and I don't believe it's timely at
5 this point to raise that issue here or at the hearing.

6 **MR. MOYLE:** If he's representing that all his
7 witnesses are expert witnesses and are subject to being
8 questioned as an expert witness, then I think I'm good.

9 **COMMISSIONER PATRONIS:** Mr. Rehwinkel.

10 **MR. REHWINKEL:** Thank you, Commissioner. I
11 don't have disagreement with what I heard from either
12 counsel, but I think that there can be a fine line
13 between what's voir dire and what is cross-examination
14 that is reasonably aimed at understanding the basis for
15 a witness's testimony. So we -- we will conduct
16 ourselves as we always have, and we'll address that as
17 needed. I'm not presuming there will be a problem, but
18 we just wanted to state that for the record. Thank you
19 for the opportunity.

20 **COMMISSIONER PATRONIS:** Any other parties?

21 **MR. WRIGHT:** Thank you, Commissioner Patronis.
22 I'd just like to say I generally agree with
23 Mr. Rehwinkel. I think it's perfectly permissible cross
24 to ask a witness the basis of his opinion and to -- and
25 to go into issues that relate to credibility. That's

1 important to the Commissioners as the triers of fact.
2 But that's way short of full-blown voir dire. Thank
3 you.

4 **COMMISSIONER PATRONIS:** Sure.

5 **MR. MARSHALL:** Thank you, Mr. -- thank you,
6 Commissioner Patronis. And I would just like to echo my
7 colleagues from the Office of Public Counsel and
8 Mr. Wright that we also believe that being able to
9 cross-examine a witness on their credibility is
10 important for the Commission and is certainly distinct
11 from voir dire.

12 **COMMISSIONER PATRONIS:** Any other parties?
13 Mary Anne.

14 **MS. HELTON:** Thank you, Commissioner. Yes, I
15 think we are in agreement. It sounds like that there
16 will not be voir dire as it's maybe known in a more
17 formal type practice, but I do think that a certain
18 amount of cross-examination with respect to the -- to
19 get to the credibility of the witness is appropriate
20 whenever any witness takes the stand.

21 **COMMISSIONER PATRONIS:** If Mr. Moyle is even
22 here, all that.

23 **MR. MOYLE:** That should have been a
24 preliminary matter at the end of the hearing.

25 (Laughter.)

1 **COMMISSIONER PATRONIS:** Okay. Well, let's go
2 ahead now and proceed to the prehearing draft order now.
3 We'll go through the issues individually by section.
4 I'd like the parties to let me know if there's any
5 corrections or changes to their positions. We may go
6 through this quickly, so speak up, raise your hand if
7 you have any changes to make.

8 Section I, case background.

9 Section II, conduct of proceedings.

10 Section III, jurisdiction.

11 Section IV, procedure and handling of
12 confidential information.

13 Section V, prefiled testimony and exhibits,
14 witnesses.

15 **MS. CORBARI:** Commissioner, staff recommends
16 that the witnesses' summaries be limited to no more than
17 five minutes per witness. If a witness has filed both
18 direct and rebuttal testimony, staff would recommend
19 that he or she receive five minutes for direct and five
20 minutes for rebuttal. If both direct and rebuttal
21 testimonies are taken together, staff would recommend
22 that the witnesses be given ten minutes total.

23 As will be discussed under Section IX of the
24 draft prehearing order, staff hopes to have a stipulated
25 composite exhibit list which includes specific discovery

1 responses. Some of the discovery responses staff hopes
2 to include have been granted confidential
3 classification. Staff will ensure all procedures are
4 followed with respect to these hearing exhibits.

5 Finally, staff would like to note that
6 pursuant to a stipulation approved by this Commission in
7 the Environmental Cost Recovery Clause, ECRC, docket,
8 160007-EI, the Commission ordered that the issues
9 identified in the ECRC docket related to Gulf's recovery
10 of its identified environmental compliance investment
11 and expenses associated with Gulf's ownership interest
12 in Scherer Unit 3 be deferred for resolution in the
13 instant proceeding.

14 In addition, the Commission ordered that the
15 testimony and exhibits of Gulf witnesses Boyette,
16 Burleson, Deason, Liu, Markey, and Vick related to those
17 issues filed in the ECRC docket be inserted into the
18 record of this proceeding as a basis for recovery of all
19 costs identified therein and that the witnesses be
20 subject to cross-examination.

21 **MR. BADDERS:** And if I may speak to that.

22 **COMMISSIONER PATRONIS:** Gulf.

23 **MR. BADDERS:** Basically what we have in the 07
24 docket, what was moved to the base rate case docket, is
25 the sole issue as to whether or not Scherer 3 is retail,

1 going to be rededicated to retail and recognized as
2 retail. Two pieces of testimony in the 07 docket don't
3 address that at all. They're the regular Environmental
4 Cost Recovery Clause filing testimony. You have a
5 description of programs and you have a witness who goes
6 through the costs.

7 The other three are witness Burleson, Deason,
8 and Liu. Those three do cover the Scherer 3 issue.
9 When we filed the rate case, we filed more or less the
10 same testimony in the rate case docket. So to bring
11 that -- those three over to this docket would be
12 duplicative. I mean, they're almost word for word.

13 So our recommendation is not to bring any of
14 the five pieces of testimony over to the rate case
15 docket. The first two don't have anything to do with
16 the rate case issue, and, of course, the other three are
17 completely duplicative.

18 I believe the only two parties at the table
19 today other than Gulf that were involved in any of that
20 are FIPUG and OPC. And I've conferred with both, and I
21 think it's our consensus that we'd rather not bring any
22 of that testimony over to this docket.

23 **COMMISSIONER PATRONIS:** Mr. Moyle.

24 **MR. MOYLE:** That's right. When staff was
25 presenting that stipulation, I heard something about no

1 cross-examination, and absolutely I don't want anything
2 to bring that testimony over about Scherer without the
3 ability to cross-examine it. But we have had a
4 conversation before you convened, and we're good on
5 putting on Mr. Deason and Mr. Burleson and the other
6 witness kind of afresh, anew, and subject to
7 cross-examination as if it was never filed in that 07
8 docket where we entered into the stipulation.

9 **COMMISSIONER PATRONIS:** OPC.

10 **MR. REHWINKEL:** Thank you, Commissioner. I
11 concur with Mr. Badders' representation about our
12 position as well as the basis for that issue being
13 brought over to this case was solely on the threshold
14 issue: Is it a retail responsibility or not? The costs
15 that are associated with Mr. Markey's and Mr. Boyette's
16 testimony are the subject of the 07 or Environmental
17 Cost Recovery Clause docket, and we never intended to
18 address those in this case, nor have we conducted any
19 discovery on those aspects of that docket.

20 So we don't have a need for it to be addressed
21 in this case, and we think it would be cleaner if
22 they're not included in the docket, those testimonies.
23 Because the issues of Ms. Liu, Mr. Deason, and
24 Mr. Burleson are covered duplicatively in their
25 testimony that was filed in the rate case.

1 **COMMISSIONER PATRONIS:** Okay. All right.

2 **MS. HELTON:** Mr. Chairman?

3 **COMMISSIONER PATRONIS:** Yes.

4 **MS. HELTON:** I would suggest, though, that we
5 include a footnote at least in the prehearing order to
6 state that so that if someone were to go to look at that
7 07 order from last year, they'll know what happened to
8 that testimony.

9 **COMMISSIONER PATRONIS:** Right. Okay. Sounds
10 good.

11 **MS. CORBARI:** And, Commissioner, and I can
12 make a reminder when we get to the ruling section for
13 you.

14 **COMMISSIONER PATRONIS:** Okay. Thank you. All
15 right.

16 Section VI, order of witnesses.

17 **MR. BADDERS:** Again, this -- your decision
18 here on that issue will be reflected in this section.

19 **COMMISSIONER PATRONIS:** Right.

20 **MS. CORBARI:** Staff recommends all witnesses
21 must appear according to the order of witnesses stated
22 in the prehearing order. And it's staff's understanding
23 that Gulf wishes to take up its direct and rebuttal
24 witnesses separately.

25 **MR. BADDERS:** That is correct. And we do have

1 one topic, I guess, we can address as far as
2 collectively. And this will be a surprise, I guess, to
3 FEA and I apologize.

4 Office of Public Counsel, Gulf -- I'm sorry --
5 and FEA each have cost of capital witnesses. It's
6 witnesses Woolridge, Vander Weide, and Gorman. I've
7 talked with Public Counsel and we've come to what we
8 think may be a workable solution with regard to those
9 three pieces of testimony, if FEA is okay, that we would
10 take those three pieces of testimony, the depositions of
11 those witnesses, and place that into the record without
12 cross-examination. Clearly, the Commissioners would
13 still be able to ask questions and they'd be able to
14 review it prior to and decide if they want to excuse
15 those witnesses. But barring that, I believe that would
16 allow those witnesses to be excused. Again, this is
17 subject to staff, whether or not they're okay with that,
18 and then, of course, FEA also.

19 **COMMISSIONER PATRONIS:** Major, FEA, are you
20 there?

21 **MR. BADDERS:** I'm sorry. There are --

22 **MAJOR UNSICKER:** I am, yes, sir. That's the
23 first I've heard of that. So what we're proposing is
24 that they -- that we would just stipulate to their
25 testimony or --

1 **COMMISSIONER PATRONIS:** Gulf?

2 **MR. BADDERS:** Yes. Basically we would
3 stipulate the testimony of each of those witnesses and
4 allow their depositions to go into the record. And
5 I'll -- I misspoke. Mr. Vander Weide also has rebuttal
6 testimony, so it's four pieces of testimony.

7 **COMMISSIONER PATRONIS:** FEA?

8 **MAJOR UNSICKER:** I'd probably want to talk to
9 my expert first. Do I -- can I take a minute to give
10 him a call on this?

11 **MR. MOYLE:** Can I jump in as well?

12 **COMMISSIONER PATRONIS:** Mr. Moyle.

13 **MR. MOYLE:** So this is news to me as well. My
14 client takes positions on return on equity in all the
15 cases and conducts cross-examination. So I think beyond
16 just the parties who have witnesses, that parties who
17 don't have witnesses would also have to be consulted,
18 you know, and agree to basically let the ROE thing go in
19 cold with no cross-examination. And I'm absolutely
20 willing to consider it, but I'm not sure I'm absolutely
21 willing to say yeah or nay, you know, right now.

22 **MAJOR UNSICKER:** I would agree. I think FEA
23 is in the same boat as that.

24 **MR. BADDERS:** Commissioner Patronis, I assumed
25 that would be the -- I just wanted to put that on the

1 table so everyone would understand that we were
2 considering that and we were offering that up. I don't
3 believe we can resolve it today.

4 **MR. WRIGHT:** Right. Right. That's -- you
5 agree; right? Yeah.

6 **MS. HELTON:** Yes, sir. Maybe we can set a
7 date certain by when everybody could see whether they
8 could agree to it, if that would be helpful in witness
9 planning for transportation.

10 **MR. BADDERS:** Again, we're amenable. I mean,
11 if parties need a couple of days to think about that, I
12 mean, that's fine. Again, that's really up to FEA and
13 FIPUG how much time they need, and, of course, any other
14 party.

15 **COMMISSIONER PATRONIS:** Is there a recommended
16 timeline then?

17 **MR. BADDERS:** Friday of this week.

18 **MS. CORBARI:** Staff would recommend the close
19 of business Friday.

20 **COMMISSIONER PATRONIS:** Okay. Is that fine
21 with all parties?

22 **MR. BADDERS:** It is for Gulf.

23 **COMMISSIONER PATRONIS:** Okay.

24 **MS. CORBARI:** Just --

25 **MAJOR UNSICKER:** Yes for FEA as well.

1 **COMMISSIONER PATRONIS:** Okay. FEA is good.

2 Schef?

3 **MR. WRIGHT:** Thank you, Commissioner. We're
4 fine with the Friday deadline, but I do want to be on
5 the record as agreeing with Mr. Moyle. Although we
6 don't have a witness, we take positions on ROE and
7 frequently conduct cross, whether it's Wal-Mart or the
8 Florida Retail Federation, in these rate cases.
9 Generally speaking, I think that cross-examination is
10 important for the Commissioners to hear. But I'm not
11 saying I'm going to oppose it. I'm going to check with
12 my client, and letting you all know by Friday is fine
13 with me. Thank you.

14 **MR. REHWINKEL:** Commissioner, while we are in
15 accord with what Mr. Badders has offered up, we are --
16 we are certainly amenable if the Commissioners want them
17 to appear live and ask questions, we're completely fine
18 with that. And so we're willing to bring our witness to
19 Tallahassee to give a summary and have the witness --
20 the Commissioners ask questions as a fallback position
21 on this.

22 Certainly if there's no agreement, then we'll
23 put our witness on as scheduled. But we think what
24 Mr. Badders has offered is reasonable, we support it,
25 but we're also willing to do a lesser included, if you

1 will, of that.

