

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

FILED 10/31/2018  
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FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20180007-EI

ENVIRONMENTAL COST  
RECOVERY CLAUSE.

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PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS  
PARTICIPATING: COMMISSIONER GARY F. CLARK  
PREHEARING OFFICER

DATE: Tuesday, October 23, 2018

TIME: Commenced: 9:54 A.M.  
Concluded: 10:06 A.M.

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

REPORTED BY: DEBRA R. KRICK  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

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

1 APPEARANCES:

2           MARIA MONCADA and JOEL BAKER, ESQUIRES, 700  
3 Universe Boulevard, Juno Beach, Florida 33408-0420,  
4 appearing on behalf of Florida Power & Light Company.

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

10           RUSSELL A. BADDERS and STEVEN R. GRIFFIN,  
11 ESQUIRES, Beggs & Lane, P.O. Box 12950, Pensacola,  
12 Florida 32591-2950; JEFFREY A. STONE, ESQUIRE, One  
13 Energy Place, Pensacola, Florida 32320, appearing on  
14 behalf of Gulf Power Company.

15           JAMES D. BEASLEY and J. JEFFRY WAHLEN,  
16 ESQUIRES, Ausley & McMullen, Post Office Box 391,  
17 Tallahassee, Florida 32302, appearing on behalf of Tampa  
18 Electric Company.

19           GEORGE CAVROS, ESQUIRE, 120 East Oakland Park  
20 Boulevard, Suite 105, Fort Lauderdale, Florida 33334,  
21 appearing on behalf of Southern Alliance for Clean  
22 Energy.

23           JON C. MOYLE, JR., and KAREN PUTNAL, ESQUIRES,  
24 Moyle Law Firm, P.A., 118 North Gadsden Street,  
25 Tallahassee, Florida 32301, appearing on behalf of

1 APPEARANCES (CONTINUED):

2 Florida Industrial Power Users Group.

3 JAMES W. BREW, OWEN J. KOPON AND LAURA A.  
4 WYNN, ESQUIRES, Stone Matheis Xenopoulos & Brew PC, 1025  
5 Thomas Jefferson Street, NW, Eight Floor, West Tower,  
6 Washington, DC 20007, appearing on behalf of White  
7 Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate  
8 - White Springs.

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

15 CHARLES MURPHY and ASHLEY WEISENDFELD,  
16 ESQUIRES, FPSC General Counsel's Office, 2540 Shumard  
17 Oak Boulevard, Tallahassee, Florida 32399-0850,  
18 appearing on behalf of the Florida Public Service  
19 Commission Staff.

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

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

2 COMMISSIONER CLARK: We will move to the 07  
3 docket.

4 All right. Mr. Murphy, any preliminary  
5 matters?

6 MR. MURPHY: Yes, sir, if stipulations can be  
7 reached in the next few days, the prehearing order  
8 will need to be modified, and staff will circulate  
9 an amended draft before an order is issued.

10 When we get to the issues, there may be  
11 suggested revisions to positions, and we will need  
12 to discuss whether one issue is appropriate for the  
13 docket.

14 COMMISSIONER CLARK: All right. Any of other  
15 parties have a preliminary matter?

16 All right. Let's roll through the order then.

17 Section I, Case Background.

18 Section II, Conduct of Proceedings.

19 Section III, Jurisdiction.

20 Section IV, Procedure for Handling  
21 Confidential Information.

22 Section V, Prefiled Testimony and Exhibits.

23 MR. MURPHY: Commissioner, you addressed  
24 expert witnesses in another docket, and staff  
25 requests the same ruling in this docket, that FIPUG

1 not be allowed to challenge witness expertise.

2 MR. MOYLE: FIPUG would just reference the  
3 arguments and observations made in the -- as part  
4 of this transcript, but I think it would be in the  
5 02 docket.

6 COMMISSIONER CLARK: Duly noted.

7 All right, Mr. Murphy.

8 MR. MURPHY: I think we are ready for order of  
9 witnesses.

10 COMMISSIONER CLARK: All right. We will move  
11 to order of witnesses.

12 MR. MURPHY: If an agreement can be reached to  
13 excuse my witness, staff will confirm with each  
14 Commissioner that the witness can be excused. If  
15 no Commissioner has a question for the witness, the  
16 witness may be excused from the hearing and his or  
17 her testimony and exhibits entered into the record  
18 as though read.

19 COMMISSIONER CLARK: Very good.

20 Parties, any changes?

21 All right. Section VII, Basic Positions.

22 Section VIII, Issues and Positions, Mr.  
23 Murphy.

24 MR. MURPHY: Commissioner, as with the other  
25 dockets, staff recommends that parties who have not

1 yet taken a position, or who wish to change their  
2 position, be allowed to submit their position in  
3 writing no later than noon tomorrow, Wednesday,  
4 October 24th.

