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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20190061-EI

In re: Petition for approval  
of FPL SolarTogether program  
and tariff, by Florida  
Power & Light Company.

\_\_\_\_\_ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS  
PARTICIPATING: CHAIRMAN GARY F. CLARK  
PREHEARING OFFICER

DATE: Friday, January 10, 2020

TIME: Commenced: 9:00 A.M.  
Concluded: 9:36 A.M.

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

REPORTED BY: DEBRA R. KRICK  
Court Reporter

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

1 APPEARANCES:

2 MARIA JOSE MONCADA and WILLIAM P. COX,  
3 ESQUIRES; WADE LITCHFIELD, General Counsel, 700 Universe  
4 Boulevard, Juno Beach, Florida 33408, on behalf of  
5 Florida Power & Light Company (FPL).

6 J. R. KELLY, Public Counsel, CHARLES J.  
7 REHWINKEL, Deputy Public Counsel and STEPHANIE MORSE,  
8 Associate Public Counsel, ESQUIRES, 111 West Madison  
9 Street, Room 812, Tallahassee, Florida 32399,  
10 on behalf of the Citizens of the State of Florida (OPC).

11 JOHN C. MOYLE JR. and KAREN A. PUTNAL,  
12 ESQUIRES, 118 North Gadsden Street, Tallahassee, Florida  
13 32301, on behalf of Florida Industrial Power Group Users  
14 (FIPUG).

15 GEORGE CAVROS, ESQUIRE, 120 E. Oakland Park  
16 Boulevard, Suite 105, Fort Lauderdale, Florida 33334  
17 On behalf of Southern Alliance for Clean Energy (SACE).

18 MARSHA E. RULE, ESQUIRE, 119 South Monroe  
19 Street, Suite 202, Tallahassee, Florida 32301; RICHARD  
20 A. ZAMBO, ESQUIRE, 2336 South East, Ocean Boulevard,  
21 #309, Stuart, Florida 34966; and KATIE CHILES  
22 OTTENWELLER, QUALIFIED REPRESENTATIVE, 151 Estoria  
23 Street SE, Atlanta, GA 30316, on behalf of Vote Solar  
24 (Vote Solar).

25

1                   STEPHANIE U. EATON, ESQUIRE, 110 Oakwood  
2 Drive, Suite 500, Winston-Salem, North Carolina 27103  
3 and DERRICK PRICE WILLIAMSON, ESQUIRE, 1100 Bent Creek  
4 Boulevard, Suite 101, Mechanicsburg, Pennsylvania 17050,  
5 on behalf of Walmart Inc. (Walmart).

6                   WALT L. TRIERWEILER and KRISTEN B. SIMMONS,  
7 ESQUIRES, Florida Public Service Commission, 2540  
8 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,  
9 on behalf of the Florida Public Service Commission  
10 (Staff).

11                  MARY ANNE HELTON, ESQUIRE, Deputy General  
12 Counsel; KEITH C. HETRICK, ESQUIRE, General Counsel,  
13 Florida Public Service Commission, 2540 Shumard Oak  
14 Boulevard, Tallahassee, Florida 32399-0850, Advisor to  
15 the Florida Public Service Commission.

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1 PROCEEDINGS

2 CHAIRMAN CLARK: All right. I think it's 9:00  
3 a.m. We will go ahead and get started.

4 I understand that it's two unusual things  
5 happening this morning. We are having a hearing on  
6 a Friday, and it's before 9:30, so be prepared,  
7 lots of changes to come, right?

8 All right. We will go ahead and get things  
9 started this morning. I call the hearing to order  
10 and ask staff if you would read the notice, please.

11 MR. TRIERWEILER: By notice, this time and  
12 place was set for a prehearing conference in Docket  
13 No. 20190061-EI. The purpose of the hearing is  
14 more fully set out in the notice.

15 CHAIRMAN CLARK: All right. Let's begin with  
16 appearances.

17 MS. MONCADA: Good morning, Mr. Chairman.  
18 Maria Moncada from Florida Power & Light. Would  
19 like to also enter an appearance for Wade  
20 Litchfield and Will Cox.

