

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20190001-EI

FUEL AND PURCHASED POWER COST
RECOVERY CLAUSE WITH
GENERATING PERFORMANCE
INCENTIVE FACTOR.

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PROCEEDINGS: PREHEARING STATUS CONFERENCE

COMMISSIONERS
PARTICIPATING: GARY CLARK
PREHEARING OFFICER

DATE: Thursday, September 26, 2019

TIME: Commenced: 2:00 p.m.
Concluded: 3:00 p.m.

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

REPORTED BY: DANA W. REEVES
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
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1 APPEARANCES:

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3 DEPUTY PUBLIC COUNSEL; PATRICIA A. CHRISTENSEN,
4 STEPHANIE A. MORSE [Telephonic] and THOMAS DAVID,
5 ESQUIRES, Office of Public Counsel, c/o the Florida
6 Legislature, 111 W. Madison Street, Room 812,
7 Tallahassee, Florida 32399-1400, appearing on behalf of
8 the Citizens of the State of Florida.

9 JAMES D. BEASLEY, MALCOM MEANS, ESQUIRES
10 Ausley & McMullen, Post Office Box 391, Tallahassee,
11 Florida 32302. PENELOPE RUSK [Telephonic] appearing on
12 behalf of Tampa Electric Company.

13 MARIA J. MONCADA, ESQUIRE, 700 Universe
14 Boulevard, Juno Beach, Florida 33408-0420, appearing on
15 behalf of Florida Power & Light Company. [Telephonic]

16 MATTHEW R. BERNIER, ESQUIRE, 106 East College
17 Avenue, Suite 800, Tallahassee, Florida 32301-7740,
18 appearing on behalf of Duke Energy Florida, LLC.

19 RUSSELL A. BADDERS, ASSOCIATE GENERAL
20 COUNSEL, One Energy Place, Pensacola, Florida
21 32520-0100, appearing on behalf of Gulf Power Company.
22 [Telephonic]

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1 APPEARANCES (CONTINUED):

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3 215 South Monroe Street, Suite 601, Tallahassee, Florida
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5 Utilities Company.

6 JON C. MOYLE, JR., ESQUIRE, KAREN A. PUTNAL,
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8 North Gadsden Street, Tallahassee, Florida 32301,
9 appearing on behalf of Florida Industrial Power Users
10 Group.[Telephonic]

11 JAMES W. BREW, AND LAURA A. WYNN, ESQUIRES,
12 Stone Matheis Xenopoulos & Brew PC, 1025 Thomas
13 Jefferson Street, NW, Eighth Floor, West Tower,
14 Washington DC 20007, appearing on behalf of PCS
15 Phosphate - White Springs. [Telephonic]

16 SUZANNE BROWNLESS, FPSC General Counsel's
17 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida
18 32399-0850, appearing on behalf of the Florida Public
19 Service 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, adviser to the Florida Public
24 Service Commission.

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P R O C E E D I N G S

COMMISSIONER CLARK: All right. We'll go ahead and get started. We'll call this status conference to order. A month ago, I didn't even know what a status conference was and now we're having one. So that's a little bit interesting. I appreciate everybody being here today. I'll ask staff if they would read the notice, please.

MS. BROWNLESS: Thank you, sir. By notice issued on September 20th, 2019, this time and place has been set for status conference in Docket No. 20190001-EI. The purpose of this status conference is to hear from the parties regarding the wording of OPC's proposed issues and the Commission staff's proposed issues, which are attached to the September 20th notice.

COMMISSIONER CLARK: All right. Thank you, Suzanne. We're going to take appearances. We've got several parties that are participating by telephone today. So as I call your company name for appearances, please speak loudly, and then I'm going to follow back around and see if there's anyone else on the line that needs to be identified. So we'll start today with Duke.

MR. BERNIER: Good afternoon, Commissioner.

