

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20170002-EG
ENERGY CONSERVATION COST
RECOVERY CLAUSE.

_____ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER
PARTICIPATING: COMMISSIONER RONALD A. BRISÉ
PREHEARING OFFICER

DATE: Wednesday, October 11, 2017

TIME: Commenced at 1:31 p.m.
Concluded at 1:47 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 J.R. KELLY, PUBLIC COUNSEL; CHARLES REHWINKEL,
3 DEPUTY PUBLIC COUNSEL; PATRICIA A. CHRISTENSEN, ERIK
4 SAYLER, and STEPHANIE A. MORSE, ESQUIRES, Office of
5 Public Counsel, c/o the Florida Legislature, 111 W.
6 Madison Street, Room 812, Tallahassee, Florida
7 32399-1400, appearing on behalf of the Citizens of the
8 State of Florida.

9 JAMES D. BEASLEY, J. JEFFRY WAHLEN, ESQUIRES,
10 Ausley & McMullen, Post Office Box 391, Tallahassee,
11 Florida 32302, appearing on behalf of Tampa Electric
12 Company.

13 JEFFREY A. STONE, RUSSELL A. BADDERS, and
14 STEVEN R. GRIFFIN, ESQUIRES, Beggs & Lane, P.O. Box
15 12950, Pensacola, Florida 32591-2950, appearing on
16 behalf of Gulf Power Company.

17 JON C. MOYLE, JR., and KAREN PUTNAL, ESQUIRES,
18 Moyle Law Firm, P.A., 118 North Gadsden Street,
19 Tallahassee, Florida 32301, appearing on behalf of
20 Florida Industrial Power Users Group.

21 JAMES W. BREW, ESQUIRE, Stone Mattheis
22 Xenopoulos & Brew PC, 1025 Thomas Jefferson Street, NW,
23 Eight Floor, West Tower, Washington, DC 20007, appearing
24 on behalf of White Springs Agricultural Chemicals, Inc.
25 d/b/a PCS Phosphate - White Springs.

1 APPEARANCES:

2 DIANNE M. TRIPLETT, ESQUIRE, 299 First Avenue
3 North, St. Petersburg, Florida 33701; and MATTHEW R.
4 BERNIER, ESQUIRE, 106 East College Avenue, Suite 800,
5 Tallahassee, Florida 32301-7740, appearing on behalf of
6 Duke Energy Florida, LLC.

7 JOHN BUTLER, WADE LITCHFIELD, and
8 KENNETH M. RUBIN, ESQUIRES, 700 Universe Boulevard, Juno
9 Beach, Florida 33408-0420, on behalf of Florida Power &
10 Light Company.

11 BETH KEATING, ESQUIRE, Gunster Law Firm, 215
12 South Monroe Street, Suite 601, Tallahassee, Florida
13 32301-1839, appearing on behalf of Florida Public
14 Utilities Company.

15 MARGO DUVAL, ESQUIRES, FPSC General Counsel's
16 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida
17 32399-0850, appearing on behalf of the Florida Public
18 Service Commission Staff.

19 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE HELTON,
20 DEPUTY GENERAL COUNSEL, as Advisors to the Florida
21 Public Service Commission, 2540 Shumard Oak Boulevard,
22 Tallahassee, Florida.

P R O C E E D I N G S

1
2 **COMMISSIONER BRISÉ:** All right. We're going
3 to go ahead and call this Prehearing Conference to
4 order. Today is October 11th, 2017, it is 1:31, I
5 believe, and this is 2017.

6 And so we have five dockets that we have to
7 cover today, and so with that, we're going to ask
8 Ms. Margo Duval to read the notice.

9 **MS. DUVAL:** Thank you, Commissioner.

10 By notice issued September 27th, 2017, this
11 time and place was set for a prehearing in the following
12 dockets: 20170001-EI, 20170002-EG, 20170003-GU,
13 20170004-GU, and 20170007-EI. The purpose of the
14 prehearing is set out in the notice.

15 **COMMISSIONER BRISÉ:** Thank you. And so at
16 this time, we'll take appearances, and staff has
17 suggested, and I think it's a great suggestion, that we
18 will take appearances for all of the dockets at one
19 time. And so at this point, we'll take appearances.

20 **MR. BUTLER:** Thank you, Commissioner. John
21 Butler appearing for Florida Power & Light Company in
22 the 01, 02, and 07 dockets. I'd also like to enter
23 appearances for Wade Litchfield in the 01, 02, and 07
24 dockets, Ken Rubin in the 02 docket, Jessica Cano in the
25 07 docket, and Maria Moncada in the 01 docket. Thank

1 you.

2 **COMMISSIONER BRISÉ:** Thank you.

