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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20210015-EI

Petition for rate increase
by Florida Power & Light
Company.

_____ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS
PARTICIPATING: CHAIRMAN GARY F. CLARK
PREHEARING OFFICER

DATE: Monday, August 2, 2021

TIME: Commenced: 9:00 a.m.
Concluded: 11:18 a.m.

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

REPORTED BY: DEBRA R. KRICK
Court Reporter

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

1 APPEARANCES:

2 WADE LITCHFIELD, JOHN BURNETT, MARIA MONCADA
3 ESQUIRES, Florida Power & Light Company, 700 Universe
4 Boulevard, Juno Beach, Florida 33408; KENNETH A.
5 HOFFMAN, ESQUIRE, 134 W. Jefferson Street, Tallahassee,
6 Florida 32301; RUSSELL A. BADDERS, ESQUIRE, Gulf Power
7 Company, One Energy Place, Bin 100, Pensacola, Florida,
8 32520, appearing on behalf of Florida Power & Light
9 Company (FPL).

10 BRADLEY MARSHALL and JORDAN LUEBKEMANN,
11 ESQUIRES, Earthjustice, 111 S. Martin Luther King Jr.
12 Boulevard, Tallahassee, Florida 32301; CHRISTINA I.
13 REICHERT, ESQUIRE, Earthjustice, 4500 Biscayne
14 Boulevard, Suite 201, Miami, Florida 33137, appearing on
15 behalf of Florida Rising, Inc., League of Latin American
16 Citizens of Florida, and Environmental Confederation of
17 Southwest Florida(LULAC, ECOSWF).

18 THOMAS JERNIGAN, MAJOR HOLLY BUCHANAN, CAPTAIN
19 ROBERT FRIEDMAN, SERGEANT ARNOLD BRAXTON, EBONY PAYTON
20 and SCOTT KIRK, Federal Executive Agencies, 139 Barnes
21 Drive, Suite 1, Tyndall AFB, Florida 32403; appearing on
22 behalf of the Federal Executive Agencies (FEA).

23

24

25

1 APPEARANCES CONTINUED:

2 JON C. MOYLE, JR. and KAREN A. PUTNAL,
3 ESQUIRES, Moyle Law Firm, 118 North Gadsden Street,
4 Tallahassee, FL 32301; appearing on behalf of Florida
5 Industrial Users Group (FIPUG).

6 FLOYD R. SELF, ESQUIRE, Berger Singerman, LLP,
7 313 North Monroe Street, Suite 301, Tallahassee, Florida
8 32301; T. SCOTT THOMPSON, ESQUIRE, Mintz, Levin, Cohn,
9 Ferris, Glovsky and Popeo, P.C., 555 12th Street NW,
10 Suite 1100, Washington, DC 20004, appearing on behalf of
11 Florida Internet & Television, Inc. (FIT).

12 JAMES W. BREW and LAURA W. BAKER, Stone Law
13 Firm, 1025 Thomas Jefferson Street NW, Suite 800 West
14 Washington, DC 20007; appearing on behalf of Florida
15 Retail Federation (FRF).

16 WILLIAM C. GARNER, ESQUIRE, Law Office of
17 William C. Garner, 3425 Bannerman Road Unit 105, #414,
18 Tallahassee, Florida 32312, appearing on behalf of The
19 CLEO Institute, Inc. (CLEO).

20 ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA, III,
21 ESQUIRES, Gardner, Bist, Bowden, Dee, LaVia, Wright,
22 Perry & Harper, P.A., 1300 Thomaswood Drive,
23 Tallahassee, Florida 32308, appearing on behalf of
24 Floridians Against Increased Rates, Inc. (FAIR).

25

1 APPEARANCES CONTINUED:

2 GEORGE CAVROS, ESQUIRE, 120 E. Oakland Park
3 Boulevard, Suite 105, Fort Lauderdale, Florida 33334;
4 appearing on behalf of Southern Alliance for Clean
5 Energy (SACE).

6 KATIE CHILES OTTENWELLER, ESQUIRE, 838 Barton
7 Woods Road, Atlanta, Georgia 30307, appearing on behalf
8 of Vote Solar (VOTE SOLAR).

9 NATHAN A. SKOP, ESQUIRE, 420 NW 50th
10 Boulevard, Gainesville, Florida 32607, appearing on
11 behalf of Daniel R. and Alexandria Larson (Larsons).

12 RICHARD GENTRY, PUBLIC COUNSEL; CHARLES
13 REHWINKEL, DEPUTY PUBLIC COUNSEL; PATRICIA A.
14 CHRISTENSEN and ANASTACIA PIRRELLO, ESQUIRES, OFFICE OF
15 PUBLIC COUNSEL, c/o The Florida Legislature, 111 West
16 Madison Street, Room 812, Tallahassee, Florida
17 32399-1400, appearing on behalf of the Citizens of the
18 State of Florida (OPC).

19 SUZANNE BROWNLESS, BIANCA LHERISSON, SHAW
20 STILLER and JENNIFER CRAWFORD, ESQUIRES, FPSC General
21 Counsel's Office, 2540 Shumard Oak Boulevard,
22 Tallahassee, Florida 32399-0850, appearing on behalf of
23 the Florida Public Service Commission (Staff).

24

25

1 APPEARANCES CONTINUED:

2 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE
3 HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service
4 Commission, 2540 Shumard Oak Boulevard, Tallahassee,
5 Florida 32399-0850, Advisor to the Florida Public
6 Service Commission.

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1 PROCEEDINGS

2 CHAIRMAN CLARK: Good morning. I would like
3 to welcome all of you to this prehearing
4 conference. It's actually interesting to see some
5 of you live and in person. I don't know that we've
6 met some of you before officially, but it's great
7 to have everyone here this morning.

8 I will go ahead and call the prehearing
9 conference to order, and I would ask staff, if they
10 would, to please read the notice.

11 MS. BROWNLESS: By notice issued on July 19th,
12 2021, this time and place has been set for a
13 prehearing conference in Docket No. 20210015-EI,
14 the FPL rate case. The purpose of the prehearing
15 is set out more fully in the notice.

16 CHAIRMAN CLARK: All right. Let's try to put
17 some faces and names together now while we begin
18 taking appearance.

19 FPL and Gulf.

20 MR. LITCHFIELD: Thank you. Good morning, Mr.
21 Chairman and everyone. It's great to see folks
22 here today, and I mean that from a lot of different
23 respects as well, Mr. Chairman.

24 Wade Litchfield and John Burnett and Maria
25 Moncada appearing on behalf of Florida Power &

1 Light Company.

2 CHAIRMAN CLARK: Thank you.

3 OPC.

4 MS. CHRISTENSEN: Good morning, Commissioner.

5 Patricia Christensen on behalf of the Office of

6 Public Counsel. I would like to put in an

7 appearance for Richard Gentry, the Public Counsel,

8 Anastacia Pirrello and Charles Rehwinkel.

9 Thank you.

10 CHAIRMAN CLARK: Thank you very much.

11 CLEO Institute.

12 MR. GARNER: Thank you, Chairman Clark.

13 William Garner appearing on behalf of the CLEO

14 Institute, and also Katie Chiles Ottenweller could

15 not be present today, so I am also appearing on

16 behalf of Vote Solar.

17 CHAIRMAN CLARK: Thank you, Mr. Garner.

18 FAIR. Mr. Wright.

19 MR. WRIGHT: I am sorry, Mr. Chairman.

20 Robert Scheffel Wright on behalf of Floridians

21 Against Increased Rates, Incorporated. I would

22 also like to enter an appearance for John Thomas

23 LaVia, III.

24 Thank you.

25 CHAIRMAN CLARK: Thank you Mr. Wright.

1 FIPUG.

2 MR. MOYLE: Good morning, Mr. Chairman. Jon
3 Moyle with the Moyle Law Firm on behalf of the
4 Florida Industrial Power Users Group, FIPUG. I
5 would also like to enter an appearance for Karen
6 Putnal with our firm.

7 Thank-ly you.

8 CHAIRMAN CLARK: Thank you, Mr. Moyle. FIT.

9 MR. SELF: Good morning, Mr. Chairman, Floyd
10 Self of the Berger Singerman law firm on behalf of
11 the Florida Internet & Television Association. I
12 would also like to enter an appearance for my
13 co-counsel, Mr. Scott Thompson of the Mintz Levin
14 firm who is also with me today.

15 CHAIRMAN CLARK: Thank you very much.

16 Florida Retail.

17 MR. BREW: Good morning, Mr. Chairman.

18 For the Florida Retail Federation, the law
19 firm of Stone Mattheis Xenopoulos & Brew, I am
20 James Brew. I would also like to note an
21 appearance for Laura Baker.

22 CHAIRMAN CLARK: All right. Thank you, Mr.
23 Brew.

24 Florida Rising, League of United Latin
25 American Citizens, Environmental Confederation of

1 Southwest Florida.

2 MR. MARSHALL: Good morning, Mr. Chair.
3 Bradley Marshall on behalf of Florida Rising,
4 League of United Latin American Citizens of
5 Florida, better known as LULAC, and the
6 Environmental Confederation of Southwest Florida,
7 better known as ECOSWF. With me today I also have
8 Jordan Luebke and Christina Reichert.

9 Thank you.

10 CHAIRMAN CLARK: Thank you, Mr. Marshall.
11 Daniel and Alexandria Larson.

12 MR. SKOP: Yes, good morning, Mr. Chairman.
13 Nathan Skop, Esquire, appearing on behalf of Daniel
14 and Alex -- excuse me, Daniel and Alexandria
15 Larson.

16 CHAIRMAN CLARK: Thank you, Mr. Skop.
17 Southern Alliance.

18 MR. CAVROS: Good morning, Mr. Chairman.
19 George Cavros on behalf of Southern Alliance for
20 Clean Energy.

21 CHAIRMAN CLARK: Thank you, Mr. Cavros.
22 Vote Solar.

23 MR. GARNER: Thank you, Chairman Clark,
24 William Garner also appearing on behalf of Vote
25 Solar.

1 CHAIRMAN CLARK: Thank you, Mr. Garner.
2 Walmart, Ms. Eaton.

3 MS. EATON: Good morning. Stephanie Eaton
4 appearing on behalf of Walmart.

5 CHAIRMAN CLARK: All right. Commission staff.

6 MS. BROWNLESS: Suzanne Brownless appearing on
7 behalf of Commission staff. I would also like to
8 enter an a notice of appearance for Shaw Stiller
9 and Bianca Lherisson.

10 MS. HELTON: And Mary Anne Helton is here as
11 your Advisor this morning, along with your General
12 Counsel, Keith Hetrick.

13 CHAIRMAN CLARK: All right. Did we get
14 everyone?

15 Yes, sir. Florida Executive Agencies --
16 Federal Executive Agency. I am sorry.

17 MAJOR KIRK: Good morning, Mr. Chairman.
18 Major Scott Kirk, U.S. Air Force on behalf of
19 Federal Executive Agencies.

20 CHAIRMAN CLARK: All right. Anyone else?

21 All right. Staff, are there any preliminary
22 matters that we need to address before we get to
23 the draft prehearing order?

24 MS. BROWNLESS: We are no -- we are aware of
25 no preliminary matters at this time. There are

1 several outstanding motions which will be addressed
2 when we get to Section IX.

3 CHAIRMAN CLARK: All right. Any of the
4 parties have any preliminary matters?

5 MR. MARSHALL: Mr. Chairman.

6 CHAIRMAN CLARK: Mr. Marshall.

7 MR. MARSHALL: Thank you.

8 I just wanted to inquire regarding the COVID
9 safety protocols that will be undertaken for the
10 two-week evidentiary hearing. For example, our
11 colleague, Christina Reichert, we just learned on
12 Friday evening tested positive for COVID. And
13 given that we are envisioning an in-person hearing,
14 I am just inquiring what the protocols are going to
15 be if people test positive, because, you know, we
16 need to have the witnesses, we need to have the
17 attorneys, but if there is --

18 CHAIRMAN CLARK: That's a great point. We
19 actually had a preliminary discussion earlier this
20 morning about that. We will make some -- make some
21 final decisions and make sure that is noticed
22 probably before end of business today. That's a
23 great point. Thank you, Mr. Marshall.

24 MR. MARSHALL: Thank you, Mr. Chairman.

25 CHAIRMAN CLARK: Any other preliminary

1 matters?

