BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Tampa Electric Company.	DOCKET NO. 080317-EI ORDER NO. PSC-09-0571-FOF-EI ISSUED: August 21, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER DENYING THE INTERVENORS' JOINT MOTION FOR RECONSIDERATION, CLARIFYING ORDER NO. PSC-09-0283-FOF-EI, AND GRANTING IN PART TAMPA ELECTRIC COMPANY'S MOTION FOR RECONSIDERATION

BY THE COMMISSION:

On August 11, 2008, Tampa Electric Company (TECO or the Company) filed a petition for a permanent rate increase. TECO requested an increase in its retail rates and charges to generate $228.2 million in additional gross annual revenues. TECO based its request on a projected test year ending December 31, 2009. The Office of Public Counsel (OPC), Office of Attorney General (OAG), AARP, Florida Industrial Power Users Group (FIPUG), and the Florida Retail Federation (FRF) intervened in the proceeding.

We held an administrative hearing on TECO's proposed rate increase on January 20, 21, 27-29, 2009. Thereafter, on April 30, 2009, upon consideration of the evidentiary record, the post-hearing briefs of the parties, and our staff's recommendation, we issued Order No. PSC-09-0283-FOF-EI (Final Order), granting TECO an increase in its retail rates and charges to generate $104.3 million in additional gross annual revenues, with a step increase in rates to generate $33.5 million of additional revenue effective January 1, 2010, for a total $137.8 million. The Final Order indicated that the step increase was designed to address the additional costs TECO would incur to construct five combustion turbines (CTs) and a new rail unloading facility at Big Bend Station (Rail Facility) to be placed in service toward the end of 2009.

On May 15, 2009, the Intervenors in the case jointly filed a Motion for Reconsideration, contesting our decision to grant the step increase. TECO also filed a Motion for Reconsideration contesting our adjustments to reconcile capital structure to rate base. TECO questioned our decision to make the necessary adjustments over only investor sources of capital rather than over all sources of capital as TECO had proposed. TECO filed a response in opposition to the Intervenors' Motion on May 22, 2009. The Intervenors did not file a response to TECO's Motion.

The Intervenors filed a separate Request for Oral Argument on their Motion. TECO filed a Conditional Request for Oral Argument on the Intervenors' Motion, stating that while it did not believe oral argument was necessary, if we did grant oral argument, it requested permission to participate. TECO did not request oral argument on its own Motion. The reconsideration requests came before us on July 14, 2009.

We have jurisdiction pursuant to Sections 366.06(2) and (4), and 366.071, Florida Statutes. (F.S.)

REQUEST FOR ORAL ARGUMENT

Rule 25-22.0021(1), Florida Administrative Code (F.A.C.), provides for oral argument before the Commission as follows:

> Oral argument must be sought by separate written request filed concurrently with the motion on which argument is requested, or no later than ten (10) days after exceptions to a recommended order are filed. Failure to timely file a request for oral argument shall constitute waiver thereof. Failure to timely file a response to the request for oral argument waives the opportunity to object to oral argument. The request for oral argument shall state with particularity why oral argument would aid the Commissioners, the Prehearing Officer, or the Commissioner appointed by the Chair to conduct a hearing in understanding and evaluating the issues to be decided, and the amount of time requested for oral argument.

The Intervenors properly filed their request for oral argument concurrently with their motion for reconsideration. TECO also timely filed a response and conditional request for oral argument if we saw fit to grant the Intervenors' request. TECO asked that it be granted the same amount of time to argue its position as the Intervenors collectively. The Intervenors alleged that oral argument would aid us in comprehending and evaluating the facts and policies that, according to the Intervenors, we overlooked or misstated in our Final Order. Specifically, they stated that oral argument would help us evaluate whether their due process rights were violated when we adopted a step rate increase for TECO, whether we overlooked our own rules and statutes in implementing the step increase, and whether we properly applied the "statutory standard" set forth in Chapter 366, F.S., and our rules. We granted oral argument on the Intervenors' motion for reconsideration. Because the matters raised are fairly complex, the Intervenors adequately demonstrated that oral argument would assist us in resolving them. Fifteen minutes were allotted per side.

TECO did not request oral argument on its own motion for reconsideration, and the Intervenors did not file a response to TECO's motion. However, at our Agenda Conference, TECO requested the opportunity to address its motion, and the Commission, in its discretion under Rule 25-22.0021(2), F.A.C., granted TECO's request for oral argument. We also allowed oral argument by the Intervenors on TECO's reconsideration motion.