21 MS. OTTENWELLER: Good morning, Mr. Chairman,  
22 Katie Ottenweller with Vote Solar.

23 MS. RULE: Marsha Rule here for Vote Solar.  
24 Also entering an appearance for Rich Zambo.

25 MS. EATON: Stephanie Eaton here for Wal-Mart,

1 Inc.

2 MR. CAVROS: Good morning, Chairman. George  
3 Cavros for Southern Alliance for Clean Energy.

4 MS. PUTNAL: Good morning, Chairman. Karen  
5 Putnal for Florida Industrial Power Users Group.  
6 And I would also like to enter an experience for  
7 Jon Moyle.

8 MR. REHWINKEL: Good morning, Chairman.  
9 Charles Rehwinkel, Stephanie Morse on behalf of the  
10 citizens with the Office of Public Counsel. And we  
11 with like to enter an appearance also for J.R.  
12 Kelly, the Public Counsel.

13 CHAIRMAN CLARK: Thank you, sir.  
14 Staff.

15 MR. TRIERWEILER: Good morning, Chairman.  
16 Walt Trierweiler and Kristen Simmons for the staff.

17 MS. HELTON: Good morning. Mary Anne Helton,  
18 here as your advisor, along with your General  
19 Counsel, Keith Hetrick.

20 CHAIRMAN CLARK: All right. Do we have  
21 everybody on record?

22 All right. Let's move into preliminaries.  
23 Are there any preliminary matters that we need to  
24 address?

25 MR. TRIERWEILER: Yes, sir, a couple of

1 preliminary matters that we would like to take up  
2 now.

3 At present, there is a disagreement about the  
4 inclusion of No. 5. However, OPC has offered to  
5 stip -- to remove the issue so long as the  
6 deposition transcript of Bill Brannen is entered  
7 into the record of the hearing. And we can take up  
8 this issue and OPC's contested issue in Section VII  
9 when we -- when we talk about -- or sorry, Section  
10 VIII when we talk about the issues.

11 Staff also recommends that Duke's motion for  
12 leave to file amicus comments be taken up now as we  
13 have Duke on hand if comment was required, and then  
14 we can send him back to work at Duke.

15 I also believe that OPC, who has filed  
16 responsive comments to the amicus, would like to  
17 comment on the motion at this time, if you would  
18 permit.

19 CHAIRMAN CLARK: Okay. We will go ahead and  
20 take that item up now. Does Duke want to enter an  
21 appearance here?

22 Good morning, Mr. Bernier.

23 MR. BERNIER: Good morning, Mr. Chairman.

24 Matt Bernier for Duke Energy.

25 I think that our arguments are pretty well

1           laid out in our motion. I understand that there  
2           was a response filed by OPC, and that they would  
3           like to make comments. I will just withhold any  
4           comments to respond to their -- their comments.

5           Thank you.

6           CHAIRMAN CLARK: All right. Mr. Rehwinkel,  
7           Ms. Morse?

8           MR. REHWINKEL: Thank you, Mr. Chairman.

9           Yes, we filed a response to the motion to  
10          accept amicus yesterday. In addition to this being  
11          very last minute, and kind of intertwined with our  
12          preparation for -- for this hearing that we have  
13          been trying to get to for a while, we believe that  
14          it is highly improper for another utility to seek  
15          to intervene in a contested adversarial litigated  
16          case.

17          This is not like situations where a  
18          declaratory statement is before the Commission and  
19          the Commission has entertained amicus comments.  
20          And we believe that Duke, by indicating its  
21          interest in an amicus fashion, is really  
22          highlighting that this is a policy change that --  
23          that may be nec -- that may require rule-making.

24          We are happy to litigate this case on its  
25          facts between FPL's customers and FPL, but we think

1           it's highly inappropriate for another utility to  
2           come on at the last -- at the 11th hour and say we  
3           want -- we want that for us too.  If that's the  
4           situation, then we think rule-making -- we should  
5           stop this thing right now and go to rule-making.

6           So we think the better course of action would  
7           be for the Commission to hear this case.  It's --  
8           it's -- it's been adversarial, but professionally  
9           adversarial.  We understand that.  And it -- it --  
10          it should -- should go forward between the  
11          litigants, and I will just stop right there.

12          CHAIRMAN CLARK:  Okay.  Thank you.

13          I have not -- have not had an opportunity to  
14          read -- I guess that was filed last night.  I have  
15          not read your objection yet, so I will take a look  
16          at that this afternoon, and we will just include  
17          the rul -- the final ruling in the prehearing  
18          order.

