

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

FILED 12/5/2018
DOCUMENT NO. 07388-2018
FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20180061-EI

PETITION FOR LIMITED
PROCEEDING TO RECOVER
INCREMENTAL STORM
RESTORATION COSTS, BY
FLORIDA PUBLIC UTILITIES
COMPANY.

_____ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS
PARTICIPATING: COMMISSIONER JULIE I. BROWN
PREHEARING OFFICER

DATE: Monday, November 26, 2018

TIME: Commenced: 1:30 p.m.
Concluded: 2:00 p.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 BETH KEATING and GREGORY MUNSON ESQUIRES,
3 Gunster Law Firm, 215 South Monroe Street, Suite 601,
4 Tallahassee, Florida 32301-1839, appearing on behalf of
5 Florida Public Utilities Company.

6 J.R. KELLY, PUBLIC COUNSEL; CHARLES REHWINKEL,
7 DEPUTY PUBLIC COUNSEL; and VIRGINIA PONDER, ESQUIRE,
8 Office of Public Counsel, c/o the Florida Legislature,
9 111 W. Madison Street, Room 812, Tallahassee, Florida
10 32399-1400, appearing on behalf of the Citizens of the
11 State of Florida.

12 RACHEL DZIECHCIARZ and ASHLEY WEISENFELD,
13 ESQUIRES, FPSC General Counsel's Office, 2540 Shumard
14 Oak Boulevard, Tallahassee, Florida 32399-0850,
15 appearing on behalf of the Florida Public Service
16 Commission Staff.

17 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE
18 HELTON, DEPUTY GENERAL COUNSEL; Florida Public Service
19 Commission, 2540 Shumard Oak Boulevard, Tallahassee,
20 Florida 32399-0850, adviser to the Florida Public
21 Service Commission.

22

23

24

25

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

P R O C E E D I N G S

COMMISSIONER BROWN: Good afternoon, everyone.

THE AUDIENCE: Good afternoon.

COMMISSIONER BROWN: Hope you all had a wonderful holiday week with your families and friends. And it's nice to see you here today. Today is November 26th, and the time is 1:30. We're here today to hear the prehearing conference in the FPUC storm recovery docket.

And at this time, I would like to ask staff to call -- or read the notice, please.

MS. DZIECHCIARZ: Thank you.

By notice issued November 15th, 2018, this time and place was set for a prehearing conference in Docket No. 20180061-EI.

The purpose of the prehearing is set out in the notice.

COMMISSIONER BROWN: Thank you, Ms. Dziechciarz.

And at this time, we'll take appearances, starting with FPUC.

MS. KEATING: Good afternoon, Commissioner. Beth Keating with the Gunster Law Firm here today on behalf of FPUC. I'd also like to enter an appearance for Greg Munson, also with the Gunster

1 Law Firm.

2 Also with me today is Mike Cassel with the
3 company.

4 COMMISSIONER BROWN: Thank you.

5 OPC.

6 MS. PONDER: Good afternoon. Virginia Ponder
7 with the Office of Public Counsel. I'd also like
8 to make an appearance for Charles Rehwinkel and
9 J.R. Kelly, the Public Counsel.

10 COMMISSIONER BROWN: Thank you.

11 Staff.

12 MS. DZIECHCIARZ: And I'd like to make an
13 appearance for myself, Rachel Dziechciarz, and
14 Ashley Weisenfeld.

15 MS. HELTON: And Mary Anne Helton. I'm here
16 as your adviser. I'd also like to enter an
17 appearance for your general counsel, Keith Hetrick.

18 COMMISSIONER BROWN: Thank you.

19 And we will go to preliminary matters. Staff,
20 is there -- are there any preliminary matters?

21 MS. DZIECHCIARZ: Yes, thank you.

22 At present, there is disagreement about
23 certain issues, such as the inclusion of Issue
24 Nos. 4 and 10, and the wording for Issue No. 7.
25 Staff recommends we address these in Section 8 of

1 the prehearing order.

2 COMMISSIONER BROWN: We'll go ahead and do
3 that.

4 MS. DZIECHCIARZ: Okay. And staff would also
5 like to advise the parties that we no longer take
6 issue with the use of "reasonable and prudent"
7 for -- as the standard for the issues in this
8 particular docket due to the fact that the issues
9 are related to actual costs. With the exception of
10 Issues 4, 7, and 10, staff, FPUC, and OPC are now
11 in agreement on the issue wording.