INTERVENORS' MOTION FOR RECONSIDERATION

Intervenors' Argument

In their joint motion for reconsideration, the Intervenors request that we reconsider certain aspects of our decision memorialized in our Final Order, and issue a revised order denying the step increase in 2010 for the five new CTs and Rail Facility. The Intervenors contend that we should reject the step increase for the following reasons: (1) granting the step increase was a departure from the essential requirements of law and violated the parties' due process rights; (2) the proposed implementation of the step increase violated the fundamental requirement of the Florida Administrative Procedures Act that parties be given a point of entry and opportunity for a hearing on any decision affecting their substantial interests; (3) our Final Order does not reflect the vote sheet from the Agenda Conference; (4) the step increase is not allowed by the applicable statutes; and (5) the step increase is not allowed by our rules. The Intervenors contend that even if the step increase were on procedurally firm ground, the step increase would result in a substantive mismatch between TECO's costs and sales in the future period (2010) in which the increased rates are to be in effect.

Due Process

The Intervenors assert that the step increase was not requested by TECO in its petition, was not requested by any of TECO's witnesses in direct and rebuttal testimony or on cross-examination, and was not included in TECO's Minimum Filing Requirements (MFRs). They also contend that the step increase was not raised as an issue verbally or in writing in TECO's prehearing statement or at any other point in the prehearing process, and was not added as an issue after hearing. They stated that it was not addressed by the parties in post-hearing briefs. The Intervenors contend that they did not address the issue of the step increase in their testimony because they did not know that it was at issue in the case, or that we were going to consider such treatment. They contend that it was only raised as a passing comment by one of TECO's witnesses during cross-examination by a Commissioner.

The Intervenors argue that we should grant the motion for reconsideration because due process requires that parties be given adequate notice and an opportunity to be heard on this issue. They cite Bresch v. Henderson, 761 So. 2d 449, 451 (2nd Fla. DCA 2000), as precedent for their position. In Bresch, a party facing the allegation of civil contempt did not receive notice prior to the hearing. The court held that a person subject to civil contempt sanctions is entitled to a proceeding that meets the fundamental fairness requirement of the due process clause of the Fourteenth Amendment to the United States Constitution. Failure to provide any notice whatsoever constituted a lack of due process which would require the court's order to be vacated. The Intervenors contend that since the step increase was not proposed by TECO and was first presented the day that we voted on the issues, after the post-hearing briefs of the parties were filed, we not only failed to consider the due process implications of voting to approve the step increase, we also failed to comply with the fundamental fairness required by due process.

Violation of Chapter 120, Florida Statutes

The Intervenors also contend that our approval of a step increase for the cost of the CTs and the Rail Facility was a violation of Chapter 120, F.S. They submit that Chapter 120, F.S., provides that before any agency may implement a decision that affects the substantial interest of any person, the agency must provide a point of entry giving any substantially affected persons the opportunity to request and have a hearing on the merits of any disputed issues of material fact. The intervernors contend that we granted our staff the authority to approve the step increase upon staff's determination that the criteria articulated in the Final Order, including whether the CTs are needed for service in 2009 or 2010, have been met. The Intervenors disputed that the September CTs are needed and argued that our proposed step increase, implemented per the Final Order, would deny them a point of entry to timely litigate that issue before the units are built.

The Intervenors also assert that their motion for reconsideration should be granted because the Final Order does not reflect our vote on this matter. They argue that we voted for the following language from staff's handout at the Agenda Conference: "the decision to complete any or all of these projects by year end, considering changed circumstances such as, but not limited to, decreased electricity consumption, is subject to Commission review and rate adjustment." The Final Order stated that the decision "shall be subject to our staff's review and approval." The Intervenors contend that the subtle change in the wording creates a significant change in the meaning and implementation of the step increase review. Moreover, under the original language, the substantial decision-making remained with us, subject to a further vote. They argue the change in the language was not voted on or discussed, and placed the substantial decision making on final rates with Commission staff. Thus, the Final Order's language failed to reflect the actual vote that was made, and could create an unlawful delegation of our authority to defer substantial decisions to staff.

Violation of Statutes and Commission Rules

The Intervenors contend that their motion for reconsideration should be granted because the step increase pro forma adjustments are based upon speculative projected costs for the portion of 2009 when the projects are not used and useful in the public service. The Intervenors argue that rates should be based upon the actual and legitimate cost of the utility's property that is actually used and useful in the public service, in accordance with Section 366.06(1), F.S. They contend that the approved step increase treatment provides for additional Commission staff review and adjustment based upon potentially changing circumstances, underlines the speculative nature of the CTs and Rail Facility costs, and violates Section 366.06, F.S.