19          MR. REHWINKEL:  Thank you, Mr. Chairman.

20          MR. BERNIER:  Mr. Chairman, just if I could  
21          real quickly.

22          I just want to make clear, we did not petition  
23          to intervene.  I have no desire to intervene.

24          CHAIRMAN CLARK:  Understood.

25          MR. BERNIER:  Y'all seem like you have a good

1 thing going that you don't need me no for.

2 CHAIRMAN CLARK: Are you sure you don't want  
3 to stay for the party?

4 MR. BERNIER: No. No. No. Not at all. Nor  
5 do I really want to go back to work, but I  
6 appreciate that.

7 But no, we didn't petition to intervene. If  
8 we had, it would have been timely. We don't think  
9 you need rule-making, but anyway, we just -- we  
10 offered our comments and that is the extent of it.

11 CHAIRMAN CLARK: All right. Great. Thank you  
12 very much.

13 All right. Mr. Trierweiler, any other  
14 preliminary matters?

15 MR. TRIERWEILER: Not at this time.

16 CHAIRMAN CLARK: All right. We are going to  
17 start going through the prehearing order. I am  
18 going to kind of go through the first parts pretty  
19 quick. If you have any issues you would like to  
20 discuss, send up a smoke signal really quick and we  
21 will stop and get that until we get to the ones  
22 where I am pretty sure we are going to have some  
23 discussion.

24 Section I, case background.

25 II, conduct of proceedings.

1 III, jurisdiction.

2 IV, procedures for handling confidential  
3 information. Walt.

4 MR. TRIERWEILER: 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 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 protective  
14 agreement with the owner of the material.

15 CHAIRMAN CLARK: All right. All good.

16 Section V, prefiled testimony.

17 MR. TRIERWEILER: If witnesses are presented,  
18 staff will suggest that the witness summary  
19 testimony be no longer than three minutes.

20 In its prehearing statement, FIPUG objects to  
21 a witness as being considered an expert witness  
22 unless a witness affirmatively states the subject  
23 matter areas in which he or she claims expertise in  
24 voir dire, if required, is permitted.

25 However, Section V A(8) of the Order

1           Establishing Procedure requires that a party shall  
2           identify each witness the party wishes to voir  
3           dire, as well as state the specificity -- spe --  
4           let me try that one again -- state with specificity  
5           the portions of that witness' prefiled testimony by  
6           page and line number and/or exhibits by page and  
7           line number to which the party objects. If the  
8           party fails to identify the portions of the  
9           prefiled testimony or exhibits to which it objects,  
10          the party is not permitted to conduct voir dire at  
11          the hearing absent a showing of good cause.

12                 The good cause exemption does not apply to the  
13           identification of a witness. If a party does not  
14           identify the witness it wishes to voir dire, it  
15           waives the right to conduct voir dire.

16                 However, further, the Supreme Court addressed  
17           this issue in a recent opinion. Specifically, the  
18           Court held that a party's failure to identify a  
19           witness that it wishes to voir dire in compliance  
20           with the Commission's Order Establishing Procedure  
21           results in a waiver of that party's right to voir  
22           dire that witness regarding his or her expertise,  
23           and to challenge the expertise on appeal.

24                 In its prehearing statement, FIPUG has not  
25           identified the witnesses that it wishes to voir

1           dire, therefore, it appears to have waived the  
2           right to do so since it has not complied with the  
3           OEP. So at this time, staff requests that a ruling  
4           to that effect be made.

5           CHAIRMAN CLARK: All right. Thank you, sir.

6           Ms. Putnal, would you care to make Mr. Moyle's  
7           point here?

8           MS. PUTNAL: I think what I would request, Mr.  
9           Chairman, is that we have until close of business,  
10          if I may, or I could even probably verify this  
11          sooner than -- than that, to make sure that we do  
12          not have a filing to make by the end of the day.

13          I don't expect one. I think that this is a  
14          position that FIPUG has maintained in previous  
15          proceedings. It's a procedural point. I do  
16          understand the provisions that Mr. Trierweiler has  
17          outlined, so I don't have anything to add at this  
18          point.

19          CHAIRMAN CLARK: Okay. Thank you.

20          MS. HELTON: Mr. Chairman.

21          CHAIRMAN CLARK: Yes.

22          MS. HELTON: The practice for how we handle  
23          voir dire is clearly laid out in the Order  
24          Establishing Procedure. And it's very clear that  
25          any request to voir dire a witness should have been

1 made in the prehearing statement, not by the end of  
2 the day of the prehearing conference.

