

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

FILED 1/18/2018  
DOCUMENT NO. 00395-2018  
FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20170225-EI

PETITION FOR DETERMINATION  
OF NEED FOR DANIA BEACH  
CLEAN ENERGY CENTER UNIT  
7, BY FLORIDA POWER &  
LIGHT COMPANY.

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PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS  
PARTICIPATING: GARY F. CLARK  
PREHEARING OFFICER

DATE: Wednesday, January 10, 2018

TIME: Commenced: 9:30 a.m.  
Concluded: 9:46 a.m.

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

REPORTED BY: ANDREA KOMARIDIS  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
114 W. 5TH AVENUE  
TALLAHASSEE, FLORIDA  
(850) 894-0828

1 APPEARANCES:

2 WILLIAM P. COX and KEVIN I.C. DONALDSON,  
3 ESQUIRES, 700 Universe Boulevard, Juno Beach, Florida  
4 33408-0420; and MICHAEL MARCIL, ESQUIRE, GUNSTER  
5 YOAKLEY Law Firm, 450 E. Las Olas Boulevard, Fort  
6 Lauderdale, Florida 33301, appearing on behalf of  
7 Florida Power & Light Company.

8 J.R. KELLY, PUBLIC COUNSEL; and PATRICIA  
9 CHRISTENSEN, ESQUIRE, Office of Public Counsel, c/o the  
10 Florida Legislature, 111 W. Madison Street, Room 812,  
11 Tallahassee, Florida 32399-1400, appearing on behalf of  
12 the Citizens of the State of Florida.

13 DIANA CSANK and JULIE KAPLAN, ESQUIRES;  
14 MICHAEL LENOFF, LEGAL FELLOW, 50 F Street, NW, 8th  
15 Floor, Washington, DC 20001, appearing on behalf of  
16 Sierra Club.

17 CHARLES MURPHY, STEPHANIE CUELLO, and RACHAEL  
18 DZIECHCIARZ, ESQUIRES, FPSC General Counsel's Office,  
19 2540 Shumard Oak Boulevard, Tallahassee, Florida  
20 32399-0850, appearing on behalf of the Florida Public  
21 Service Commission Staff.

22 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE  
23 HELTON, DEPUTY GENERAL COUNSEL; Florida Public Service  
24 Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
25 Florida 32399-0850, Advisor to the Commission.

1 P R O C E E D I N G S

2 COMMISSIONER CLARK: All right. It's 9:30.

3 Are all the parties here? Is everyone --

4 MR. MURPHY: I believe so.

5 COMMISSIONER CLARK: All right. We'll go  
6 ahead and get started this morning. Welcome to my  
7 first pre-hearing conference. There's a lot of, I  
8 guess, speculation on how this is going to go. So,  
9 I'm probably more nervous than anybody here. I  
10 don't want to make any mistakes.

11 So, I encourage you to help me as we go  
12 through this process. Bear with me. Be patient.  
13 And we'll try to get through this together. And I  
14 promise to learn from my mistakes as we move along.

15 We'll go ahead and call this pre-hearing to  
16 order in Docket No. 20170225-EI, the petition for  
17 determination of need for Dania Beach Clean Energy  
18 Center Unit 7 by Florida Power & Light Company.

19 And I'll ask staff to read the notice.

20 MR. MURPHY: By notice issued December 21,  
21 2017, this time and place has been set for pre-  
22 hearing conference in the docket you just  
23 referenced.

24 COMMISSIONER CLARK: Thank you. All right.

25 And we'll take appearances, beginning with

1 FPL.

2 MR. COX: Good morning, Commissioner Clark.  
3 William Cox appearing today on behalf of Florida  
4 Power & Light Company, as senior attorney with FPL.  
5 And also, I would like to make appearances for  
6 Kevin Donaldson, who is also a senior attorney with  
7 FPL; as well as Michael Marcil with the Gunster law  
8 firm, all on behalf of FPL today.