2 All right. Let's go through the draft
3 prehearing order. I am going to go through each
4 part section by section. If you have any
5 corrections or changes that need to be made, please
6 let me know. I'm probably going to roll through
7 them quick, so just give me a shout-out if you have
8 any issues until we get down to the main portion.

9 All right. Section I, Case Background.
10 Section II, Conduct of Proceedings.
11 III, Jurisdiction.

12 Section IV, Procedures for Handling
13 Confidential Information, Ms. Brownless.

14 MS. BROWNLESS: Yes, sir.

15 Parties must bring 40 copies of all
16 confidential cross-examination exhibits to the
17 hearing in red folders with the confidential
18 material in the exhibit highlighted in yellow. The
19 red folders will be collected at the end of the
20 witness' testimony.

21 If a confidential exhibit is admitted into
22 evidence and no request for confidentiality has
23 previously been made for that material, a request
24 for confidentiality shall be made within 21 days of
25 the conclusion of the hearing.

1 CHAIRMAN CLARK: All right. Next item,
2 Prefiled Testimony and Exhibits and Witnesses,
3 Witness Summary Testimony.

4 MS. BROWNLESS: Staff suggests that the
5 witness summary testimony be no longer than three
6 minutes.

7 CHAIRMAN CLARK: Okay. All in agreement?

8 MR. LITCHFIELD: Mr. Chairman, we are
9 comfortable with that, FPL is comfortable with that
10 either on an average basis, right, which would
11 allow us to maybe provide a particular witness who
12 has got a little more weightier testimony to take
13 four or five minutes versus, or in the alternative,
14 to be on an exceptions basis to be able to do that
15 for just a very small number of witnesses.

16 CHAIRMAN CLARK: Ms. Christensen?

17 MS. CHRISTENSEN: Yes, we would concur with
18 that. Three witness is rather short, and some
19 testimony is rather short and that would
20 accommodate that, but there are some witnesses with
21 over 100 pages of written testimony.

22 CHAIRMAN CLARK: Okay.

23 MR. WRIGHT: Mr. Chairman, I am perfectly
24 comfortable -- we are perfectly comfortable with
25 average.

1 CHAIRMAN CLARK: All right. So let me just --
2 let me get a head nod consensus here. Are we all
3 good with a three-minute average? I am going to
4 have someone keeping score, right. No, I am
5 kidding.

6 All right, just go on some gut instinct here
7 and work on a three-minute average. I won't put
8 the clock on it. The Chairman that day may feel
9 different, but as the prehearing officer, I am
10 going to make that decision today.

11 MR. LITCHFIELD: And, Mr. Chairman, we are
12 even -- we are fine -- we are even happy to cap on
13 the north side of that, you know, five minutes, if
14 that helps.

15 CHAIRMAN CLARK: I like that. Let's put the
16 cap at five. Let's work on a three to five
17 arrange. I think we can be flexible there.
18 Everybody in agreement?

19 MS. BROWNLESS: Mr. Chairman, if I may.

20 CHAIRMAN CLARK: You may.

21 MS. BROWNLESS: Are there any people today
22 that you know will be needed, five minutes will be
23 needed for? If so we can go ahead and identify
24 them so we know.

25 MR. LITCHFIELD: We are in a position to do

1 that today.

2 MS. BROWNLESS: Thank you, if you could help.

3 CHAIRMAN CLARK: Everyone else, if you would,
4 go ahead and, if you have witnesses that you would
5 like a little extra time, get that list ready and
6 we will go down the line.

7 MR. LITCHFIELD: So for FPL, we would have
8 Ms. -- essentially the first four witnesses on
9 direct. To the extent that they appear on rebuttal
10 the same four witnesses, and then Mr. Bores
11 rebuttal only, five.

12 MS. BROWNLESS: So it would be Silagy, Reed,
13 Barrett, Coyne.

14 MR. LITCHFIELD: And on direct and/or
15 rebuttal, to the extent they have rebuttal. And
16 then Bores five minutes only on rebuttal, but not
17 on direct. Let me just double check with my
18 co-counsel. We are in agreement on that.

19 CHAIRMAN CLARK: Okay. Anyone else want five
20 on any of their witnesses?

21 Mr. Moyle.

22 MR. MOYLE: Jeff Pollock is a FIPUG witness
23 and covers quite a bit of ground, we would like
24 five for him.

25 CHAIRMAN CLARK: All right.

1 MS. CHRISTENSEN: Yes, Commissioner Ms.
2 McCullar, Dr. Woolridge, Mr. Lawton and Ralph
3 Smith. And I will check with the witness to see if
4 that is necessary or if we have any other changes
5 and let staff know.

6 CHAIRMAN CLARK: Okay. Thank you.

7 Anyone else?

8 Mr. Wright.

9 MR. WRIGHT: Thank you, Mr. Chairman.

10 First, respecting the three-minute average, I
11 would like to ask for extra time for Mr. Mac
12 Mathuna, former Commissioner Herndon and Tim
13 Devlin.

14 Thank you.

15 CHAIRMAN CLARK: Thank you very much.

16 MR. WRIGHT: We will -- we will honor the 12
17 minutes. Thanks.

18 CHAIRMAN CLARK: Thank you, sir.

19 Anyone else?

20 All right. Ms. Brownless, does that take care
21 of that issue?

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

23 CHAIRMAN CLARK: All right. Move to
24 Cross-examination Exhibits.

25 MS. BROWNLESS: Parties must bring 40 copies

1 of all nonconfidential cross-examination exhibits
2 to the hearing for distribution to the parties and
3 hearing participants by Commission staff. The
4 nonconfidential exhibits must be collated by
5 witness.

6 And let me explain what we have in mind there
7 and get your input on it. The idea was to have
8 cardboard boxes with the parties' names on them
9 labeled OPC, et cetera, and that since we will know
10 pursuant to our witness list who the next four
11 witnesses are, you can coordinate your exhibits
12 witness one, two, three, four, put them in your
13 box, and then our staff can pick them up, put them
14 all together and distribute them prior to the
15 beginning of that session, so we won't be passing
16 out exhibits during the hearing taking up time.
17 And if y'all have any better idea about how to do
18 that, now is the time to tell us, but that's our
19 thought on it.

20 Yes, sir.

21 MR. MOYLE: Just a clarifying question.

22 I commend you for thinking through it, and
23 about having 40 copies passed out. That takes some
24 time. But do I understand, so it's witness, FPL
25 Witness Barrett that there will be a folder that

1 says FIPUG, and all of the Barrett exhibits will be
2 in there and I will just pick up a folder that has
3 hard copies of Barrett, and then -- so Barrett
4 takes the stand -- Witness Barrett takes the stand
5 and I will have all of that in one folder, is
6 that's what's contemplated?

7 MS. BROWNLESS: Yeah. The idea is that you
8 will have, not just Barrett, but you will have them
9 collated. So let's just start with the first four
10 witnesses here.

11 So you will have Mr. Silagy's cross if you
12 have any for him, you know, the exhibits. So you
13 will have Silagy, Reed, Barrett and Coyne all in a
14 row in one folder, FIPUG, that's the idea.

15 MR. LITCHFIELD: So as I understand it then,
16 Mr. Moyle would pick up his folder, FIPUG, but that
17 would include --

18 MS. BROWNLESS: The four people.

19 MR. LITCHFIELD: Well, it would include the
20 cross exhibits that others are planning to use,
21 correct?

22 MS. BROWNLESS: Okay. I am not explaining
23 this very well, and I apologize.

24 The idea is that in your box you will have
25 collated by order that's listed on the prehearing

1 order the exhibits for the first four witnesses.
2 So that for FPL's first four witnesses, you would
3 have a folder that was labeled whatever your label
4 is for Silagy, Reed, Barrett and Coyne, and they
5 would be stacked in that order.

6 MR. LITCHFIELD: And these are cross exhibits,
7 correct?

8 MS. BROWNLESS: These are cross-examination
9 exhibits. And then our staff will distribute them.
10 Y'all won't distribute them. Staff will distribute
11 them.

12 MS. CHRISTENSEN: Let we ask who -- who in
13 this box are we putting these exhibits for? Is
14 this just for staff and the Commissioners, and then
15 we --

16 MS. BROWNLESS: No, this is everybody, the
17 Commission -- our staff will distribute the 40
18 copies to everyone. Y'all will collate them, put
19 them in your box, and we will do it four witnesses
20 at a time.

21 MS. CHRISTENSEN: So if we had five exhibits
22 for Silagy, we put five exhibits in that, and then
23 40 copies of that five exhibits for everybody for
24 Silagy?

25 MS. BROWNLESS: Correct. That's the idea.

1 MR. MOYLE: And from a timing standpoint, it's
2 kind of a rolling average, as I understand it. You
3 want to have four, but the fifth one would not need
4 to be there until after Mr. Silagy got off the
5 stand?

6 MS. BROWNLESS: Well, we -- you know, we are
7 going to be taking breaks during this hearing. The
8 reason we picked four people is we thought that
9 given the nature of the testimony here, four people
10 would probably take up three or four hours, so that
11 was the idea. We didn't want you to have to stack
12 up all 25 people in a box. That was the thought
13 process.

14 MR. MOYLE: Okay.

15 CHAIRMAN CLARK: All right. Express your
16 concerns now.

17 MR. MARSHALL: Just a question regarding,
18 like, impeachment exhibits, because normally we
19 don't make those exhibits -- say the witness
20 contradicts their deposition testimony and we, you
21 know, we have a copy of their deposition and we
22 want to impeach them, it seems odd that we would
23 hand that out as an exhibit. Can we -- but for
24 impeachment, would that wait until they are on the
25 stand in case somebody contradicts their testimony?

1 MS. BROWNLESS: Well, obviously, for
2 impeachment testimony, you don't know what they are
3 going to say on the stand, correct?

4 MR. MARSHALL: Exactly.

5 MS. BROWNLESS: And they may say something
6 consistent with their previous testimony or not.

7 MR. LITCHFIELD: Let me -- so I understand the
8 point. Let me -- let me propose that, in the
9 interest of efficiency, that even if we don't
10 require 40 exhibits of the deposition to be ready
11 that cross-examining counsel have a certain minimum
12 number of exhibits, right, so we are not clogging
13 down the proceeding when they want to make an
14 impeachment point, does that make sense?

15 MS. BROWNLESS: We are trying to keep from
16 handing out exhibits to each witness.

17 CHAIRMAN CLARK: Yeah. We are making this a
18 whole lot more complicated than it needs to be. My
19 intent here was that we be able to expedite the
20 process.

21 If you know you have got cross-examination
22 exhibits that you are going to use, you get them in
23 a folder, you get them here in advance, get them in
24 a box so they can be handed out and we can open
25 them up and go through them as you go through each

1 witness. That's the concept.

2 Now, there is going to be things, you may come
3 up with something that you, again, you want to
4 impeach the witness. That's going to be something
5 that's handled on a case-by-case basis. We will
6 certainly stop and take time to handle that as an
7 examination exhibit like we would in any other
8 case.

9 If it's something you know in advance you are
10 going to use, then follow this procedure. Have
11 them ready for us and turn them in in advance. If
12 we have to do it another way and have to stop the
13 meeting to take 20 minutes to hand out 40 copies of
14 exhibits, we will do so, all right. Are we clear?
15 Any questions?

16 All right. That's the way we are going.

17 Next issue.

18 MS. BROWNLESS: Thank you.

19 CHAIRMAN CLARK: Back to me.

20 Order of Witnesses. Any changes to the order
21 of witnesses?

22 MR. BREW: Mr. Chairman.

23 CHAIRMAN CLARK: Yes, Mr. Brew.

24 MR. BREW: This is just a small matter. On
25 page seven, Retail Federation Witness Georgis is

1 listed twice. The issues covered are accurate, but
2 he doesn't need to be listed twice.

3 MR. LITCHFIELD: He still only gets three
4 minutes for his summary, right?

5 CHAIRMAN CLARK: Right.

6 MR. BREW: We could average it out.

7 CHAIRMAN CLARK: Do we have that correction
8 made?

9 MS. BROWNLESS: Yes, sir.

10 CHAIRMAN CLARK: All right. Any other
11 changes?

12 MS. BROWNLESS: My understanding --

13 CHAIRMAN CLARK: Mr. Marshall. One second.
14 Mr. Marshall.

15 MR. MARSHALL: All right. Mr. Chairman, I
16 believe we had agreement from some of the parties,
17 including Florida Power & Light, that they have no
18 questions for our standing witnesses of Florida
19 Rising, LULAC and ECOSWF. And if no other parties
20 have questions for them, we would ask that their
21 testimony be stipulated into the record.