2 **MS. CORBARI:** Commissioner, staff would just
3 like to add one housekeeping matter. Gulf mentioned the
4 possibility of entering the cost of capital witnesses'
5 depositions into the record.

6 Section VI(G) of the OEP governing the use of
7 depositions at hearing, obviously absent an agreement by
8 all of parties concerning the introduction of
9 depositions into the record at hearing, any party
10 wishing to introduce all or part of the deposition at
11 the hearing for any purpose other than impeachment must
12 file a notice of intent to use the deposition no later
13 than the last day to conduct discovery in this docket.
14 Staff would just point that out. If all the parties are
15 in agreement, then the provisions of the OEP have been
16 met.

17 **MR. REHWINKEL:** Commissioner, if I could add,
18 we certainly support the way the OEP is presented.
19 We've had a position on use of depositions at hearings
20 for a number of years. We definitely agree that the
21 only way the depositions should go in is by stipulation
22 of all the parties, agreement of staff, and agreement of
23 the Commission. So that's the only way we think that
24 that provision of the OEP wouldn't apply.

25 **MR. BADDERS:** And I'm in complete agreement

1 with that. I was offering that up as an accommodation
2 because I believe people have already asked questions
3 of the witnesses and may want that in. I would --
4 basically I'm not going to object if we're able to reach
5 that type of agreement here.

6 **COMMISSIONER PATRONIS:** Got you.

7 **MS. CORBARI:** Also at this time, staff would
8 ask whether the parties are willing to stipulate to any
9 witnesses and the witnesses' testimony and exhibits
10 being inserted into the record at hearing in lieu of the
11 witness testifying live, other than the cost of capital
12 witnesses.

13 **COMMISSIONER PATRONIS:** Gulf.

14 **MR. BADDERS:** Yes, sir. For Gulf, we're
15 willing to stipulate to Witness Brown and Witness Hicks
16 at this time. That's the only witnesses that we're able
17 to do so. But we'll continue to look at the issues as
18 we resolve some of them and see if that can be whittled
19 down a little bit, the total list.

20 **COMMISSIONER PATRONIS:** Any other parties?

21 **MR. WRIGHT:** Commissioner, we're willing to
22 stipulate to the testimony and exhibits of all three of
23 the staff's witnesses -- Brown, Hicks, and Harlow --
24 being entered into the record as though read and
25 received into evidence in the case of the exhibits.

1 Since I've got the floor briefly, I'd just
2 like to say one thing about the order of witnesses. We
3 have always worked politely, collegially, and
4 effectively to accommodate special needs in courts' and
5 witnesses' schedules and things like that, and I fully
6 commit to participate in that. I'm fine with the order
7 of witnesses as it stands, but things are going to
8 happen during the hearing, and I just want to kind of go
9 on record as saying I think that we need to continue to
10 work that way. Thank you.

11 **COMMISSIONER PATRONIS:** Sure.

12 **MR. REHWINKEL:** Commissioner, the Public
13 Counsel at this point in time, we need to consult, but I
14 think we will be in a position perhaps to stipulate
15 Brown and Hicks. Witness Harlow, if there is agreement
16 among all the other parties for Witness Harlow's
17 testimony to be stipulated, we would be in a position of
18 taking no position on that and not standing in the way
19 of a stipulation. But we would not be able to
20 affirmatively stipulate that in either way.

21 **COMMISSIONER PATRONIS:** Any other parties?

22 **MS. JOHNSON:** Yes. Sierra Club would also be
23 willing to -- able to stipulate all of staff's
24 witnesses. That's Witness Brown, Harlow, and Hicks.

25 **COMMISSIONER PATRONIS:** Okay.

1 **MR. MARSHALL:** SACE and the League can
2 stipulate to Witness Brown at this time. We still need
3 to do further consultation and consideration of staff
4 Witness Hicks. And I'd also like to echo Mr. Wright
5 again about the flexibility within cases regarding, you
6 know, if travel considerations come up or et cetera,
7 that the Commission has historically granted
8 consideration to take witnesses out of order within
9 either the intervenor's case or Gulf's case but not
10 between cases to accommodate those -- what those needs
11 are, and we would ask and make a request that the
12 Commission continue to do so. Thank you.

13 **COMMISSIONER PATRONIS:** Okay.

14 **MR. REHWINKEL:** And if could I add, I have
15 advised staff and Gulf that our witnesses, three of our
16 witnesses -- Dauphinais, Ramas, and Woolridge -- are
17 likely not available before noon on Wednesday, but we
18 will work with the parties and staff to make sure that
19 we work it out if that is a logistical problem.

20 **COMMISSIONER PATRONIS:** Any other parties?
21 Okay.

22 **MS. CORBARI:** Does Mr. Moyle and FEA have a
23 position on the stipulation of staff witnesses?

24 **COMMISSIONER PATRONIS:** Mr. Moyle?

25 **MR. MOYLE:** I think we'll probably be able to

1 get there, but probably not right now.

2 **COMMISSIONER PATRONIS:** Major?

3 **MAJOR UNSICKER:** I would agree as well. I
4 think we're not necessarily opposed to it, but I think
5 at this point I don't see where I can say that, yes, we
6 can definitely stipulate to that.

7 **MS. CORBARI:** Commissioner, staff would ask if
8 the parties could, if possible, let staff know whether
9 they'd be willing to stipulate to these witnesses by
10 close of business on Friday, March 10th, as well.

11 **COMMISSIONER PATRONIS:** Parties good with
12 that? Okay. Major, Friday, will that work?

13 **MAJOR UNSICKER:** That will, yes, sir.

14 **COMMISSIONER PATRONIS:** Okay. Great. All
15 right.

16 Section VII, basic positions. Oh, yes.

17 **MS. CORBARI:** Before we move on, are there any
18 other party witnesses any of the parties are willing to
19 stipulate to? Okay.

20 **COMMISSIONER PATRONIS:** Section VII, basic
21 positions.

22 Section VIII, issues and positions.

23 **MR. REHWINKEL:** Commissioner, we'd just like
24 to state for the record, and I won't need to do this at
25 each and every point along the way, the Public Counsel

1 filed in Word today with the parties and staff a redline
2 and a clean version of revisions to our prehearing
3 statement. I am not going to state each of those. The
4 staff has that, and they can incorporate it into the
5 draft prehearing order and I won't burden the record
6 with that every time. We do -- we will have three or
7 four further slight modifications that we'll make as we
8 go.

9 **COMMISSIONER PATRONIS:** Okay. Staff, it's my
10 understanding there are a few additional issues proposed
11 by the parties.

12 **MS. CORBARI:** Yes, Commissioner. OPC, FIPUG,
13 and Wal-Mart have each proposed an additional issue, and
14 Gulf opposes the inclusion of all of the issues. Gulf,
15 OPC, League of Women Voters, SACE, Sierra Club, FIPUG,
16 and Wal-Mart have also filed comments either in support
17 of or in objection to the inclusion of the proposed
18 additional issues. Staff recommends that the parties be
19 allowed to present oral arguments on the inclusion or
20 exclusion of the proposed issue. You may take up the
21 new issues as we go through the issue list. At that
22 time, you may rule from the bench as desired on the
23 issue, or you may take the arguments under advisement
24 and issue a ruling in the prehearing order or in a
25 separate order.

1 **COMMISSIONER PATRONIS:** Let's address the
2 proposed issues at the end after we go through the
3 current list of issues. At that time the parties will
4 have three minutes to present their arguments on each
5 one of the proposed issues.

6 Staff, anything else before we start these
7 issues?

8 **MS. CORBARI:** Before going through the issues,
9 staff will note that Section VI of the order
10 establishing procedure states that unless a matter is
11 not at issue for that party, each party shall take a
12 position on each issue by the time of the prehearing
13 conference or by such later time as permitted by the
14 prehearing officer.

15 If a party is unable, through diligence and
16 good faith efforts, to take a position on an issue, then
17 the party shall explicitly state in its prehearing
18 statement why it cannot take a position.

19 If the prehearing officer finds that party has
20 acted diligently and in good faith to take a position
21 and further finds that the party's failure to take a
22 position will not prejudice other parties or confuse the
23 proceedings, the party may maintain no position at this
24 time prior to hearing and thereafter identify its
25 position in a post-hearing statement of issues.

1 In the absence of such a finding by the
2 prehearing officer, the parties shall have waived the
3 entire issue and the party's position shall be shown as
4 no position in the prehearing order.

5 When an issue and position have been properly
6 identified, any party may adopt that issue and position
7 in its post-hearing statement. Commission staff may
8 take no position at this time or a similar position on
9 any issue without having to make the showing described
10 above.

11 If parties do not take a position during the
12 prehearing conference, the prehearing officer may give
13 the parties additional time to submit their position in
14 writing. If the prehearing officer is so inclined,
15 staff would ask that the additional time be no later
16 than close of business tomorrow, March 7th, with no
17 exceptions or extensions. Staff would ask that if the
18 positions are not received by that time, that the
19 parties' position will become no position.

20 Likewise, if any of the proposed additional
21 issues are added, the prehearing officer may also give
22 the parties some additional time to include a position
23 on the issue. Again, staff would ask that any
24 additional time be no later than close of business the
25 day after the prehearing officer issues a ruling on the

1 additional issues with no exceptions or extensions. If
2 the positions are not received by that time, the party's
3 positions will become no position on the additional
4 issues.

5 **COMMISSIONER PATRONIS:** Thank you, staff.

6 I'll go through the issues individually. If there are
7 issues that I wish to hear oral arguments, I will ask
8 for the argument. Otherwise, I would just like to know
9 whether or not there are any changes to your position.
10 In addition, we're going to go through the issues. If
11 any of you believe that the issues may be stipulated,
12 please speak up so we can indicate. So, staff, please
13 begin.

14 **MS. CORBARI:** The first issue is legal issue,
15 Issue 1.

16 **MR. MOYLE:** Can I ask just a point of
17 clarification?

18 **COMMISSIONER PATRONIS:** Mr. Moyle.

19 **MR. MOYLE:** I'm sorry. So a lot of times on
20 these issues, you know, somebody -- we've taken a
21 position we agree with OPC or agree with FEA. And
22 rather than burden it without knowing whether you're
23 going to allow us to change our position until 5:00
24 o'clock tomorrow, if you say, "I'll give you till
25 5:00 to change your positions tomorrow," that results in

1 me not having to say much at all because I'll have till
2 5:00 tomorrow. But if you're saying, "I need to know
3 that today, right now," then that may result in more
4 discourse. So I was just curious as to whether you were
5 predisposed one way or the other on that point.

6 **COMMISSIONER PATRONIS:** Mary Anne, what's
7 going to be easier for y'all?

8 **MS. HELTON:** I think maybe Kelly might be the
9 better person to answer this, but I would say
10 5:00 o'clock tomorrow.

11 **MS. CORBARI:** Certainly if a party knows today
12 during the conference --

13 **COMMISSIONER PATRONIS:** Right.

14 **MS. CORBARI:** -- that they have changed their
15 position, please indicate so. If not -- if the
16 prehearing officer is inclined to give them additional
17 time, 5:00 o'clock tomorrow.

18 **COMMISSIONER PATRONIS:** We'll just stick with
19 5:00 o'clock tomorrow. Okay.

20 **MR. MOYLE:** Thank you.

21 **MS. CORBARI:** Okay. The next section, test
22 period and forecasting, Issue 2. Issue 3.

23 **MR. BADDERS:** Commissioner Patronis, would you
24 like us to mention where an issue may be possibly
25 stipulated or -- at this point, or would you like us to

1 wait on that part?

2 **COMMISSIONER PATRONIS:** Yes, that's fine.

3 **MR. BADDERS:** From what I believe, and just
4 looking at the positions, I believe Issue 2 might be a
5 possible stipulation.

6 **MR. MOYLE:** Charles, do you agree with that?

7 **MR. REHWINKEL:** The Public Counsel is not in a
8 position to stipulate that at this time because of the
9 looming change in the tax law. So that's -- that's
10 something I think that's bound up in the rest of these
11 issues.

12 **COMMISSIONER PATRONIS:** Okay.

13 **MS. CORBARI:** Any other parties?

14 Okay. Staff would just like to note that,
15 going back to Issue 1 and 2, FEA's position in the
16 draft -- in their prehearing statement was no position
17 at this time. They have to take a position today or
18 change their position by 5:00 o'clock tomorrow.

19 So Issue 3, again, FEA's position is no
20 position at this time. Issue 4. Issue 5. Issue 6.

21 Okay. Quality of service, Issue 7. FEA has a
22 position of no position at this time.

23 Next section, depreciation and dismantlement,
24 Issue 8. Again, FEA has no position at this time.
25 Issue 9.

1 **MR. REHWINKEL:** Before you go to 9, I would
2 just like to state for the record that Public Counsel
3 will -- we'd be glad to let you know by the end of the
4 day tomorrow whether we can do a Type 2 stipulation on
5 Issue 8. We're willing to consider that one.