1 Matt Bernier for Duke Energy.

2 COMMISSIONER CLARK: Florida Power & Light.

3 MS. MONCADA: Good afternoon, Commissioner.

4 Maria Moncada for FPL.

5 COMMISSIONER CLARK: FPU.

6 MS. KEATING: Good afternoon, Commissioner.

7 Beth Keating here for FPU.

8 COMMISSIONER CLARK: Gulf Power.

9 MR. BADDERS: Good afternoon, Commissioner.

10 This is Russell Badders on behalf of Gulf.

11 COMMISSIONER CLARK: Tampa Electric.

12 MR. BEASLEY: Good afternoon, Commissioner.

13 Jim Beasley and Malcolm Means for Tampa Electric.

14 COMMISSIONER CLARK: OPC.

15 MS. RUSK: Penelope --

16 COMMISSIONER CLARK: I'm sorry. There was
17 someone on the phone. Would you say that again?

18 MS. RUSK: Yes. I was going to say, this is
19 Penelope Rusk on the line, as well, for Tampa
20 Electric.

21 COMMISSIONER CLARK: Penelope? Thank you.

22 OPC.

23 MR. REHWINKEL: Commissioner, Charles

24 Rehwinkel, J.R. Kelly, Tad David and Patty

25 Christensen here present for the Office of Public

1 Council. And I think we have some on the phone.

2 COMMISSIONER CLARK: Okay. Anyone on the line
3 for OPC?

4 MS. MORSE: Yes. Good afternoon,
5 Commissioner. This is Stephanie Morse with OPC.

6 COMMISSIONER CLARK: Thank you. Anyone else
7 for OPC? All right. FIPUG.

8 MR. MOYLE: Greetings. John Moyle on behalf
9 of the Florida Industrial Power Users Group, FIPUG.

10 COMMISSIONER CLARK: Florida Retail. Anyone
11 for Florida Retail on the line?

12 All right. PCS Phosphate.

13 MR. BREW: Good morning Commissioner, this is
14 James Brew.

15 COMMISSIONER CLARK: And Commission staff.

16 MS. BROWNLESS: Suzanne Brownless on behalf of
17 Commission staff.

18 MS. HELTON: And Mary Ann Helton here as your
19 adviser, along with your General Counsel, Keith
20 Hetrick.

21 COMMISSIONER CLARK: All right. Is there
22 anyone else on the line participating
23 telephonically?

24 All right. That sounds great. Well, we'll
25 move into oral presentations. We're going to begin

1 with OPC. Mr. Rehwinkel.

2 MR. REHWINKEL: Thank you, Commissioner. And
3 I want to thank you personally for taking the time
4 to do this. This is -- this is something that I
5 welcome and the office welcomes is your personal
6 attention to this issue.

7 The Public Council raised an issue -- and we
8 admittedly raised an issue fairly late in the
9 process, and the issue is broader than just one
10 issue's wording, but it really focuses on the use
11 of the word appropriate, as a polestar for the
12 Commission's decision-making on issues that affect
13 large sums of money that the customers will incur.
14 Oftentimes in the fuel clause and other clauses,
15 these large amounts of money are not put in
16 dispute, but the Commission has a large staff, as
17 do the companies that spend a lot of time and
18 effort in developing precise numbers for the
19 Commission to approve.

20 So we put some wording changes in that would
21 substitute a level of prudence -- a level of
22 precision, I mean -- in the issue -- the
23 determinations that the Commission would make,
24 because we felt like the word appropriate was not
25 appropriate in the sense that it has a softness

1 about it that we think may not be the best way to
2 do it. We fully understand that the use of the
3 term appropriate has been around for a long time,
4 but we had encountered the phraseology and we were
5 pointed to that its genealogy came from these fuel
6 docket issues. And so we decided that we would
7 seek to advocate that the Commission make a change
8 in the way they word these issues.

9 I, admittedly, we're bringing this up for the
10 first time and rather late in the process. If
11 nothing else, we wanted to start a dialogue, but we
12 certainly welcome any finality that you want to
13 accord to these issued wordings and we will except
14 that wording no matter what you come up with. But
15 there are terms like correct, or just asking the
16 question, what amount, et cetera, et cetera should
17 the Commission approve and go to the substance of
18 the language.