22 CHAIRMAN CLARK: We are going to come to that
23 in one second. That's next on the list.

24 Any changes to the order? Ms. Brownless, did
25 you have a change?

1 MS. BROWNLESS: My understanding is that the
2 parties were able -- are able to stipulate to the
3 testimony and exhibits of staff Witness Rhonda
4 Hicks and Deborah Dobiac, and we would like to
5 confirm that at this time.

6 CHAIRMAN CLARK: We are all in agreement?

7 MR. LITCHFIELD: Confirmed for FPL.

8 CHAIRMAN CLARK: Confirmed, okay.

9 Next.

10 MS. BROWNLESS: My understanding is also, as
11 we've just heard, the parties may be able to
12 stipulate to the testimony and exhibits of Florida
13 Rising standing's witnesses, and I will list them.
14 Alvarez, Gustavus, Jenkins, Marcelin, Mathis,
15 Mercado, Osses, Salvador, Corugedo, Hernandez,
16 Sinclair, Werner, Avech, Blomquist, Davenport,
17 Lewis and Wilson, and is that correct? Is that
18 everyone's understanding?

19 CHAIRMAN CLARK: Mr. Marshall, all other
20 parties all in agreement? Yes.

21 MS. BROWNLESS: I'm a bit unclear about
22 whether Florida Rising witness Rabago can also be
23 stipulated to, and I would like to ask the parties
24 at this time if he is also included?

25 MR. LITCHFIELD: Yes, for FPL.

1 CHAIRMAN CLARK: FPL agrees.

2 Any other party object? Ms. Christensen?

3 Okay, all good.

4 All right.

5 MS. BROWNLESS: With regard to the witnesses
6 for the other intervenors, are there any other
7 non-FPL witnesses that can be stipulated to at this
8 time? And when I say stipulated, I mean that they
9 can be excused from the hearing, that their
10 testimony and exhibits would be admitted into
11 evidence, at this time.

12 CHAIRMAN CLARK: All right. Let's start with
13 non-FPL witnesses.

14 MS. MONCADA: Good morning, Mr. Chairman. For
15 Florida Power & Light we can stipulate to the entry
16 of the prefiled testimony for all intervenor
17 witnesses except for three.

18 CHAIRMAN CLARK: Okay.

19 MS. MONCADA: CLEO witness Yoca Arditi-Rocha,
20 FAIR witness Herndon and FAIR witness Watkins.
21 With those three exceptions, we stipulate all other
22 witness testimonies.

23 CHAIRMAN CLARK: Okay.

24 MR. WRIGHT: Mr. Chairman, just -- just to be
25 clear. We will -- we will -- Mr. Herndon will

1 appear and testify.

2 CHAIRMAN CLARK: Okay.

3 MR. WRIGHT: Thank you.

4 CHAIRMAN CLARK: That's Herndon?

5 MR. WRIGHT: And Ms. Watkins, of course, will
6 be here. And -- and also, all our witnesses will
7 appear and testify, Mr. Mac Mathuna, Mr. Devlin,
8 Mr. Herndon and Ms. Watkins will be present and
9 testify.

10 MR. LITCHFIELD: And we are willing to
11 stipulate, as we indicated, all witnesses including
12 the latter witnesses that Mr. Wright just referred
13 to, other than the three Ms. Moncada identified
14 earlier. We will have no questions for any
15 additional witnesses.

16 CHAIRMAN CLARK: Very good.

17 MR. GARNER: Mr. Chairman?

18 CHAIRMAN CLARK: Yes.

19 MR. GARNER: Witnesses for the CLEO Institute,
20 FPL, we can stipulate, I believe similar to FAIR,
21 we would like the opportunity to have them present
22 to present their summaries, and that if there are
23 any questions of Commissioners or whatever, then
24 they would be able to do that.

25 We did have a practical issue with one of our

1 witnesses who may not be able to be here in person,
2 and I wanted to raise at some point whether or not
3 there would be some accommodations possible for
4 those witnesses to appear via telecommunications.

5 CHAIRMAN CLARK: Well, we will take it -- we
6 will take that into consideration. You are free to
7 make the case as to the circumstance surrounding
8 the nonavailability to be here.

9 MR. GARNER: Sure. One of our witnesses,
10 Witness Volkmann, at the time he was retained to
11 provide testimony and review the case, he thought
12 the hearing was set to be handled remotely, and he
13 made his plans based on that. And I believe that
14 he is a little bit older than some of the other
15 witnesses too, and there may be concerned about
16 traveling and appearing in person due to COVID.

17 CHAIRMAN CLARK: Okay.

18 MS. EATON: Mr. Chairman.

19 CHAIRMAN CLARK: Yes, Ms. Eaton.

20 MS. EATON: Walmart's witness Mr. Chriss plans
21 to be here in person, but I am wondering if the
22 Chairman would entertain trying to schedule a date
23 certain so he can make travel arrangements and
24 coordinate schedule in other PSC dockets in other
25 states as well. And he -- he had suggested the

1 August 26th since he is kind of toward the end of
2 the order of witnesses anyway, and he could be here
3 first thing in the morning if that would suit the
4 Chairman and the other parties.

5 CHAIRMAN CLARK: All right. We will -- let me
6 look at that. That's going to be a major
7 scheduling question there. I just don't know that
8 that's -- I don't know how possible that is.

9 Ms. Christensen?

10 MS. CHRISTENSEN: Yes, Commissioner. I want
11 to thank FPL for offering to stipulate our
12 witnesses, but like the other parties, at this time
13 we would like to reserve our right to have our
14 witnesses present and provide their summaries of
15 their testimony and be available to answer
16 questions. If that changes, we will certainly let
17 you know.

18 We do know that one of our witnesses has a
19 conflict for a couple of the days, but otherwise
20 would be available. We can speak with Ms.
21 Brownless as to those dates after we conclude the
22 hearing and work around that, but I think otherwise
23 we should have all our witnesses be available and
24 be able to present summaries, and if that changes,
25 we will let Ms. Brownless know.

1 CHAIRMAN CLARK: And that's my anticipation,
2 is that witnesses need to be here and available
3 when they are called upon. I don't mind making
4 some adjustments where we can, but I am not going
5 to hole, you know, hold up this entire case based
6 on a witness not being here. If we can move them
7 around in the order, I will just trust you guys to
8 work with the staff. Staff will work with you to
9 accommodate where we can in these cases.

10 Let me give consideration, Mr. Garner, on
11 yours, and we will make a decision before the day
12 is over.

13 Mr. Moyle.

14 MR. MOYLE: Just -- just a brief point.
15 FIPUG, as others had said, would like to reserve
16 the right to have their witnesses appear, but we
17 appreciate the offer of FPL to stipulate them.

18 CHAIRMAN CLARK: Okay.

19 MR. MOYLE: We will take that under
20 advisement. And I just note, having been through a
21 number of these rate cases, the parties work well
22 together on scheduling.

23 CHAIRMAN CLARK: Absolutely. Absolutely.

24 And I appreci-- I greatly appreciate that. I
25 am taking that most of you -- does anyone want to

1 stipulate their witnesses out completely? If you
2 don't, I am just assuming your witness is going to
3 be here and at least give their summaries. Anyone
4 want to stipulate?

5 MR. MOYLE: Just -- could we have some time to
6 think -- think about it? We very know -- very well
7 may stipulate, but this was the first I've heard of
8 that, so I need to think about it, and -- and if we
9 agree then I would assume they are okay to be
10 stipulated.

11 CHAIRMAN CLARK: Absolutely. Before close of
12 the hearing today, let's -- if you want to give me
13 that, or I don't -- is there any reason why we
14 can't have them stipulated even later on?

15 MS. BROWNLESS: Oh, no. We can stipulate any
16 time --

17 CHAIRMAN CLARK: Any time. That's what I
18 thought.

19 MS. BROWNLESS: -- before the hearing
20 commences.

21 CHAIRMAN CLARK: Okay.

22 MS. BROWNLESS: And with regard to OPC, if you
23 know the person that --

24 MS. CHRISTENSEN: I know it's Mr. Smith. I am
25 not sure of the dates. I want to stay it's the

1 25th, 26th, but I want to check those and verify
2 those dates, so...

3 MS. BROWNLESS: It's Mr. who?

4 MS. CHRISTENSEN: Mr. Ralph Smith.

5 MS. BROWNLESS: Oh, I am sorry.

6 CHAIRMAN CLARK: Hold on one second.

7 (Brief recess due to technical issues.)

8 CHAIRMAN CLARK: We will go ahead and get
9 started back. If this happens again, if we lose
10 connection again, we will take a 30-minute recess
11 and she's going to drive in. She's available to
12 drive in, so y'all just might expedite things to go
13 ahead and try to finish up like we are today, but
14 if it happens again, we will have a 30-minute
15 recess and get her driving in.

16 I think we were on stipulating witnesses, Mr.
17 Litchfield.

18 MR. LITCHFIELD: We were. Thank you, Mr.
19 Chairman. Before we -- before the intermission, I
20 was going to suggest to people that, obviously,
21 we've indicated that we only have a limited number
22 of questions for a limited number of witnesses, and
23 folks can take that, you know, as they will in
24 terms of deciding who they will bring to the
25 hearing or not.

1 I recognize that everybody has the opportunity
2 to have their witness give their opening summary.
3 The Commission may or may not have questions, but,
4 you know, as we, again, move forward, you know,
5 knock on wood, that COVID will -- will improve, but
6 if it doesn't, people will continue to have the
7 opportunity to make the decisions that are best for
8 themselves and their witnesses given FPL's offer to
9 stipulate those witnesses in.

10 The other point that I wanted to make sure,
11 because I think we do have some new participants
12 here, Mr. Chairman, is just to make sure we all are
13 on the same page as far as no friendly cross. So
14 for example, if a witness appears, gives his or her
15 summary, the Commission asks what questions they
16 have, that it's not as though that there will be --
17 if we have no cross, FPL, it's not as though others
18 will have the opportunity to cross-examine them.

19 CHAIRMAN CLARK: Correct.

20 MR. LITCHFIELD: Thank you.

21 CHAIRMAN CLARK: That is the case.

22 All right. Anybody have any questions on that
23 regard?

24 MS. BROWNLESS: Wait a minute. Hold on. I
25 want to make sure I understand what FPL is stating.

1 CHAIRMAN CLARK: Okay.

2 MS. BROWNLESS: If the parties -- if the
3 intervenorors put their witnesses on the stand and
4 they give their summary, then I don't think it's
5 necessarily true that there should be no cross by
6 any of the other intervenors, because I believe
7 that the intervenors each have a unique position.
8 They don't all necessarily -- they may all disagree
9 with FPL, but they don't all necessarily agree with
10 each other. So I want to make sure before we move
11 on that we are clear with regard to that.

12 If there is friendly cross asked at the time,
13 that will be objected to and ruled upon.

14 MR. LITCHFIELD: Fair enough. Yeah, I said no
15 friendly cross. I wasn't saying there would be no
16 cross. Although, I believe the burden -- the
17 presumption would be there is no cross, and the
18 burden, in my view, would be upon the party asking
19 the questions to demonstrate to the Commission
20 that, in fact, it is -- it is not friendly cross,
21 that their positions are not in alignment.

22 CHAIRMAN CLARK: If you have a witness that
23 has testimony substantially different than the
24 position that the party has taken, they would
25 obviously have an opportunity to cross in that

1 case, but I think we are all -- we all know what
2 friendly cross is. I don't think we are going to
3 have any -- if it gets out of hand, we will raise
4 the objection and take care of it.

5 Any other questions?

6 All right. Let's go back to my final
7 question. Any witness anyone wants to stipulate
8 completely take out of the equation, anyone?

9 Mr. Marshall.

10 MR. MARSHALL: Yea, Mr. Chairman. I believe
11 we were discussing our 17 standing witnesses, and
12 there was also the offer regarding our non-standing
13 witness Karl Rabago, and would agree to stipulate
14 all 18 of our witnesses.