3 CHAIRMAN CLARK: Correct. Okay. Thank you  
4 very much.

5 MR. REHWINKEL: Mr. Chairman.

6 CHAIRMAN CLARK: Mr. Rehwinkel.

7 MR. REHWINKEL: I would like to ask that you  
8 consider the three-minute summary to be -- you  
9 reconsider that for five minutes. We have a  
10 proceeding where our witness -- we have one  
11 witness, he has filed two sets of testimony. We  
12 are not asking that he get five minutes per set of  
13 testimony, but there -- this is a brand new and  
14 novel first time policy question before the  
15 Commission. We think it's important that he be  
16 given adequate time to summarize his testimony, and  
17 it -- just three minutes is not -- is not  
18 sufficient. Five minutes is -- will be, based on  
19 our preparation, and I would ask you to allow that.

20 CHAIRMAN CLARK: Okay. Any other comments?

21 All right. Let's move on to next section,  
22 order of witnesses.

23 Are there any witnesses that we can stipulate?

24 MR. TRIERWEILER: At this time, staff believes  
25 that the prefiled testimony and exhibits of Vote

1 Solar Witness Cox, Wal-Mart Witness Chriss, SACE  
2 Witness Jacob and staff Witness Hinton can be  
3 stipulated.

4 FPL Witnesses Shannon, Deason and Brannen can  
5 also be stipulated providing the deposition  
6 transcripts for witnesses Deason and Brannen are  
7 also stipulated into the record.

8 CHAIRMAN CLARK: All right. All the parties  
9 in agreement to stipulation? Coming down the line.

10 MS. MONCADA: Yes.

11 MS. OTTENWELLER: Yes.

12 MS. EATON: Yes.

13 MR. CAVROS: Yes.

14 MS. PUTNAL: Yes.

15 MR. REHWINKEL: Yes.

16 CHAIRMAN CLARK: Okay. We got everybody.

17 MR. TRIERWEILER: Staff will confirm with each  
18 Commissioner that any identified witness can be  
19 excused. We've done so.

20 If the Commissioners don't have any questions  
21 for these witnesses, the witnesses may be excused  
22 from the hearing, and his testimony and exhibits  
23 entered into the record at the hearing as though  
24 read.

25 With those expected excusals, let me just skip

1 ahead. We've -- we've achieved those excusals.  
2 Staff understands that FPL would like to take up  
3 its direct and rebuttal case together, along with  
4 discussion about its proposed settlement to be  
5 followed by OPC's direct and supplemental case,  
6 which would include the testimony of Witness  
7 Dauphinais, and to be concluded with FPL's  
8 supplemental rebuttal witnesses, which would be Dr.  
9 Sim and Mr. Valle.

10 CHAIRMAN CLARK: All right. Everybody okay?  
11 Any objections to this order of this -- order of  
12 presentation?

13 MR. REHWINKEL: No.

14 CHAIRMAN CLARK: Mr. Rehwinkel.

15 MR. REHWINKEL: Mr. Chairman, these are things  
16 we will work out with FPL. The -- just kind of a  
17 housekeeping matter. When we put the depositions  
18 in, I don't know that we've seen the errata sheet  
19 from the -- from the witnesses, but those would --  
20 would need to be provided, and I am sure that FPL  
21 will. That's just something -- that's just a  
22 detail.

23 CHAIRMAN CLARK: They were in the -- they were  
24 in the exhibits?

25 MS. MONCADA: Yes. FPL has prepared the

1           errata sheets for the witness depositions and  
2           provided them to the court reporter. We'll provide  
3           them to you --

4           MR. REHWINKEL: Okay.

5           MS. MONCADA: -- as well.

6           MR. REHWINKEL: They just need to be part of  
7           that. And as well as there -- I don't know if  
8           there is any errata for the witnesses that are  
9           stipulated in. I don't think Mr. Shannon or Mr.  
10          Deason or Mr. Bores filed errata, but if they did,  
11          those would be --

12          MS. MONCADA: Mr. Shannon did file errata just  
13          to the extent that he is adopting --

14          MR. REHWINKEL: That's right.

15          MS. MONCADA: -- Mr. Huber's testimony, and  
16          that's reflected in the errata sheets.

17          MR. REHWINKEL: Okay.

18          MS. MONCADA: And that has been filed, Mr.  
19          Rehwinkel.

20          MR. REHWINKEL: Thanks.

21          MS. MONCADA: You are welcome.

22          CHAIRMAN CLARK: Okay. All right. Everybody  
23          is good? No other objections, no problems.

24          All right. Let's move to positions.

25          Basic positions. Now the fun ones.

1           Issues and positions. Let's go through them.  
2           I think we are all in agreement.

3           MR. TRIERWEILER: Staff will note that the  
4           Order Establishing Procedure requires that a party  
5           take a position at the prehearing conference unless  
6           good cause is shown as to why that party cannot  
7           take a position at this time.