12 COMMISSIONER BROWN: Thank you.

13 Do any of the parties have any other
14 preliminary matters to address? Seeing none -- all
15 right.

16 We're going to go through the draft prehearing
17 order at this time. As you know, I will identify
18 sections. And if the parties have any changes or
19 corrections to make, please go ahead and do so and
20 speak up when I notify the sections.

21 Starting with Section 1: The case
22 background -- any changes?

23 Seeing none, moving on to Section 2: The
24 conduct of proceedings.

25 Seeing none, Section 3: Jurisdiction.

1 Seeing none, Section 4: Procedure for
2 handling confidential information.

3 Staff.

4 MS. DZIECHCIARZ: When confidential
5 information is used in the hearing, parties must
6 have copies for the Commissioners, necessary staff,
7 and the court reporter in red envelopes clearly
8 marked with the nature of the contents.

9 Any party wishing to examine the confidential
10 material that is not subject to an order granting
11 confidentiality shall be provided a copy in the
12 same fashion as provided to the Commissioners,
13 subject to execution of any appropriate --
14 appropriate protective agreement with the owner of
15 the material.

16 COMMISSIONER BROWN: Okay. Thank you.

17 Any questions on that?

18 Seeing none, we'll move to Section 5, the
19 prefiled testimony and exhibits and witnesses.

20 MS. DZIECHCIARZ: Thank you, Commissioner.

21 If witnesses are presented, staff will suggest
22 that the witness summary testimony be no longer
23 than three minutes.

24 COMMISSIONER BROWN: Are -- are the par- --
25 parties okay with that time frame? Yes? Thank

1 you. Okay. Thank you.

2 Moving on to Section 6: Order of witnesses.
3 Are there any witnesses that can be stipulated at
4 this time? Starting with Ms. Keating.

5 MS. KEATING: I believe that we've agreed to
6 the stipulation of staff's witness, Ms. Dobiac.

7 COMMISSIONER BROWN: Is that correct?

8 MS. PONDER: As well as OPC has, yes.

9 COMMISSIONER BROWN: Okay. Anyone else?

10 MS. PONDER: No.

11 COMMISSIONER BROWN: Thank you.

12 MS. KEATING: Not at this time.

13 COMMISSIONER BROWN: Okay. Staff.

14 MS. DZIECHCIARZ: Staff has also -- we do have
15 the stipulation of Ms. Dobiac as well as her
16 exhibit, DMD-1. I would also like to note that her
17 name was inadvertently omitted from the witness and
18 exhibit list in the prehearing order and we will
19 correct that for the final prehearing order.

20 COMMISSIONER BROWN: Thank you.

21 MS. DZIECHCIARZ: And staff will reach out to
22 the parties to determine if other witnesses can be
23 stipulated to. And any witnesses who may be
24 stipulated to may be suggested by the parties at
25 this time -- which we already went through. Sorry.

1 We will also confirm with each Commissioner
2 that any identified witness can be excused -- if
3 Commissioners don't have questions for the
4 witnesses they may be used excused from the hearing
5 and his or her testimony and exhibits entered into
6 the record as though read.

7 COMMISSIONER BROWN: All right. Thank you.
8 Okay. Moving on to basic positions,
9 Section 7. Any changes?

10 Seeing none, now, let's get into Section 8,
11 the issues and positions. Other than Issues 4,
12 10 -- 4, 7, and 10, are there any other issues
13 or -- that need to be addressed or changed?

14 MS. KEATING: I hate to go back on what staff
15 just said, but -- but if I could just give you a
16 little bit of background on -- on the issues that
17 arose with regard to what Ms. Dziechciarz mentioned
18 with regard to "reasonable and prudent," and just
19 say that the company still does have a level of
20 concern with regard to the change from the way the
21 issues have been worded in prior cases as opposed
22 to now.

23 Let me be clear, we don't disagree that
24 "reasonable and prudent" is the standard that's
25 included in the rule. Our -- our greatest concern

1 is really -- you had a matter that was set for
2 hearing earlier in the year that reflected a
3 prehearing order that had the wording "appropriate"
4 in it. And now, we're moving --

5 COMMISSIONER BROWN: Was it -- was it a storm-
6 related ta- -- docket?

7 MS. KEATING: It was. It was the FP&L storm
8 proceeding. And the issues in that proceeding were
9 worded using the word "appropriate" as opposed to
10 "reasonable and prudent."