The Intervenors also contend that approval of the step increase violated Commission rules, because it does not conform to the 13 month average requirement. The Intervenors contend that in its test-year notification letter, TECO chose to use a projected test-year ending December 31, 2009, based upon a historic test year ended December 31, 2007, and the projected test-year utilized the average 13 month balance for the projected 2009 test-year. However, in contravention of Rule 25-6.043(h), F.A.C., and without any request for variance from the rule,

the step increase attempts to use a year-end balance as of December 31, 2009. The Intervenors contend that the step increase selectively applies a year-end balance for only the three plant accounts relevant to the CTs and Rail Facility, while applying Rule 25-6.043(h), F.A.C., 13 monthly average balances for all other plant accounts. They argue that this is a variation from required procedure and unfair because notice was not given to the Intervenors.

The Intervenors also argue that because there are no meaningful rules that have been promulgated to allow for such subsequent adjustment under a "limited proceeding," the step increase would create a facial violation of Section 120.54, F.S. The Intervenors contend that the statute regarding a limited proceeding under Section 366.076(2), F.S., provides that "the commission may adopt rules which provide for adjustments of rates based on revenues and costs during the period new rates are to be in effect." According to the Intervenors, we never promulgated meaningful rules to implement this section of the statute. Rule 25-6.0425, F.A.C., merely restates the language of the statute, and provides no guidance as to how this statutory provision would be implemented. They argue that we should grant their motion for reconsideration claiming the step increase violated the requirements governing the conduct of rate cases.

The Proposed Step Increase Would Result in a Substantive Mismatch of Revenues and Sales

Finally, the Intervenors contend that their motion for reconsideration should be granted because the proposed step increase would result in a substantive mismatch of revenues and sales.[1] They assert that by approving the step increase, we have proposed to allow TECO to raise its rates in January 2010, based upon the company's 2009 sales (billing determinants). They argue that this is fundamentally wrong as a matter of regulatory practice. If not corrected, the Intervenors say the resulting rates will be unfair, unjust, and unreasonable because the rates will have been calculated for a projected year using that projected year revenue requirements divided by a previous year's sales.

TECO's Response

In its response, TECO contends that the Intervenors' motion is nothing but a reargument of their general opposition expressed throughout this proceeding to the base rate recognition of the benefits TECO's customers will derive from the company's significant investment in CTs and the Rail Facility. According to TECO, the Intervenors' motion exceeds the allowed purpose of a motion for reconsideration and should be denied.

TECO asserts that there was no departure from the essential requirements of law because the step increase was an implicit form of base rate relief within the relief originally requested by the company. By approving the step increase, we recognized TECO's significant investment in the CTs and rail facility, but deferred the recovery of these investments from May 7, 2009, to

[1] While the Intervenors variously use the terms "revenues and sales" and "cost and sales" in their Motion, we understand that the argument is to address a mismatch between 2010 revenue requirements and 2009 billing determinants.

January 1, 2010, in order to resolve the matching concerns raised by the Intervenors with respect to these investments. TECO contends that our approval of the step increase was procedurally sound and is supported by the record. According to TECO, we could have approved the annualization of CTs and Rail Facility as requested. However, we elected to defer the recovery of the cost for the CTs and Rail Facility, and granted less than the base rate relief requested by TECO. Thus, we acted within our broad scope of authority to set rates. TECO cites several cases in which the court held that we have considerable discretion and latitude in the ratemaking process.

TECO contends that we have the authority to approve prospective rate increases and that we routinely do so. TECO notes that our authority to approve prospective rate increases has been expressly recognized by the Florida Supreme Court in Floridians United for Safe Energy, Inc. v. Public Service Commission, 475 So. 2d 241 (Fla. 1985). In Floridians United, Florida Power & Light Company was granted a rate increase for 1984 and a subsequent rate increase in 1985. Floridians United challenged the Commission's authority to grant the subsequent year increase based on the newly created Section 366.076, F.S. The Supreme Court found that the Commission had authority, and had always had authority, to grant subsequent year rate increases.