19 We had initially, I think incorrectly,
20 proposed that the Commission try to get precise
21 with whether they were making a reasonableness
22 determination or a prudence determination, but upon
23 reviewing some case law, it was brought to our
24 attention by one of our accountants, Mr. Willis, is
25 that the Commission stays away from making prudence

1 determinations in fuel purchases because there are
2 reasons to sometimes go back and forward in that.
3 And so we don't want to undo that.

4 So we commend to you for your consideration
5 the language suggestions that we have and we
6 welcome the opinions that the other parties have,
7 as well as your staff, which ultimately has to
8 write the recommendations and advise you on what
9 your decisions should be, but we would ask that the
10 Commission strongly consider words like correct or
11 have no qualifiers and just say, what amount should
12 be determined or approved.

13 Finally, issue -- there is an issue related to
14 St. Lucie that the parties have agreed to defer to
15 next year. So I won't get into -- I don't think
16 you need to worry about the wording of that one.

17 Issue 1B, which relates to the Bartow 2017
18 outage, that was deferred by agreement and approval
19 of the Commission to this year, has some language
20 changes that we've suggested, that upon reflection
21 and discussion very late in the day today, we have
22 proposed some modifications that Duke has countered
23 with that we agreed to and we gave to staff at the
24 outset of this meeting here today. We would ask
25 that you park that issue and we deal with the

1 issues other than that one and that we then come
2 back to it, but I think I can read for the record,
3 and those on the line who may not have had a chance
4 to be a part of this conversation -- if you don't
5 mind, I'll read this out loud. And we would
6 propose for issue 1B, and we would also propose
7 that if this issue, or something very close to this
8 is agreed to, issue 1C would not be required,
9 because this issues would cover both the outage
10 replacement costs for the 60 or so -- the
11 approximately 60-day period in 2017, as well as the
12 any replacement power for any unit de-rating that
13 might have occurred, which is what issue C was
14 about.

15 So we would propose that the issue read: Was
16 DEF prudent in its actions and decisions leading up
17 to and in restoring the unit to service after the
18 February 2017 forced outage at the Bartow Plant
19 and, if not, what action should the Commission take
20 with respect to replacement power costs.

21 So I think, if I read it correctly, Duke
22 agrees with that language and your staff has asked
23 to give -- be given some time to consider it. And
24 I have not had a chance to run this by PCS
25 Phosphate or FIPUG or any other party that may be

1 interested in this Bartow issue.

2 So, with those comments, I thank you for
3 affording us the opportunity to make this
4 presentation and we look forward to the discussion
5 and your decision. Thank you.

6 COMMISSIONER CLARK: Thank you, Mr. Rehwinkel.
7 So my preliminary issue report -- I did not have
8 those as OPC issues. Suzanne, is there a reason --
9 they are on staff issues, but I don't have them
10 listed as OPC issues.

11 MS. BROWNLESS: The list that's included as
12 attachment A was given to us by OPC on
13 September 17th and we had -- when we were putting
14 the final issue list together for September 18th,
15 we included issues that had been discussed and that
16 was the final issue list, and that's why there's a
17 disparity between the 17 issues and the 18 issues.
18 The 18 issues are, to the best of my knowledge and
19 belief, where everybody is right now.

20 COMMISSIONER CLARK: So I should be working
21 off of this September 18th preliminary?

22 MS. BROWNLESS: Yes, sir, the staff issue
23 list. It's Attachment B to the notice.

24 COMMISSIONER CLARK: Got it. Okay. Thank
25 you, Mr. Rehwinkel. I believe next up is Duke.

1 MR. BERNIER: Thank you, Commissioner. I'll
2 start with the Issue 1B, I guess that Mr. Rehwinkel
3 just read. We are good with the rewording. He
4 faithfully read it. We have no objection to it and
5 we agree that with 1B updated, as he just read into
6 the record, 1C can go away.

7 Regarding the other language changes that OPC
8 has proposed, we're very largely ambivalent to it.
9 We think that the language as it has been in the
10 issues for the last couple years has worked fine,
11 but we also would not have a strong objection to a
12 change. So we're okay either way, I guess.