15 CHAIRMAN CLARK: That's where we were. I am
16 sorry.

17 MS. BROWNLESS: Yes, sir.

18 CHAIRMAN CLARK: Got you now.

19 So we are in agreement, that was -- bear with
20 me a second. Rabago, was that?

21 MR. MARSHALL: Rabago.

22 CHAIRMAN CLARK: Rabago, all right.

23 MR. GARNER: Chairman Clark, I'm sorry.

24 William Garner, CLEO and Vote Solar.

25 I had a chance to consult with Vote Solar

1 during the break, and we are in a position to go
2 ahead and agree to FPL's stipulation on Witness
3 Whited.

4 CHAIRMAN CLARK: Okay. Witness -- say the
5 name again please.

6 MR. GARNER: Melissa Whited.

7 MS. BROWNLESS: She's on page seven of the
8 prehearing order.

9 MS. HELTON: I think it's White with a D on
10 the end of it.

11 CHAIRMAN CLARK: All right.

12 MS. EATON: Chairman Clark, during the break I
13 also had an opportunity to consult with Walmart,
14 and we are in agreement with the stipulation that's
15 been offered with FPL for Witness Chriss.

16 CHAIRMAN CLARK: Okay. Anyone else? Anyone
17 else?

18 All right. Ms. Brownless.

19 MS. BROWNLESS: Yes, sir.

20 If the parties advise staff of any witness
21 stipulations for witnesses in which the testimony
22 will still be included in the docket, staff will
23 confirm with each Commissioner that any identified
24 witness may be excused.

25 If Commissioners do not have any questions for

1 these witnesses, the witnesses may be excused from
2 the hearing and their testimony and exhibits
3 entered into the record as though read and admitted
4 into evidence.

5 CHAIRMAN CLARK: All right. Thank you, Ms.
6 Brownless.

7 Any questions?

8 Mr. Marshall.

9 MR. MARSHALL: Thank you, Mr. Chairman.

10 Before we move on from witnesses, we still
11 have a request to be listed as co-sponsoring the
12 FAIR witnesses Mr. Mac Mathuna, Mr. Devlin and Mr.
13 Herndon.

14 CHAIRMAN CLARK: All right. You are
15 requesting?

16 MR. MARSHALL: That we be listed as
17 co-sponsoring those witnesses.

18 CHAIRMAN CLARK: Okay. Ms. Brownless, do you
19 have those?

20 MS. BROWNLESS: I am writing them down. That
21 would be Mac Mathuna, Devlin, Herndon and Watkins,
22 is that correct?

23 MR. MARSHALL: Not Watkins, the other three.

24 MS. BROWNLESS: Mac Mathuna, Devlin and
25 Herndon?

1 MR. MARSHALL: Yes. Thank you.

2 CHAIRMAN CLARK: All right. Let's move to --

3 MR. LITCHFIELD: Sorry, Mr. Chairman, may I
4 have that again? Who is co-sponsoring those
5 witnesses?

6 MR. MARSHALL: That would be Florida Rising,
7 LULAC, ECOSWF co-sponsoring Mr. Mac Mathuna, Mr.
8 Devlin and Mr. Herndon.

9 MR. LITCHFIELD: These are witnesses that were
10 filed on behalf of FAIR?

11 MR. MARSHALL: Correct.

12 MR. LITCHFIELD: But we are at the prehearing
13 conference and you are adopting their testimony?

14 MR. MARSHALL: That is correct.

15 MR. LITCHFIELD: Interesting. Can we take
16 that under advisement and come back at a break on
17 that? Thank you.

18 MS. BROWNLESS: I'm sorry, what did you just
19 say? I didn't hear it.

20 MR. LITCHFIELD: FPL would like a chance to
21 consider that and come back at a break on that
22 point. It's a last minute move for a party, right,
23 to adopt the testimony of another party whose
24 standing is in question.

25 MS. BROWNLESS: Yes, sir, I understand that.

1 And this is what I would argue.

2 What I would argue is that these witnesses
3 have been identified. They were filed in a timely
4 fashion. We've done extensive discovery with
5 regard to these witnesses, so it would be -- it
6 seems to me like there is nothing unfair or
7 unreasonable about allowing another party to adopt.

8 MR. LITCHFIELD: And I am offering, Mr.
9 Chairman, that we are hearing about this for the
10 first time.

11 CHAIRMAN CLARK: Sure.

12 MR. LITCHFIELD: And we would just like a few
13 minutes to think about it and have a chance to
14 react.

15 CHAIRMAN CLARK: All right. Anybody else?

16 All right. Let's move to basic positions.
17 Any of the parties have any changes to their basic
18 positions?

19 All right, Ms. Brownless.

20 MS. BROWNLESS: Yes, sir.

21 There are no changes to the basic positions,
22 correct?

23 CHAIRMAN CLARK: Correct. There are
24 modifications changes.

25 MS. BROWNLESS: Then we can move on to Issues

1 and Positions.

2 CHAIRMAN CLARK: All right.

3 MS. BROWNLESS: And before we start with that,
4 we will note that for a number of issues, there are
5 parties who have not taken a position. You are
6 deemed not to taken a position if you have stated
7 the following:

8 No position at this time.

9 FPL has the burden of demonstrating that the
10 appropriate adjustments to whatever have been made.

11 Or there was no position at all stated in your
12 prehearing statement.

13 If you have stated no position pending FPL's
14 response to discovery, you must show that in good
15 faith you were unable to take a position by the
16 prehearing conference without the discovery in
17 order to maintain your ability to take a position.
18 FIT has several of these positions which we will
19 discuss in connection with their motion to compel
20 and FPL's motion for protective order when we get
21 to Section XI, pending motions.

22 Pursuant to the prehearing order, if a party
23 fails to take a position on an issue by the time of
24 the prehearing conference, the party waives its
25 opportunity to conduct cross-examination on the

1 issue, as well as file a post-hearing brief on the
2 issue.

3 We have, however, traditionally given extra
4 time for parties to file positions under these
5 circumstances. Since there are both depositions in
6 this docket and an agenda conference tomorrow, you
7 will be allowed to state your positions in writing,
8 and staff would recommend by noon August 4th.

9 MR. WRIGHT: What is that, August 4th?

10 CHAIRMAN CLARK: Noon August 4th. You have
11 until noon August 4th regarding your positions.

12 MS. BROWNLESS: To the extent that you have
13 not stated a position today.

14 MS. CHRISTENSEN: For clarification -- this is
15 Patty with OPC. We have several positions where we
16 have identified that FPL has the burden of proof.
17 Some of them are more extensive than others, which
18 is a more clarified position. If we can get some
19 clarification from staff as to which of those they
20 believe is a non-position, that would help us
21 identify in rewriting those positions on noon
22 August 4th.

23 MS. BROWNLESS: I think that if you have said
24 FPL has the burden of proof that you need to say
25 whatever the issue is, yes, no, whatever. You

1 can't just say FPL has the burden of proof. That
2 is a statement of evidentiary policy. It is not a
3 position.

4 CHAIRMAN CLARK: All right. Any questions?
5 We have until August 4th, noon August 4th.

6 MR. WRIGHT: Mr. Chairman, briefly. Can that
7 extend to clean up things, like I need to change a
8 couple of positions, and rather than burden this
9 proceeding with everybody here, can we do that by
10 noon on the 4th?

11 CHAIRMAN CLARK: That's my understanding.

12 MS. BROWNLESS: I didn't understand that. Oh,
13 yeah.

14 MR. WRIGHT: Yeah, just I want to make sure
15 that that extends to updating and cleanup.

16 MS. BROWNLESS: Sure.

17 MR. WRIGHT: Thank you.

18 MR. MARSHALL: And just a clarifying question,
19 are -- do you want this filed in the docket or
20 emailed to staff?

21 MS. BROWNLESS: You can send it by email to
22 me. That would be fine.

23 CHAIRMAN CLARK: All right. Is everyone
24 clear?

25 All right. Now for the fun part, let's go

1 into the issues. We will begin -- I am going to go
2 through the first ones. I assume we are going to
3 get and arrive at the same place together at the
4 same time on the contested issues, so I am going
5 toking through the other ones. If you have an
6 issue or problem, be sure and let me know.

7 Legal issues, No. 1 through 14.

8 MS. BROWNLESS: Staff would say that Issues
9 No. 13 and 14 can be dropped, since Smart
10 Thermostat Coalition has been denied intervention
11 by Order No. PSC-2021-0256-PCO-EI issued July 13th,
12 2021, and did not file a timely request for
13 reconsideration. Therefore, since they are not
14 party, these issues are irrelevant -- not parties,
15 I am sorry, these issues are irrelevant.

16 CHAIRMAN CLARK: All right. 13 and 14 are
17 both dropped.

18 Anybody else on that section?

19 All right. Testing period and forecasting,
20 Issues 15 through 24.

21 MS. BROWNLESS: Before we leave the legal
22 issues, OPC newly raised issue, Issue 5A, which is
23 on page 15, it's actually in the back, that has to
24 do with --

25 CHAIRMAN CLARK: Commission's authority?

1 MS. BROWNLESS: Does the Commission have the
2 authority to approve FPL's requested proposal or
3 its federal corporate income tax adjustment that
4 addresses the change in tax if any occurs during or
5 after the pendency of the proceeding, that that
6 issue is consistent with the other legal issues
7 that have been raised for each of FPL's proposed
8 regulatory mechanisms, and our recommendation is
9 that it be included here.

10 MS. MONCADA: No objection from FPL.

11 CHAIRMAN CLARK: Anyone else object?

12 All right. No objections, 5A is in.

13 MS. MONCADA: And we will provide a position.

14 Thank you.

15 CHAIRMAN CLARK: Thank you.

16 All right. Are we through with legal, Ms.

17 Brownless?

18 MS. BROWNLESS: Yes, sir.

19 CHAIRMAN CLARK: All right. Next, test period
20 and forecasting, 15 through 124.

21 Quality of service, Issue 25.

22 Depreciation and dismantlement studies, 26
23 through 35.

24 Rate base, 36 through 73.

25 Net operating income, 74 through 105.

1 Revenue requirements, 106 through 107.

2 Cost of services, 108 through 129.

3 Other issues, 130 through 139.

4 Ms. Brownless, do you have a stipulation on
5 those?

6 MS. BROWNLESS: Yes, sir. We would offer that
7 issues 138 and 139 might be stipulated as yes for
8 both.

9 CHAIRMAN CLARK: Any objections?

10 All right. We begin with the contested
11 issues.

12 MS. BROWNLESS: Before we go on, sir. Is
13 everybody okay with 138 and 139 being yes?

14 CHAIRMAN CLARK: Yes, we have an agreement.

15 MS. BROWNLESS: Thank you.

16 CHAIRMAN CLARK: All right. Issue A, Ms.
17 Brownless.

18 MS. BROWNLESS: Yes, sir.

19 This issue is: Has FPL proven any financial
20 need for single-issue rate relief in 2024 and 2025,
21 based upon only the additional costs associated
22 with FPL's request for solar rate base adjustments
23 in 2024 and 2025, and with no offsets for
24 anticipated load and revenue growth forecast to
25 occur in 2024 and 2025.

1 This is OPC's issue, and we should hear from
2 them.

3 CHAIRMAN CLARK: All right. Ms. Christensen.

4 MS. CHRISTENSEN: Yes. We included this issue
5 because the -- FPL has requested additional
6 ratemaking treatment for two additional years under
7 its four-year plan, and we believe that there needs
8 to be an issue decided on whether or not it's
9 appropriate or financially needed. And I don't
10 think that's completely teed up under issue 136,
11 which was proposed, or any of the other issues that
12 were proposed under the other issues section, so we
13 are asking that it continue to be included.

14 CHAIRMAN CLARK: FPL.

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

16 We do not believe this issue should be
17 included. It is not necessary. There is an Issue
18 133, which asks whether the Commission should
19 approve FPL's SoBRA mechanism in 2024 and 2025 for
20 a total of 1,788 megawatts. If OPC believes that,
21 for the reasons stated in Issue A, the answer
22 should be no, it can state so under that issue.

23 CHAIRMAN CLARK: Ms. Brownless, we -- there is
24 another issue -- we address another issue very
25 similar to this. I am trying to find it.

1 MS. BROWNLESS: The one that would also be
2 covered by 136?

3 CHAIRMAN CLARK: No, in our issues, contested
4 issues.

5 MS. MONCADA: Pardon me, Mr. Chairman. That's
6 Issues I and J from FIPUG.

7 CHAIRMAN CLARK: These are almost overlapping,
8 is that a fair statement?

9 MR. MOYLE: We might have a disagreement on
10 whether they overlap.

11 CHAIRMAN CLARK: Yes, sir. We would
12 definitely have a disagreement on the use of the
13 word "piecemeal". Okay. Let's take this by
14 itself.