3 **MR. BERNIER:** Good afternoon, Commissioner.
4 Matt Bernier for Duke Energy. I'll be entering an
5 appearance in the 01, 02, and 07 dockets. And I'd also
6 like to enter an appearance for Dianne Triplett in those
7 same dockets.

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

9 **MR. GRIFFIN:** Good afternoon, Commissioner.
10 Steven Griffin with the law firm of Beggs & Lane. I'd
11 like to enter an appearance for myself in the 01, 02,
12 and 07 docket. Also appearing in those dockets are
13 Jeffrey A. Stone, General Counsel for Gulf Power
14 Company, and my partner, Russell A. Badders.

15 **MR. BEASLEY:** Good afternoon, Commissioner.
16 Jim Beasley for Tampa Electric Company in the 01, 02,
17 and 07 dockets. I'd also like to enter an appearance
18 for my partner Jeff Wahlen.

19 **COMMISSIONER BRISÉ:** Okay.

20 **MS. KEATING:** Good afternoon, Commissioner.
21 Beth Keating with the Gunster Law Firm. I'm here today
22 appearing on behalf of FPUC in the 01, 02, and
23 03 dockets, and on behalf of FPUC and Chesapeake, the
24 consolidated companies, in the 04 docket.

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

1 **MR. MUNSON:** Good afternoon, Commissioner.

2 Greg Munson also with the Gunster Law Firm here on
3 behalf of Florida City Gas in the 03 and 04 dockets.

4 **COMMISSIONER BRISÉ:** Thank you.

5 **MR. BREW:** Good afternoon, Commissioner. I'm
6 James Brew. I'm here for White Springs Agricultural
7 Chemicals, PCS Phosphate in the 01, 2, and 7 dockets.

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

9 **MR. REHWINKEL:** Good afternoon, Commissioner.
10 Charles Rehwinkel with the Office of Public Counsel. I
11 would like to enter an appearance in all dockets for
12 myself; Patricia Christensen; Stephanie Morse; J.R.
13 Kelly, the Public Counsel; and Erik Sayler.

14 **COMMISSIONER BRISÉ:** Thank you.

15 **MR. CAVROS:** Good afternoon, Commissioner.
16 George Cavros appearing on behalf of Southern Alliance
17 for Clean Energy in the 07 docket.

18 **COMMISSIONER BRISÉ:** Thank you.

19 **MR. WRIGHT:** Good afternoon. Robert Scheffel
20 Wright with the Gardner Law Firm appearing on behalf of
21 the Florida Retail Federation in the 001 docket, the
22 fuel docket. I'd also like to enter an appearance for
23 my law partner, John T. Lavia, III, in the 001 docket.
24 Thank you.

25 **COMMISSIONER BRISÉ:** Thank you.

1 **MR. MOYLE:** Jon Moyle on behalf of the Florida
2 Industrial Power Users Group, FIPUG. I'd like to enter
3 an appearance in the 01, 02, and 07 docket for myself
4 and also for Karen Putnal with our firm.

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

6 **MS. DUVAL:** Margo Duval on behalf of
7 Commission staff in the 02 and 07 dockets. And I'd like
8 to enter appearances for Wesley Taylor in the 03
9 docket, Stephanie Cuello in the 04 and 07 dockets,
10 Suzanne Brownless and Danijela Janjic in the 01 docket,
11 and Charles Murphy in the 07 docket.

12 **COMMISSIONER BRISÉ:** Thank you. So with that
13 --

14 **MS. HELTON:** Did you want me to make an
15 appearance?

16 **COMMISSIONER BRISÉ:** Oh, absolutely. Thank
17 you.

18 **MS. HELTON:** Mary Anne Helton. I'm here as
19 your advisor for all of the dockets. And I'd also like
20 to make an appearance for our General Counsel, Keith
21 Hetrick. Thank you.

22 **COMMISSIONER BRISÉ:** Thank you very much.
23 Thank you for catching me there.

24 So the order of the dockets -- oh, I'm sorry.

25 **MS. SPARKMAN:** Sorry. If I may, I didn't have

1 a seat left, this is Paula Sparkman on behalf of Sebring
2 Gas on the 04 docket. Thank you.

3 **COMMISSIONER BRISÉ:** Okay. Thank you. All
4 right. Is that everyone? All right. It seems like it
5 is.

6 So the order of dockets today is going to be
7 the following: 02, 03, 04, 01, and 07. Okay. So
8 starting with 02, are there any preliminary matters that
9 we must address regarding the draft prehearing order?

10 **MS. DUVAL:** Yes, Commissioner. If
11 stipulations can be reached in the next few days, the
12 Prehearing Order will need to be modified to reflect
13 such agreements. If such agreements are reached, staff
14 proposes to circulate an amended draft before an order
15 is issued. Other than that, there are no other
16 preliminary matters that staff is aware of.