13 COMMISSIONER CLARK: Okay. Thank you, sir.

14 MR. BERNIER: Thank you.

15 COMMISSIONER CLARK: FPL.

16 MS. MONCADA: Thank you, Commissioner. FPL
17 also wants to thank you for your time this
18 afternoon and listening to what the parties have to
19 say today. You know, the way FPL feels is, to sum
20 it up, in a quaint saying, if it ain't broke, don't
21 fix it. There has been nothing wrong, from what we
22 can see with it, use of the words the way they have
23 been for many, many years. It has worked well. I
24 don't see a difference in the level of softness or
25 hardness, you know, if you try to distinguish

1 between the word correct and appropriate. Mr.
2 Rehwinkel mentioned something about a want of
3 precision, and I can speak for -- I know I can
4 speak for FPL when I say that there is -- there
5 would be no difference in our level of precision,
6 depending on what the word is, and the fact that
7 the word appropriate is used, does not take
8 anything from the level of rigor that we put into
9 our filing.

10 And, as Mr. Rehwinkel pointed out, there is
11 PSC precedent that allows the Commission to look
12 back into any prior costs that were incurred if
13 there is ever a question about it. And the wording
14 that staff proposes is consistent with that
15 precedent. So FPL would support the staff issues
16 as they were worded by staff.

17 COMMISSIONER CLARK: All right. Thank you
18 very much. Florida Public. Ms. Keating.

19 MS. KEATING: Good afternoon, Commissioner,
20 and thank you, as well, for your time. I would say
21 FPUC is largely ambivalent, as is Duke, as Duke
22 mentioned to the changes proposed by OPC, but we
23 would really tend to prefer the original wording of
24 the issues. I think when you look back in time and
25 you go from year to year and you see a change in

1 the wording of the issues, that you would assume
2 that something had changed in the standard of
3 review. And I don't know how you would explain
4 that in an order showing how the issues have
5 changed, you know, what was the rationale for the
6 change.

7 FPUC ran into a similar issue last year in a
8 different case where issues had been proposed for
9 one company worded one way, and a similar case for
10 the company came before the Commission and
11 suggestions were made to change the wording of the
12 issues for FPUC, and I think we would have the same
13 concern here as we did there, which was just that,
14 you know, you assume a change in wording means some
15 change in the standard of review and if there
16 really isn't, then it would seem like maintaining
17 the issues as they are should be fine.

18 COMMISSIONER CLARK: Okay. Thank you very
19 much.

20 Gulf Power. Mr. Badders.

21 MR. BADDERS: Yes. Good afternoon, again, and
22 thank you for this opportunity on this issue.

23 Largely what, you know, along with what's been
24 said by Ms. Keating, I have a preference to keep
25 the language as it is. This language has worked

1 well for a number of years. If we start changing
2 it -- we've got a hard look, I mean, there may be
3 some unintended consequences. I mean, someone
4 down -- you know, three or four years down the road
5 will look at this change in language if we do it
6 and wonder why and then we have to start figuring
7 out what has changed. Is there a burden of proof
8 difference, filing requirement difference?

9 So I think we all know what we're doing at
10 this point with the language that we have. It has
11 worked. Worked well. So my preference would be
12 that we keep this language as is.

13 COMMISSIONER CLARK: Thank you, Mr. Badders.
14 TECO. Mr. Beasley.

15 MR. BEASLEY: Yes, sir. Thanks, again, sir
16 for being here and conducting this proceeding.
17 Tampa Electric does not have any company-specific
18 issues affected by the proposed changes, but just
19 as a generic matter, we have some concern about
20 changing the way language is stated in our orders
21 and prehearing orders that have stood the test of
22 time. And I looked back before coming here at a
23 prehearing order 25 years ago and 30 years ago and
24 both of which use the term appropriate in
25 describing issues to be decided in this case this

1 year. There is obviously some concern about
2 changing that language on a going-forward basis and
3 what the impact would be. There is, I guess, a
4 fear of the unknown and a comfort in the known and
5 we would, I guess, prefer adhering to the language
6 the staff has proposed for use in this proceeding.