11 And -- and our greatest concern is really
12 that, without some level of explanation, it could
13 be perceived, particularly by people looking back
14 in time, that a different standard was --

15 COMMISSIONER BROWN: Absolutely.

16 MS. KEATING: -- applied --

17 COMMISSIONER BROWN: Could not agree more.

18 MS. KEATING: -- from one company to the next.
19 So, we would just ask that, you know, some
20 consideration be given to explaining that
21 difference --

22 COMMISSIONER BROWN: I appreciate --

23 MS. KEATING: -- at some point.

24 COMMISSIONER BROWN: -- your sentiment, and
25 I'm glad that you raised it. And I've talked about

1 this with my own staff as well as our staff.

2 And so, I do believe in being consistent. And
3 I do believe in the standard of reasonable and
4 prudent as the appropriate standard in guiding and
5 governing cost recovery. I think -- I don't know
6 how the word "appropriate" got in there. We'll
7 take a look at that as well, moving forward.

8 I think that "reasonable and prudent" is the
9 governing platform here, so -- and I would also
10 caution the parties, Public Counsel, too, moving
11 forward in the other storm cost recovery dockets
12 to -- to be mindful of the fact that that is our
13 guiding principle here.

14 Thank you.

15 MS. KEATING: Thank you, Commissioner.

16 COMMISSIONER BROWN: All right. So, with
17 regard to the issues and positions on any other
18 issues, four, seven, ten -- any changes before we
19 address the arguments on those issues?

20 MS. PONDER: Yes, Issue 17 was -- was added
21 and --

22 COMMISSIONER BROWN: If you don't mind, a
23 little -- thank you.

24 MS. PONDER: Oh, my apologies.

25 On Issue 17, OPC would just like -- that was

1 added a little bit after the prehearing statements
2 were filed. And OPC's position is that this is a
3 fall-out issue that would be decided by a sum of no
4 more than the amounts decided on the individual
5 issues, so --

6 COMMISSIONER BROWN: Thank you.

7 MS. PONDER: That would be our position there.

8 COMMISSIONER BROWN: Thank you for your
9 statement here as well.

10 And Issue 20, obviously, close the docket. I
11 think that was an issue you took no position.

12 You're --

13 MS. PONDER: Right.

14 COMMISSIONER BROWN: Okay. So, let's dive
15 into the issues. This is the time for you all to
16 articulate your arguments on -- let's group four
17 and ten, first, together. And then, I guess,
18 the -- Issue 7 is the issue that you have with
19 regard to wording.

20 I have -- I am very familiar with all three
21 issues. So, whoever would like to address this
22 here today -- we'll start with four.

23 MS. KEATING: Okay. And do you want us --
24 just so I'm clear, Commissioner, do you want us to
25 go issue by issue or stop at four and have

1 discussion on four first?

2 COMMISSIONER BROWN: We're fine with all other
3 issues right now. So, I think you just go four,
4 seven, ten, if you'd like.

5 MS. KEATING: Okay. Well, Commissioner, with
6 regard to Issue 4, which is what is the proper
7 capitalization rate for labor benefits and
8 overhead -- this issue asked the Commission to
9 determine the appropriate capitalization rate for
10 FPU.

11 A decision on this issue is neither
12 appropriate nor necessary for the Commission to
13 address what costs FPUC should be allowed to
14 reser- -- recover through the charge -- the reserve
15 account. Sorry.

16 First, not only is this not an issue proposed
17 for consideration in prior storm proceedings; this
18 isn't an issue that arises under or is even
19 contemplated by Rule 25-60143.

20 To the extent that OPC believes that certain
21 costs should be capitalized, OPC clearly has an
22 opportunity under other identified issues to
23 present that argument as a basis for the Commission
24 to reduce the amount to be charged to the reserve.

25 Second, attempting to define a capitalization

1 rate in this proceeding, particularly as it relates
2 to labor, would be inappropriate and shortsighted.