9 COMMISSIONER CLARK: Thank you.  
10 Sierra.

11 MS. KAPLAN: Good morning, Commissioner Clark.  
12 I'm Julie Kaplan. I'm -- and I'm making an  
13 appearance for the Sierra Club. I'm the senior  
14 attorney with the Sierra Club. I will also  
15 identify Diana Csank, who is also an attorney with  
16 the Sierra Club; and Michael Lenoff, who is a  
17 fellow with the Sierra Club, who will be appearing  
18 at the hearing.

19 COMMISSIONER CLARK: Okay. Thank you.

20 MS. KAPLAN: Thank you.

21 COMMISSIONER CLARK: OPC.

22 MS. CHRISTENSEN: Good morning. Patti  
23 Christensen with the Office of Public Counsel. And  
24 I'd also like to put in an appearance for J.R.  
25 Kelly, the Public Counsel.

1 COMMISSIONER CLARK: Thank you.

2 MR. MURPHY: Charlie Murphy for Commission  
3 staff, along with Stephanie Cuello, and Rachael  
4 Dziechciarz, again, for Commission staff.

5 COMMISSIONER CLARK: Thank you.

6 MS. HELTON: And Mary Anne Helton. I'm here  
7 as your adviser this morning. And also appearing  
8 this morning is Keith Hetrick, your general  
9 counsel.

10 COMMISSIONER CLARK: Thank you, Mary Anne.  
11 Don't get too far away. The adviser part may be  
12 really important here.

13 All right. We'll begin with preliminary  
14 matters. Do we need to address any preliminary  
15 matters before we get to the pre-hearing order?

16 Mr. Murphy.

17 MR. MURPHY: Staff is not aware of any.

18 Sierra Club has identified some timing issues  
19 with respect to exhibits, use of deposition, and  
20 potential motions to strike that we recommend that  
21 we consider at Section 13 of the pre-hearing order.

22 COMMISSIONER CLARK: Okay. Great.

23 Any other party have any preliminary matters?

24 MR. COX: FPL does not.

25 MS. KAPLAN: No.

1           COMMISSIONER CLARK: Okay. All right. Let's  
2 go through the pre-hearing order now. I'm going to  
3 go through the sections. And as we go through the  
4 sections, I'll kind of speed through those. So, if  
5 you have an issue with any of those, then let me  
6 know, and we'll discuss the changes or any  
7 corrections that need to be made.

8           Beginning in Section 1, case background.

9           Section 2, conduct of proceedings.

10          Section 3, jurisdiction.

11          Section 4, procedure for handling confidential  
12 information.

13          Section 5, prefiled testimony and exhibits.

14          Section 6, order of witnesses.

15          Section 7, basic positions.

16          Section 8, issues and positions.

17          Section 9, exhibit list.

18          MR. MURPHY: Yes. Staff has prepared a  
19 comprehensive exhibit list, which includes all  
20 prefiled exhibits and also includes those exhibits  
21 staff wishes to include in the record.

22          Staff will check with the parties prior to the  
23 hearing to determine if there are any objections to  
24 the comprehensive exhibit list or any of staff's  
25 exhibits being moved into the record.

1           Staff also plans to have two demonstrative  
2           exhibits. These will be graphs made from data  
3           points provided by FPL in discovery. Staff will  
4           circulate to -- these to the parties in a day or  
5           so.

6           COMMISSIONER CLARK: Great.

7           All in agreement?

8           MR. COX: Yes.

9           MS. CHRISTENSEN: Yes.

10          COMMISSIONER CLARK: All right. Moving to  
11          proposed stipulations.

12          MR. MURPHY: There are no proposed  
13          stipulations at this time.

14          COMMISSIONER CLARK: Item No. 11, pending  
15          motions.

16          MR. MURPHY: There are no pending motions at  
17          this time.

18          COMMISSIONER CLARK: No. 12, pending  
19          confidentiality motions.

20          MR. MURPHY: In an apparent con- -- in  
21          apparent con- -- conflict with my previous  
22          statement, there are a couple of pending motions  
23          for confidentiality. There are three orders that  
24          should be going forward pretty quickly. Sierra  
25          Club has one that we're working on. And there is

1           also a new FPL that we will be working on.  
2           Hopefully we'll have them before the hearing.