17 **COMMISSIONER BRISÉ:** Okay. Does any party
18 have any preliminary matter that we need to address?
19 Okay. Going once, twice, three times. Seems that
20 there's none. Thank you.

21 So we're now going to proceed through the
22 Draft Prehearing Order. I'll identify the sections, and
23 I want you, the parties, to let me know if there are any
24 corrections, changes to be made. We may go through this
25 a bit quickly, so please speak up so that we can make

1 corrections or changes as necessary.

2 Okay. Section I, case background.

3 Okay. Section II, conduct of proceedings.

4 Section III, jurisdiction.

5 Section IV, procedure for handling
6 confidential information.

7 Section V, prefiled testimony and exhibits.

8 **MS. DUVAL:** Yes, Commissioner. In its
9 prehearing statement, FIPUG objects to a witness being
10 considered an expert witness unless the witness
11 affirmatively states the subject matter areas in which
12 he or she is claiming expertise and voir dire, if
13 requested, is permitted.

14 However, Section 6A8 of the Order Establishing
15 Procedure requires that a party shall identify each
16 witness the party wishes to voir dire as well as state
17 with specificity the portions of that witness's prefiled
18 testimony by page and line number and/or exhibits by
19 page and line number to which the party objects.

20 If the party fails to identify the portions of
21 the prefiled testimony or exhibits to which it objects
22 in their prehearing statement, the party is not allowed
23 to conduct voir dire at the hearing absent a showing of
24 good cause. And the good cause exemption, as written in
25 the OEP, does not apply to the identification of a

1 witness. If a party does not identify the witness it
2 wishes to voir dire, it waives its right to voir dire.

3 So in its prehearing statement, FIPUG has not
4 identified the witnesses that it wishes to voir dire;
5 therefore, it waives the right to do so since it has not
6 complied with the OEP. And since FIPUG has not complied
7 with the OEP, it should not be allowed to challenge the
8 expertise of any witness. So at this time staff would
9 request that a ruling to that effect be made.

10 **COMMISSIONER BRISÉ:** Okay. I'm trying to see
11 if FIPUG has anything that it needs to say at this time.
12 Mr. Moyle.

13 **MR. MOYLE:** We didn't have extensive plans to
14 participate in this docket in any event, but we'll just
15 stand by our position. I think, I think as a matter of
16 due process, somebody should indicate in advance if
17 they're filing testimony, "I'm testifying as an expert
18 in this subject or that subject," so that all people and
19 parties and the general public is on notice in advance.
20 So, you know, we'll just maintain the positions that
21 we've taken in our, in our pleadings.

22 **COMMISSIONER BRISÉ:** Okay.

23 **MR. MOYLE:** And I can say the same, you know,
24 if this, if this is brought up in all the other dockets,
25 I can say, "See above."

1 **COMMISSIONER BRISÉ:** Okay. Perfect. So, so
2 with that -- how do I phrase this properly? So we
3 expect that you won't be challenging or be doing voir
4 dire during the process, and if you do so, you will not
5 be complying with the OEP. Okay? Is that clear enough?

6 **MS. HELTON:** (Nods affirmatively.)

7 **COMMISSIONER BRISÉ:** All right. Section VI,
8 order of witnesses.

9 **MS. DUVAL:** Yes, Commissioner. Staff is
10 hopeful that all issues with the parties can be
11 stipulated and witnesses excused in this docket. Staff
12 will continue to work toward this end.

13 **COMMISSIONER BRISÉ:** Okay. Section VII, basic
14 positions. All right. So then I need to go through the
15 numbers here; right?

16 **MS. DUVAL:** Commissioner, for Section VIII for
17 issues and positions in the 02 docket, I think that we
18 probably don't need to go through the individual issues.
19 I'm prepared to give you a broad statement on behalf of
20 staff regarding the positions taken.

21 **COMMISSIONER BRISÉ:** Okay. Go ahead.

22 **MS. DUVAL:** The Order Establishing Procedure
23 requires that a party take a position at the Prehearing
24 Conference unless good cause is shown as to why that
25 party cannot take a position at this time. Accordingly,

1 if a party's position in the Draft Prehearing Order is
2 currently no position at this time, which we do have
3 some of those, that party can change its position or
4 show good cause why it cannot take a position.

5 Otherwise, the Prehearing Order will reflect, will
6 reflect no position for that party for that issue.

7 Staff would also suggest that the parties who
8 have not yet taken a position or wish to change their
9 position be allowed to submit that position in writing
10 no later than close of business tomorrow, Thursday,
11 October 12th.

12 In addition, FIPUG has stated the following
13 for all issues: "The petitioner has the burden of proof
14 and must carry its burden." However, this is not a
15 statement of position; it's a statement of the
16 evidentiary burden of proof. So in order to be
17 consistent with the OEP, FIPUG must take a position by
18 close of business tomorrow, October 12th, on these
19 issues or show good cause why it cannot do so or have
20 its position changed to no position.