7 COMMISSIONER CLARK: Thank you, sir. Mr.
8 Moyle. FIPUG.

9 MR. MOYLE: Thank you. And along with the
10 others, we would echo the thanks and gratitude for
11 you convening a status conference to allow the
12 parties to be heard. Doesn't happen everyday and I
13 think it's a good process and gives people the
14 opportunity to share some thoughts and hopefully
15 you'll find it worthwhile as you contemplate the
16 decision that is before you.

17 So FIPUG would support the position of the
18 Office of Public Council as Mr. Rehwinkel set out,
19 and just add a couple of things that I think
20 hopefully will be worth considering. You know, it
21 sounds to me like the issue out there is some
22 imprecision in the language, appropriate. And, you
23 know, taking kind of a step back in a big picture,
24 I mean, we're in a 120.57 hearing that's set up to
25 find facts, and I would think that it's probably

1 better to have issues phrased in a way that doesn't
2 have qualitative modifiers in them. If now is not
3 the time to have the qualitative modifier, which
4 Mr. Rehwinkel cited a case that said this is -- you
5 know, this not when we're making a prudence
6 determination. This is more a time when we're
7 trying to figure out what's the number.

8 And to Maria's point about correct and
9 appropriate, you know, being the same, I think
10 there is a little difference. And in my mind, you
11 know, the issue is -- to use a hypo, is two plus
12 three -- does two plus three equal five, you know,
13 is that correct or incorrect? I mean, everybody
14 would say, oh, that's correct. But is two plus
15 three appropriate? You know, that obviously is a
16 different question and is a lot harder to answer.

17 And that hypo, I hope, underscores sort of the
18 point I'm trying to make with respect to factual
19 determinations that are at issue. And the argument
20 about, well, it's worked, it's worked well, and if
21 it ain't broke don't fix it, I think is sometimes
22 hard to reconcile that argument with improvement.
23 And if all of us have said, well, it seems to be
24 working okay. Well, can it be improved and better
25 clarified?

1 And I know one of the tenets underlying the
2 APA is it's supposed to be set up so people can go
3 look at rules and understand. They don't have to
4 necessarily rely on unwritten things and, oh, let
5 me talk to Russell Badders or Jim Beasley, who's
6 been doing this for a long time, to understand
7 really what appropriate means.

8 So at the very least, I would think that when
9 wrestling with this issue in making a decision, it
10 would help all involved if the order on this would
11 provide some background and some clarity,
12 particularly on the points that this is not where
13 prudence is determined, per Mr. Rehwinkel's point,
14 and then that becomes something that could be
15 looked to, to give a little more precision to what
16 it is that's taking place.

17 So at the end of the day, you know, we would
18 support OPC's position on this and suggest that
19 qualitative words in these issues, if you're not in
20 the process of making a qualitative judgment should
21 be avoided and the issue should be framed in a way
22 that can take the facts in and save the qualitative
23 judgments for a later day, if need be. So that's
24 the points that we just wanted to bring to your
25 attention.

1 COMMISSIONER CLARK: All right. Thank you,
2 sir. FRF. No one from FRF is on the line,
3 correct? Still no one from FRF?

4 Okay. PCS. Mr. Brew.

5 MR. BREW: Thanks, Commissioner. I guess I'm
6 Tail End Charlie. Very quickly, to not be
7 repetitive, we would support the proposals from
8 OPC. Appropriate is always kind of a vague word
9 when the Commission is trying to make a
10 determination regarding rates. From our
11 perspective when we're looking at historic actuals,
12 we're looking for the correct number when we're
13 doing forecasts, we're looking for a reasonable
14 forecast to use for rate-making purposes so the
15 editing adjustments that they've proposed seem to
16 be more consistent and provide greater clarity.

17 COMMISSIONER CLARK: Okay. Thank you very
18 much. And, finally, Commission staff.

19 MS. BROWNLESS: Thank you, sir. I'm going to
20 start out by saying that our positions are found in
21 Attachment B to the notice and those are the issues
22 that we all agree on, as we previously discussed.
23 And to kind of explain how staff uses the words
24 that are in question here, staff uses prudent in an
25 issue when the amount is connected with a discreet

1 fully complete event, in which the discovery is
2 complete, all parties have had an opportunity to
3 conduct discovery, there is -- it's a known event
4 and it's completely finished. And that is the type
5 of issue in the fuel docket that we use the term
6 prudent for, and that number -- when an order is
7 issued on that type of issue, that number has
8 administrative finality attached to it.