3 Establishing a capitalization rate for FPUC in
4 this context would assume there's some generally-
5 definable point at which a facility or equipment is
6 determined to be either repairable or a total loss
7 when, in fact, in an actual storm-restoration
8 situation, such decisions may depend on other
9 factors.

10 While establishing a set capitalization rate
11 might make it easier to simply eliminate a certain
12 percentage of costs being charged to the reserve,
13 doing so based on a capitalization rate that's
14 established after the storm event would neglect the
15 review of costs contemplated by the rule and fail
16 to address whether, under the circumstances, the
17 costs were appropriate for recovery through the
18 reserve.

19 COMMISSIONER BROWN: Okay. Thank you.

20 If you will, I will hear OPC on Issue 4.

21 MS. PONDER: Yes, OPC contends this should be
22 a separate issue here and -- as representative
23 Witness Schultz's testimony -- the company
24 understated the cost per hour by assuming, under
25 their capitalization plan, that work was performed

1 by FPUC employees and not contractors that charge a
2 higher hourly rate. And so, we contend it should
3 be a separate issue.

4 COMMISSIONER BROWN: OPC, I have a question.
5 Okay. So, I see Issues 2 -- I see a few issues
6 that this type of issue could fall within: Two,
7 five, six, poss- -- clearly, you could argue this
8 particular issue within those different three
9 parameters.

10 I mean, they -- they all deal with payroll-
11 benefit overhead. I don't know why you would be
12 harmed by having that issue subsumed in those
13 issues. Do you have a response?

14 MS. PONDER: Again, based on Witness Schultz's
15 testimony, it -- it seemed most appropriate to have
16 it as a separate issue.

17 COMMISSIONER BROWN: I -- I tend to disagree.
18 I think that you can easily argue the merits of the
19 issue within either -- three different issues. So,
20 we're going to go ahead and subsume Issue 4 in two,
21 five, and six. I think you will not be harmed in
22 any way.

23 MS. PONDER: Okay.

24 COMMISSIONER BROWN: Moving on to Issue 7,
25 Ms. Keating.

1 MS. KEATING: Thank you, Commissioner.

2 So, with regard to Issue 7, FPU doesn't
3 necessarily oppose including some form of this
4 issue; although, we note that this is also another
5 issue that hasn't been included in prior
6 proceedings.

7 Plus, OPC could actually argue, under Issue 9,
8 that certain contractor costs should not be
9 included for recovery through the reserve because
10 the rate charged was inappropriate, which would
11 seem to render this issue duplicative.

12 Nonetheless, if this issue is going to be
13 included, we oppose the inclusion of the phrase,
14 "... of up to \$509 per hour." Inclusion of this
15 phrase is clearly designed to be inflammatory and
16 it suggests that the particular rate is somehow
17 inappropriate, while presenting the rate out of
18 context without identifying the activity or expense
19 included in the rate.

20 Therefore, if this issue is going to be
21 included, we would ask that the phrase "\$509-an-
22 hour rate" be excluded.

23 COMMISSIONER BROWN: Thank you, Ms. Keating.

24 And -- all right. Let -- yes, OPC.

25 MS. PONDER: Thank you.

1 OPC contends the Commission must regulate in
2 the public interest and in an open and transparent
3 manner. Hiding the embarrassing factual basis for
4 the issue is not good government and does not serve
5 the public interest.

6 FPUC has not demonstrated that line crews
7 receiving rates of \$509 per hour for standing in
8 waiting, \$307 per hour for mobilization, and \$290
9 per hour for actual -- actually working provided a
10 faster, more-efficient, and reliable service than
11 line crews charging half those amounts.

12 The issue is a grossly-excessive rate. The
13 Commission should not hide the ball on this. The
14 public deserves to know precisely the basis for the
15 issue. And the Commission should squarely and in
16 full, public view decide whether these iss- --
17 these outrageous price-gouging rates are to be
18 encouraged and endorsed by the Agency.

19 COMMISSIONER BROWN: Okay. I appreciate your
20 argument here. I -- I really do. I have never
21 seen wording like this in an issue in a hurricane
22 docket, to my date. And also, this particular
23 issue, seven, includes Hurricane Matthew and
24 Hurricane Irma; is -- is that correct?