5 COMMISSIONER CLARK: Okay. Do we need to go  
6 through these issues?

7 MR. MURPHY: You know, unless the parties say,  
8 I don't know that we do. I believe that Issue 10E  
9 is where the excitement is.

10 COMMISSIONER CLARK: Okay. Anyone?

11 Yes, sir.

12 MR. CAVROS: Thank you, Commissioner Clark.

13 10E reads as follows, just for the record:

14 "Is FPL meeting remediation objectives in the  
15 Florida Department of Environmental Protection  
16 Consent Order in the Miami-Dade County DERM Consent  
17 Agreement in a timely manner? If not, what  
18 jurisdictional amounts, if any, should the  
19 Commission approve as reasonably projected?"

20 The request to have this issue included, not  
21 only in this docket, but in future dockets, there  
22 is several reasons for it.

23 First of all, while the Commission doesn't  
24 have jurisdiction, obviously, over the  
25 environmental compliance requirements of the DEP

1 Consent Order, or the DERM Consent Agreement, it  
2 does have jurisdiction over recovery of costs that  
3 the company and that the actions that the company  
4 will be taken are intended to meet the  
5 environmental requirements in the Consent Order and  
6 the Consent Agreement.

7 The company is not only coming to the  
8 Commission to get a prudence determination on  
9 already incurred costs, but it's also coming to the  
10 Commission with forward looking costs with  
11 projected costs. And the test that this commission  
12 has used is reasonableness determination, and  
13 whether FPL is making timely progress in meeting  
14 those environmental requirements should be a part  
15 of a reasonableness determination, you know, that  
16 information is critical.

17 I don't believe that this issue can be  
18 subsumed under any of the others. As you may  
19 recall, Commissioner, this is a very complex issue.  
20 It involves complex hydrological issues. There  
21 was, you know, testimony last year's, you know,  
22 docket stating that, you know, there is no  
23 guarantee that this will work, and there is a  
24 10-year timeframe that will be evaluated,  
25 reevaluated and then reevaluated again.

1           So the idea of including this issue here is to  
2           leave -- to get something on the record, not only  
3           for the Commission in this docket, but also  
4           Commissioners sitting in those seats 10 years from  
5           now on how the progress -- whether there was  
6           progress by FPL in meeting those requirements, or  
7           failure, for that matter, you know. And so the  
8           Commission will have, and the Commissioners in the  
9           future will have sort of a roadmap on how the  
10          project progressed and how the Commission handled  
11          the costs associated with those events.

12           Thank you.

13           COMMISSIONER CLARK: Okay. Thank you, Mr.  
14          Cavros.

15           Staff.

16           MS. HELTON: Commissioner, you may want to  
17          hear from OPC and Power & Light on their opinion on  
18          whether the issues should be included.

19           COMMISSIONER CLARK: Okay. Certainly.

20           MS. CHRISTENSEN: At this time, we've taken a  
21          position, and our position is that it's too early  
22          to tell the success or failure of such activities,  
23          and any failure to meet the requirements should be  
24          considered in a prudence determination of future  
25          costs or modifications. This issue should be

1 deferred for consideration to a future clause  
2 proceeding, but should be maintained as an issue  
3 for the pendency of the project and so long as FPL  
4 seeks recovery through the clauses.

5 And that's our position on this issue. So we  
6 can leave it as a stated position and include that  
7 as our response to the position.

8 COMMISSIONER CLARK: Okay. FPL.

9 MS. MONCADA: Thank you, Commissioner.

10 FPL agrees with the position that staff took  
11 in the draft prehearing order on this issue, which  
12 is that whether FPL is in compliance with the  
13 environmental regulators is beyond the jurisdiction  
14 of this commission.

15 The costs in question here, as alluded to by  
16 Mr. Cavros, relate to activities that FPL has  
17 performed, or will perform, in order to comply with  
18 the Consent Order issued by the Miami-Dade  
19 Department of Environmental Resource Management, or  
20 DERM, and a consent agreement that FPL entered into  
21 with the Florida DEP.

22 The Consent Agreement and Consent Order both  
23 stem from DEP's conditions of certification  
24 associated with FPL's operation of its Turkey Point  
25 cooling canal system.

1           Following last year's ECRC proceeding, the  
2           Commission entered an order determining that the  
3           requirements of the Consent Order and the Consent  
4           Agreement are environmental regulations as  
5           contemplated by the ECRC statute, and therefore,  
6           the costs that FPL incurs to comply with those  
7           requirements are eligible for recovery through the  
8           environmental clause.

9           There are two statements in the Commission's  
10          order that are of particular relevance here.  
11          Starting at the bottom of page seven, the  
12          Commission recognizes that FDEP and DERM are state  
13          and local environmental regulators, respectively,  
14          with the authority to impose requirements on FPL's  
15          operations of the CCS, or cooling canal system, and  
16          other relevant plants.