3           COMMISSIONER CLARK: Before the hearing.  
4           Okay. All right.

5           All right. No. 13, conflicts with order  
6           establishing procedure.

7           MR. MURPHY: Sierra Club has identified timing  
8           issues with respect to exhibits, use of depositions  
9           at hearing, and potential motions to strike that  
10          staff recommends we exist at -- review at this  
11          time.

12          COMMISSIONER CLARK: Okay. All right.  
13          Sierra.

14          MS. KAPLAN: Yes, specifically, due to the  
15          compressed schedule in this docket, and noting that  
16          we -- Sierra -- Sierra Club deposed two of FPL's  
17          witnesses on Monday and -- we are potentially  
18          filing a motion related to the rebuttal testimony,  
19          but were not able to get that done in the short  
20          period of time between the depositions on Monday  
21          and today.

22          However, we are planning to make a decision on  
23          that and hope to file it either today or tomorrow.

24          COMMISSIONER CLARK: Okay. Mr. Murphy?

25          MR. MURPHY: So, you're -- you're waiving your



1 concerns about the use of deposition transcripts  
2 at -- at hearing?

3 MS. KAPLAN: I think we would -- we would  
4 still like to be able to, once we get the  
5 deposition transcripts, review them, but I think  
6 it's unlikely that that's going to become something  
7 that we're going to file.

8 MR. MURPHY: Okay. Because it -- to move them  
9 in, in whole, would require a stipulation. And  
10 then the other -- the other, you could just ask the  
11 question. So, I -- I would just love a yes or no  
12 so we can know what to do with this order.

13 MS. KAPLAN: Okay. Well, I think that -- that  
14 our main concern is with respect to the motions.  
15 And so, with the depositions, I think we're okay.

16 MR. MURPHY: Okay. Thank you.

17 MR. COX: Could FPL comment, for the record,  
18 on -- on the motion to strike, which is what I  
19 think I just heard from Sierra Club?

20 COMMISSIONER CLARK: Yes, sir.

21 MS. KAPLAN: Can I just say, we haven't  
22 specifically formulated what the title of the  
23 motion will be. I'm just formulating the general  
24 topic.

25 MR. COX: And I would just like to make a

1           brief statement on the record if it is, in fact, a  
2           motion to strike that they intend to file or -- or  
3           will file.

4           The procedural order in this docket was issued  
5           on November 6th. And it said that any motions to  
6           strike prefiled testimony must be made by the  
7           pre-hearing conference. And you know, FPL would  
8           stand by that. We're on the same time clock as  
9           they are. Everyone has been working at this.  
10          We've known what this has been since November 6th.  
11          And I'll leave it at that.

12                    COMMISSIONER CLARK: Okay.

13                    MR. COX: Thank you.

14                    COMMISSIONER CLARK: Thank you, Mr. Cox.

15                    Mr. Murphy?

16                    MR. MURPHY: I guess the question we would  
17           have is, if we receive a motion, FPL would be  
18           entitled to respond to it. And I'm wondering about  
19           the -- the timing of -- of a response and whether  
20           we would take it up as the first item at the  
21           hearing or whether the pre-hearing officer would  
22           rule on it.

23                    Does -- does FPL have any notion about  
24           responding to such a motion? Or we could take --  
25           have oral argument. Where -- where are we?

1 MR. COX: Well, first of all, we don't know  
2 what the motion, if -- and what it would be. So,  
3 it's hard for us to comment on that, Mr. Murphy.  
4 But we certainly think we would be entitled to a  
5 response period and have our due process if a  
6 motion is filed.

7 COMMISSIONER CLARK: Ms. Helton.

8 MS. HELTON: Maybe it would be helpful to just  
9 look at the language in the order establishing  
10 procedure so we all know what we're working with  
11 here.

12 And that is, "Motions to strike any portion of  
13 the prefiled testimony and related portions of  
14 exhibits of any witness shall be made in writing no  
15 later than the pre-hearing conference." So,  
16 obviously, we have not met that time period.