9 Now, we use -- we've used, in this issue list,
10 prudent on issues 1B, which is the 2017 Bartow
11 outage at Duke's plant. Issue 1D, which is the
12 2017 de-rating cost. Issue 2L, which is the St.
13 Lucie outage. We've also used prudent for hedging
14 activities, the few that are left. Issue 1A, 4A,
15 5A, because those are discreet events in the past.
16 Everybody knows what the costs are. Nothing is
17 going to change.

18 We use reasonable when an amount is a tariff,
19 because the Commission's authority is to set under
20 Chapter 366.06 just, fair and reasonable rates. So
21 you could find those terminologies in Issue 2K and
22 issue 35. Now, I want to mention that issue 2N and
23 M were phrased by Florida Power and Light, and we
24 would have -- they used appropriate, but in issue
25 2M -- or 2N, I'm sorry, which is to revise tariff,

1 we probably would have used reasonable, but that's
2 why that terminology is different.

3 Every other issue in here uses the word
4 appropriate. And I want to share that the American
5 Heritage Dictionary, the Second College Edition
6 from 1991, and I understand I'm the only person in
7 America who's still using a dictionary, but there
8 you are -- defines appropriate as suitable for a
9 particular purpose, condition, occasion or place,
10 proper or fitting.

11 Now, our staff feels that appropriate is a
12 smaller subset of reasonable. They think for doing
13 a calculation, there may be an entire group of
14 reasonable calculations that could be done to
15 compute a particular amount, but that appropriate
16 is the one that's most suitable out of that group
17 of potential reasonable choices, because
18 reasonable, according to the American Heritage
19 Dictionary, means governed by or in accord with
20 reason or sound thinking. So obviously there would
21 be many reasonable calculations that could be done
22 for virtually every one of the amounts that are
23 discussed in this docket.

24 I have been doing this a long time, as has Mr.
25 Beasley, and I decided that I would just go back to

1 1999 and look at the prehearing order in the 1999
2 fuel docket. And what I have just described is
3 what also the wording was in the 1999 docket. And
4 the generic issues that appear every year and have
5 appeared for the last 20 years, are exactly worded
6 the way they are today, except for the fact that
7 you change the years.

8 So the fuel docket, unlike the other clause
9 dockets for which there's a statute, there is no
10 statute for the fuel docket. There is no rule that
11 controls the fuel docket. The fuel docket came
12 about in the '70s as a reaction to the Arab oil
13 embargo and it is based upon the very broad ability
14 of the Commission to set fair, just and reasonable
15 rates and to allow appropriate expenses, prudently
16 incurred, to be recovered.

17 So if you look -- if you go back and look at
18 the orders and decisions that have interpreted the
19 fuel docket, you can start with some Attorney
20 General's opinions in 1974 and then you can talk
21 about the Maxine Mine Case, back in 1984. In the
22 Maxine Mine Case, we found that a
23 previously-approved expense for coal was excessive
24 and unreasonable. And that adjustment was made
25 five years after the fact. Then there was the

1 Progress Energy Case, which was an October 10, 2007
2 case, in which Progress Energy, who was the
3 predecessor to the charming Duke Energy now, went
4 back for a period of -- in 2007 they went back to
5 1996 and found that a refund of 143 million dollars
6 was appropriate.

7 So when we use the word prudent, we attach
8 administrative finality to it. Every other number
9 in the fuel docket is subject to being revised
10 should, in the future, information come up that
11 allows us the ability to do so, or in which it's
12 apparent that a revision needs to be made.

13 So, given the development of the fuel docket,
14 the case law that we have, we want to stick with
15 using what we've been using, and with the
16 understanding that essentially every amount that's
17 found is going to be subject to review under the
18 appropriate circumstances, unless we have attached
19 the word prudent to it, and we're not going to
20 attach the word prudent to something unless it is
21 the defined complete event that has been fully
22 litigated by every party to the docket.