25 MS. KEATING: Yes.

1 MS. PONDER: Yes, that's correct.

2 COMMISSIONER BROWN: That's correct.

3 You're -- okay.

4 And -- and you referenced in your argument
5 other hourly fees. Okay. But you went up to I
6 guess, the --

7 MS. PONDER: Well -- yeah, the top of the
8 range.

9 COMMISSIONER BROWN: I -- I do believe it does
10 provide a little bit of bias in the wording. And
11 your argument, obviously, is passionate and --
12 and -- and geared towards highlighting the amount
13 that is paid, but I do believe that you can
14 encapsulate that and educate the public.

15 Obviously, the proceedings are going to be all
16 televised and in the public and our dockets are all
17 in the public. And we will absolutely educate the
18 public, to the best of our ability, as well as
19 yours.

20 I think having language like this puts a bit
21 of a skew to the Commission in an impartial
22 technical, evidentiary hearing. I haven't seen
23 anything like this --

24 MS. PONDER: Well --

25 COMMISSIONER BROWN: -- to date.

1 MS. PONDER: And, perhaps, because there
2 hasn't been a case like this where the evidence has
3 shown this to -- to be at issue.

4 COMMISSIONER BROWN: Ms. --

5 MS. PONDER: And so, it is important to bring
6 to light what is -- what the evidence demonstrates.

7 COMMISSIONER BROWN: I cannot wait for all the
8 evidence to be deduced -- adduced at -- at the
9 proper proceeding, but when you have a final issue
10 list, it has to be impartial. And it has to be
11 able to convey a sentiment that will provide
12 balance to the proceedings.

13 I think the way that it is worded is -- and --
14 and Ms. Keating could probably offer the opposite,
15 a minimum. So, you know, to that -- to that
16 effect, I think that is skewed.

17 I think striking the word -- but I will give
18 Ms. Keating an opportunity -- I -- I read it and I
19 was briefed on it beforehand, and I did not like
20 the language at all. If there's a -- a better way
21 to word it, I would be amenable to it, if you have
22 a suggestion.

23 MS. KEATING: Well, Commissioner, obviously, I
24 would caution against including any rate in there.
25 The issue is really -- in addition to what we've

1 talked about so far, is looking back. So, suppose
2 years into the future -- or just two years down the
3 road, you have another storm-restoration case that
4 comes before you, different circumstances,
5 different area, different contractors, different
6 availability.

7 And there's the potential that there could be
8 rates above \$509. And with inflation, who's to say
9 that that might not be a low number ten years into
10 the future. But if you include a rate in an issue
11 and specifically make a determination that
12 ostensibly would say that \$509 an hour is some sort
13 of limit, then you're -- I suspect you could run
14 into problems down the road in terms of the
15 precedential effect of that.

16 COMMISSIONER BROWN: Any rebuttal here?

17 MS. PONDER: Well, I -- OPC contends that it
18 would not be harmful in that way. It's based on
19 the evidence presented in this case, that FP- --
20 FPUC paid for their storm costs.

21 COMMISSIONER BROWN: I am not comfortable with
22 the language as proposed. I think it sends a
23 message to the Commission -- the Commissioners
24 of -- that would challenge it. I think if we took
25 out "... of up to \$509 an hour," I think you can

1 still make the exact same arguments within that
2 issue and you would not be harmed, by any means,
3 but I think phrasing it with including a maximum
4 amount for this particular case may set a -- a
5 dangerous bias towards the Commission.

6 I think you will not be harmed in any way by
7 having the issue with that language stricken. And
8 you could argue the full merits of that in the
9 proceeding.

10 MS. PONDER: Okay. Thank you.

11 COMMISSIONER BROWN: All right. We're going
12 to move to Issue 10, which is -- all right.

13 MR. HETRICK: Excuse me, Commissioner.

14 COMMISSIONER BROWN: Sure.

15 MR. HETRICK: I don't mean to disrupt the
16 settlement --

17 COMMISSIONER BROWN: But you are.

18 (Laughter.)

19 MR. HETRICK: I am.

20 When I do look at Issue 7, and when you take
21 that language out, I'm -- I'm not sure I just
22 really understand the distinction between Issue 7
23 and Issue 9 at that point.

24 COMMISSIONER BROWN: So, you think Issue 7
25 should be subsumed in Issue 9.

1 MR. HETRICK: I do.

2 COMMISSIONER BROWN: See, I'm okay with
3 leaving Issue 7 as is to allow Public Counsel an
4 opportunity to argue whatever merits that they want
5 within that. I -- it is a little duplicative, as
6 FPU argued earlier, but I was going to go ahead and
7 allow it.