8           Accordingly, if a party's position in the  
9           draft prehearing order is currently no position,  
10          then the party must change its position, or show  
11          good cause why it cannot proceed.

12          Contested OPC Issue A should be taken up once  
13          the other issues have been addressed. Staff also  
14          recommends that Issue No. 5 should be dropped.  
15          However, I believe that OPC would like to speak on  
16          Issue 5.

17          CHAIRMAN CLARK: Okay. All right. Let's go  
18          through the issues. When we get to that, we will  
19          have the discussion.

20          Issue 1, we are all good?

21          Issue 2?

22          Issue 3?

23          Issue 4?

24          And No. 5. Mr. Rehwinkel.

25          MR. REHWINKEL: Yes. Mr. Chairman, previously

1 I had mentioned to staff that we would want to make  
2 supplemental comments related to affiliate  
3 transactions, but with the accommodation that we've  
4 reached with FPL with regard to the stipulation of  
5 Witness Brannen, and the insertion of his testimony  
6 through the deposition testimony, we will no longer  
7 be asking for that.

8 I am going to note at the outset of the  
9 hearing that FPL has satisfied the concerns that we  
10 had related to affiliate transactions, but that the  
11 deposition transcript is the repository of the  
12 testimony that resolved those concerns, which is  
13 why we want it to be part of the record.

14 So that ameliorates our concerns. And with  
15 that, we -- we are okay with Issue 5 being dropped  
16 from -- from contention.

17 CHAIRMAN CLARK: Okay. Great.

18 Ms. Moncada.

19 MS. MONCADA: We agree. And I just want to  
20 make a quick note, Mr. Chairman, that Mr. Brannen's  
21 testimony -- I am sorry, his deposition, the  
22 second part of it was confidential because it did  
23 deal with a lot of sensitive procurement  
24 information. We are preparing a request for  
25 confidential classification. I expect that to be

1 filed at some point today.

2 CHAIRMAN CLARK: Okay. Great.

3 MR. REHWINKEL: And just to add onto that. I  
4 know there might have been a concern. We will not  
5 be needing to utilize that deposition in any way  
6 during the hearing. It will just be entered into  
7 the record, and it will be subject to the RCC and  
8 any order covering that. But it's not something  
9 that needs to be aired out in the hearing in any  
10 way.

11 CHAIRMAN CLARK: Great.

12 MS. RULE: Mr. Chairman, Vote Solar has  
13 maintained no position on Issues 1 and 5. And our  
14 reading of the procedural order is different than  
15 staff's. We believe it says you may maintain no  
16 position throughout, you do not need to take a  
17 position, but if we haven't taken one by now, we  
18 may not take one thereafter.

19 CHAIRMAN CLARK: Mary Anne.

20 MS. HELTON: Our reading of the procedural  
21 order is different. Our reading of the procedural  
22 order is that if you do not take a position by the  
23 time of the prehearing conference, then you have  
24 waived your ability to pursue that issue in the --  
25 in the case. So it could be a matter of either yes

1 or no and agreeing or not agreeing with the  
2 position -- with the issue.

3 MS. RULE: I am not sure I understand the  
4 difference. If we -- if we are not taking a  
5 position, then we are waiving the right to take a  
6 position.

7 MS. HELTON: Okay. Then we are on the same  
8 page then.

9 MS. RULE: Okay.

10 CHAIRMAN CLARK: Y'all are in agreement?

11 MS. HELTON: I think so.

12 CHAIRMAN CLARK: Good. Makes me happy.

13 All right. Any other issue -- any other items  
14 in discussion on No. 5? Okay. That one goes away.

15 All right, moving to the final item. I  
16 believe that is OPC contested Issue A.

17 Mr. Rehwinkel, you want to begin there?

18 MR. REHWINKEL: Yes. Yes, Mr. Chairman.

19 In this case, the Commission is being asked to  
20 approve a solar project, or solar program that is  
21 novel. And the Public Counsel believes that there  
22 needs to be a determination by the Commission that  
23 this project is needed.