23 So I guess we're kind of in the FP&L, if it
24 ain't broke, don't fix it mode. And we don't think
25 changing the words will change whether

1 administrative finality attaches to any particular
2 issue. And we think that the reasons that
3 supported this wording 40 years ago and during --
4 30 years ago and 20 years ago are still rational.
5 We haven't heard anything different from the Office
6 of Public Council today. And since nothing has
7 changed of which we are aware, then we want to
8 stick with the wording we have.

9 COMMISSIONER CLARK: Thank you, ma'am. All
10 right. Any other parties? I think we went through
11 the complete list. Any other parties have anything
12 they would like to add to that?

13 All right. I'll tell you what we're going to
14 do. We're going to probably go ahead and make a
15 ruling today. That will give you guys everything
16 you need to go back and get started in preparation
17 for the prehearing. Give me about five minutes in
18 recess to consult with our attorneys and I'll be
19 right back. Mr. Rehwinkel.

20 MR. REHWINKEL: Before you break,
21 Commissioner, I would just ask staff if they have
22 an opinion for the Commissioner with respect to 1B
23 and the proposed wording?

24 MS. BROWNLESS: I think we're fine with regard
25 to 1B. And we also understand that if the wording

1 of 1B is adopted as it is, we will strike 1C.

2 COMMISSIONER CLARK: 1C goes away. Okay.

3 MR. REHWINKEL: Because Duke has assured us
4 that their reading is the same as ours, that the
5 way it's worded as proposed here today, it would
6 allow us to litigate and advocate and the
7 Commission to decide the -- any dollars that might
8 be appropriately disallowed related to the de-rate.

9 COMMISSIONER CLARK: Okay. Great.

10 MR. MOYLE: FIPUG's good with that language.
11 We heard it today. So I know it was represented.
12 We haven't seen it, but we're good with that, as
13 well.

14 COMMISSIONER CLARK: Okay great. Mr. Bernier.

15 MR. BERNIER: I told OPC I would agree on the
16 record to that and I begrudgingly do at this time.

17 COMMISSIONER CLARK: Understood. And was PCS
18 also a participant to that? PCS, do you have a
19 comment on 1B?

20 MR. BREW: Commissioner, from what I heard, I
21 have not seen the language in writing, but from
22 what I've heard, it appears to be fine.

23 COMMISSIONER CLARK: Great. Okay. Nothing
24 else, we'll stand in recess for five minutes.

25 (Brief recess.)

1 COMMISSIONER CLARK: All right. We will
2 reconvene, kind of go through a couple findings
3 here and talk for just a second about the issues as
4 I see them and then we'll probably go to everyone.

5 I want to say thank you Mr. Rehwinkel, OPC,
6 for bringing this issue up. It's a lot to digest
7 and I realize you guys acknowledge it's of a very
8 short, condensed time line, as well.

9 There may be better terms that we need to use,
10 but I think Mr. Moyle, I overheard him say, words
11 matter, and I got to thinking about that exact
12 statement when we look at where we are in this.
13 And he's absolutely right, the words do matter.
14 And I have some very serious concerns with what the
15 potential unintended consequences of making this
16 change at this point, without having some sort of
17 established background, some established procedure
18 that we're able to go forward with.

19 Again, I am one of those, if things need
20 changing -- I'm not the huge change advocate, but
21 if they need changing and we're going to get a
22 better result from them, then you have my support
23 in less than a hundred percent. I just can't
24 understand exactly what's going to happen when we
25 begin to unravel this and that gives me great

1 concern.

2 So, with that, we're going to leave the
3 language the same as it is right now. As regard to
4 the rest of the issues, the 1B issue is accepted,
5 that is -- and that will eliminate 1C. We'll leave
6 the language, again, as staff has recommended. We
7 will issue an order establishing these issues
8 officially probably today or tomorrow. We'll get
9 that out to you guys and that will kind of clear
10 everything up and give us new direction to go with
11 there. Mr. Rehwinkel.

12 MR. REHWINKEL: Thank you, Commissioner. And,
13 again, I can't express how much we appreciate you
14 being here today and taking the time to do this.