8 MR. HETRICK: Okay.

9 COMMISSIONER BROWN: All right. Let's move on
10 to Issue 10.

11 Ms. Keating.

12 MS. KEATING: Thank you, Commissioner.

13 So, Issue 10 is the issue that asks: As a
14 result of the evidence in this case, what action
15 should the Florida Public Service Commission take
16 to ensure contractor rates charged to utilities are
17 reasonable and prudent.

18 We object to this issue in its entirety. This
19 issue clearly goes well beyond the consideration of
20 costs identified for recovery through the storm
21 reserve as contemplated by the rule.

22 Not only does this issue contemplate
23 Commission action that would impact entities that
24 aren't parties to this proceeding, but as phrased,
25 it contemplates action directed towards entities

1 that are arguably beyond the scope of the
2 Commission's jurisdiction.

3 The Commission should not decide to take
4 action impacting the entire industry based solely
5 upon evidence adduced in this case, which would, at
6 the very least, give rise to due-process questions.

7 Moreover, given that a decision resolving this
8 issue would have direct effect on other utilities,
9 could adversely affect substantive rights, and
10 impose newer additional requirements, it would be
11 much more appropriately considered, if at all, in
12 the context of a rulemaking.

13 And even, then, if, arguably, policy decisions
14 in the context of storm cost recovery are subject
15 to the exemptions from rulemaking that are found in
16 120.80, it's important to consider that only FPUC
17 and OPC are parties to this proceeding.

18 The Commission has only established generally-
19 applicable guidelines and procedures for recovery-
20 clause proceedings through orders and proceedings
21 to which all electric utilities are parties, such
22 as the fuel clause.

23 As such, Commissioner, because of the due-
24 process scope and concerns, we ask that this issue
25 be eliminated in its entirety.

1 COMMISSIONER BROWN: OPC.

2 MS. PONDER: Yes.

3 COMMISSIONER BROWN: Ms. Ponder.

4 MS. PONDER: So, OPC, in its prehearing
5 statement, had suggested qualifying language of:
6 As a result of the evidence in this case, what
7 action, if any, should -- should the Florida Public
8 Service Commission take in the future to ensure
9 contractor rates charged to utilities are
10 reasonable and prudent.

11 And as stated in our position, we -- we
12 believe that, just as in the 2004, 2005 storm
13 dockets, here, the Commission should take steps to
14 compare the rates against other utility dockets
15 and -- and make sure that no amendment to the rule
16 is -- is needed.

17 COMMISSIONER BROWN: All right. I -- I think
18 your intent is well-intended.

19 Staff, I'd love a little bit of insight. I do
20 have an opinion on it, but I would love to hear
21 your opinion on this. I think that their intent is
22 commendable, but I don't think this is the
23 appropriate vehicle in this particular docket.

24 And in looking back at the 2004-'05 seasons --
25 I mean, we had a hurricane, a generic hurricane

1 docket, when all parties and re- -- interested
2 persons were allowed an opportunity to raise issues
3 and provide public testimony, public comment. And
4 Public Counsel was a part of that process, a very
5 integral part of that process.

6 I don't know why that particular issue was not
7 included in the process. We took forensic data.
8 We took evidence. We have a fully-developed
9 report. Why in the world would this come up right
10 now in this particular docket when this is a
11 generic issue that would have affected the entire
12 industry?

13 Any thoughts?

14 MS. DZIECHCIARZ: Staff agrees that this issue
15 is beyond the scope of this docket and should not
16 be included. And we also would agree that, if
17 there -- some kind of look-back wanted to be done,
18 it wouldn't be appropriate in this particular
19 docket, on a generic basis.

20 COMMISSIONER BROWN: Is there a forum where
21 Public Counsel and other interested parties could
22 be able to provide this type of issue development?
23 It is a -- it does seem very policy-driven. Is
24 there some type of forum that you think would be an
25 appropriate vehicle to at least have discussions

1 about --

2 MS. DZIECHCIARZ: I'll let Mary Anne take
3 that.

4 COMMISSIONER BROWN: Hurricanes are not going
5 away and I do think OPC's argument is somewhat
6 commendable. I -- I would have like to have seen
7 this a lot earlier, post-Hurricane Irma or Matthew,
8 obviously.