6 **MS. CORBARI:** Any of the other parties?

7 **MAJOR UNSICKER:** FEA will provide a response
8 to all those ones that you listed and the future ones on
9 the issue list to you by tomorrow.

10 **COMMISSIONER PATRONIS:** Okay.

11 **MS. CORBARI:** Thank you. Okay. Issue 9.
12 Okay. Issue 10. Issue 11. Issue 12. Staff would note
13 that on Issue 12 OPC is no position at this time.

14 **MR. REHWINKEL:** Yeah. Our no positions will,
15 unless we change them today, will default to no -- no
16 positions at this time will default to no position, and
17 that's the case in 12 and 13.

18 **MS. CORBARI:** Issue 13. Issue 14, 15, 16.

19 **MR. REHWINKEL:** Commissioner, Issue 16, the
20 Public Counsel would ask that the staff reflect our
21 position that is contained in the revisions we sent this
22 morning on 17, also reflect that the same on Issue 16.
23 And we are willing to consider a stipulation on 14, but
24 it may take some conversation with the company before we
25 do that. So that one may not be done by 5:00 tomorrow,

1 but we'll work with them on that.

2 **MR. MOYLE:** And to the extent FIPUG has taken
3 a position agree with OPC and OPC has submitted
4 something this morning that has changed their position,
5 then our position still agrees with OPC. You know,
6 we're not locked into the position that they put in
7 Friday or whenever they put them in. I just want to be
8 clear.

9 **MR. WRIGHT:** The same is true for Wal-Mart.
10 Thank you.

11 **MS. CORBARI:** Any other parties? SACE, Sierra
12 Club?

13 **MS. JOHNSON:** Yes, that's also true for Sierra
14 Club. Thank you.

15 **MS. CORBARI:** Okay. So Issue 16. Issue 17.
16 Issue 18.

17 **MR. BADDERS:** I believe Issue 18 is subject to
18 a possible stipulation as it's presented at this time.

19 **MS. CORBARI:** Any other parties wish to
20 comment?

21 **MR. REHWINKEL:** Is Gulf's date July 1?

22 **MR. BADDERS:** Yes. Effective date of base
23 rates set in this docket, which would be July 1.

24 **MR. REHWINKEL:** Yeah. We concur in that, so
25 that's a possible stipulation for us.

1 **COMMISSIONER PATRONIS:** Anybody else?

2 **MS. CORBARI:** Okay. Next section, rate base,
3 Issue 19. Issue 20, 21, 22, 23.

4 **MR. REHWINKEL:** The Public Counsel --

5 **COMMISSIONER PATRONIS:** OPC.

6 **MR. REHWINKEL:** Thank you, Commissioner. The
7 Public Counsel would ask that our statement of no
8 position at this time be stricken there.

9 **MS. CORBARI:** Issue 22, Charles?

10 **MR. REHWINKEL:** I mean 23.

11 **MS. CORBARI:** Twenty-three.

12 **COMMISSIONER PATRONIS:** Twenty-three.

13 **MS. CORBARI:** Any other comments? Okay.
14 Issue 24, 25, 26.

15 **COMMISSIONER PATRONIS:** OPC.

16 **MR. REHWINKEL:** Yes, Commissioner. I believe
17 this issue can be stipulated.

18 **COMMISSIONER PATRONIS:** Issue 26?

19 **MR. REHWINKEL:** Yes. And I think we can
20 actually do a Type 1 on this one.

21 **COMMISSIONER PATRONIS:** Any other parties?
22 Gulf?

23 **MR. BADDERS:** Gulf agrees.

24 **MR. MOYLE:** Given that it's a reduction in
25 rates --

1 **COMMISSIONER PATRONIS:** FIPUG.

2 **MR. MOYLE:** -- FIPUG agrees as well. It's
3 directionally correct.

4 **COMMISSIONER PATRONIS:** Anybody else?

5 **MR. REHWINKEL:** If I could --

6 **COMMISSIONER PATRONIS:** OPC.

7 **MR. REHWINKEL:** If I could go back to 21. I
8 think we would be willing to tell you tomorrow by 5:00
9 if we can stipulate there.

10 Issue 23, I would need to consult with Gulf
11 and talk to them about whether -- it's kind of an
12 accounting nuance about whether the deferred return or
13 any accrued AFUDC-like charges would be considered part
14 of this issue. If not, we do not have an issue with the
15 gross additions of plant-in-service related to these
16 transmission capital additions. So we're willing to
17 have a conversation about that, so that's a possibility.

18 **COMMISSIONER PATRONIS:** Okay.

19 **MR. BADDERS:** We look forward to the
20 conversation.

21 **COMMISSIONER PATRONIS:** All right. Anybody
22 else?

23 **MS. CORBARI:** Okay. Issue 27, 28, 29, 30, 31,
24 32, 33.

25 **MR. REHWINKEL:** Back to --

1 **COMMISSIONER PATRONIS:** OPC.

2 **MR. REHWINKEL:** Yes, Commissioner. Back to
3 31, I think the staff has suggested that, I mean, 32 was
4 duplicative of 31. Is there any -- is there any dispute
5 about that?

6 **COMMISSIONER PATRONIS:** Gulf?

7 **MR. BADDERS:** No. We're fine doing that.

8 **MR. REHWINKEL:** I think, let's see, 30 --
9 31 is plant held for future use, and it specifically
10 calls out the north Escambia site. And I think 32 is
11 just a generic plant held for future use.

12 **MS. CORBARI:** Correct. Thirty-one is the same
13 issue as 32, but specifically to clarify that it
14 includes the north Escambia site.

15 **MR. BADDERS:** We would agree that 32 could be
16 dropped.

17 **COMMISSIONER PATRONIS:** Okay. Any others?

18 **MS. CORBARI:** Are the parties in agreement?

19 **MR. MOYLE:** As long as 31 remains, we're okay.

20 **MR. WRIGHT:** Same for Wal-Mart. Thanks.

21 **COMMISSIONER PATRONIS:** Okay. Sierra Club?

22 **MR. MARSHALL:** Yes, we agree.

23 **MS. JOHNSON:** Yes, Sierra Club also agrees.

24 **MS. CORBARI:** FEA?

25 **COMMISSIONER PATRONIS:** FEA?

1 **MAJOR UNSICKER:** Yes, we would agree with
2 that.

3 **MS. CORBARI:** So Issue 32 will be dropped.
4 The issue list will not be renumbered. Just that
5 issue -- there will be no issue for 32.

6 To go back quickly to Issue 30, it looked like
7 Sierra Club did not provide a position to Issue 30.
8 Was -- staff wanted to clarify whether that was an
9 oversight or Sierra Club had a position.

10 **MS. JOHNSON:** That was an oversight, but
11 Sierra Club has no position at this time. We will let
12 you know by the close of business tomorrow if we do.

13 **MS. CORBARI:** Thank you. Okay. It looks like
14 33.

15 **MR. REHWINKEL:** This is an issue,
16 Commissioner, that we would want to have a conversation
17 with Gulf about. We believe that to the extent we can
18 work out a stipulation that in-transit coal or -- that
19 is accounted for in the working capital allowance, if
20 that's not considered part of fuel inventory for the
21 purposes of this issue, I think we could reach a
22 stipulation on that because we do not challenge the
23 non-in-transit coal portion of their inventory.

24 **COMMISSIONER PATRONIS:** Okay. Gulf?

25 **MR. BADDERS:** We'll get with Public Counsel

1 and we'll work through the numbers and know exactly
2 what's in there.

3 **COMMISSIONER PATRONIS:** All right. Anybody
4 else?

5 **MS. CORBARI:** Thirty-four, 35, 36.

6 **MR. MELSON:** Commissioner, I wonder if this
7 might be a possible stipulation. Gulf's position is,
8 yes, with an adjustment, and OPC's is, no, because an
9 adjustment needs to be made, but I think we're talking
10 about making the same adjustment.

11 **MR. REHWINKEL:** Mr. Melson is quicker than I
12 am on the trigger. We would concur in that.

13 **COMMISSIONER PATRONIS:** Okay. Thank you, OPC.

14 **MS. CORBARI:** Any of the other parties wish to
15 comment?

16 **MR. MOYLE:** Given the direction, we concur
17 with OPC.

18 **COMMISSIONER PATRONIS:** Thank you, FIPUG.

19 **MS. CORBARI:** Okay. That was 36.
20 Thirty-seven.

21 **MR. REHWINKEL:** Let me --

22 **COMMISSIONER PATRONIS:** OPC.

23 **MR. REHWINKEL:** I apologize, Commissioner.

24 **MS. CORBARI:** Did I skip one?

25 **MR. REHWINKEL:** I think 34 is one that we can

1 agree to a Type 2 Stipulation on.

2 **COMMISSIONER PATRONIS:** Okay. Anyone else?

3 **MR. WRIGHT:** Commissioner, we take no
4 position. Accordingly, we have no problem with a Type
5 2 stipulation. I'm not going to jump in and say that on
6 every issue, but I just thought I'd make that clear. If
7 we have no position, we're not going to object to a
8 Type 2 stip. Thanks.

9 **MAJOR UNSICKER:** That same would hold true for
10 FEA as well. We didn't take a position on that either
11 and would not object to a stipulation.

12 **COMMISSIONER PATRONIS:** Okay. Thank you,
13 Major.

14 **MS. CORBARI:** I believe on Issue 34, FEA took
15 no position at this time. Is FEA clarifying their
16 position to no position?

17 **MAJOR UNSICKER:** Yes, ma'am.

18 **MS. CORBARI:** Thank you. Is that all for 34?
19 Okay. So back to 37, 38.

20 Next section, cost of capital issues, Issue --

21 **COMMISSIONER PATRONIS:** OPC?

22 **MR. REHWINKEL:** Thank you, Commissioner. I
23 would just like to state for the record that if we work
24 out a stipulation on 33 with the company on the
25 in-transit coal, our position that's in 33 would be

1 transferred over to 37. Because if that's where this
2 issue appropriately lies and should be litigated, if
3 it's a working capital-only issue, then our position
4 would go over there. We would just move that over.
5 Does that make sense?

6 **COMMISSIONER PATRONIS:** Okay. Anybody else?

7 **MS. CORBARI:** And you'll try to identify that,
8 Charles, by the end of the week, or that may take
9 further discussion?

10 **MR. REHWINKEL:** Well, to the extent we can get
11 with Gulf and work that out, we would present you a
12 stipulation on 33 and just let you know that we would
13 want to maintain that language. And it probably is best
14 to just go ahead and move our position, to copy it over
15 to 37 from 33, and then we can just drop it from 33 and
16 we'll be okay.

17 **MS. CORBARI:** Okay. So to clarify, you want
18 to go ahead and have your -- OPC's position moved to --
19 on Issue 33 moved to 37?

20 **MR. REHWINKEL:** I would say instead cut and
21 paste, copy and paste, just so we have it in both
22 places.

23 **MS. CORBARI:** Copy and paste. Okay.

24 **MR. REHWINKEL:** And then we would drop it in
25 one, assuming we work it out.

1 **MS. CORBARI:** Okay. So noted. I think we
2 were moving on to cost of capital issues, Issue 39, 40.

3 **COMMISSIONER PATRONIS:** OPC?

4 **MR. REHWINKEL:** Yes, Commissioner. I just
5 wanted -- we provided changes to 39 and 45. And I just
6 want to state for the record the positions on the tax
7 rate change we have put after the position statement
8 that is attributed to Dr. Woolridge, just so it's clear
9 that we are not -- he is not testifying on that. He's
10 testifying on the cost components and not the tax rate
11 issue.

12 **MS. CORBARI:** For Issue 45?

13 **MR. REHWINKEL:** Well, for 39 and for 45, yes.

14 **MS. CORBARI:** And 45. Okay.

15 **COMMISSIONER PATRONIS:** Mr. Moyle?

16 **MR. MOYLE:** I'm just assuming that we're good
17 per the earlier comment if OPC made a change today and
18 FIPUG and Mr. Wright with Wal-Mart said, "Adopt position
19 of OPC," that that will be carried forward.

20 **MS. CORBARI:** Yes.

21 **COMMISSIONER PATRONIS:** That's fine.

22 **MR. MOYLE:** And I won't say that again.

23 **COMMISSIONER PATRONIS:** Okay.

24 **MS. CORBARI:** Okay. We were on 39, 40, 41.

25 **MR. BADDERS:** I believe Issues --

1 **COMMISSIONER PATRONIS:** Gulf?

2 **MR. BADDERS:** I'm sorry. I believe Issues
3 41 through 44, that all parties are in agreement.

4 **COMMISSIONER PATRONIS:** Mr. Rehwinkel?