15 MS. BROWNLESS: Does anyone have a -- want to
16 state a position with regard to the inclusion of
17 Issue A?

18 Then staff will take our position. Our
19 position is that this issue is unnecessary, and it
20 can be fully argued in Issue 133. Issue 133
21 states: Should the Commission approve FPL's
22 revised solar base rate adjustment mechanisms in
23 2024 and 2025 for a total 1,788 megawatts.

24 CHAIRMAN CLARK: Bear with me.

25 MR. MOYLE: Mr. Chairman, I don't want to

1 complicate things, but you did note that FIPUG has
2 a similar issue.

3 CHAIRMAN CLARK: Yes, sir.

4 MR. MOYLE: And I was not quick on the button
5 when Ms. Brownless said, does anyone else want to
6 say anything. I am happy to make my argument now
7 on the FIPUG issue that is similar just so that --

8 CHAIRMAN CLARK: Yeah, that's fine. Go ahead.
9 I agree.

10 MR. MOYLE: I think it just would more fully
11 inform the parties and you as to why we believe
12 that our issue should be included. But the issue
13 that FPL is saying these should be subsumed under,
14 133, should the Commission approve FPL's requested
15 solar base rate mechanism in 2024 and 2025 for a
16 total of 1,788 megawatts?

17 That's a very broad question, and we've had
18 these discussions often, and there is one vary that
19 says, well, you can -- you can raise your issue
20 under this big broad question. And other views
21 are, it's a 120 hearing, and 120 gives you certain
22 rights to identify issues that you believe are
23 disputed that should be decided.

24 FIPUG comes down on the side of more
25 granularity is better than less. And, you know,

1 the theory that's being espoused by FPL is, you
2 know, you take it to its extreme. You could have
3 one issue, should the rate case as filed be
4 approved, and you could say that's all you need
5 because everything else is part and parcel of that.

6 But just as -- as OPC put forth a question
7 about have they proven a financial need. That's
8 their specific question. FIPUG -- and it's
9 different than financial need. You know, piecemeal
10 ratemaking is a question that FIPUG has put at
11 issue. Witness Jeff Pollock has filed testimony
12 that -- that talks about piecemeal ratemaking, and
13 so FIPUG has identified that as an issue that we
14 believe is worthy of consideration and -- and a
15 decision actually made on.

16 The -- what often -- well, sometimes might be
17 more fair is when you have this big broad issue,
18 133, sub-issues that people are saying, oh, that
19 should be subsumed, they don't get picked up, and
20 they don't get addressed. So the financial need
21 question, or the question that FIPUG seeks to raise
22 with respect to piecemeal ratemaking may never be
23 particularly addressed.

24 So if -- if staff and FPL said, from my view,
25 to FIPUG, you can raise this in 133, but rest

1 assured, if you raise it in 133, we will address it
2 in our staff recommendation, that would give us
3 greater comfort, at least give FIPUG greater
4 comfort, and I think it would give OPC greater
5 comfort too, because you have assurances that the
6 issue you have identified you that believe is
7 important, in OPC's case, financial need, in
8 FIPUG's case, does it violate a convention of
9 ratemaking with respect to not having piecemeal
10 ratemaking? At least you know they are going to be
11 identified and not subsumed in a way that there is
12 no articulation of what the Commission has found in
13 that regard.

14 So that's a little belabored, but I wanted to
15 share that with you. And that would be the basis
16 for the argument that FIPUG would suggest that its
17 issue be included.

18 CHAIRMAN CLARK: Ms. Brownless.

19 MS. BROWNLESS: Ms. Christensen, do you want
20 to speak first?

21 MS. CHRISTENSEN: Yeah, just briefly.

22 It looks like OPC's Issue A and FIPUG's Issue
23 I are similar in what they are trying to address,
24 which is the single-issue ratemaking or piecemeal
25 ratemaking, which is how FIPUG articulated it. And

1 I think we could probably either address our
2 concerns under the issue as drafted by FIPUG or our
3 issue, but we wouldn't need to keep both issues.
4 But we do think that it's still worthy of having a
5 issue on whether or not this is single-issue or
6 piecemeal ratemaking.

7 MS. BROWNLESS: And I can assure the parties
8 that with regard to Issue No. 133 if they talk
9 about piecemeal ratemaking, lack of need for the
10 generation, we will address that in the staff
11 recommendation. We will -- we will make that
12 representation to you right now. You argue it, we
13 will discuss it in the order. So it won't be
14 simply buried, because I appreciate and understand
15 that concern.

16 CHAIRMAN CLARK: I think the issues are
17 probably going to get a lot of addressing from the
18 Commission as well. I can -- I can pretty well
19 assure you of that. This is an area that I have a
20 lot of interest and concern in.

21 So I am going to allow them to be included
22 under 133. I think -- I think -- I think they are
23 well absorbed there, and I think the assurances
24 that we have from staff, they will address those.
25 Issue A will go away and we will make sure it's

1 addresses in 133.

2 MS. BROWNLESS: And will also drop Issue I and
3 J?

4 CHAIRMAN CLARK: Yes. Correct.

5 All right. Next issue, Item B has been
6 dropped. Next is item Issue C.

7 MS. BROWNLESS: Yes, sir.

8 MR. GARNER: Thank you, Mr. Chairman. William
9 Garner on behalf of CLEO and Vote Solar.

10 CLEO introduced this issue as -- or CLEO and
11 Vote Solar have introduced this issue as our
12 understanding that there are certain investments
13 that FPL is proposing where this determination may
14 never be considered. Under the statute 366.05, the
15 Commission is tasked with, among other things,
16 adequate fuel diversity and fuel supply reliability
17 of the electric facilities. And the Commission
18 need determination for natural gas facilities that
19 fall under that -- that act, those determinations
20 are made part of the elements that have to be shown
21 in --

22 CHAIRMAN CLARK: Mr. Garner, our court
23 reporter is having a difficult time understanding
24 you. Can you get a little bit closer to the mic?

25 MR. GARNER: May I talk without my mask?

1 CHAIRMAN CLARK: Absolutely. Yes, sir.

2 MR. GARNER: Just to summarize. The need
3 determination proceedings that the Public Service
4 Commission undertakes for facilities that fall
5 under that act, need determinations about fuel
6 supply reliability and fuel diversity are
7 considered. FPL proposals natural gas resources,
8 though, that don't fall under that act, investment
9 in combined -- or combustion turbines and other
10 upgrades to combined cycle facilities, things of
11 that nature.

12 So CLEO believes that this issue is germane
13 and important, so that the Commission is always
14 apprised and always aware of what FPL's investments
15 are having on the grid, fuel diversity and fuel
16 supply reliability.

17 CHAIRMAN CLARK: FPL.

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

19 The investments that Mr. Garner has just
20 identified that combustion turbines, the conversion
21 of Plant Crist to natural gas, and the combined
22 cycle additional upgrades, each have some
23 individual issue associated with them. They are
24 issues 42 for the combustion turbine, 43 for the
25 combined cycle, and the Plant Crist issue is Issue

1 47. In fact, we also have one for the Dania Beach
2 plant, that's No. 37. And to the extent that CLEO
3 wants to address fuel diversity and fuel supply
4 under those issues, it is free to do so.

5 Mr. Moyle mentioned earlier, you know, you
6 could take the position that there could be just
7 one issue here, but that's not the case. We have
8 almost 140 issues, so we've got to draw the line
9 somewhere.

10 There are already issues regarding the natural
11 gas investments, the upgrades and the new plant,
12 and CLEO can address their issue under those.

13 CHAIRMAN CLARK: Ms. Brownless.

14 MS. BROWNLESS: Yes, sir.

15 We also believe this issue is not needed, and
16 we would add to Issue 42, 43, 47 and 37, that it
17 could also be discussed under Issue 25, which is
18 the general quality of electric service issue. So
19 because there are so many places in which to raise
20 these points, which are legitimate points, and
21 staff will make sure that for every argument raised
22 it is included in the staff recommendation and
23 addressed, we believe this issue should be dropped.

24 CHAIRMAN CLARK: Any of the other parties have
25 any comments?

1 All right. I think I agree with staff's
2 position here. These are easily absorbed under the
3 other ones. I would like to get out a list as fast
4 as we can, so we will absorb those under the other
5 ones.

6 All right. Next issue will be Item D.

7 MR. GARNER: Thank you, Chairman, Clark.

8 This is CLEO and Vote Solar's issue again, and
9 for brevity sake, it is very similar to Issue E.

10 Issue D are FPL's T&D growth-related capital
11 expenditures reasonable and prudent? And E are the
12 reliability and grid modernization related T&D
13 capital expenditures reasonable and prudent?

14 We haven't been able to identify any other
15 issues in the case where these matters are
16 considered. I believe an Issue 88 and 89, perhaps,
17 O&M expenditures regarding these matters are dealt
18 with, but we haven't been able to identify anywhere
19 that capital expenditures are dealt with. We think
20 it's necessary for the Commission to evaluate that.

21 CHAIRMAN CLARK: Are these not addressed under
22 plant in service.

23 MS. BROWNLESS: Yes, it is.

24 CHAIRMAN CLARK: Ms. Moncada.

25 MS. MONCADA: Issue 50 is what is the

1 appropriate level of plant in service?

2 CHAIRMAN CLARK: Issue 50?

3 MS. MONCADA: Yes. And they can be addressed
4 there. There is also an issue for the appropriate
5 level of rate base at Issue 64.

6 CHAIRMAN CLARK: Staff is the appropriate
7 place to address those is under 50, is that
8 correct?

9 MS. BROWNLESS: Yes, sir, that's our position.
10 And Issue 50 is what is the appropriate level of
11 plant in service for the 2022 projected test year,
12 and if applicable for the 2023 subsequent
13 projected.

14 CHAIRMAN CLARK: You have that information
15 broken you out, Ms. Moncada? Would you have that
16 in the testimony?

17 MS. MONCADA: We have taken positions on what
18 the appropriate level of plant in service is for
19 '22, and also separately for '23.

20 CHAIRMAN CLARK: All right. We will include
21 those under 50 as well.

22 Next issue Item E, who has E?

23 MS. BROWNLESS: That's we just did E.

24 MR. GARNER: Yeah, I grouped D and E together
25 because of their similarity.

1 CHAIRMAN CLARK: Thank you very much.

2 All right. Next up, Item F has been dropped,
3 Item G dropped. Next issue is Item H.

4 MR. GARNER: I believe that's a CLEO and Vote
5 Solar issue as well. One second, let me consult.

6 Again, CLEO and Vote Solar have only been able
7 to identify Issue 25 as relating to quality of
8 service of the rates and charges FPL is proposing
9 as being germane to the issues we want to raise,
10 but we don't think it necessarily captures what we
11 are trying to get at, which is the reasonableness
12 of the rates and charges, taking into consideration
13 the cost of providing service to customer class, as
14 well as rate history value of service experience of
15 FPL consumption and load characteristics to the
16 various classes of customer, and public acceptance
17 of those rate structures in compliance with the
18 statute.

19 CHAIRMAN CLARK: That's a very broad question.

20 Ms. Moncada.

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

22 I agree. It's a very broad question. It is
23 everything, including the kitchen sink. It's hard
24 to know what isn't -- what should not be addressed
25 under this question. You know, Mr. Moyle said the

1 case could be boiled down into one question, and
2 perhaps it's Issue H, where the only questions
3 might be appropriate, but there are 139 others, and
4 the issues that CLEO has with the rates, the
5 charges, cost of service, value of service, there
6 are issues 1 through 139 where those could be
7 addressed. This is the ultimate fallout issue, and
8 the Commission will determine at the very end what
9 the just and reasonable rates of FPL should be, and
10 this issue is unnecessary.

11 CHAIRMAN CLARK: Any of the other parties have
12 a position here?

13 Ms. Brownless, staff's position?

14 MS. BROWNLESS: Yes, sir. We really think
15 that this is the all-out issue, which is the
16 ultimate issue in the case, and the result of the
17 Commission's decision on rate base, cost of
18 service, NOI, and capital structure. Based on the
19 Commission's decisions on these issues, a revenue
20 requirement is calculated and rates are designed to
21 generate those revenues. So we think that the
22 rates approved by the Commission, as stated in
23 Issues 122 through 129, are the Commission's
24 determination of fair, just and reasonable rates,
25 and for that reason, we do not think this issue is

1 necessary.