17 "Motions to strike any portion of prefiled  
18 testimony and related portions of exhibits at  
19 hearing shall be considered untimely, absent good  
20 cause shown."

21 So, if Sierra Club does plan to file a motion  
22 to strike after this pre-hearing conference is  
23 over, then it would need to contain some rationale  
24 as to why there is good cause for you or the  
25 Commission, depending on the timing of it all, to

1 take it -- up a motion to strike after the pre-  
2 hearing conference.

3 And Florida Power & Light, I believe, would  
4 have the opportunity to respond. And depending on  
5 the timing, it may be something that you could  
6 resolve prior to the hearing or it may be something  
7 that has to wait until the actual hearing.

8 And until we see the -- any motion or a  
9 response, we -- we really don't know at this time  
10 what the timing will be.

11 MR. COX: And just to respond briefly to that,  
12 FPL would be willing -- be perfectly happy, I  
13 should say, with the pre-hearing officer ruling on  
14 pleadings, assuming we have an opportunity to file  
15 a response.

16 MS. KAPLAN: And -- may I respond?

17 COMMISSIONER CLARK: Okay. Yes.

18 MS. KAPLAN: So, two things. I think we do  
19 have good cause, given the compressed schedule, and  
20 the fact that, on Monday, that was the day that we  
21 deposed FPL's rebuttal testimony. And the subject  
22 of the motion would be specifically that.

23 And I guess the other point I would like to  
24 make is that my understanding of the order on  
25 procedure -- establishing procedure is that we are

1 allowed to raise objections at the hearing with  
2 respect to prefiled testimony or exhibits. And our  
3 thinking was it would be more efficient for the  
4 parties and the Commission if we were to file  
5 something related to that prior to the hearing.

6 COMMISSIONER CLARK: Ms. Helton?

7 MS. HELTON: I think, if you want to see a  
8 wholesale striking of a -- of an exhibit or any  
9 part of the prefiled testimony, that the order  
10 establishing procedure contemplates that you file a  
11 motion. That's my understanding.

12 COMMISSIONER CLARK: Any other comments?

13 All right. We'll take this one under  
14 advisement.

15 Let's move to -- any other issues under the  
16 conflicts, Mr. Murphy?

17 MR. MURPHY: I'm not aware of them.

18 COMMISSIONER CLARK: All right. Item 14,  
19 post-hearing procedures.

20 MR. MURPHY: Staff recommends that post-  
21 hearing briefs be no more than 40 pages.

22 And also the question is whether 50 words are  
23 adequate for the party-position summaries. The  
24 order establishing proceeding indicated 75. The  
25 draft pre-hearing order is 50. I don't believe

1 staff has an opinion, if -- 50 or 75 -- whatever is  
2 the preference of the parties.

3 COMMISSIONER CLARK: Okay. We'll give you  
4 some latitude. 50 or 75, which do you want?

5 MS. CHRISTENSEN: I think, Commissioner, we  
6 would prefer 75.

7 MS. KAPLAN: Yes, we would also prefer 75.

8 MR. COX: 75 is fine. Thanks.

9 COMMISSIONER CLARK: 75. Okay. 75 it is.  
10 All right.

11 MR. MURPHY: And then the other thing is that  
12 briefs will be due January 29th.

13 COMMISSIONER CLARK: Okay. Are we all in  
14 agreement?

15 Ms. Christensen.

16 MS. CHRISTENSEN: Commissioner, with respect  
17 to the briefs being due -- I think it's  
18 approximately a week after the conclusion of the  
19 hearing. If we are going to maintain that  
20 schedule, I would ask that we have expedited  
21 transcripts because it's very difficult for us to  
22 write briefs without citing -- without being able  
23 to cite to the record, without the record.

24 MR. MURPHY: We have requested expedited  
25 transcripts.

1 COMMISSIONER CLARK: Okay. Good?

2 MS. CHRISTENSEN: And can I ask what -- what  
3 turnaround we're looking at with the expedited  
4 transcripts? Are we talking daily transcripts or  
5 are you -- something more than that?