5 **MR. REHWINKEL:** Yes. OPC would state today,
6 we will be in a Type 2 stipulation on that issue -- on
7 those four issues.

8 **COMMISSIONER PATRONIS:** Anybody else?

9 **MS. CORBARI:** Staff would note that on Issues
10 41 through 44, FEA has a position of no position at this
11 time. If that -- is FEA willing to change that to no
12 position?

13 **MAJOR UNSICKER:** I'm sorry. Did you say 34 or
14 44?

15 **MS. CORBARI:** 41 through 44.

16 **MAJOR UNSICKER:** Oh, sorry. We -- yeah, we
17 can change to no position on that.

18 **MS. CORBARI:** Which then looks like there's a
19 stipulation as to those issues.

20 **COMMISSIONER PATRONIS:** Uh-huh.

21 **MAJOR UNSICKER:** Yes, ma'am.

22 **MS. CORBARI:** A Type 2 stipulation among the
23 parties.

24 **COMMISSIONER PATRONIS:** 41 through 44.

25 **MS. CORBARI:** Okay.

1 **COMMISSIONER PATRONIS:** Wow, we're making
2 progress.

3 **MS. CORBARI:** So we can go to 45, 46, 47, 48.

4 **MR. REHWINKEL:** Commissioner?

5 **COMMISSIONER PATRONIS:** Yes, OPC.

6 **MR. REHWINKEL:** I think the Public Counsel has
7 a position on Issues 48 through 51 to enter into Type
8 2 stipulations where we would take no position and a
9 position to stipulation there.

10 **MS. CORBARI:** And, Charles, that was
11 48 through 51?

12 **MR. REHWINKEL:** Yes, correct.

13 **MS. CORBARI:** Again, on Issues 48 through 51,
14 FEA has a position of no position at this time. Is FEA
15 willing to change their position at this time to no
16 position?

17 **MAJOR UNSICKER:** We are, yes, ma'am, on those
18 particular issues you just identified.

19 **MS. CORBARI:** So then it looks like there may
20 be a Type 2 stipulation on Issues 48 through 51.

21 Okay. We are on to 52, 53, 54.

22 **MR. REHWINKEL:** Let me --

23 **COMMISSIONER PATRONIS:** OPC?

24 **MR. REHWINKEL:** Commissioner, let me state for
25 the record, 54 through 70, that Public Counsel will

1 endeavor to give you and your staff a decision by the
2 end of the day tomorrow about whether we would take a
3 Type 2 stipulation on these issues, but it's still --
4 it's under consideration.

5 **COMMISSIONER PATRONIS:** Okay.

6 **MS. CORBARI:** And that was 54 through 70?

7 **COMMISSIONER PATRONIS:** Uh-huh.

8 **MR. REHWINKEL:** I apologize. I'm looking at
9 the motion to -- I mean, the cheat sheet on issues for
10 identification. So let me state 54, 55, 56, 57, 58, 62,
11 65, and 70. I apologize. There was a series of
12 expense-related issues that we are considering. I
13 apologize for the confusion. I got ahead of myself.

14 **MS. CORBARI:** I got excited.

15 **COMMISSIONER PATRONIS:** Me too. Gulf?

16 **MR. MELSON:** Charles, Issue -- Commissioner,
17 Issue 61 looks like it's another one where we've got a
18 yes and they've got a no, but we're agreeing to the same
19 adjustment. I wonder if Charles might add that to the
20 list he just read.

21 **MR. REHWINKEL:** Yes, I did have that written
22 down because that's an adjunct to Issue 36. So we are
23 willing on 61 to stipulate.

24 **COMMISSIONER PATRONIS:** Okay. Any other
25 parties?

1 **MR. MOYLE:** We're not going to stand in the
2 way on 61.

3 **COMMISSIONER PATRONIS:** Okay.

4 **MS. CORBARI:** And on issues -- these issues,
5 54, 55, 56, 57, 58, 62, 65, 70, and 61, FEA has no
6 position at this time. Is FEA willing to change their
7 position on those issues at this time?

8 **MAJOR UNSICKER:** Yes, ma'am. Just following
9 up, you said 61, 58, and 59?

10 **MS. CORBARI:** I'm sorry, Major. Can you
11 repeat that?

12 **MAJOR UNSICKER:** Which numbers did you say
13 again?

14 **MS. CORBARI:** Starting with 54, 55, 56, 57,
15 58, 61, 62, 65, and 70.

16 **MAJOR UNSICKER:** No, FEA doesn't have a
17 problem with changing on those ones.

18 **MS. CORBARI:** Okay. So it appears that those
19 issues may be stipulated. OPC will confirm that.

20 **MR. MOYLE:** And FIPUG is going to look at them
21 and be bound by the 5:00 o'clock tomorrow.

22 **MS. CORBARI:** Okay. So addressing the issues
23 in between, we have, it looks like, 60 -- I'm sorry, 59,
24 60. We covered 61 and 62, 63, 64. We covered 65, 66,
25 67, 68, 69. It looks like the parties have -- with the

1 exception of FIPUG, all the parties have no position at
2 this time or no position. FIPUG, Gulf?

3 **MR. MOYLE:** I anticipate there will probably
4 be some follow-up conversations on some of these things.

5 **MR. BADDERS:** Yeah. We've identified this
6 issue to consult with them.

7 **MS. CORBARI:** Okay. We covered 70.
8 Seventy-one, it looks like 71 is similar with all the
9 parties having no position. FIPUG, no.

10 **MR. MOYLE:** We'll have some discussion. I
11 mean, we have, over the years in rate cases, asked some
12 questions about what is in administrative and general
13 expenses, so that's the reason for putting that issue.
14 But some of these other issues I anticipate having some
15 discussions with Gulf after the prehearing conference.

16 **MS. CORBARI:** Okay. Seventy-two, 73, 74.

17 **COMMISSIONER PATRONIS:** OPC?

18 **MR. REHWINKEL:** Yes. Public Counsel would
19 like to add to Ms. McCullar, Ms. Ramas as a witness on
20 this issue as well, which would also require an
21 amendment on Section VI where the listing of issues by
22 the witnesses are. We just need to insert 74 there.

23 **MS. CORBARI:** So you're inserting Witness
24 Ramas on 74. Was that included in your revised
25 prehearing statement today?

1 **MR. REHWINKEL:** No, that's new today.

2 **MS. CORBARI:** Okay. Seventy-five, 76. It
3 looks -- staff would point out that it looks like 76 may
4 be possible for a stipulation. No?

5 **COMMISSIONER PATRONIS:** OPC?

6 **MR. REHWINKEL:** I don't think that we will be
7 in a position to stipulate on this one.

8 **MS. CORBARI:** Okay. Seventy-seven, 78, 79,
9 80.

10 Next section, revenue requirement issues, 81,
11 82.

12 Cost of service and rate design issues, 83.
13 Staff would point out -- would ask whether or not the
14 parties believe Issue 83 may be stipulated.

15 **COMMISSIONER PATRONIS:** Gulf?

16 **MR. BADDERS:** Yes, from Gulf's perspective, it
17 should be.

18 **COMMISSIONER PATRONIS:** OPC?

19 **MR. REHWINKEL:** From Issues 83 to 106, the
20 Public Counsel is in a position to -- our position will
21 be no position on these. I would state that for 98 and
22 100, we have some specific language that we would ask
23 that the parties read as not standing in the way if
24 everyone else agrees. So we have no position and we
25 have a caveat, but that caveat language should not be

1 read to stand in the way of a Type 2 stipulation, if
2 that makes sense.

3 **MS. CORBARI:** And which issues, Charles, with
4 the caveat?

5 **MR. REHWINKEL:** Ninety-eight and 100 we have
6 caveat language. I just wanted to state that from 83 to
7 106 we have -- do not intend to stand in the way of any
8 Type 2 stipulation that the parties may wish to enter
9 into. Just to state that one time so we don't --

10 **MS. CORBARI:** Okay. Any of the other parties
11 have a comment on 83? And staff would add, for Issue
12 83, the inclusion of a caveat to make fallout
13 adjustments based on the Commission's decision on other
14 issues. The addition of that to this issue may allow
15 this issue to be stipulated as well --

16 **COMMISSIONER PATRONIS:** Okay.

17 **MS. CORBARI:** -- on behalf of staff.

18 **COMMISSIONER PATRONIS:** Gulf?

19 **MAJOR UNSICKER:** I don't think FEA would
20 necessarily have opposition to that. We'll check and
21 give the answer with the rest of our answers by tomorrow
22 at 5:00.

23 **COMMISSIONER PATRONIS:** Gulf?

24 **MR. BADDERS:** Again, we'll wait and we'll see
25 the language, but I don't think that'll be an impediment

1 to a stipulation.

2 **MS. CORBARI:** Okay. Issue 84, 85. Staff
3 believes that Issues 85 and 86 -- SACE?

4 **MR. MARSHALL:** We're not prepared to stipulate
5 to Issues 85 or 86.

6 **MS. CORBARI:** Okay. Eighty-seven, 88, 89, 90,
7 91, 92, 93. Ninety-three appears that a stipulation may
8 be possible.

9 **COMMISSIONER PATRONIS:** Gulf?

10 **MR. BADDERS:** Yes, I believe that is true of
11 Issue 93 and Issue 94.

12 **COMMISSIONER PATRONIS:** Other parties?

13 **MS. CORBARI:** And it looks like on Issues
14 93 and 94 FEA has no position at this time. Is FEA
15 willing to change their position at this time to no
16 position?

17 **MAJOR UNSICKER:** I don't think it's going to
18 be a problem, but let me check and I'll provide that
19 correspondence that's due by tomorrow at 5:00.

20 **MS. CORBARI:** Okay. Thank you, Major.

21 **MAJOR UNSICKER:** Yes, ma'am.

22 **MS. CORBARI:** We may have possible
23 stipulations for 93 and 94, pending FEA confirmation.
24 Okay. Ninety-five.

25 **MR. REHWINKEL:** Commissioner?

1 **COMMISSIONER PATRONIS:** Yes, OPC.

2 **MR. REHWINKEL:** If you'll see on Issues
3 95 through 100, the Public Counsel states no position
4 and then has that caveat language I talked about.
5 Without changing what I said earlier, that this is not
6 intended to stand in the way of a Type 2 stipulation, I
7 think it would be preferable to remove the no position
8 language so that the rest of that position doesn't get
9 stricken. So the "no position" language on 95 through
10 100, those two words at the beginning of each position
11 should be stricken and the explanatory language should
12 stay behind.

13 **COMMISSIONER PATRONIS:** Okay.

14 **MS. CORBARI:** Just to confirm OPC's positions
15 on Issues 95 through 100, strike "no position" at the
16 beginning.

17 **MR. REHWINKEL:** That is correct. Thank you.

18 **MS. CORBARI:** Okay. So I think we're on 96,
19 97, 98. Staff would note that it appears 98 may be
20 possible for a stipulation.

21 **COMMISSIONER PATRONIS:** Gulf?

22 **MR. BADDERS:** Gulf agrees.

23 **COMMISSIONER PATRONIS:** Mr. Moyle?

24 **MR. MOYLE:** I just was -- the language that
25 OPC has there, that's just stating a position. It's not

1 standing in the way of any stipulation; correct?

2 **MR. REHWINKEL:** That's correct.

3 **MR. MOYLE:** Okay. Thanks. Thank you.

4 **MS. CORBARI:** FEA has no position at that
5 time. Is FEA willing to change their position at that
6 time on Issue 98?

7 **MAJOR UNSICKER:** I believe we will, but if I
8 could just check and get back with you the rest of my
9 responses by tomorrow.

10 **MS. CORBARI:** Sure. And, FIPUG, you adopt the
11 position of FEA there.

12 **MR. MOYLE:** Yeah. We'll -- 5:00 o'clock
13 tomorrow is probably the same position we would take.

14 **MS. CORBARI:** Okay. Moving on to 99, 100. It
15 appears that Issue 100 may be stipulated.

16 **COMMISSIONER PATRONIS:** Gulf?

17 **MR. BADDERS:** We agree.

18 **MS. CORBARI:** And on Issue 100, with
19 confirmation tomorrow with FEA on their position on no
20 position at this time in Issue --

21 **MAJOR UNSICKER:** Yes. That's correct from
22 FEA.

23 **MS. CORBARI:** And then Issue 100 may be
24 stipulated possibly.

25 Okay. Issue 101.

1 **COMMISSIONER PATRONIS:** Gulf?

2 **MR. BADDERS:** I believe this is also in a
3 position to be stipulated. I believe what we would need
4 to do is to combine Gulf's and OPC's positions. So
5 basically it would read what we have with a comment at
6 the end, "but no sooner than July 1, 2017."

7 **MR. REHWINKEL:** I think we can agree to that.
8 We can do a Type 1 on that one.