9 MS. HELTON: Well, we do have other dockets
10 open to deal with particular storms for cost
11 recovery, but I don't --

12 COMMISSIONER BROWN: Don't --

13 MS. HELTON: -- think it's appropriate in any
14 of those.

15 COMMISSIONER BROWN: No, I don't either.

16 MS. HELTON: I think we could have a meeting
17 with OPC and other utilities to discuss that. I
18 don't know whether I would, at this point in time,
19 say it's appropriate for rulemaking because I'm not
20 sure what policy we would bring forth.

21 And my concern is we don't have jurisdiction
22 or any authority --

23 COMMISSIONER BROWN: The AG's office, right,
24 the --

25 MS. HELTON: -- over the contractor rates.

1 COMMISSIONER BROWN: Right. So, the --

2 MS. HELTON: So, I'm a little bit con- --
3 quite frankly, confused about this issue. And if
4 it were to stay, I'm not sure how staff could
5 address that, given the fact that I believe the
6 Commission does not have jurisdiction over
7 contractor rates, but --

8 COMMISSIONER BROWN: So, we're -- we are
9 simpatico. We -- I -- I agree with you on that.
10 I'm just trying to seek some guidance here.

11 MS. HELTON: I mean, we --

12 COMMISSIONER BROWN: I think the issue is
13 commendable. So, I mean, it should be noted that
14 it is commendable. I just don't know what our
15 venue, our jurisdiction, and then the -- the
16 applicability towards this particular docket --
17 again, given all those other parameters, it just is
18 not very appropriate.

19 MS. HELTON: Yes, I -- I definitely believe --
20 agree with Ms. Dziechciarz that this is beyond the
21 scope of this docket. If OPC would like to have --
22 if they have some ideas, obviously, staff would be
23 agreeable to discussing those ideas with OPC, but I
24 just don't think that's appropriate to do here in
25 this docket.

1 COMMISSIONER BROWN: Thank you.

2 Ms. Ponder.

3 MS. PONDER: Commissioner, if I may -- and
4 you're addressing the previous dockets. This is --

5 COMMISSIONER BROWN: Generic dockets.

6 MS. PONDER: Yes. Right. And even since the
7 storm -- the generic storm docket here in the
8 meeting, this is all knowledge gained. And it has
9 just come to light and been able to kind of compare
10 and look back. So, now is the appropriate time
11 to -- to raise that as a policy issue.

12 COMMISSIONER BROWN: Ms. Keating, any
13 additional thoughts?

14 MS. KEATING: I would only add that it may be
15 that it's information that's recently come to light
16 and it may be something that's appropriate for
17 another process, but we would say it's not
18 appropriate for a proceeding of this nature
19 involving only one utility.

20 COMMISSIONER BROWN: And I would like to
21 develop the conversation a little bit more
22 thoroughly, even given the limited scope of the
23 Commission's jurisdiction over the specific price
24 gouging and profiteering because I think it is
25 imperative and important for consumers.

1 So, it is something that I would like to
2 direct our staff to gather and have some
3 discussions with the interested parties at a later
4 juncture, and Office of Public Counsel, and have
5 the discussion, and -- and find a way that we can
6 make this work within our realm.

7 And if not -- if it doesn't work within our
8 jurisdiction, let's -- let's find another avenue to
9 at least express our thoughts. Okay?

10 MS. PONDER: Thank you.

11 COMMISSIONER BROWN: Thank you. So, we're
12 going to remove Issue 10.

13 And I think that concludes Section 8, so --

14 MS. DZIECHCIARZ: Apologies, Commissioner.
15 Can I interrupt?

16 COMMISSIONER BROWN: Yes.

17 MS. DZIECHCIARZ: Ms. Ponder, did you want
18 to -- you mentioned earlier that Issue 17 you
19 wanted to say was a fall-out. Did you want to
20 remove Issue 17 or --

21 MS. PONDER: No.

22 MS. DZIECHCIARZ: Oh, okay. I'm sorry. I
23 misunderstood. Okay.

24 MS. PONDER: No, I was just --

25 COMMISSIONER BROWN: She was making her notes.

1 MS. PONDER: (Inaudible.)

2 MS. DZIECHCIARZ: Okay. Thank you.

3 COMMISSIONER BROWN: Did you get that?

4 THE COURT REPORTER: I did not.

5 COMMISSIONER BROWN: Could --

6 MS. PONDER: I guess I was acknowledging our
7 position there. I did not want -- I was not
8 advocating that it be removed.