15 I want to put everybody on notice that when we
16 get to the prehearing, this has been transcribed,
17 we may ask and we may have conversation in the
18 interim, that the description that Ms. Brownless
19 went through sort of laid out, I think that was a
20 good thing and I don't think it would hurt to have
21 that in an order to say this had been dealt with,
22 even if it's an order that you put out, but I don't
23 know that the time will be right for that, but I
24 just want to put people on notice that we might do
25 that, because I think that was a very -- I mean,

1 everything everyone said today I think has a lot of
2 important meaning. Mr. Badders and I had the same
3 conversation about unintended consequences. So we
4 accept that.

5 And the one last little thing I would ask, and
6 maybe FPL could speak to it, is staff had mentioned
7 that there was one issue that they thought probably
8 should have the word reasonable in it and it
9 didn't, to be consistent. I don't know if it make
10 sense to conform that if we're going to take this
11 opportunity to set some principles that we go
12 forward with, but, you know, I'm not trying to
13 throw a monkey wrench in it at all and I'm just --
14 I'm really indifferent to it, but I really liked
15 the fact that you're making a decision based on a
16 very good recommendation from your staff.

17 COMMISSIONER CLARK: Thank you. All right.
18 Ms. Suzanne, do you have a response to that?

19 MS. BROWNLESS: Yes. Thank you for your kind
20 words. And that, I think would be issue 1N, which
21 is the tariff issue for --

22 COMMISSIONER CLARK: Is it 2N?

23 MS. BROWNLESS: 2N. I'm sorry.

24 COMMISSIONER CLARK: 2N is what I had marked.

25 The word appropriate is -- should have been

1 reasonable. Is that what you --

2 MS. BROWNLESS: Yes, sir. Determine to be
3 reasonable.

4 COMMISSIONER CLARK: Ms. Moncada, are you on
5 the line?

6 MS. MONCADA: I am on the line.

7 COMMISSIONER CLARK: Are you looking at that?

8 MS. MONCADA: I actually, for some reason, I
9 have a version pulled up that doesn't have that,
10 but I heard the description of what the change
11 would be and -- okay. We have no objection to
12 changing appropriate to reasonable in issue 2N.

13 COMMISSIONER CLARK: Okay. And staff's good
14 with it. Okay.

15 MS. BROWNLESS: Yes, sir. Thank you.

16 COMMISSIONER CLARK: We will make that change
17 there.

18 MR. MOYLE: Mr. Chairman, John Moyle. If I
19 could just be heard for a quick second.

20 COMMISSIONER CLARK: Certainly.

21 MR. MOYLE: We would echo the suggestion Mr.
22 Rehwinkel made. I mean, this, you know, issue has
23 been around a long time and, you know, it's kind of
24 an oral history that you got to go through to
25 really understand and appreciate what's at play

1 here. And I think what Ms. Brownless outlined was
2 good and we'd just strongly encourage that the
3 order that is forthcoming, you know, hopefully take
4 advantage of an opportunity to spell out some of
5 that, as compared to just saying, you know, the
6 motion is denied, without putting in some of the
7 points that were made during the discussion. I
8 think it would help because then you would have
9 something that would be easy to find. It being an
10 order, you wouldn't have to go dig up the
11 transcript and things are easier to locate in an
12 order. So I just wanted to make that -- make that
13 point with you.

14 COMMISSIONER CLARK: Okay. We will certainly
15 take a look at that and discuss that with our
16 General Counsel and make sure we're on the right
17 track there. I'm looking for nods. I'm not
18 getting any, so I'm going to hold that one under
19 advisement for just a little while.

20 Any other comments or questions? Any other
21 matters to come before the hearing?

22 MR. MOYLE: I should have been there
23 scowling -- scowling at my friends.

24 COMMISSIONER CLARK: I missed that. I'm
25 sorry.

1 MR. MOYLE: I just said, maybe I should have
2 been there in person to scowl at my friends who
3 aren't nodding.

4 COMMISSIONER CLARK: Thank you for your
5 participation, Mr. Moyle. Without objection, we
6 stand adjourned.

7 (Proceedings concluded at 3:00 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DANA W. REEVES, Professional 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 7th day of October, 2019.



DANA W. REEVES
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