2 CHAIRMAN CLARK: All right. I agree with
3 staff's position on this issue.

4 Next up, we eliminate --

5 MR. GARNER: Chairman Clark, before you move
6 on, I think that concludes the issues that CLEO had
7 contested. In light of the fact that staff has
8 helped us identify the issues where we can make our
9 argument, is it -- I -- I assume it's appropriate
10 for us to revise our statement for each of the
11 issues accordingly by August 4th?

12 MS. BROWNLESS: Yes, sir.

13 MR. GARNER: Thank you.

14 CHAIRMAN CLARK: All right. Items I and J.

15 MS. BROWNLESS: We've disposed of those.

16 CHAIRMAN CLARK: Those are disposed of.

17 Next item is Item K.

18 Walmart.

19 MS. EATON: Item K is we don't believe
20 subsumed within Issues 109 or 108. Both of those
21 issues address -- I think Issue 108, should FPL's
22 proposal for consolidation for unified tariffs and
23 rates for FPL and Gulf be approved? I mean, even
24 to the extent Walmart's answer is yes, the answer
25 to that issue doesn't say what happens if the

1 Commission votes no. And so Walmart wants to be
2 more specific than either issue 108 or 109, which
3 is both kind of are a yes or no question. And if
4 the Commission were to say no to the consolidation
5 of the rates and tariffs for FPL and Gulf, then
6 what happens? Which company's rates do these
7 customers fall under? And obviously, Walmart takes
8 service from both of those utilities, so we would
9 like our issue to be addressed, and I don't think
10 that it was squarely addressed with righter of
11 those issues.

12 CHAIRMAN CLARK: Would this be like an
13 exception? If the rate is not adopted, you are
14 asking would there be an exception made to allow
15 you to take the discount rider?

16 MS. EATON: I don't know that it would be an
17 exception. I hadn't really thought about it that
18 way.

19 CHAIRMAN CLARK: If the company doesn't offer
20 a rate and you are going to get a rate that another
21 company is offering, would that --

22 MS. EATON: Sure, I believe that it would -- I
23 believe that some of the parties' positions would
24 just go to the stand-alone rate of the two
25 individual -- of the two individual companies, but

1 we wanted to make sure the issue was addressed to
2 the extent the Commission did not vote to
3 consolidate the rates, what Walmart's preferred --

4 CHAIRMAN CLARK: I think it's a good issue. I
5 am just trying to figure out where you are going
6 with it.

7 MS. EATON: Sure, so --

8 CHAIRMAN CLARK: Ms. Moncada.

9 MS. MONCADA: FPL defers to staff as to
10 whether it should be in or out.

11 CHAIRMAN CLARK: Okay. Mr. Brew.

12 MR. BREW: Yes, Mr. Chairman.

13 FRF thinks that Walmart has appropriately
14 identified sort of a gap issue, and I think it
15 should stay in.

16 CHAIRMAN CLARK: Anyone else?

17 Mr. Skop.

18 MR. SKOP: Mr. Chair, the Larsons also think
19 it should stay in.

20 CHAIRMAN CLARK: Thank you, sir.

21 Staff.

22 MS. BROWNLESS: Yes, sir.

23 We think this is not duplicative and
24 appropriately should be added.

25 CHAIRMAN CLARK: Sounds like you got that one,

1 Ms. Eaton.

2 MS. EATON: Thank you.

3 CHAIRMAN CLARK: Item K is in.

4 All right. What comes after K, L?

5 MS. BROWNLESS: No, sir. Now we are on the
6 newly raised issues. We've already dealt with OPC
7 Issue 5A.

8 CHAIRMAN CLARK: All right.

9 MS. BROWNLESS: Now we are down to FIT Issues
10 1 through 4.

11 CHAIRMAN CLARK: These are new issues. I am
12 skipping a page here, so -- all right. FIT. Yes,
13 sir.

14 MR. THOMPSON: Thank you, Mr. Chairman.

15 First off, in looking at our issues, FIT would
16 propose that we recognize this issue FIT 2, FIT 3
17 and FIT 4 really are -- we were going for
18 granularity, but they are going to be subsumed into
19 our first issue, which raises the question whether
20 FPL's projected revenues for pole attachment rent
21 are overstated, and whether they are based on
22 overstatements and charges of unlawfully high pole
23 attachment rental rates.

24 I know this issue is part of FPL's motion for
25 protective order from some of our discovery as

1 well, so perhaps all of these issues are being
2 rolled into each other. But our view is that FPL
3 has raised these issues that put all of its
4 revenues, all of its expenses at issue for the next
5 several years with regard to this larger rate case.
6 It can't just declare that certain parts of those
7 revenues are not relevant, and because those will
8 still have an impact on the rate base overall, but
9 will need to be -- will have an impact on the rate
10 of return.

11 And we are talking about a substantial amount.
12 They've included these in their projections and
13 their test year for 2023 and -- 2022 and 2023, and
14 they are, you know, in the tens of millions of
15 dollars, getting up to close to \$40 million a year.
16 And they reflect, in our view, a nearly 35 percent
17 increase over the course of, like, a three-year
18 period. And we think that that needs to be
19 investigated because -- we think it's a separate
20 issue for the Commission to investigate.

21 CHAIRMAN CLARK: Ms. Moncada.

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

23 I think everything that Mr. Thompson just said
24 supports what we -- our premonition was when FIT
25 moved to intervene, which is that they are trying

1 to convert this into a pole attachment rate
2 proceeding, which this is not, but perhaps we can
3 short-circuit everything by saying that Mr.
4 Thompson said this has an impact on rate base.

5 What the impact is, is that for every dollar
6 that we, FPL, receive as pole attachment revenue,
7 it is an offset, or a credit to retail customers.
8 So if what he is saying is that we are overcharging
9 them, then the ultimate result would be that FPL
10 would have to increase its revenue requirement.

11 And FPL stipulates today before Your Honor
12 that we will not be shifting the cost, no matter
13 what, to our customers. The projection that we
14 have made will not decrease. When I say
15 projection, the projection of pole attachment
16 revenues will not decrease regardless of what
17 discovery or what depositions are had, or anything
18 else regarding pole attachment rates in this case,
19 it will not change. It does not change, so it will
20 not impact the case.

21 And secondly, again, already there are other
22 forums under which, pursuant to which FIT and its
23 members can make any claims regarding the
24 unlawfulness, right or wrong, of our pole
25 attachment rates, whether that be at the FCC or

1 pursuant to the new Senate Bill 1944, which will
2 provide this commission with the jurisdiction to
3 hear and decide pole attachment rates.

4 CHAIRMAN CLARK: I have a feeling we are going
5 to hearing a few of those.

6 I do want to ask one question. So in your
7 revenue requirement under other income, are pole
8 attachments broken down -- pole attachment revenue
9 broken as a separate line item category? Can you
10 see that number?

11 MS. MONCADA: In the MFRs, yes.

12 CHAIRMAN CLARK: In the MFRs you can find
13 that. Are they broken by contributor, which
14 company contributes which amount?

15 MS. MONCADA: It is not.

16 CHAIRMAN CLARK: It is not. Just pole
17 attachment revenue.

18 MS. MONCADA: It is a whole number. It is a
19 high level rolled up number.

20 CHAIRMAN CLARK: And your position was that
21 even if that number is less than what you have
22 projected in your rate filings, that you do not
23 intend to come back and ask for any adjustments?

24 MS. MONCADA: For this -- in this proceeding,
25 would he will not.

1 CHAIRMAN CLARK: All right, Mr. Thompson.

2 MR. THOMPSON: Mr. Chairman, let me actually
3 that part. There is nothing -- if they don't
4 recover as much revenue as they have projected,
5 it's going to impact their rate of return, and
6 there is nothing stopping them from asking for more
7 the next time, right? You just heard her say, in
8 this proceeding. This is all part of a bigger
9 picture. They can't pretend like these revenues
10 don't exist.

11 I also want to just very briefly address,
12 these are not issues that this commission -- we are
13 not trying to turn this into the Commission's
14 adoption of rules under SB 1944, as has been
15 suggested. That's a process that will take place
16 separately. That process will be about adoption of
17 rules, for the formula to use, et cetera. It's not
18 going to be an adjudication of FPL's rates, and
19 certainly not FPL's rates for 2020, 2021, '22, '23,
20 until the commission has.

21 CHAIRMAN CLARK: Ms. Brownless.

22 MS. BROWNLESS: Yes, sir.

23 The staff feels that the amount of revenues
24 associated with utility pole attachment fees is
25 relevant. As has been stated, it is included in

1 the MFRs. However, we think that this point can be
2 fully discussed in Issue 74, which is what are the
3 appropriate projected amounts of other operating
4 revenues, because that's where pole attachment
5 revenues are recorded.

6 So although we think the amount of pole
7 attachment revenues is appropriately considered
8 here, we think that this issue is not necessary.

9 CHAIRMAN CLARK: I disagree. I am also
10 concerned about -- there are some -- these are very
11 specific questions that the Commission would be
12 voting on individually that -- I guess we are in a
13 position where we don't know all the rules yet that
14 are going to be coming out of the Senate Bill.

15 Yeah, I -- I will agree with staff. We are
16 going -- we are going to roll those into their
17 other operating revenues, and we will take them up
18 under that issue.

19 All right. Next issue, number -- Issue No. 2,
20 FIT No. 2.

21 MR. THOMPSON: Yes. We had actually just
22 offered to roll two, three and four into our Issue
23 No. 1., if -- if it's -- as I understand it, it is
24 your view that those can all be handled under, did
25 you say Issue 74?

1 CHAIRMAN CLARK: 74, yes, sir.

2 MR. THOMPSON: And that would all be subsumed.

3 CHAIRMAN CLARK: Great. Thank you very much.

4 All right. That takes care of, I believe, all
5 of the FIT issues, and -- wow, that's all of the
6 issues. I have lost a page. There we go.

7 Okay. All right, Section IX, Exhibit List.

8 Ms. Brownless.

9 MS. BROWNLESS: Yes, sir.

10 The parties have been given a copy of the
11 comprehensive exhibit list, which lists all
12 prefiled exhibits and those exhibits staff wishes
13 is to include in the record. The list has been
14 provided to the parties to see if there were any
15 changes or objections to the CEL, or to the
16 introduction of any of staff's exhibits being
17 entered into the record.

18 At this time, we would like to see if there
19 are any known changes that need to be made to the
20 parties' prefiled exhibits, and if there are any
21 known objections to the entry of staff's proposed
22 exhibits into the record as evidence of record.

23 Staff will not -- will continue to work with
24 the parties toward stipulating the exhibit list
25 prior to the hearing.

1 CHAIRMAN CLARK: All right. Any changes to
2 the parties' prefiled exhibits? Anyone? None.

3 All right. Are the parties willing to
4 stipulate to staff's cross-examination exhibits
5 listed on the CEL? No objection? No objection.

6 MS. CHRISTENSEN: Commissioner, this is Patty
7 with OPC.

8 CHAIRMAN CLARK: Yes, Patty.

9 MS. CHRISTENSEN: We haven't had a chance to
10 review the list yet, so we would --

11 CHAIRMAN CLARK: You want a second or you want
12 to --

13 MS. CHRISTENSEN: No, I would -- no, I think
14 we are going to need a little more time than that,
15 but I just wanted to put that in, we haven't had a
16 chance to review the list, but we will certainly
17 look at it --

18 CHAIRMAN CLARK: Not a problem.

19 MS. CHRISTENSEN: -- and if there is anything
20 we can agree with stipulating on the list.

21 Thank you.

22 CHAIRMAN CLARK: Very good.

23 MR. MOYLE: Same with FIPUG.

24 CHAIRMAN CLARK: Okay. We will hold off on
25 that item. It was a good try, Ms. Brownless.

1 All right. Let's move on to Section X,
2 Proposed Stipulations. I assume we have none.

3 MS. BROWNLESS: To my knowledge, there are
4 none at this time.

5 CHAIRMAN CLARK: All right. Pending Motions.

6 MR. LITCHFIELD: I am sorry, Mr. Chairman. I
7 just wanted to make sure we didn't lose track of
8 the stipulations that Ms. Moncada just put on the
9 record earlier with respect to the level of pole
10 attachments.