9 COMMISSIONER BROWN: Thank you. And I
10 appreciate all of the arguments today.

11 Staff, are there any other issues before we
12 move on to Issue 9?

13 MS. DZIECHCIARZ: Yes, Commissioner. We'll
14 note that the order establishing procedure requires
15 that a party take a position at the prehearing
16 conference unless good cause is shown as to why the
17 party cannot take a position at this time.

18 Accordingly, if a party's position in the
19 draft prehearing order is currently no position,
20 then the party must change it.

21 Ms. Ponder, will you be giving us the wording
22 that you would like for Issue 17?

23 MS. PONDER: Yes.

24 MS. DZIECHCIARZ: Okay.

25 COMMISSIONER BROWN: By tomorrow?

1 MS. PONDER: Sure.

2 MS. DZIECHCIARZ: And that's -- so, we would
3 suggest, the parties who haven't taken a position,
4 please submit their position in writing no later
5 than close of business tomorrow, November 27th.
6 And if the party fails to take a position by that
7 time, the prehearing order will reflect -- will
8 reflect no position.

9 Thank you.

10 COMMISSIONER BROWN: Thank you.

11 Any other issues before we move on to
12 Section 9? No? Okay.

13 So, exhibit list. Staff, Section 9.

14 MS. DZIECHCIARZ: We have prepared a draft
15 comprehensive exhibit list, which includes all
16 prefiled exhibits and includes those exhibits staff
17 wishes to include in the record.

18 Staff will -- has circulated the draft list to
19 determine if there are any objections to the draft
20 comprehensive exhibit list or to any of staff's
21 exhibits being entered into the record.

22 COMMISSIONER BROWN: Thank you.

23 All right. Seeing nothing else there, we'll
24 move to Section 10, proposed stipulations. Seeing
25 that there are no proposed stipulations, from the

1 parties -- nope? All right.

2 We're going to move to a pending motion.

3 Staff, Section 11.

4 MS. DZIECHCIARZ: There are no pending motions
5 at this time.

6 COMMISSIONER BROWN: And -- because you guys
7 are awesome. Thank you.

8 Section 12: Pending confidentiality. Same?

9 MS. DZIECHCIARZ: No pending confidentiality.

10 COMMISSIONER BROWN: Thank you.

11 Section 13: Post-hearing.

12 MS. DZIECHCIARZ: If issues are stipulated and
13 the parties agree to waive briefs, the Commission
14 may make a bench decision for this portion of the
15 docket. If there are any issues to be briefed,
16 staff recommends post-hearing briefs be no longer
17 than 40 pages.

18 COMMISSIONER BROWN: Are all parties in
19 agreement with that?

20 MS. PONDER: Yes.

21 COMMISSIONER BROWN: Thank you.

22 MS. KEATING: Yes.

23 MS. DZIECHCIARZ: Staff notes that any briefs
24 would be due on January 7th, 2018 -- 2019, excuse
25 me.

1 COMMISSIONER BROWN: Oh, yeah. Wow. Time
2 moves fast.

3 All right. Section 14.

4 MS. DZIECHCIARZ: Staff recommends that the
5 prehearing officer make a ruling that opening
6 statements, if any, should not exceed five minutes
7 per party, unless any party chooses to waive its
8 opening statements.

9 COMMISSIONER BROWN: Sound good to everybody?
10 Thank you.

11 MS. KEATING: Thank you.

12 COMMISSIONER BROWN: All right. Section 6:
13 Other matters. Are there any other matters to be
14 addressed here at this prehearing conference?
15 Seeing none -- okay.

16 All right. I think we are officially
17 adjourned. Thank you so much for an efficient
18 prehearing conference and for your arguments today.

19 MS. KEATING: Thank you, Commissioner.

20 COMMISSIONER BROWN: We're adjourned.

21 MS. PONDER: Thank you.

22 (Whereupon, proceedings concluded at 2:00
23 p.m.)

24

25

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

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;
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 5th day of December, 2018.



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