9 **MS. CORBARI:** So the parties are in agreement
10 for a Type 1 Stipulation on Issue 101. FEA's position
11 on Issue 101 is no position at this time.

12 **MAJOR UNSICKER:** Yeah. I think FEA would be
13 okay with that at this point.

14 **MS. CORBARI:** Okay.

15 **MR. MOYLE:** And FIPUG would be okay with
16 what's been just quickly discussed here, which is -- so
17 long as it's not sooner than July 1, 2017, which I think
18 is the intent; correct?

19 **MS. CORBARI:** So to confirm, Gulf and OPC's
20 positions would be combined and be the positions of --
21 the same position for both Gulf and OPC?

22 **MR. BADDERS:** Yes.

23 **MR. REHWINKEL:** Yes.

24 **MS. CORBARI:** Okay. Other issues, Issue 102,
25 103, and 104.

1 **COMMISSIONER PATRONIS:** Schef?

2 **MR. WRIGHT:** Thank you, Commissioner. On 104,
3 we changed our position to no position at this time in
4 the redline I sent back over, but I think it got
5 obscured by the draft watermark and left off. But we
6 are no position on 104.

7 **COMMISSIONER PATRONIS:** Okay.

8 **MR. WRIGHT:** Thanks.

9 **MS. CORBARI:** Okay. And SACE and Sierra --
10 SACE and League of Women Voters' positions on 103 and
11 104 indicate same as Issue 102. Would it -- staff -- in
12 the prehearing order be appropriate to copy and paste
13 your -- SACE's positions?

14 **MR. MARSHALL:** Yes, that would be fine.

15 **MS. CORBARI:** And on issues -- on Issues 102,
16 103, and 104, staff -- Commissioner, staff took a
17 position that the resolution of these issues is
18 dependent on the final rates and charges ultimately
19 established by the Commission, and staff does not
20 believe these issues are ripe for final decision at this
21 time. Is Gulf willing to stipulate to that?

22 **COMMISSIONER PATRONIS:** Gulf?

23 **MR. BADDERS:** Yes, Commissioner. We propose
24 some alternate language here as the second paragraph,
25 which would basically effectuate a deferral. And to do

1 that, I believe we would just enter the testimony of
2 Mr. Floyd into the record and stipulate this issue to be
3 deferred.

4 **MR. MARSHALL:** I think we would object to
5 Mr. Floyd's testimony being entered into the record. I
6 don't think at this time we're ready to stipulate to his
7 testimony. I understand the desire to defer this issue
8 for consideration later, but at this time we're not
9 ready to stipulate to Mr. Floyd's testimony.

10 **MR. BALLINGER:** Commissioner, what makes this
11 a little awkward is we enter testimony, but we're not
12 voting on an issue. How do we deal with the issue if
13 this docket gets closed? That's what I'm struggling
14 with. If we're going to deal with these conservation
15 programs at a later date, it might be cleaner to just
16 spin them out, have Gulf refile under a separate docket,
17 and we can deal with it that way. That's what's a
18 little confusing, I think, with putting in the testimony
19 now.

20 **COMMISSIONER PATRONIS:** Mr. Moyle?

21 **MR. MOYLE:** I mean, there's a separate docket
22 that handles energy efficiency measures that comes
23 around periodically, you know, that may be appropriate
24 as well. You know, I'm not sure how it's handled here,
25 but this is one that has me scratching my head as well.

1 **COMMISSIONER PATRONIS:** Gulf?

2 **MR. BADDERS:** This witness addresses a couple
3 of other issues that have not yet been stipulated to, so
4 it may be that -- I mean, the testimony will have to be
5 addressed regardless. I don't want to have to go
6 through and -- I'm sorry -- and parse out the pages that
7 deal with the DSM part. So I guess the best thing to do
8 would be to leave it in for now. And if we can resolve
9 the other issues, deal with it at that point. If we
10 can't, then he'll need to take the stand.

11 **MS. CORBARI:** Staff can work with Gulf and the
12 rest of the parties, SACE, to work towards resolving the
13 issue of Mr. Floyd's testimony in the next several days.

14 **COMMISSIONER PATRONIS:** Okay. Thank you.

15 **MS. CORBARI:** Issue 105, 106.

16 **COMMISSIONER PATRONIS:** OPC?

17 **MR. REHWINKEL:** Yes. Commissioner, I believe
18 that the Public Counsel can enter into a Type
19 2 stipulation on 106.

20 **COMMISSIONER PATRONIS:** Any other parties?

21 **MS. CORBARI:** On Issue 106, FEA has no
22 position at this time, assuming they clarify by tomorrow
23 they're willing to change their position to no position,
24 106 --

25 **MAJOR UNSICKER:** Yeah, I think that's what FEA

1 would like to do like the others.

2 **MS. CORBARI:** -- 106 can be stipulated.

3 **COMMISSIONER PATRONIS:** Okay.

4 **MS. CORBARI:** And the final issue, 107.

5 **COMMISSIONER PATRONIS:** OPC?

6 **MR. REHWINKEL:** Yes. The Public Counsel would
7 change its position from yes to no.

8 **COMMISSIONER PATRONIS:** Other parties? Gulf?

9 **MR. BADDERS:** We have no objection to the
10 stipulation. Oh, I'm sorry.

11 **MS. CORBARI:** Okay. Okay. I guess moving on
12 to additional contested issues.

13 **COMMISSIONER PATRONIS:** It appears through --
14 OPC, FIPUG, and Wal-Mart have each proposed an
15 additional issue, and Gulf objects to the inclusion of
16 all three of these additional proposed.

17 **MS. CORBARI:** Yes, Commissioner. As staff
18 previously indicated, OPC, FIPUG, and Wal-Mart have each
19 proposed an additional issue, and Gulf opposes the
20 inclusion of all the additional issues. Gulf, OPC,
21 League of Women Voters, SACE, Sierra Club, FIPUG, and
22 Wal-Mart have filed comments in support or in objection
23 to the inclusion of the issues. Again, you may rule
24 from the bench, as desired, on the issues, or you may
25 take the arguments under advisement and issue a ruling

1 in the prehearing order or in a separate order.

2 **COMMISSIONER PATRONIS:** I've reviewed the
3 comments that were filed by the parties on the proposed
4 additional issues, and thank you for the comments. They
5 were instructive. Let's go through each one of the
6 additional proposed issues. Staff will identify the
7 issues, then each party will have three minutes to
8 present its arguments, including or excluding an issue.
9 OPC? Staff?

10 **MS. CORBARI:** The first issue proposed is OPC
11 issue on federal -- proposed federal tax legislation.

12 **COMMISSIONER PATRONIS:** All right. The clock
13 has started.

14 **MR. REHWINKEL:** Thank you, Commissioner
15 Patronis. We appreciate your indulgence to hear
16 argument. The Public Counsel's position is a
17 fundamental that a party is entitled to raise any issue
18 that is relevant to the proceeding. We have done that.
19 We believe the burden is on a person objecting to have
20 an issue stricken.

21 This issue is fundamental. It is one that has
22 a range of \$14- to \$28 million of revenue requirements
23 for the customers. We believe the Commission has
24 precedent for acting very similarly to preserve its
25 jurisdiction over revenues for tax law changes that are

1 made coincident with or after the hearing is conducted
2 in a case. This is not an insignificant issue. The
3 President of the United States and leaders of Congress
4 have stated they intend to enact tax reform this year.
5 The Treasury Secretary has stated he hopes to have that
6 done by August of this year, less than 60 days after
7 rates go into effect in this docket.

8 The revenue requirement in this case is based
9 on the tax rate in effect at the time that rates are to
10 be collected, and we believe that it is fundamental that
11 the customers be protected and that monies be subject to
12 refund if the tax law changes on a reasonable -- within
13 a reasonable time after rates are set.

14 So we have circulated to the parties orders
15 that describe a situation that happened 26 years ago
16 where there was a proposed tax regulation that the
17 Commission, in order to protect the companies when a tax
18 law change was unfavorable to the customers, held money
19 subject to refund and then adjusted rates going forward
20 when the tax regulation was not enacted. So we think
21 the shoe is on the other foot. Tax law benefits are
22 looming based on statements made in Washington, based on
23 statements made by Gulf's leadership, parent company
24 leadership, and those benefits would benefit the
25 customers. Rates should not be set higher than they

1 need to be. And we intend to present cross-examination
2 evidence in this case, and we believe Gulf should even
3 be entitled to present supplemental testimony on this
4 either in writing or live because we are not trying to
5 be unfair to Gulf, but we're trying to ask that fairness
6 for customers be preserved in this issue.

7 The fundamental issue that we're asking for is
8 that the Commission attach jurisdiction to the increment
9 that is represented by rate reductions. Thank you.

10 (Timer sounding.)

11 **COMMISSIONER PATRONIS:** This is the first time
12 I've used this that way.

13 Thank you. FEA, any comments? Major?

14 **MAJOR UNSICKER:** No, sir, FEA doesn't have any
15 comments.

16 **COMMISSIONER PATRONIS:** FIPUG?

17 **MR. MOYLE:** We support OPC's position. I
18 think the only comment I would make, sir, is that, you
19 know, since we're using projected test years to set
20 rates, it seems to me logical that if there's a big
21 material change that takes place in '17 with respect to
22 tax changes, either good for Gulf or bad for Gulf in
23 terms of bottom line, that it ought to be something that
24 the Commission, you know, is free to consider so that
25 the, you know, when setting rates, the pot is right, as

1 compared to setting them and then have some big change
2 and then not -- and then being hamstrung and not being
3 able to react and adjust to that. So we support what
4 OPC is trying to do, which is what I just described as I
5 understand it.

6 **COMMISSIONER PATRONIS:** League? SACE?

7 **MR. MARSHALL:** We support OPC's position, and
8 we would have nothing to add to that.

9 **COMMISSIONER PATRONIS:** Okay. Sierra Club?

10 **MS. JOHNSON:** Sierra Club also supports OPC's
11 position and has nothing to add. Thank you.

12 **COMMISSIONER PATRONIS:** Okay. Wal-Mart?

13 **MR. WRIGHT:** Thank you, Commissioner. Very
14 briefly, Wal-Mart supports the OPC's proposal to include
15 this issue. This is an entirely appropriate issue as
16 backstopped by the citations to Commission precedent
17 provided by Mr. Rehwinkel. It's necessary to protect
18 customers and ensure that their rates will be fair,
19 just, and reasonable in the future, and similarly and in
20 the same vein, i.e., achieving fair, just, and
21 reasonable rates to avoid a windfall to Gulf Power.
22 Thank you.

23 **COMMISSIONER PATRONIS:** Gulf?

24 **MR. BADDERS:** Yes, Commissioner. We have been
25 through a very long hearing process. We've developed

1 107 issues. They've developed along the way in a very
2 collaborative method. We've had several meetings where
3 issues have been raised. Testimony has been filed.
4 We're two weeks away from a hearing, and we're now
5 presented with a very complex, potentially complex
6 issue, an issue where there is no testimony, none, which
7 is obviously why there's the offer to file supplemental
8 testimony. We don't have time to do that. We have two
9 weeks to get ready for a hearing. It's fundamentally
10 unfair at this stage of the game to raise this issue.

11 Nothing has happened in the last three weeks.
12 It's the same news reports. It's the same statements.
13 There's no proposed legislation. There's not a proposal
14 that anyone can even look at to analyze to see what type
15 of impact. This is framed as a legal issue. It's not
16 just a legal issue. There are a lot of factual matters
17 that have to be determined in this.

18 If we look at the changes that Mr. Rehwinkel
19 provided today in their prehearing statement, they go
20 throughout many issues. They make many statements about
21 the amount, timing, and all that. All those are factual
22 issues, factual issues that there's no testimony about
23 that has been filed. I understand he'd like to develop
24 that on cross, but it's simply fundamentally unfair to
25 raise this type of an issue basically on the last step

1 of a rate case proceeding just before we go to hearing.

2 The cites that they provide in each of the
3 cases that I was able to get through, there was a
4 proposed piece of legislation or a proposed rule at the
5 IRS or somewhere that we could look at, we could all
6 look at and make a determination this is a potential
7 impact, this is how it may impact the electric industry.
8 Not one company, but the industry as a whole. This type
9 of a change, if it occurs, may affect the
10 water/wastewater industry, the gas industry, and the
11 electric industry.

12 This isn't something we can carve out just for
13 Gulf Power in our case here. This is something that if
14 it happens, the Commission, on its own motion or
15 initiation, or a party can initiate a proceeding to ask
16 the Commission to look at it, if it happens. We'll have
17 the facts before us. Factual determinations can be made
18 and they can be applied. In this case, it's
19 fundamentally unfair at this stage of the game to raise
20 and litigate this issue.

21 **COMMISSIONER PATRONIS:** OPC, isn't this -- I
22 mean, is it premature? There's not legislation.