6 MR. MURPHY: Clerk's office is over there.  
7 They may know. I don't know.

8 MS. STAUFFER: 72 hours.

9 MS. CHRISTENSEN: Three days?

10 MS. STAUFFER: 72 hours is what is requested.

11 MS. CHRISTENSEN: I mean, I think our  
12 preference, of course, is -- is daily transcripts,  
13 but if we can get all the transcripts by the  
14 following Monday or Tuesday at the latest, we can  
15 work with that.

16 MR. MURPHY: Commissioner, could we have the  
17 clerk join us? I -- I don't know the -- what the  
18 limitations are on that.

19 MS. STAUFFER: The request that's on file is  
20 for 72-hour turnaround. That would have them due  
21 on the 22nd and the 23rd, respectively. If you're  
22 looking to have them done on the 22nd, we would  
23 need to, obviously, have a modified request. I  
24 would think 48 hours.

25 MS. CHRISTENSEN: And -- and Commissioner, the

1 reason I bring this up is because if -- if the  
2 transcripts are not due -- or the full transcripts  
3 are not complete until the 23rd, that gives us less  
4 than a week before briefs are due with a  
5 transcript.

6 COMMISSIONER CLARK: Can we accommodate,  
7 Mr. Murphy?

8 MR. MURPHY: I believe that's -- staff does  
9 not oppose a more-rapid transcript time.

10 COMMISSIONER CLARK: 48 hours is sufficient?

11 MS. CHRISTENSEN: Yes. I believe if we can  
12 get the full transcript by Monday the 22nd, we  
13 should -- that will give us a full week with the  
14 transcript, and we should be able to write with a  
15 full week. Thank you.

16 COMMISSIONER CLARK: Okay. Make it so.

17 MR. MURPHY: And -- and the clerk is agreeable  
18 to that?

19 MS. STAUFFER: Yes.

20 COMMISSIONER CLARK: She nodded yes.

21 MS. STAUFFER: Yes.

22 COMMISSIONER CLARK: All right. 20 -- 48  
23 hours. All right. So, we're in agreement,  
24 48-hours turnaround. Briefs are still due on the  
25 29th.



1 All right. Are there any other issues under  
2 post-hearing procedures?

3 MR. MURPHY: No, sir.

4 COMMISSIONER CLARK: All right. Next is  
5 rulings. I guess the only issues that we have are  
6 the 40 pages on the briefings, 75 words on position  
7 summaries. Briefs are due on January 29th. We  
8 agreed to timing for opening statement of five  
9 minutes per party, and 48-hours turnaround on the  
10 transcripts.

11 And the only other matter is the item related  
12 to conflicts with the procedure. And I'm taking  
13 that one under advisement.

14 Is that all the issues?

15 MR. MURPHY: Yes, sir, to my knowledge.

16 COMMISSIONER CLARK: Okay. Are there any --  
17 there's -- anybody else? Any other issues that  
18 we're missing?

19 MR. COX: FPL has none. Thank you.

20 MS. KAPLAN: Sierra Club also has none.

21 MS. CHRISTENSEN: OPC has none.

22 COMMISSIONER CLARK: Okay. Great.

23 Any other matters to address?

24 MR. MURPHY: No, sir.

25 COMMISSIONER CLARK: All right. Then, we will

1           adjourn this conference. Thank you very much.

2                   (Whereupon, proceedings concluded at 9:46

3 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, ANDREA KOMARIDIS, Court Reporter, do hereby  
certify that the foregoing proceeding was heard at the  
time and place herein stated.

IT IS FURTHER CERTIFIED that I  
stenographically reported the said proceedings; that the  
same has been transcribed under my direct supervision;  
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I FURTHER CERTIFY that I am not a relative,  
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am I a relative or employee of any of the parties'  
attorney or counsel connected with the action, nor am I  
financially interested in the action.

DATED THIS 18th day of January, 2018.



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ANDREA KOMARIDIS  
NOTARY PUBLIC  
COMMISSION #GG060963  
EXPIRES February 9, 2021