17          The Commission goes on, on page 14, to  
18          expressly state -- and I am quoting here: "It is  
19          not our role to determine if the requirements of  
20          the CO, CA or CAA are appropriate or will be  
21          effective at mitigating saltwater intrusion from  
22          the CCS." End quote.

23          In other words, the Commission acknowledged  
24          that it is DERM and DEP that are charged with  
25          regulating the environmental impacts of the cooling

1           canals, and by contrast, the Commission is an  
2           economic regulator charged with determining whether  
3           the costs are prudent and reasonable.

4           So it is DEP and DERM that will determine  
5           whether the goals of the consent order and the  
6           consent agreement are being met. And part and  
7           parcel of that determination is whether FPL is  
8           meeting those goals timely.

9           So again, FPL supports staff's position that  
10          this issue can be subsumed within Issues 1 through  
11          3, which will determine the reasonableness and  
12          prudence of FPL's activities and the associated  
13          costs, and that the issues should not be -- that  
14          there should not be an additional issue as proposed  
15          by SACE.

16          Thank you.

17          COMMISSIONER CLARK: Mr. Murphy.

18          MR. MURPHY: They stated our position, and we  
19          stick to it.

20          COMMISSIONER CLARK: All right. Mr. Cavros.

21          MR. CAVROS: Commissioner, could I just  
22          respond very briefly?

23          I think we are just -- I think we are talking  
24          about past each other here. I acknowledge that DEP  
25          and DERM have jurisdiction over environmental

1 compliance. This issue is here related to costs  
2 and the costs that flow from those compliance  
3 activities, and it's in there just so the  
4 Commission can have information related to the  
5 activities and the costs that flow from those  
6 activities.

7 Thank you.

8 COMMISSIONER CLARK: Great. Thank you.

9 MR. MURPHY: Commissioner, I am sorry.

10 COMMISSIONER CLARK: Mr. Murphy.

11 MR. MURPHY: I think that the kind of  
12 information that he is looking for would be subject  
13 to discovery under the issues that are existing,  
14 that he could still ask are you doing what you are  
15 needing to to support these expenditures. So I  
16 am -- we are talking past each other a little bit,  
17 because I think that he could do that.

18 COMMISSIONER CLARK: Under the -- under -- you  
19 are saying this issue could be addressed under one  
20 through three?

21 MR. MURPHY: Yes, sir.

22 COMMISSIONER CLARK: He could still question  
23 the witness regarding these specific issues under  
24 Issues 1 through 3?

25 MR. MURPHY: Yes, sir, or conduct discovery

1 prehearing. All of that.

2 COMMISSIONER CLARK: All right. Good.

3 All right. Any other comments from any of the  
4 parties?

5 Very good. Let's move on to Section IX,  
6 Exhibit List.

7 MR. MURPHY: Staff has prepared a  
8 comprehensive exhibit list for the purpose of  
9 numbering and identifying exhibits at hearing.  
10 Staff will continue to work with the parties on the  
11 exhibit list with the hopes that it can be  
12 stipulated.

13 COMMISSIONER CLARK: All right. All in  
14 agreement?

15 Proposed Stipulations, Section X.

16 MR. MURPHY: There are none at this time.

17 COMMISSIONER CLARK: Pending Motions.

18 MR. MURPHY: None at this time.

19 COMMISSIONER CLARK: Pending Confidentiality  
20 Motions.

21 MR. MURPHY: Staff is working on these orders,  
22 and they should be done before the hearing.

23 COMMISSIONER CLARK: Very good.

24 All right. Post-Hearing Procedures.

25 MR. MURPHY: If issues are stipulated, a bench

1 decision may be possible. If no agreement is  
2 reached, briefs will be due on November 16th, 2018.

3 COMMISSIONER CLARK: All right. Section XIV,  
4 Rulings.

5 Opening statements are going to be limited to  
6 three minutes.

7 Briefs, if needed, will be limited to 40  
8 pages. They are due November 16th.

9 I will issue a ruling on 10E in the final  
10 order -- or in the prehearing order.

11 I think the issue with FIPUG has been properly  
12 addressed and taken care of.

13 Every party will have until noon tomorrow to  
14 take positions on any issues.

15 If stipulations can be reached, the witnesses  
16 will be excused if no Commissioner has any  
17 questions for those witnesses.

18 Any questions?

19 All right. Moving to other matters.

20 MR. MURPHY: Staff has none.

21 COMMISSIONER CLARK: Parties.

22 All right. Seeing none, we will adjourn the  
23 07 docket and take up the 01 docket.

24 (The prehearing concluded at 10:06 A.M.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA     )  
COUNTY OF LEON     )

I, DEBRA KRICK, 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;  
and that this transcript constitutes a true  
transcription of my notes of said proceedings.

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

DATED this 31st day of October, 2018.




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DEBRA R. KRICK  
NOTARY PUBLIC  
COMMISSION #GG015952  
EXPIRES JULY 27, 2020