23 **MR. REHWINKEL:** Commissioner, it's not
24 premature because this is not idle talk. This is the
25 President of the United States and the leaders of the

1 House and the Senate. Gulf Power's parent company,
2 Southern Company, as I put in my comments, has made
3 statements to investors that indicates that there is
4 some meat on the bone to this. And we're not asking
5 that the Commission determine what the amount is. We're
6 only asking that the Commission protect customers by
7 keeping this subject to refund. Gulf is the only
8 company in here asking for a rate increase right now,
9 and they're asking for it based on a tax rate that the
10 people who matter in Washington are saying they want to
11 change.

12 So it doesn't hurt for the Commission to
13 protect customers, to attach jurisdiction and make sure
14 that everyone is on notice that if there is a change in
15 law, that the rates should come down by an amount that
16 can be fairly easily identified. We are willing to work
17 on the language in the issue. But the cases that I
18 cited, the regulation occurred after the vote had been
19 even taken, and they went back into the case and held
20 the revenue subject to refund to protect the company and
21 the customers. So we believe this is not an
22 insignificant amount of money, and all the Commission
23 has to do is to protect customers and attach the
24 revenues.

25 So it's not premature. There -- and we did

1 not raise it lazily late. The testimony of Mr. Mnuchin
2 that I cited was on February 22nd. Gulf made their
3 comments on February 23rd. I may have those date
4 backwards. So we raised it very shortly thereafter. So
5 it's not something we can control, but it is a very real
6 possibility.

7 **COMMISSIONER PATRONIS:** Staff, I've been
8 listening to the comments, but if Congress did do this,
9 it would apply across the board to every utility in the
10 state, wouldn't it?

11 **MS. CORBARI:** I'm sorry, Commissioner. Could
12 you repeat your question?

13 **COMMISSIONER PATRONIS:** I'm listening to the
14 comments, but anything that would happen on a federal
15 level is going to apply to every utility in the state;
16 correct?

17 **MS. CORBARI:** Correct, Commissioner. If the
18 purported tax changes do occur, they would affect all
19 the IOUs.

20 And going back similarly, 26 years ago, in
21 1990, *Florida Administrative Code*, Rule 25-14.003, which
22 addressed changes in tax rates, was repealed in favor of
23 regular statutory requirements for earnings reviews,
24 rate cases in limited proceedings, which are more
25 conducive for dealing with changes in tax rates.

1 Specifically, that citing order, No. 23570, issued
2 October 2nd, 1990, in Docket No. 891278-PU, in proposed
3 revisions to Rule 25-14.003, F.A.C., corporate income
4 tax expense adjustment rule midpoint and additional
5 changes.

6 Staff believes that OPC's issue seeks a
7 limited reopening of this proceeding on an issue that
8 staff believes is premature and not ripe for
9 consideration. OPC's issue assumes that federal tax
10 litigation will be passed, taxes will be reduced, and
11 will apply to the 2017 tax year, all of which are
12 speculation at this point.

13 If the purported changes do occur, the tax
14 issue would be dealt -- could be dealt with collectively
15 for all the IOUs in a limited proceeding subsequent to
16 the tax -- the changes in tax rates, which would be more
17 appropriate than a limited reopening of this proceeding
18 to speculate on the implication of nonexistent tax
19 legislation.

20 Staff would echo Gulf's reading of the orders
21 that Mr. Rehwinkel proposed and point out significantly,
22 in every instance, there was some type of rule or
23 directive from the Treasury Department. Particularly in
24 one of the orders Mr. Rehwinkel cites, Order No. 23858,
25 one portion of -- the Commission did not address one

1 portion of the Treasury regulation because the
2 regulation had an indefinite future effective date.
3 Similar to here, we have no effective date with no
4 proposed legislation.

5 **MR. REHWINKEL:** Commissioner, may I be heard
6 on that?

7 **COMMISSIONER PATRONIS:** Please. OPC.

8 **MR. REHWINKEL:** This was a proposed IRS
9 regulation with an effective date that was proposed of
10 December 20th, 1990. The Commission went back -- and
11 the IRS withdrew the regulation on April 11th after the
12 legal director of the Commission and I went to
13 Washington and argued to the IRS that it didn't apply,
14 and they withdrew it. But the Commission took action
15 based on a proposed regulation that had no force and
16 effect of law. And what they did was they protected the
17 companies and they raised rates based on just the
18 proposed regulation.

19 And that regulation came out -- in one case it
20 came out a month at least after the Commission already
21 voted on a rate increase. It was very late. The
22 Commission was well aware of the proposed effective
23 date, but that effective date never went into effect.
24 It was just a proposal.

25 And I -- I think it's -- it would be very bad

1 public policy for this Commission to lose jurisdiction
2 over a potential large amount of dollars that would be a
3 windfall to the shareholders if the Commission doesn't
4 protect customers.

5 The analysis that we gave -- that I could give
6 you and that I will give to the full Commission if this
7 issue is not carried forward will show that the shoe is
8 now on the other foot. Then, in 1990 and '91, the tax
9 reduction went -- the tax change was not favorable to
10 the customers. Here the tax change is favorable to the
11 customers. We think symmetry should require that the
12 company and the customers are treated fairly.

13 I can say this, that this is important enough
14 to us that we will -- we will insist on our rights to
15 proffer testimony and proffer cross-examination all
16 through the hearing on this issue so we can protect our
17 rights on appeal, because the Commission's obligation is
18 to set rates based on the costs that the company will
19 incur in the future. And so we don't think that it is
20 inappropriate to attach jurisdiction to those revenues,
21 like the Commission did back in 1990 and 1991.

22 We would be happy to brief the full Commission
23 on our legal analysis of the cases that we gave. I
24 don't believe that the staff's presentation is entirely
25 accurate, and I don't blame them because I just brought

1 those cases to their attention last night. So thank
2 you.

3 **MS. CORBARI:** Commissioner, staff would just
4 like to add a few points. The -- if the Commission --
5 if the Commissioner was so inclined not to include this
6 issue, the Commission is not giving up jurisdiction, as
7 Mr. Rehwinkel mentioned. As staff stated, if the
8 purported tax legislation were to occur, it would affect
9 all the, all the utilities, and there is a mechanism for
10 dealing with that once it's actually enacted. We
11 would -- could bring them all in one, in one collective
12 docket. We could bring them in individually. Several
13 of these orders provided by Mr. Rehwinkel were
14 amendatory orders, as he stated, after a vote. There
15 are options than dealing with something at this point
16 that is speculation.

17 **COMMISSIONER PATRONIS:** Gulf?

18 **MR. BADDERS:** I guess not to belabor the
19 point, we have no idea what this legislation may look
20 like. There's no way to address it here. There's no
21 reason to set up a process to address it in the future
22 where one already exists. If the Commission -- if there
23 is a new tax plan that is passed in August, September,
24 October of this year or next year and the Commission
25 brings a company in, whether or not to -- or to

1 determine whether or not their rates are fair, just, and
2 reasonable, if they find they're not because of the tax
3 rate that has been incorporated in their rates, the
4 Commission can pursue that through a limited proceeding.

5 There is clearly a path forward once we know
6 the facts, once we know what we need to be looking at.
7 We don't have that here. And, again, I don't believe
8 the Supreme Court -- I cannot opine exactly what they
9 would do, but I believe it's within your discretion
10 today whether or not this issue goes forward.

11 **COMMISSIONER PATRONIS:** Okay. Let's go on and
12 take up the next issue. FIPUG. Staff.

13 **MS. CORBARI:** The next issue is an issue
14 proposed by FIPUG: What need exists, if any, for
15 Scherer Unit 3 to serve Gulf's retail customers?

16 **COMMISSIONER PATRONIS:** Okay. Mr. Moyle?

17 **MR. MOYLE:** Thank you for the chance to argue
18 some points with respect to why FIPUG believes it's
19 important for Gulf's consumers to have this issue
20 considered by the Commission.

21 The first point is it's never been considered
22 directly before this proceeding. I mean, the Scherer
23 Plant has been around for a long time, but there has
24 never been a need determination proceeding or any kind
25 of formal proceeding where this issue has been looked at

1 by the Commission. So this is the opportunity to look
2 at that.

3 You know, I will probably ask some questions
4 of witnesses: "Where were you when this issue first
5 arose?" And, you know, a lot of senior executives and
6 others were in high school, as was I, at the time, and
7 so it doesn't make a lot of sense to my way of thinking
8 to take something that was done 30-plus years ago and
9 not rigorously look at is there a need for Scherer 3.

10 And this is not a small issue. If you take
11 the total revenues associated with Scherer, according,
12 you know, to my math, which should be double-checked,
13 but my math has it at about, you know, 33 million bucks
14 out of a \$106 million ask. So roughly a third of this
15 case relates to Scherer. And it's the only issue in the
16 case that FIPUG has put forward, which is a very simple
17 issue, which is, stated: "What need exists, if any, for
18 Scherer Unit 3 to serve Gulf's retail customers?"
19 Simple, direct, straightforward, and, you know, it
20 should be included. It's relevant.

21 And we suggest that Gulf is coming before you
22 and asking you to enter an order that requires Gulf's
23 customers to pull out their checkbooks and pull out
24 their wallets and pay money that, surely, there should
25 be a close examination as to whether something for which

1 \$33 million is at issue should be looked at and
2 determined whether, yes, indeed, it's needed or, no,
3 it's not.

4 And in the written materials that we submitted
5 to you, and we drew your attention to 120.57(1)(b),
6 which provides that parties shall have the opportunity
7 to present evidence and argument on all issues involved
8 in the case. I don't think that there's a debate with
9 respect to this issue being involved because, as I said,
10 there's two or three witnesses that talk to it --
11 Mr. Deason and Mr. Burleson -- and it should be included
12 and set forth in the case squarely and distinctly.

13 **COMMISSIONER PATRONIS:** Thank you. OPC?

14 **MR. REHWINKEL:** Commissioner, we support
15 FIPUG's issue. Thank you.

16 **COMMISSIONER PATRONIS:** FEA?

17 **MAJOR UNSICKER:** Sir, FEA supports FIPUG's
18 issue.

19 **COMMISSIONER PATRONIS:** League, SACE?

20 **MR. MARSHALL:** SACE and the League support
21 FIPUG's issue.

22 **COMMISSIONER PATRONIS:** Sierra Club?

23 **MS. JOHNSON:** Sierra Club also supports
24 FIPUG's issue.

25 **COMMISSIONER PATRONIS:** Wal-Mart?

1 **MR. WRIGHT:** Thank you, Commissioner.

2 Wal-Mart supports the inclusion of this issue. It's
3 relevant. It's important. It's significantly material
4 to the overall dollars involved in this case. And as a
5 matter of public policy, Gulf's customers deserve to
6 have their Florida Public Service Commissioners vote on
7 this issue.

8 **COMMISSIONER PATRONIS:** Gulf?

9 **MR. BADDERS:** Thank you, Commissioner. What I
10 heard from Mr. Moyle today was basically a restatement
11 of their position on Issue 19. Issue 19 is the
12 Scherer 3 issue provided by Staff. It is very neutral.
13 It allows us to argue our position in this case, our
14 theory of the case, the standard that should apply to
15 Scherer 3 being rededicated to retail. It also allows
16 the other parties, FIPUG and the others, to argue
17 whether or not Scherer 3 is needed. We dispute whether
18 or not need is at issue here.

19 What they're trying to do is turn their
20 position into an issue. And if it's worded as an issue
21 as it is now, it somehow becomes the standard by which
22 this will be decided. That's inappropriate. I could
23 have included a similar issue stating our basis for
24 Scherer coming in, but that wouldn't be a neutral issue.
25 And they would have a hard time taking a position on

1 that issue without giving up some of their rights.

2 Where we are today is there is already an
3 issue in place where they can state their full case;
4 need, otherwise, it doesn't matter. They can state
5 their full position with no prejudice and the Commission
6 will vote. We believe it would be improper and unfair
7 at this point for an issue to be worded such that it
8 favors one party's position versus the other.

9 **COMMISSIONER PATRONIS:** Mr. Moyle?

10 **MR. MOYLE:** Well, thank you for the chance.
11 It's an issue FIPUG feels strongly about, so thanks for
12 the chance to have the last word on it.

13 I do have to take issue with my friends from
14 Gulf with respect to the contention that the issue is
15 somehow argumentative or, you know, setting FIPUG up in
16 an advantageous position. I mean, if it were a leading
17 question that says something about Scherer being around
18 for 30 years and never having been looked at and had a
19 whole bunch of facts, I think that would be a good
20 point. But the issue is non-leading. It just simply
21 says, "What need exists, if any, for Scherer 3 to serve
22 the retail customers?" And so they could say, "Yes."
23 We could say, "No." You know, it's not set up in a way
24 that advantages FIPUG. It's, we think, a very important
25 issue that is ripe for this Commission to consider.