11 CHAIRMAN CLARK: Pole attachments, yes.

12 MR. LITCHFIELD: Correct.

13 CHAIRMAN CLARK: Absolutely. Make sure that's
14 included, Ms. Brownless.

15 MS. BROWNLESS: Yes, sir.

16 MS. MONCADA: And, Mr. Chairman, FPL would
17 offer to stipulate Issues 11 and 12 with regard to
18 Florida Rising and --

19 MR. MARSHALL: We'll certainly agree to that.

20 CHAIRMAN CLARK: All right. Issue 11 and 12
21 are stipulated.

22 MS. BROWNLESS: And that would remove the
23 question of Florida Rising's standing in this
24 proceeding?

25 MR. LITCHFIELD: That is correct, but I would

1 like to come back to the other point that we raised
2 earlier at an appropriate point.

3 CHAIRMAN CLARK: Any other stipulations? Now
4 is your chance.

5 All right. Let's go to pending motions.

6 MS. BROWNLESS: Yes, sir.

7 On July 23rd, 2021, FIT filed a motion to
8 compel or, in the alternative, an order requiring
9 expedited responses to discovery, and a request for
10 oral argument on its motion.

11 FIT is asking for FPL to respond to its first
12 and second set of interrogatories Nos. 1 through 23
13 and 24 through 32 by August 3rd. These
14 interrogatories were served on July 1st and July
15 8th respectively, and should have been responded to
16 on July 26th and August 1st, in FIT's opinion,
17 which is 25 days from the date of service.

18 FIT was granted intervention on July 13th by
19 Order No. PSC-2021-0255-PCO-EI, 15 days after its
20 petition to intervene was filed. FPL takes the
21 position that the time to starting counting
22 beginning on July 13th, the date FIT was granted
23 intervention, not the date that FIT served
24 discovery. So FPL does not, in its opinion, does
25 not have to answer the discovery until August 9th,

1 seven days before the final hearing. Essentially,
2 FPL is saying that it has 25 days to answer, as is
3 required by the OEP.

4 On Friday, July 30th, FPL filed responses to
5 first set of -- FIT's first set of interrogatories
6 Nos. 3, 5, 6, 9, 12 through 16, 18 through 20 and
7 23, and responses to FIT's first PODs Nos. 1, 5, 8
8 through 15.

9 We can do this one first, or we can talk about
10 the motion for protective order filed on July 30th.

11 CHAIRMAN CLARK: Well, let's take the
12 arguments one at a time.

13 FIT.

14 MR. SELF: Thank you, Mr. Chairman.

15 Our request is pretty simple. We are simply
16 asking that they respond appropriately in the
17 timeframes that were set forth in the order. You
18 have already heard from staff counsel with respect
19 to the responses that have already been answered.
20 We appreciate FPL providing us with those; however,
21 we believe that go interrogatory responses 15, 16,
22 18 and 20 are not responsive because they have not
23 provided the breakdowns or detail that was
24 requested in those interrogatories, which is highly
25 relevant for pole attachment revenue calculation

1 purposes.

2 Also, with respect to the production of
3 documents responses that have been provided, we
4 also believe that 9 through 13 and 15 are also not
5 responsive for the same reason.

6 With respect to why we are seeking to compel
7 the answers tomorrow, as you have already heard, we
8 served these on July 1st and July 8th. Both are
9 more than 25 days ago. I acknowledge that we were
10 NOT immediately granted intervention, but FIT felt
11 it was important to be transparent regarding its
12 participation in this case, and to immediately
13 request the limited discovery that we felt was
14 necessary to address our interest in the case.

15 We believe that in relying upon the
16 Commission's July 13 order elevates form over
17 substance. The parties of record clearly must meet
18 the statutory and decisional opinions that spell
19 out the threshold requirements for party status,
20 but FIT, which has a long history of participation
21 in relevant PSC and legislative proceedings
22 nevertheless had to wait until July 7th for FPL's
23 decision to not challenge FIT's intervention.

24 By not objecting on July 7th, we believe that,
25 if nothing else, at that point in time, the

1 issuance of an order granting FIT's intervention
2 essentially became a ministerial act, which was not
3 completed until the 13th. Thus, we believe, at a
4 minimum, the response time is should have started
5 on July 7th, which is the point at which FPL
6 acknowledged that FIT should be a party of record,
7 and that's 26 days as of today for the first set,
8 and 25 for the second.

9 It's also important to note, as staff has
10 indicated, that we have depositions scheduled for
11 Thursday and Friday. We think it's in FPL's best
12 interest to produce this information prior to those
13 depositions so that they could be conducted in the
14 most efficient and effective manner, save a lot of
15 hassle trying to go through stuff that we've asked
16 in discovery. If we have those answers, we can
17 make that process work.

18 So we would ask that you compel for them to
19 respond by the close of business tomorrow. And, as
20 appropriate, we would also ask for the additional
21 detail for interrogatories 15, 16, 18 and 20 and
22 POD responses 9 through 13 and 15.

23 Thank you.

24 CHAIRMAN CLARK: All right. Thank you very
25 much, Mr. Self.

1 Ms. Moncada.

2 MS. MONCADA: We think it's pretty simple,
3 too, for different reasons.

4 First, let me say that we do not believe the
5 Commission's entry of an order is simply a
6 ministerial act. The Commission had to take into
7 account whether FIT met the tests necessary for
8 standing, and we did not prejudge that at any time.
9 We waited until your order came out to make -- for
10 us to know whether FIT would be a party or not.
11 And under the rules, the Florida Administrative
12 Code, that is what is required. They must file for
13 leave, and they are not a party until you grant --
14 you grant their party status. And so on July 13th,
15 the clock began to run, and based on that, 25 days
16 later is August 9th.

17 We have already answered half of their
18 questions. We made an offer when and if -- if and
19 when we have them early, we will provide it to
20 them, and we have done so.

21 The situation in which FIT finds itself is of
22 its own making. They moved to intervene on June
23 30th. That's 170 days after this docket was
24 opened, 110 days after we filed our petition for
25 relief on March 12th, and only 39 days left before

1 the close of discovery. FIT has nobody to blame
2 but itself for not having any information it
3 believes it needs, and for those reasons we think
4 that there is no basis upon which to ask us to
5 accelerate our production. And notwithstanding
6 that, we still stand by our position that if the
7 answers are ready early, we will provide them
8 early.

9 CHAIRMAN CLARK: Mr. Self.

10 MR. SELF: Mr. Chairman, we -- we appreciate
11 them, regardless of the legal interpretation,
12 providing answers as soon as possible. Again,
13 they've had these for more than 30 days now. And
14 you do have the authority to shorten the period of
15 time if you otherwise believe the clock started on
16 the 13th.

17 Thank you.

18 MS. MONCADA: Just one more comment on having
19 these for 30 days. No one at FPL involved in this
20 case is just sitting at their desk twiddling their
21 thumbs waiting for the next discovery item to come
22 over through the transom.

23 At the time that FIT filed, or served us with
24 discovery, there were hundreds of items pending.
25 We've served, including subparts, more than 2,000

1 answers to discovery. We are working on FIT's. We
2 are working on staff's. We are working on OPC's.
3 Everybody is in the queue. And again, we will
4 provide them early if they become available early.

5 CHAIRMAN CLARK: Thank you, Ms. Moncada.

6 Any other comments?

7 All right. We will take it under advisement
8 and issue it in the ruling.

9 Next motion.

10 MS. BROWNLESS: I am sorry. The next issue
11 has to do with July -- the July 30th motion for
12 protective order, in which it requested that FIT's
13 deposition duces tecum set for August 5th for the
14 production of a corporate representative to bring
15 materials associated with and address 12 pole
16 attachment deposition matters be quashed. And I
17 will let FPL speak to their motion for protective
18 order.

19 CHAIRMAN CLARK: Ms. Moncada.

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

21 This is very similar to what you've heard
22 previously on the issues that FIT had raised as the
23 newly raised issues. And it's pretty simple, but I
24 will start with, just as background, if you have
25 not already reviewed their notice, they asked for a

1 corporate representative and asked for 12 specific
2 subject matters all having to do with the
3 calculation of the pole attachment rental rate.

4 We stand by our stipulation that's now been
5 made in the record, that nothing they ask in a
6 deposition about pole attachment rates is going to
7 change the level of revenue that we project to
8 receive from pole attachments, and therefore, the
9 deposition would be entirely irrelevant because it
10 would not change anything in the case. It would be
11 a waste of resources for everybody.

12 And secondly, again, it's -- it's difficult to
13 see how any of FIT's positions could be resolved by
14 this commission without the Commission making a
15 determination of what the appropriate rental rate
16 in 2022 and 2023 should be. That's not what this
17 proceeding is about. They can raise that in a
18 separate pole attachment complaint proceeding.

19 CHAIRMAN CLARK: Mr. Self.

20 MR. SELF: Thank you, Mr. Chairman.

21 Obviously this is a repeat of what we talked
22 about with the fundamentally FPL's arguing that
23 pole attachment revenues and rates are not relevant
24 in this case, and I think I have already addressed
25 that. I come back to the idea that they keep

1 saying that this won't matter. And I find it very
2 difficult to see how this does not have an impact,
3 that these, you know, tens of millions of dollars
4 in revenues don't have an impact on their rate of
5 return.

6 I think the other point that we wanted to
7 raise, you know, discovery is quite -- the
8 standards for discovery are quite broad, you know,
9 what reasonably is calculated to lead to the
10 discovery of admissible evidence.

11 FPL was served on this -- served with this on
12 July 19th, and they sat on this notice of
13 deposition for 11 days and then filed this motion
14 late Friday. It's unclear why they didn't raise
15 this before. We have actually been talking with
16 them about scheduling, and whether, you know, the
17 witnesses were going to be available, and this was
18 not brought to our attention at that time. We
19 think that this is an appropriate fact-finding
20 discovery undertaking.

21 CHAIRMAN CLARK: Ms. Moncada.

22 MS. MONCADA: Two quick points.

23 The reason for the delay was that the company
24 had -- took its time to make the decision about the
25 stipulation that's now been made on the record, the

1 decision not to raise revenue requirements and
2 shift cost from the pole attachers over to the
3 retail customers.

4 And secondly, with regard to the impact on our
5 rate of return, what I will say is that if FIT is
6 correct in that the charges are too high, all it
7 means is that FPL will under-recover, and we are
8 stipulating to that.

9 MR. SELF: Mr. Chairman, I guess on some level
10 I thought that we just decided not long ago that
11 this issue was relevant and that it was part of
12 Issue 74.

13 CHAIRMAN CLARK: Mr. Litchfield.

14 MR. LITCHFIELD: And I think -- I think, as a
15 conceptual matter, I agree with Suzanne. The
16 amount of pole attachment revenues included in the
17 MFRs is, prima facie, a relevant issue. However,
18 in this case, as Ms. Moncada has laid out, the
19 company has decided, irrespective of what FIT may
20 or may not prove with respect to the components of
21 that, and whether it is too high or too low, it
22 will not change in this case. It will not change
23 in it, and -- and the offset to customer revenues
24 will -- will -- will be as we projected, on the
25 high side, according to FIT.

1 And as Ms. Moncada pointed out, that only
2 means that, all other things equal, the company
3 would earn less than it otherwise would, and the
4 company is prepared to do that in the interest of
5 rendering this particular issue completely moot and
6 irrelevant for purposes of this proceeding.

7 CHAIRMAN CLARK: All right. Final point.

8 MR. SELF: I think that I made this point
9 already, but just to, in case it was missed, I
10 think that they have not stipulated that they are
11 not going to ask for more in the future if they
12 underearn. They seem to be suggesting that they
13 are okay with their revenue projections being
14 wrong.

15 MR. LITCHFIELD: By that time, Mr. Chairman,
16 we will have gone through the proceeding that the
17 Legislature has indicated would be had on a
18 separate basis, and the numbers will be what the
19 numbers are, and those numbers will roll up into
20 the next filing, whenever that might be. But the
21 only thing that matters for us today in this case
22 is what -- whether the numbers change in this case,
23 and we've said they won't.

24 CHAIRMAN CLARK: All right. Thank you very
25 much. We will take this one under advisement as

1 well.

2 Let's move to Pending Confidentiality Matters.

3 MS. BROWNLESS: Chairman, if I may, I goofed
4 up a bit. When we were at the exhibit list, I
5 forgot to ask if the parties' prefiled exhibits
6 could be stipulated to by everyone.