24 There is testimony on what that need is, and  
25 whether it's needed, but it is bifurcated into two

1 different types of need. One is the traditional  
2 need of a resource that is needed to meet  
3 reliability. And the other is what has become sort  
4 of a definitional gymnastic of what the word need  
5 means, and it has somewhat morphed from what's been  
6 described as desire or demand.

7           Witness Sim last week in his deposition used  
8 the phrase newly identified need -- let's see, let  
9 me see I make sure I have that just right -- newly  
10 introduced concept of a customer interest or a want  
11 for a particular product as -- as a definition of  
12 need. And we believe that the Commission needs to  
13 make a determination about whether this project is  
14 needed. And I will tell you why -- why we have  
15 that view.

16           Some have said that the Public Counsel is  
17 short-sighted in our approach to this project, or  
18 that we are anti-solar. We are neither.

19           Our long-term view is that -- that generation  
20 resources and other utility assets are added to  
21 rate base and are recovered from customers based on  
22 determinations that the Commission makes as to  
23 prudence and need. And those decisions are  
24 grounded in whether the best interest of the  
25 customers are served by the addition of these

1 resources. Traditionally, the Commission has added  
2 generation plant, transmission lines, trucks, any  
3 kind of asset because it's prudent for the company  
4 to do it and they are needed to provide service.

5 We are now being told that this project is  
6 being proposed because a segment of customers want  
7 it. They desire it. They demand it. But it's not  
8 being proposed necessarily because it meets a  
9 reliability need. And what's important to us for  
10 the long-term is that the world is changing.

11 The Supreme Court struck down a ballot  
12 amendment that would allow people to self-generate  
13 potentially. It may be only a matter of time  
14 before whatever was wrong with that is fixed. I  
15 don't know. I can't read the future. But 20 years  
16 ago, this commission engaged in a process about  
17 breaking up the electric grid that we know it and  
18 doing the California model, and they had a 2020  
19 project. We are here in 2020. That didn't happen,  
20 but it may happen. And the Commission spent a lot  
21 of time looking at stranded assets.

22 When assets are stranded, if the Commission  
23 has made the determination of need and prudence,  
24 then the customers down the road on this long-term,  
25 they are responsible for paying for those assets

1 even if they are stranded.

2 So what the Commission is going to be asked to  
3 do in this case is to add \$1.8 billion in assets  
4 based on a need, and we don't even know what  
5 standard of need the Commission will apply, or how  
6 they will define that. But we think it's important  
7 for the Commission to own this issue because the  
8 customers will have to pay if these assets ever  
9 become stranded.

10 I am not saying that I want them to be. We  
11 hope that they are not. We hope they have a long  
12 useful life, and that they provide service, and  
13 that they provide the benefits that FPL says they  
14 will if you approve them. But if you approve them,  
15 they have to be approved because they are needed.  
16 And if that approval occurs, it's -- it would mean  
17 that the customers would have to pay for those  
18 costs if they ever become stranded.

19 So this is not an issue that should be  
20 subsumed in an overall issue. If you take this to  
21 the logical conclusion, there could just have  
22 always one issue should the petition be approved,  
23 and you don't have to go through all these other  
24 things. But this is a box that the Commission has  
25 traditionally checked. And checking that box means

1           that this, in the past, has meant that this  
2           resource is needed in its entirety to meet the  
3           reliability needs of the utility.

4           So we strongly believe that this issue should  
5           be added, and the Commission should make a specific  
6           determination on this, whether they deny it or  
7           approve the project in any way, shape or form.

8           Thank you.

9           CHAIRMAN CLARK: Thank you, Mr. Rehwinkel.  
10          Ms. Moncada.

11          MS. MONCADA: Thank you, Mr. Chairman.

12          Based on recent discussions with all the  
13          parties and with staff, I understand from staff  
14          that they were inclined not to include this issue,  
15          and we support that position.

16          FPL agrees with staff that this can be  
17          resolved through Issue No. 4, and that a sub-issue  
18          is not needed.

19          FPL, along with SACE, Vote Solar and Wal-Mart  
20          have presented a settlement to you and the other  
21          Commissioners, and we will have a hearing on that  
22          next week. And if the evidence shows that it's in  
23          the public interest, that can be the basis for your  
24          decision without the need -- pardon -- pardon the  
25          use of the word -- without requiring you to decide

1 the need issue.