1 And I would also note that, as you're
2 familiar, I believe, having served in the legislature,
3 there's need determinations that power plants go
4 through. And that -- part of that process is DEP looks
5 at it. The Commission looks at need determinations
6 under current law. So the legislature, I think,
7 subsequently has spoken with respect to need, and it
8 ought to be something that, you know, that's front and
9 center in this case.

10 Again, I know it's not a situation where
11 you're counting and, you know, we'll be here at some
12 other rate case with ten issues. So I don't want to get
13 hung around my neck at that point to say we brought ten
14 issues. But it's the only issue that my client has put
15 forward, you know, in this case, and we think it ought
16 to be in the case and be decided on and voted on. I
17 don't think there's a debate about its relevancy. So
18 thank you for the chance to have the final word on that.

19 **COMMISSIONER PATRONIS:** Staff, this predates
20 me, so let's go through and explain how this was carved
21 out in the 07 docket concerning Gulf's requested
22 recovery of Plant Scherer costs in base rates.

23 **MS. CORBARI:** Commissioner, as Gulf stated,
24 Issue 19 in this proceeding is the issue that was carved
25 out of the 07 docket. Staff's Issue 19 was worded to

1 reflect what the 07 order identified as the threshold
2 issue to be determined in this matter.

3 On page 10 of that, of the 07 order, the
4 threshold issue to be determined in this proceeding is
5 whether any of the costs associated with the ongoing
6 ownership and operation of Scherer 3 are recoverable
7 from Gulf's retail customers.

8 Thus, the threshold issue before the
9 Commission, pursuant to the 07 docket, is to determine
10 whether or not Gulf should be permitted to recover costs
11 of Scherer Unit 3 in base rates in this proceeding.

12 Staff's not -- staff is not taking a position
13 by wording the issue that need is not relevant. Staff
14 agrees with Gulf that subjects such as need, other
15 subjects such as prudence, cost-effectiveness,
16 regulatory compact, environmental concerns, et cetera,
17 are positions that go toward the threshold issue,
18 whether or not to allow recovery of Scherer Unit 3.

19 Staff further notes that there is testimony by
20 the various parties discussing these various positions
21 as reasons for the Commission allowing or disallowing
22 the recovery of Scherer, the Scherer costs, so staff
23 does not believe a separate issue is needed at this
24 time.

25 And, Commissioner, one further comment. Staff

1 would, staff would note the parties have made reference
2 to their rights under Chapter 120 and proposing an
3 issue. The request for parties to submit comments on
4 these additional issues comports with the parties'
5 rights under Chapter 120 to propose additional issues in
6 this proceeding. The Commission, in the past, has
7 requested party -- comments from parties on additional
8 issues in various past proceedings, particularly when
9 there's been an issue that's an objection. The request
10 for parties -- the request for comments from the parties
11 in support or objection to the proposed issues in this
12 matter was sought in order to facilitate the discussion
13 of the issue for the prehearing officer's consideration
14 today.

15 **COMMISSIONER PATRONIS:** Okay. Let's go on to
16 the third and final issue, the Wal-Mart issue. Staff?

17 **MR. WRIGHT:** Did you say, "Schef"?

18 **COMMISSIONER PATRONIS:** Well, I was going to
19 let staff start us off, and then we'll --

20 **MS. CORBARI:** Wal-Mart's proposed issue seeks
21 that the Commission require Gulf to initiate a
22 stakeholder process involving Gulf and its customers
23 with the purpose of collaboratively developing
24 additional energy supply options for Gulf and its
25 customers, with particular emphasis on renewable energy

1 measures and initiatives.

2 **COMMISSIONER PATRONIS:** Schef, you're
3 recognized.

4 **MR. WRIGHT:** Thank you, Commissioner, and
5 thank you very much for the opportunity to address you.
6 As we've -- as the proposing parties have said, parties
7 are free to raise issues or free to present testimony
8 and evidence on all issues involved. Our -- we raised
9 this issue in the direct testimony filed by Mr. Chriss.
10 He has provided testimony on this very issue. His
11 recommendation is that the Commission initiate a
12 stakeholder process to develop and propose to the
13 Commission additional energy supply options with
14 emphasis on renewable energy measures for economic
15 development purposes.

16 The questions here are akin to those raised by
17 a motion to dismiss for failure to state a claim upon
18 which relief can be granted. Questions would be whether
19 a utility can conduct a collaborative stakeholder
20 process, whether any other party could propose this
21 issue, and whether the Commission has the jurisdiction
22 to require Gulf to enter into such a process to serve
23 renewable energy and economic development goals.

24 Gulf basically says, in its comments, "This
25 isn't appropriate for a rate case." We disagree.

1 Economic development measures are always relevant to the
2 Commission's ratemaking as a public policy, public
3 interest matter. And renewable energy matters -- issues
4 are also relevant to the Commission's ratemaking.
5 Indeed, Wal-Mart's proposed Issue 105A is every bit as
6 appropriate in this case as Gulf's proposed new economic
7 development tariffs styled as its extra large business
8 incentive rider.

9 The Commission plainly has the jurisdiction to
10 require a utility to participate in collaborative
11 processes. You did so just a few months ago in the FPL
12 case. As part of the settlement in the case, the
13 commission approved a stipulation that FPL and
14 interested parties would enter into a workshop regarding
15 an opt-out proposal. This -- there's no substantive
16 difference between a workshop and a collaborative
17 process.

18 When the Commission issued that order, that
19 requirement that FPL and the parties enter into the
20 workshop process became an enforceable provision of the
21 Commission's order. The Commission has the authority to
22 require the relief that Wal-Mart requests. Due process,
23 of course, must be satisfied, but the only issue there
24 in this instance would be surprise. There's clearly no
25 surprise. This is in our testimony filed some

1 seven weeks ago.

2 In short, it's within your jurisdiction.
3 You've exercised exactly that jurisdiction to require a
4 workshop process coming out of a rate case within the
5 past year, and there's no due process. It's supported
6 by all parties other than Gulf, and, accordingly, we
7 believe you should grant our request to include Issue
8 105A in this proceeding. Thank you.

9 **COMMISSIONER PATRONIS:** OPC?

10 **MR. REHWINKEL:** We support Wal-Mart's right to
11 raise the issue.

12 **COMMISSIONER PATRONIS:** FEA?

13 **MAJOR UNSICKER:** FEA supports Wal-Mart's
14 position.

15 **COMMISSIONER PATRONIS:** FIPUG? Mr. Moyle?

16 **MR. MOYLE:** Yeah. I -- we support their
17 position. And I have -- I think a Commissioner made the
18 reference at one point in time to rate cases being kind
19 of an ultimate true-up. I mean, it's a wide net that is
20 cast for a lot of different issues.

21 Mr. Wright points out that this type of issue
22 with respect to an opt-out was considered in the FPL
23 rate case, so I think, I think it should be an issue.
24 And, you know, the notion that somehow, well, we've got
25 to have, you know, broad issues -- I mean, you could

1 have a rate case that has one issue: How should the
2 rates be adjusted? I don't think that would serve the
3 Commission well or serve the parties well. And I think
4 Mr. Wright has raised the issue, he's put testimony on
5 it, and it would be appropriate to consider this issue.
6 So we support it.

7 **COMMISSIONER PATRONIS:** SACE?

8 **MR. MARSHALL:** SACE and the League support
9 inclusion of Wal-Mart's issue.

10 **COMMISSIONER PATRONIS:** Sierra Club?

11 **MS. JOHNSON:** Sierra Club supports inclusion
12 of Wal-Mart's issue.

13 **COMMISSIONER PATRONIS:** Okay. Gulf?

14 **MR. BADDERS:** I'll be brief. I agree, a rate
15 case casts a wide net. You look at revenue requirements
16 associated with the test year, and that involves almost
17 every aspect of an electric utility. What is being
18 requested here does not impact 2017 test year revenue
19 requirements. It's completely beyond the scope of this
20 proceeding. We have Ten-Year Site Plan dockets. We
21 have other planning dockets that come up. They can
22 submit a petition to try to initiate Commission action
23 on this path.

24 A rate case is not the catchall of everything.
25 It's just not the proper vehicle. There may be a little

1 bit of testimony where, again, they're trying to support
2 their request to have this addressed, but that doesn't
3 mean that it can be vetted in this docket whether or not
4 that is something the Commission wants to look at.
5 There's not sufficient time or testimony to look at
6 that. Again, it's simply beyond the scope of a base
7 rate proceeding.

8 Oh, and, I'm sorry, briefly, the mention of
9 the FP&L settlement, that's a settlement. There was a
10 lot of give-and-take in the settlement. This -- we
11 don't have that here. There's no agreement amongst all
12 the parties that this is something that we want to do,
13 so I don't believe the settlement has any bearing on
14 this.

15 **COMMISSIONER PATRONIS:** Schef?

16 **MR. WRIGHT:** Thank you. Part of the reason --
17 very briefly, and thank you very much, Commissioner.
18 Part of the reason that there's only Mr. Chriss's
19 testimony is that Wal-Mart -- excuse me, that Gulf Power
20 decided not to attempt to rebut Mr. Chriss's testimony.

21 Regarding Mr. Badders' suggestion that the
22 settlement somehow distinguishes the FPL situation from
23 this situation, I strongly, strongly disagree for the
24 reason I articulated earlier. With that provision in
25 the Commission's order, that's an enforceable provision

1 of the order. The Commission has the authority to grant
2 the relief that we're asking for; require this
3 collaborative process to pursue additional energy supply
4 options for a renewable energy promotion and economic
5 development that would benefit all of Gulf's customers.
6 And, accordingly, it properly belongs in the case.
7 Thank you very much.

8 **COMMISSIONER PATRONIS:** Staff, a similar
9 requirement Wal-Mart is asserting was approved by the
10 Commission in the FPL rate hearing we just finished up,
11 negotiated by the parties to that proceeding, was
12 ultimately approved by this Commission. That's right?

13 **MS. CORBARI:** That is correct, Commissioner.
14 The requirement Wal-Mart is referring to was a provision
15 included in the recent FPL rate case which the
16 Commission approved.

17 Staff would note that the requirement was not
18 an issue in the FPL rate case. It was, it was a product
19 of settlement negotiations among the parties and not
20 something that was ordered by the Commission after a
21 hearing.

22 **COMMISSIONER PATRONIS:** Okay. But when you
23 have a settlement negotiated by the parties and then the
24 Commission approves that, it's not setting a precedent;
25 correct?

1 **MS. CORBARI:** Correct, Commissioner.

2 Settlements negotiated by the parties to a proceeding
3 and approved by the Commission are not binding
4 precedent.

5 **COMMISSIONER PATRONIS:** Okay.

6 **MS. CORBARI:** Staff would add staff does not
7 believe the issue is germane at this point to an
8 electric rate case and unnecessary. Staff notes that
9 despite participating in two issue identification
10 meetings conducted by staff and the parties -- one, the
11 first on December 15th, 2016, before intervenor
12 testimony filing, the second on January 23rd, 2017,
13 which was after intervenor testimony -- Wal-Mart did not
14 propose the issue until it filed its prehearing
15 statement on February 21st.

16 That being said, whether or not the parties
17 were on notice of the issue subject -- the subject issue
18 in Wal-Mart's testimony is not the question, but whether
19 or not Wal-Mart's proposed issue is germane to this rate
20 case proceeding, which is something to be determined by
21 the prehearing officer.

22 Staff agrees that post-economic development
23 measures are clearly within the Commission's discretion
24 in base rate proceedings. And as Wal-Mart points out,
25 because Gulf has proposed a new economic development

1 tariff in the instant matter, that is the subject of
2 staff's Issue 93.

3 Wal-Mart is free to petition the Commission in
4 a separate proceeding to require Gulf to initiate a
5 stakeholder collaborative process or to participate in
6 workshops with customers and parties aimed at developing
7 additional energy supply options or renewable energy
8 measures and initiatives.

9 **COMMISSIONER PATRONIS:** Thank you for all
10 contributing your comments and work on these items.
11 I'll just take these all in consideration. My ruling
12 will come out in the final order. Thanks.

13 Any other proposed issues at this time? Okay.
14 Let's go on to the next section.

15 Section IX, exhibit list.

16 **MS. CORBARI:** As staff previously stated,
17 staff notes that the prelim -- a draft preliminary
18 comprehensive exhibit list has been prepared, which
19 includes all prefiled exhibits and includes those
20 exhibits staff wishes at this time to include in the
21 record. Staff has circulated the draft list to the
22 parties to review and determine if there's any
23 objections to the exhibit list or any of staff's
24 exhibits being entered into the record. Again, staff
25 would request that the parties identify whether they can

1 stipulate to the draft comprehensive exhibit list or
2 will object to specific exhibits by close of business,
3 Friday, March 10th.

4 **COMMISSIONER PATRONIS:** Section X, approved or
5 proposed stipulations.