7 MR. LITCHFIELD: FPL's answer would be the
8 same with respect to the witnesses.

9 MS. BROWNLESS: Anyone else?

10 CHAIRMAN CLARK: Parties, prefiled exhibits?
11 Ms. Christensen.

12 MS. CHRISTENSEN: It would be the same answer
13 as before. I mean, at this point, we just reserve
14 the right if they take the stand to make any
15 corrections if they see any between now and the
16 hearing.

17 CHAIRMAN CLARK: All right.

18 MS. CHRISTENSEN: Thank you.

19 CHAIRMAN CLARK: All right. Any objection?
20 Make this simple, any objections?

21 All right. Now move to Pending
22 Confidentiality Matters.

23 MS. BROWNLESS: Yes, sir.

24 There are several outstanding requests for
25 confidentiality which are being worked on at this

1 time. Staff anticipates that all requests for
2 confidentiality will be ruled upon by the final
3 hearing.

4 CHAIRMAN CLARK: Any questions? Any other
5 items?

6 All right. Post-hearing Procedures.

7 MS. BROWNLESS: Staff recommends that
8 post-hearing briefs be limited to, we are
9 suggesting 80 to 100 pages, should briefs be
10 necessary. And we are looking for input from the
11 parties.

12 CHAIRMAN CLARK: 80 to 100, they ought to be
13 doing cartwheels.

14 All right. What's your thoughts?

15 MR. LITCHFIELD: FPL is good with that
16 suggestion.

17 CHAIRMAN CLARK: Can you live with 80?

18 MR. LITCHFIELD: 80 is probably a little bit
19 on the light side for us, given the number of
20 issues in this case, but we ultimately would live
21 with whatever the Chairman decides.

22 CHAIRMAN CLARK: All right. Can y'all live
23 with 100?

24 MS. CHRISTENSEN: I think, yes, Commissioner,
25 we can live with 100.

1 CHAIRMAN CLARK: Thank you. My goodness.

2 MS. CHRISTENSEN: Only because I would say the
3 prehearing statement was, like, 71 pages, and that
4 didn't actually include any evidentiary discussion.

5 CHAIRMAN CLARK: All right. Let's go with 100
6 pages. Limit is 100 pages. Commissioner Graham
7 will have a heart attack when he hears this.

8 All right. Next item, Ms. Brownless.

9 MS. BROWNLESS: We recommend that a summary of
10 each position be no more than 75 words, set off
11 with asterisks, should be included in each
12 post-hearing statement.

13 CHAIRMAN CLARK: In agreement, Mr. Litchfield?

14 MR. LITCHFIELD: I think generally, again, on
15 average, maybe -- I don't want to postulate on
16 average, but again, I think we've agreed in
17 principle to that number, with the ability, again,
18 on those handful of issues that are particularly
19 complex, or that lend themselves to a few more
20 words, to expand the limit from 75 to 150.

21 And I -- sitting here today, I can't tell you
22 which those are, but I think in the past, we've
23 actually agreed to, you know, a total number of X
24 issues that we could sort of exercise our right to
25 go up to 150 words, and then we would have to

1 choose wisely.

2 CHAIRMAN CLARK: Ms. Christensen.

3 MS. CHRISTENSEN: We would second that if we
4 have to put a limit on the number, that we can go
5 up to 150, that would be fine as well, but there
6 are some complex legal issues that may require some
7 more discussion.

8 MS. BROWNLESS: At 150 for the summary?

9 MS. CHRISTENSEN: They are not ones to lend
10 themselves to a one- or two-sentence type summary
11 of the position statement. And I can say that in
12 having written the prehearing statement. It will
13 be -- it will be challenging, shall I say, to even
14 get to 150 words on some of them. We will endeavor
15 to do it lower if we can.

16 CHAIRMAN CLARK: All right. Let's use an
17 average of 100. Can we work on an average of 100?
18 I am going to give you some leeway here.

19 MS. CHRISTENSEN: Thank you.

20 CHAIRMAN CLARK: Don't make me bring my
21 calculator and add them up.

22 MR. LITCHFIELD: Mr. Chairman, the page limit
23 might be the actual governor here.

24 CHAIRMAN CLARK: Right.

25 MR. LITCHFIELD: Yeah.

1 CHAIRMAN CLARK: Good point.

2 MS. BROWNLESS: If a bench decision is not
3 made, post-hearing briefs will be due on September
4 15th, 2021.

5 CHAIRMAN CLARK: All right. Parties in
6 agreement? Parties in agreement? No objection.

7 All right. Section XIV, Rulings.

8 MS. BROWNLESS: Yes, sir.

9 We recommend that the prehearing officer make
10 a ruling that the parties shall have five -- I am
11 sorry, shall have three minutes for opening
12 statements.

13 CHAIRMAN CLARK: Wow --

14 MR. LITCHFIELD: I think that just took --

15 CHAIRMAN CLARK: -- somewhere.

16 MR. LITCHFIELD: That just took 30 seconds to
17 get that out.

18 In the past, we have -- I checked on this, and
19 in the past in a rate case, and this one is a big
20 one, we -- this is what we did and we don't have to
21 do everything like we've done in the past, but for
22 your information, Mr. Chairman, FPL had 20 minutes,
23 OPC had 10, and all others each had five, which --
24 which -- I will -- how about 15 for us and for OPC,
25 and five for all others?

1 MR. WRIGHT: Mr. Chairman, this is the largest
2 rate case in history, rate case request. If FPL's
3 request for four years are approved, it will be
4 four more years before anybody is back on this.

5 As I always say, you are the Chairman, and if
6 you say five minutes, it will be five minutes. I
7 would really rather have seven, please.

8 MS. CHRISTENSEN: In the interest of fairness,
9 I would take seven if everybody else will get
10 seven.

11 CHAIRMAN CLARK: All right. Can y'all live
12 with seven? All right. 15 and seven.

13 MR. LITCHFIELD: 15 and seven. Thank you,
14 sir.

15 MS. BROWNLESS: So it's 15 for FPL, and seven
16 for everyone else?

17 CHAIRMAN CLARK: I can live with that if y'all
18 can. Y'all got to listen to each other. All
19 right. 15 and seven.

20 All right. Other matters? Any other matters
21 that need to be addressed during this prehearing
22 conference.

23 MS. BROWNLESS: I am not aware of any.

24 MR. LITCHFIELD: Perhaps, coming back, then,
25 to the issue that we were discussing earlier and

1 requested a few minutes to digest Florida Rising's
2 willingness, or indication that it was planning to
3 adopt the testimony of three of FAIR's witnesses.

4 CHAIRMAN CLARK: Yes, sir.

5 MR. LITCHFIELD: So we have had a little bit
6 of time to think about this, not a lot, obviously.
7 The -- I think I said the time that that was a very
8 interesting development and for this reason, Mr.
9 Chairman. As you probably, I am sure, are well
10 aware, FPL has contested the standing of -- of FAIR
11 from the getgo, and the Commission granted that
12 standing provisionally with the right to contest
13 the underlying facts that served as the basis, in
14 fact, were representations in the petition for
15 standing filed by FAIR and its counsel, and
16 presumably were facts that the Commission read and
17 accepted provisionally for purposes of granting the
18 provisional standing.

19 In fact, we've taken depositions of two of
20 FAIR witnesses, and, in fact, we have concluded,
21 and will file paper to this affect, that those
22 facts are not accurate; and that the Commission, in
23 fact, in granting standing, again on a professional
24 basis, did so on the basis of false information.

25 So my question today is is FAIR, in effect,

1 signaling -- and I put this to Mr. Wright -- is
2 FAIR, in effect, signaling that -- that they
3 recognize that this is a bit of a challenge for
4 them and they are going to withdraw, and they would
5 like to pass off those three witnesses to Florida
6 Rising?

7 I guess that's a threshold question I have
8 before I can react to, right, give our position on
9 that.

10 CHAIRMAN CLARK: All right. I am going to ask
11 for some legal help here, but I am not sure that
12 that matters from a legal perspective. They have
13 the right to adopt the testimony of anyone else. I
14 am looking at you, Ms. Helton.

15 MS. HELTON: I am not sure with respect to the
16 timing, Mr. Chairman, and I would be interested in
17 hearing what Mr. Wright has to say.

18 I mean, we -- we asked, or require parties to
19 prefile testimony for their witnesses by a date
20 certain, and we ask them, the parties, to identify
21 who the witnesses will be and the order of their
22 testimony in their prehearing statement.

23 I mean, we typically regularly allow parties
24 to, if something happens to a witness, the party to
25 have another witness adopt that testimony. It's a

1 little bit different, in my mind, for a party to
2 adopt the testimony of another party.

3 And I haven't thought through it completely.
4 I would be very interested in hearing what Mr.
5 Wright says, and maybe this is one of those other
6 issues that should be also taken under advisement.

7 CHAIRMAN CLARK: Mr. Wright.

8 MR. WRIGHT: I am happy to answer Mr.
9 Litchfield's question.

10 We are not in any way signaling that we would
11 withdraw our case. We believe we have fully set
12 aside the standing requirements of equitable for
13 law and stand by it. I think Mr. Marshall would be
14 better equipped to address the issue that Ms.
15 Helton just raised.

16 CHAIRMAN CLARK: Mr. Marshall.

17 MR. MARSHALL: Thank you.

18 So this is a Chapter 120 proceeding, and I
19 have had several of those at DOAH, and obviously,
20 this is different and we have prefiled testimony;
21 but as we always do, we list in our prehearing
22 statement as witnesses any witness listed by
23 another party. And the reason you do that is
24 because as you build your case, you find out from
25 the other side's witnesses you realize that, you

1 know, sometimes they have something that's really
2 helpful to say, and so, you know, sometimes they
3 want to withdraw that witness, but, no, you want to
4 call them to the stand. And that's something we do
5 at DOAH. And from my perspective, there is no
6 difference here because the purpose of prefiled
7 testimony is no surprises. You know what's being
8 said so you can do discovery on that. And because
9 these proceedings are complex we don't want
10 witnesses getting up on the stand having a story
11 that they haven't prefiled. And so we are simply
12 proposing to adopt here testimony that has already
13 been prefiled, so there are no surprises in that
14 testimony.

15 CHAIRMAN CLARK: Mr. Litchfield.

16 MR. LITCHFIELD: Yeah. Mr. Chairman, in
17 response to that, so I think we talked amongst
18 ourselves, and I don't think any of us in our
19 practice tenure at this commission have seen
20 another party adopt someone else's witnesses, or
21 decide at the last minute to cosponsor it.

22 I don't think there is any doubt that -- that
23 when parties are preparing and litigating a case
24 that -- that the witnesses, as they are aligned
25 with different parties, absolutely is factored into

1 how you would prepare for, how you would
2 participate, and how you would litigate a case.
3 And to have those witnesses shifting at the 11th
4 hour is a little bit, you know, like the proverbial
5 shell game. So I think, to that extent, we are --
6 we are potentially prejudiced in that regard.

7 Having said that, like I said earlier, we
8 intend to file paper, Mr. Schef has effectively
9 doubled down on the representations that were made
10 in the petition, which certainly is his right to
11 make. We will file the paper.

12 I think with respect to Mr. Bradley saying, I
13 would like to endorse or adopt the testimony here,
14 that will be reflected in the -- in the prehearing
15 order, and we would just preserve our objection as
16 it plays out, right, and consistent with what we
17 file.

18 Let me talk a little about what relief, if
19 any, we request from the Commission on this point,
20 because the revelations of, in our view, the
21 misrepresentations literally just came to light
22 within the past several days through these
23 depositions, and we would just reserve our right to
24 make those arguments and to object to the evidence
25 coming into the record, again, depending on the

1 Commission's decision.

2 The standing question, of course, has been
3 teed up for a final Commission decision at the end
4 of the case, but we want to give some thought now
5 to -- to what that might imply in terms of the
6 case.

7 Anyway, we would be thoughtful about what we
8 file and hopefully provide at least a constructive
9 path or two, and ultimately it will be up to the
10 Commission, and we will participate according to
11 your ruling.

12 CHAIRMAN CLARK: Thank you very much. Duly
13 noted.

14 All right. Any other matters from any of the
15 parties? Anything else?

16 Ms. Brownless, anything on your behalf?

17 MS. BROWNLESS: No.

18 CHAIRMAN CLARK: All right. Seeing no other
19 items, this preconference hearing is adjourned.

20 Thank you for being here today.

21 (Proceedings concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
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IT IS FURTHER CERTIFIED that I
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DATED this 16th day of August, 2021.



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