2 Thank you.

3 CHAIRMAN CLARK: Great.

4 Any of the other parties have a comment?

5 Okay, Mary Anne, do you have any comment  
6 from --

7 MS. HELTON: No, sir, but this may be more --  
8 better directed toward Mr. Trierweiler if he has --

9 CHAIRMAN CLARK: I think that's what I meant.  
10 I am sorry.

11 MR. TRIERWEILER: Staff believes that Issue 5  
12 can be dropped. The matter is subsumed in Issue 4,  
13 and that's -- I think that FPL captured it well.

14 CHAIRMAN CLARK: Okay.

15 MR. TRIERWEILER: We don't object to its  
16 inclusion if -- if that's -- if that was the tenor  
17 of all the parties. However, we simply don't  
18 believe that the issue is necessary.

19 CHAIRMAN CLARK: Give me two seconds.

20 MR. REHWINKEL: Mr. Chairman.

21 CHAIRMAN CLARK: Mr. Rehwinkel.

22 MR. REHWINKEL: May I be heard on the issue  
23 about the settlement?

24 I believe it would be procedurally and --  
25 procedurally and on a due process basis wrong for

1 the issue to be dropped based on the fact that  
2 there is a nonunanimous settlement between a select  
3 group of parties. That would presume that the  
4 settlement is what we are here on, and we are here  
5 on the petition. And so the petition needs to be  
6 evaluated based on this need issue, not based on  
7 whether there is a settlement orbiting around in  
8 the room.

9 CHAIRMAN CLARK: Okay. Great. Thank you.

10 MR. TRIERWEILER: Staff would agree with the  
11 point that OPC just made, that the reason for  
12 dropping -- or not taking up OPC's proposed Issue A  
13 would not be because there is a settlement, but  
14 because it would -- the matter is subsumed within  
15 the other issues and is unnecessary.

16 CHAIRMAN CLARK: Okay. Ms. Moncada.

17 MS. MONCADA: FPL agrees that irrespective of  
18 the settlement, the issue is unnecessary.

19 CHAIRMAN CLARK: Okay. All right. Now, give  
20 me two seconds.

21 Okay -- that's sensitive.

22 All right. Let's -- let's go ahead and move  
23 on.

24 Any other comments? Any other comments on OPC  
25 Issue A? There is a little bit more I want to take

1 a look at there, so let me come back to that later.

2 All right. Let's move on to Section IX,  
3 exhibit list.

4 MR. TRIERWEILER: Staff will note that it has  
5 prepared and circulated to the parties a draft  
6 comprehensive exhibit list, which includes all  
7 prefiled exhibits, and includes those exhibits  
8 staff wishes to include in the record.

9 Staff would like to inquire at this time if  
10 the parties can stipulate to the exhibits listed by  
11 staff as we haven't received any objections to the  
12 exhibits up to this point.

13 CHAIRMAN CLARK: Make this simple. Any  
14 objections? None. Very good.

15 Moving to Item X, proposed stipulations.

16 MR. TRIERWEILER: Aside from the stipulation  
17 of witnesses, staff is aware of no other proposed  
18 stipulations at this time other than the motion.  
19 But as far as stipulations to issues, we are aware  
20 of no other stipulations at this time.

21 CHAIRMAN CLARK: Okay. Anyone else?

22 All right, pending motions.

23 MR. TRIERWEILER: There are two pending  
24 motions. The first, Duke's amicus motion and OPC's  
25 response has been taken up, and the prehearing

1 officer has taken it under advisement.

2 The second is a joint motion to approve  
3 settlement filed by FPL, SACE, Wal-Mart and Vote  
4 Solar on October 9th, 2019. Staff recommends that  
5 this motion be reserved for the hearing.

6 CHAIRMAN CLARK: All right. Let's move to  
7 pending confidentiality motions.

8 MR. TRIERWEILER: There are several pending  
9 confidentiality requests and one motion for  
10 temporary protective order. Staff will endeavor to  
11 have these addressed by separate order prior to the  
12 hearing.

13 CHAIRMAN CLARK: Post-hearing procedures.

14 MR. TRIERWEILER: If the parties agree to  
15 waive briefs, the Commission may make a bench  
16 decision for this docket. If there are issues to  
17 be briefed, staff recommends post-hearing briefs be  
18 no longer than 40 pages.