6 **MS. CORBARI:** Staff is not aware of any
7 proposed stipulations other than the possible
8 stipulations identified as we went through the issues.

9 **COMMISSIONER PATRONIS:** Right.

10 **MS. CORBARI:** And staff will advise the
11 Commission of all stipulated issues at the beginning of
12 the hearing.

13 **COMMISSIONER PATRONIS:** Okay. Section XI,
14 pending motions. OPC?

15 **MR. REHWINKEL:** Yes. Commissioner, within the
16 last 15 minutes we have filed a motion to strike a
17 portion of Mr. Jeff Burleson's rebuttal testimony and
18 his Exhibit JEB-3. The -- I don't think there's
19 anything for you to rule on today. Of course, the OEP
20 requires motions to strike prefiled testimony and
21 exhibits be made in writing no later than the prehearing
22 conference. We -- to the extent that requires it to be
23 done before the prehearing conference starts, the order
24 says that, "Absent good cause shown, motions to strike
25 that don't comport with that will be considered

1 untimely." We have stated good cause in our motion, and
2 I think that we just commend to you to consider our
3 motion. And, of course, Gulf will be entitled to an
4 opportunity to respond to the motion.

5 **COMMISSIONER PATRONIS:** Thank you. Gulf?

6 **MR. BADDERS:** Yes, Commissioner. Gulf will
7 file a responsive pleading -- seven days, is that
8 appropriate?

9 **COMMISSIONER PATRONIS:** Is that's fine?

10 **MS. HELTON:** I think it's within seven days,
11 and I don't know if there's a reason why we would ask
12 for it to be done earlier than that.

13 **MS. CORBARI:** Unless time allows otherwise.
14 There's two weeks prior to the hearing.

15 **MR. BADDERS:** We will endeavor -- we will meet
16 the day seven, but we'll endeavor to do it prior to
17 that. And we will address the untimely nature of the
18 filing.

19 **COMMISSIONER PATRONIS:** Okay. Thank you.

20 **MS. CORBARI:** Charles, to be clear, since you
21 just filed it and we've all been sitting here, did you
22 all ask for oral argument in your motion at the hearing?

23 **MR. REHWINKEL:** We did not. We did not.

24 **MS. CORBARI:** Okay.

25 **COMMISSIONER PATRONIS:** Okay. All right.

1 Section XII, pending confidentiality and temporary
2 protective order motions.

3 **MS. CORBARI:** There are approximately
4 21 outstanding requests for confidentiality and/or
5 motions for temporary protective orders pending, most of
6 which were filed at the discovery deadline last week,
7 and today several more came in. Staff is working
8 diligently to address these items.

9 **COMMISSIONER PATRONIS:** Okay. Section XIII,
10 post-hearing procedures.

11 **MS. CORBARI:** Pursuant to the OEP,
12 post-hearing statements are due on March 31st, 2017.
13 Staff suggests that post-hearing statements be limited
14 to 100 pages. Also pursuant to the OEP, staff
15 recommends that post-hearing statement position
16 summaries be limited to 75 words set off with asterisks.

17 **COMMISSIONER PATRONIS:** Gulf?

18 **MR. BADDERS:** Yes, Commissioner. I'll note
19 there are, again, 107 issues. That's about a, give or
20 take, about a page per issue. That's a pretty big
21 endeavor. We would request, consistent with our last
22 couple of cases, a 150-page limit for the brief.

23 **COMMISSIONER PATRONIS:** Can you live with 125?

24 **MR. BADDERS:** That's definitely better than
25 100. Yes, sir.

1 **COMMISSIONER PATRONIS:** Thanks.

2 **MR. BADDERS:** And we talked over with staff
3 and some of the parties, on seven issues we would like
4 the ability to go to 180 words for our positions.

5 **COMMISSIONER PATRONIS:** Okay.

6 **MR. BADDERS:** Thank you.

7 **MR. MARSHALL:** Just for clarification, would
8 that be -- is it a particular seven issues or is it up
9 to the party?

10 **MS. CORBARI:** Typically it's up to the parties
11 to choose the seven issues, with summaries of 180 words
12 set off with asterisks.

13 **MR. MARSHALL:** Thank you.

14 **COMMISSIONER PATRONIS:** OPC?

15 **MR. REHWINKEL:** I know what I'm about to ask
16 about is really a prehearing -- or a beginning of the
17 hearing matter. Is -- I did not see in here, and maybe
18 I just missed it, about opening statements. Is there an
19 intention --

20 **MS. CORBARI:** You beat me to it, Charles.

21 **MR. REHWINKEL:** Oh, I'm sorry. Oh, I
22 didn't -- I was looking -- okay. Okay. I apologize.
23 Sorry. It's that tie.

24 **MS. CORBARI:** I can go ahead and throw that
25 out. Staff would suggest the prehearing officer rule

1 that opening statements, if any, should be allotted as
2 follows: Ten minutes for Gulf, seven minutes for OPC,
3 and five minutes for each of the intervenors. Staff
4 would recommend that the parties not be allowed to share
5 time.

6 **COMMISSIONER PATRONIS:** OPC?

7 **MR. REHWINKEL:** We can live with that.

8 **COMMISSIONER PATRONIS:** All right.

9 **MR. MARSHALL:** I would just ask that if SACE
10 and the League in some way could be allowed to share
11 time, as they were at the service hearings.

12 **COMMISSIONER PATRONIS:** Are you -- when you're
13 saying "sharing time," are you saying that you want ten
14 minutes?

15 **MR. MARSHALL:** No, I don't think we would need
16 the full ten minutes. But, like, seven minutes, I
17 think, would be adequate to share -- to express both our
18 interests.

19 **COMMISSIONER PATRONIS:** So seven minutes
20 total?

21 **MR. MARSHALL:** Correct.

22 **MS. CORBARI:** And that's to make a joint
23 statement?

24 **MR. MARSHALL:** Yes.

25 **COMMISSIONER PATRONIS:** That's fine.

1 **MR. BADDERS:** Commissioner?

2 **COMMISSIONER PATRONIS:** Yes.

3 **MR. BADDERS:** I don't understand why that's
4 necessary here. Parties can take their, in this case,
5 five minutes per party. I mean, I don't see a basis for
6 doing that.

7 **MR. MARSHALL:** We -- if I may respond to that.

8 **COMMISSIONER PATRONIS:** Please.

9 **MR. MARSHALL:** We could take five minutes to a
10 party, but I believe it would be more efficient if SACE
11 and the League were to combine their opening statements
12 together and then have a total of seven minutes. It
13 might make the proceedings move along more swiftly.

14 **MR. BADDERS:** That's fine.

15 **COMMISSIONER PATRONIS:** All right. Well, I
16 don't doubt -- I don't know if anybody is going to waive
17 their opening statements, but if they so choose, then
18 we'll live with the following: Gulf to ten, OPC to
19 seven, intervenors to five each, and then we'll allow
20 you to share your seven minutes together.

21 Witness summaries at the hearing shall be
22 limited to five minutes on direct and rebuttal.

23 **MS. CORBARI:** Real quick, Commissioner.

24 **COMMISSIONER PATRONIS:** Yes.

25 **MS. CORBARI:** Going back to the party position

1 summaries, since Charles got us -- if a party's position
2 has not changed since the issuance of the prehearing
3 order, the post-hearing statement may simply restate the
4 prehearing position; however, if the prehearing position
5 is longer than 75 words, it should be reduced to no more
6 than 75.

7 On the seven additional issues, if a party
8 uses the 180-word limitation on a selected issue, staff
9 would recommend the Commission accept -- uses 180 words
10 on more than seven issues, that the Commission accept
11 the first seven position statements for those and the
12 other ones reduced to 75 words.

13 **COMMISSIONER PATRONIS:** Sounds fine.

14 **MS. CORBARI:** And if a party fails to file a
15 post-hearing statement, that party shall have waived all
16 issues and may be dismissed from the proceeding.

17 **COMMISSIONER PATRONIS:** Okay.

18 **MS. CORBARI:** And finally, staff would submit
19 that the 07 testimony as discussed today, per the
20 stipulation of the parties, be excluded from this
21 proceeding.

22 **COMMISSIONER PATRONIS:** Okay. So parties who
23 have no -- designated no position at this time, their
24 prehearing statement shall be submitted, their positions
25 in writing, by no later than close of business tomorrow,

1 March the 7th. Other positions will become no position.
2 We've already stated this earlier.

3 Proposed additional items. I'll take
4 arguments presented by the parties today under
5 advisement, and the ruling will be in the prehearing.
6 We've already made that clear.

7 Any additional issues approved or in writing,
8 no later than the close of business tomorrow or day the
9 after the ruling is issued. Parties will state whether
10 they can stipulate to the comprehensive exhibit list and
11 will object to specific exhibits by close of business on
12 Friday, March the 10th.

13 **MS. CORBARI:** Yes.

14 **COMMISSIONER PATRONIS:** Okay. Any other
15 matters? Mr. Moyle?

16 **MR. MOYLE:** I have, I have one, and this is
17 somewhat of a by-product of you taking the issues that
18 we proposed under advisement. The issue that we put
19 forward I think probably was factual in nature, but I
20 think it also has some legal aspects to it. So, you
21 know, given that today is the last point in time under
22 the order establishing procedure to raise an issue, to
23 make the record clear, and this is just for, you know,
24 for record purposes, FIPUG would propose a legal issue,
25 which is as follows: "Must Gulf demonstrate by carrying

1 its burden of proof that Scherer 3 is needed in order to
2 serve retail customers, and should those costs be
3 recovered in base rates?" So I think that covers both
4 the legal and the factual issue. And thank you for
5 giving me the chance to put that on the record.

6 **COMMISSIONER PATRONIS:** Okay. Gulf?

7 **MR. BADDERS:** Gulf maintains the same
8 objection to that as we have for the other.

9 **COMMISSIONER PATRONIS:** All right. OPC?

10 **MR. REHWINKEL:** Thank you, Commissioner. Just
11 sort of, again, a housekeeping issue. We appreciate
12 that you will take the arguments under advisement and
13 rule at a later time. There are some issue positions
14 that we have taken that reference Issue 1A, as the staff
15 has numbered it.

16 We would ask leave, if you don't -- if the
17 Commission doesn't allow that issue to be maintained in
18 the case, that we can at least make clerical
19 modifications to our position to accommodate that that's
20 not a numbered issue in the case. I'm not prejudging
21 that that's how the outcome is. I just don't want to
22 get past 5:00 o'clock tomorrow and be unable to change
23 my position to conform with the ruling, and I would
24 assume that no party would object to that.

25 **COMMISSIONER PATRONIS:** Makes sense.

1 **MR. REHWINKEL:** Thank you.

2 **COMMISSIONER PATRONIS:** Okay. Staff?

3 **MS. CORBARI:** Staff has no objections to OPC's
4 request.

5 Could I get FIPUG to restate its issue?

6 **MR. MOYLE:** I can. "Must Gulf demonstrate, by
7 carrying its burden of proof, that Scherer Unit 3 is
8 needed to serve Gulf's retail customers and whether
9 these costs should be recovered in base rates?"

10 **MS. CORBARI:** And you're proposing that as a
11 legal threshold question?

12 **MR. MOYLE:** That's right.

13 **MS. CORBARI:** And Gulf objects. At this
14 point, preliminarily staff's position is the same as it
15 was, Commissioner, in relation to FIPUG's other proposed
16 issue.

17 **COMMISSIONER PATRONIS:** Got you.

18 **MR. MOYLE:** Excellent. And we would -- it's
19 very similar. But I think we would suggest that as a
20 legal matter, in order to recover money from customers,
21 you have to show something is needed and you have the
22 burden to go forward and show that it's needed and why.
23 And that's something that a utility has a burden to do
24 before they get money from customers. So thanks for
25 letting me do that again. You haven't ruled on that,

1 and I just wanted to put it out there.

2 **COMMISSIONER PATRONIS:** Right. All right.
3 Any other matters? SACE?

4 **MR. MARSHALL:** Yes, thank you. The order
5 establishing procedure requires parties to identify
6 whether they intend to use any demonstrative exhibits.
7 At this time, we would like to state that we do intend
8 to use demonstrative exhibits; namely, blowups of
9 pre-existing things in the record or that are clearly
10 derived from the record in this proceeding. By that, I
11 mean either exhibits submitted as part of prefiled
12 testimony or docket entries or discovery responses.

13 **COMMISSIONER PATRONIS:** Okay. Anybody else?
14 Any other matters to come before this prehearing?

15 All right. We stand adjourned. Thank you.

16 (Proceeding adjourned at 4:03 p.m.)
17
18
19
20
21
22
23
24
25

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

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

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

18 DATED THIS 9th day of March, 2017.

19
 20
 21
 22
 23
 24
 25

Linda Boles

 LINDA BOLES, CRR, RPR
 Official FPSC Hearings Reporter
 Office of Commission Clerk
 (850) 413-6734