21 A no position on these issues will prohibit
22 FIPUG from cross-examining witnesses with regard to
23 those issues, and that's pursuant to the OEP in Section
24 6C on page 7.

25 **COMMISSIONER BRISÉ:** Okay. So now we're going

1 to go through the issues, and so we trust that all the
2 parties will take a position, adopt their current
3 position, modify their position. And if no positions
4 are provided by the 12th, I think, then it is
5 essentially no position and, therefore,
6 cross-examination won't be allowed on those issues.

7 **MS. CHRISTENSEN:** Commissioner, I can announce
8 today that OPC is planning on taking no position on all
9 issues.

10 **COMMISSIONER BRISÉ:** Okay. Thank you. All
11 right. Perfect. So if, if the other parties want to
12 announce which positions on which issues they are taking
13 no positions and to make it more efficient, please do
14 so.

15 **MR. BREW:** Commissioner, PCS had taken several
16 "agrees with OPC" positions on the issues, and I will
17 talk to staff before the end of tomorrow. My one
18 concern, and this applies to several of the dockets, is
19 that there are issues posed in the proposed Duke
20 settlement that affect a number of the clause issues.
21 And so I'll try to work through whether or not we can
22 actually stipulate those issues when, in fact, the
23 settlement hasn't been addressed yet.

24 **COMMISSIONER BRISÉ:** Okay. Thank you. Okay.
25 Anyone else? All right. Thank you. So we're clear,

1 any "no position" will prohibit cross-examination on
2 that issue.

3 Okay. Section IX, exhibit list.

4 **MS. DUVAL:** Staff notes that it has prepared a
5 Comprehensive Exhibit List which includes all prefiled
6 exhibits and also includes those exhibits staff wishes
7 to include in the record. And we will check with the
8 parties prior to the hearing to determine if there are
9 any objections to the Comprehensive Exhibit List or any
10 of staff's exhibits being entered into the record.

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

12 Proposed stipulations.

13 **MS. DUVAL:** There are no proposed stipulations
14 at this time. But staff is hopeful that stipulations
15 can be reached, and we'll continue working toward that
16 end.

17 **COMMISSIONER BRISÉ:** Okay. Pending motions.

18 **MS. DUVAL:** There are no pending motions.

19 **COMMISSIONER BRISÉ:** Okay. Pending
20 confidentiality motions.

21 **MS. DUVAL:** There are no pending
22 confidentiality motions.

23 **COMMISSIONER BRISÉ:** Okay. Post-hearing brief
24 procedures.

25 **MS. DUVAL:** Although staff believes that the

1 issues in this docket may be able to be stipulated, we
2 wanted to just note a few post-hearing procedures. If
3 issues are stipulated and parties agree to waive briefs,
4 the Commission may make a bench decision for this
5 portion of the docket. And if there are any issues to
6 be briefed, the staff recommends post-hearing briefs be
7 no longer than 40 pages.

8 **COMMISSIONER BRISÉ:** Okay. Do we think we
9 need 40 pages?

10 **MR. BUTLER:** I'm hopeful we don't need any
11 pages, but it kind of depends on what the scope of the
12 issues is. I'd like to leave it at the 40 pages just in
13 case.

14 **COMMISSIONER BRISÉ:** Okay. Any other parties?
15 Everyone is fine with 40 pages? Okay. So are all
16 parties in agreement with respect to the post-hearing
17 procedures? Yes. Okay. Thank you.

18 **MS. DUVAL:** And staff would also note that if
19 there are going to be briefs in this docket, that it
20 would be due on November 6th, 2017.

21 **COMMISSIONER BRISÉ:** Okay. So opening
22 statements for -- rulings, I guess. We'll do opening --
23 addressing opening statements. If there are any, they
24 shall be limited to about three minutes per party,
25 unless parties choose to waive opening statements. And

1 briefs shall be limited to 40 pages. Okay?

2 Other matters.

3 **MS. DUVAL:** That are no other matters that
4 staff is aware of, Commissioner.

5 **COMMISSIONER BRISÉ:** Okay. Since there are no
6 other matters, we thank you, and so we adjourn this
7 docket.

8 (Proceeding adjourned at 1:47 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

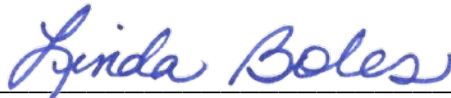
1 STATE OF FLORIDA)
 2 : CERTIFICATE OF REPORTER
 3 COUNTY OF LEON)

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, nor
 15 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 18th day of October, 2017.

19 
 20 _____

21 LINDA BOLES, CRR, RPR
 22 FPSC Official Hearings Reporter
 23 (850) 413-6734
 24
 25