19 CHAIRMAN CLARK: Everybody in agreement?  
20 Okay.

21 MR. TRIERWEILER: Staff recommends that  
22 briefs, if any, be filed by January 30th, 2020.

23 CHAIRMAN CLARK: Okay. Let's move to rulings.

24 MR. TRIERWEILER: Staff recommends that the  
25 prehearing officer make a ruling that opening

1 statements, if any, should not exceed five minutes  
2 per party unless a party chooses to waive its  
3 opening statement.

4 MR. REHWINKEL: Mr. Chairman.

5 CHAIRMAN CLARK: Mr. Rehwinkel.

6 MR. REHWINKEL: I would ask, given the  
7 importance of this docket and the fact that the  
8 second largest utility in the state has entered  
9 into -- has expressed a keen interest in the  
10 outcome of this docket, and has stated that it is a  
11 policy shift, that we be afforded more than five  
12 minutes, and I would ask for 10.

13 CHAIRMAN CLARK: All right. Any other  
14 comments or questions?

15 All right --

16 MS. MONCADA: Mr. Chairman, I am sorry.

17 CHAIRMAN CLARK: Yes, Ms. Moncada.

18 MS. MONCADA: As the utility, the petitioner  
19 in this matter, if OPC is a loud 10 minutes, we  
20 would like the opportunity for 10 as well.

21 CHAIRMAN CLARK: Of course. Yes.

22 MS. MONCADA: Thank you.

23 CHAIRMAN CLARK: All right. Let's move to  
24 other matters. Are there any other matters that  
25 need to be addressed?

1           MR. TRIERWEILER: The FIPUG matter regarding  
2           conducting voir dire or challenge the expertise of  
3           any witnesses identified in the case at the hearing  
4           has not yet been resolved. This is -- this is  
5           stan -- this is FIPUG's standard response to our  
6           standard language.

7           CHAIRMAN CLARK: FIPUG's motion is denied --  
8           request is denied.

9           MR. TRIERWEILER: All right.

10          CHAIRMAN CLARK: And the other issues we are  
11          taking under advisement. They will be ruled on in  
12          the final order.

13          And any other things that needed to be decided  
14          today? Staff is coming out -- are we bringing --  
15          getting that out this afternoon?

16          MR. TRIERWEILER: Say again.

17          CHAIRMAN CLARK: We are going to have it out  
18          this afternoon, have everything out this afternoon,  
19          is that our plan?

20          MR. TRIERWEILER: Well, we are allowing them  
21          until close of business to change, so -- so we  
22          won't be able to get it out before close of  
23          business.

24          CHAIRMAN CLARK: Okay.

25          MR. REHWINKEL: Mr. Chairman, in that

1           regard --

2           CHAIRMAN CLARK:   Mr. Rehwinkel.

3           MR. REHWINKEL:   -- we have -- our witness, we  
4           expect him to be traveling on Monday.  We have been  
5           working on, as we do with all of our witnesses  
6           before hearing, on the -- the summary, making sure  
7           that the summary stays within the -- the prefiled  
8           testimony --

9           CHAIRMAN CLARK:   Yes, sir.

10          MR. REHWINKEL:   -- and things like that, and  
11          we are -- we would just want to know for work  
12          purposes what your ruling would be on three or five  
13          minutes.

14          CHAIRMAN CLARK:   You can have five minutes for  
15          witness summaries, and I am going to split the  
16          difference and give you seven minutes on opening  
17          statements.

18          MR. REHWINKEL:   Okay.  Thank you very much.  
19          That helps.

20          CHAIRMAN CLARK:   Anything else that needs to  
21          be decided today?

22          MR. TRIERWEILER:   Staff is it not aware of any  
23          other matters to address.

24          CHAIRMAN CLARK:   All right.

25          MR. REHWINKEL:   I just need to commend you for

1 coming to Friday hearings.

2 CHAIRMAN CLARK: On a Friday meeting, and wore  
3 a tie. Two things out of me that just don't  
4 usually happen.

5 MR. REHWINKEL: Thank you.

6 CHAIRMAN CLARK: All right. Thank everyone  
7 for your appearance. That concludes the docket  
8 hearing.

9 Thank you. Have a good day.

10 (Whereupon, the proceedings concluded at 9:36  
11 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  
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I FURTHER CERTIFY that I am not a relative,  
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financially interested in the action.

DATED this 22nd day of January, 2020.



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