TECO argues that the fact that it specifically requested annualization of the CTs and the Rail Facility over the lesser form of rate relief that we ultimately adopted (the step increase), does not remove the latter from our range of alternatives or create error in our selection of the step increase alternative. TECO argues that in virtually every rate decision, we weigh competing evidence and use our judgment to achieve a result within the range of alternatives supported by record evidence. It cites as an example our decision regarding the amortization of rate case expense. TECO's witness proposed amortizing rate case expense over a three year period. OPC's witness contended that three years was too short a period of time, and recommended a five year amortization. We ultimately approved a four year amortization. However, the fact that neither witness addressing the subject supported a four year amortization does not invalidate the judgment call we made within the range of alternatives supported in the record.

TECO asserts that there were no surprises and no lack of notice in connection with the step increase. TECO states that the record of the proceeding includes testimony supportive of the step increase that we approved, and TECO discussed the subsequent year adjustment for the CTs and Rail Facility in its brief.

No Violation of Due Process Rights

TECO contends there was no violation of the Intervenors' due process rights. TECO asserts there is no due process violation in not being allowed to respond to a staff recommendation or any revision to a staff recommendation. The step increase provided less rate relief than could have been granted had we approved the annualization sought by TECO. Moreover, according to TECO, any party to the proceeding knew from the outset that the rate impact of the annualization, or any lesser relief authorized, were potential outcomes, given the breadth of ratemaking discretion vested to the Commission.

No Violation of Chapter 120, Florida Statutes

TECO contends that the Intervenors' Chapter 120 "point of entry" argument is no more than a weak variation of their general re-argument in opposition to any base rate recognition of the five CTs and Rail Facility. TECO asserts that we did not authorize staff "to approve the step increase." The Final Order itself approves the step increase and only charges staff with the ministerial duty to ensure that the clearly articulated conditions in the Final Order are met prior to implementation of the step increase. Thus, TECO argues that the Intervenors Chapter 120 "point of entry" argument is based on a mischaracterization of the nature of the relief granted in the Final Order.

No Inconsistency between the Order and the Commission's Vote

Moreover, TECO contends that our order is consistent with our vote. The Final Order only authorizes staff to police TECO's compliance with the step increase conditions contained in the Final Order. If the conditions are not met, it is incumbent upon staff to inform the Commission, so it can take whatever action is deemed appropriate.

No Violation of Statutes or Commission Rules

TECO contends that there is no violation of Commission rules or statutes. It asserts that the Intervenors' argument that costs for ratemaking purposes must be current and not speculative in nature ignores the fact that the costs associated with the CTs and Rail Facility are presently being incurred and will be fully incurred before the step increase becomes effective. Moreover, the Intervenors' argument is an assault against the use of a projected test year and our judicially recognized authority to approve prospective rate increases. TECO argues that the Intervenors have failed to demonstrate anything that the Commission overlooked or failed to consider in providing for such rate relief.

TECO also contends that there was no violation of the requirements governing the conduct of rate cases. TECO asserts that in approving the step increase, the Commission granted only a portion of the rate relief it requested, a decision clearly under the Commission's authority. TECO discounts the Intervenors' argument regarding the limited proceeding statute, Section 366.076, F.S. TECO asserts that the Commission has authority to approve prospective increases as stated in Floridians United, supra.

The Proposed Step Increase will not Result in a Substantive Mismatch of Revenues and Sales

TECO asserts that the Intervenors have shifted their position on matching, and now attempt to suggest some mismatch in sales and revenues stemming from our decision to defer any base rate increase for the CTs and Rail Facility to 2010. TECO contends that there is no mismatch of revenues and sales, and that we have overlooked nothing in deciding to defer the increase.

Analysis and Discussion

Standard of Review

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which we failed to consider in rendering our Final Order. Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958).

No Violation of Due Process Rights

Due process requires that parties to a proceeding be given adequate notice and an opportunity to be heard on the issue. Bresch v. Henderson, 761 So. 2d 449, 451 (Fla. 2nd DCA 2000). However, the concept of due process in an administrative proceeding is less stringent than in a judicial proceeding, although it nonetheless applies. Hadley v. Department of Administration, 411 So. 2d 184, 187 (Fla. 1982). As stated in Hadley, "the extent of procedural due process protections varies with the character of the interest and nature of the proceeding involved." Thus, "due process is flexible and calls for such procedural protections as the particular situation demands." Id. at 187, citing Mathew v. Eldridge, 424 U.S. 319, 334 (U.S. 1976). Due process envisions a law that proceeds upon inquiry, and renders judgment only after proper consideration of the issues advanced by adversarial parties. Scull v. State, 569 So. 2d 1251, 1252 (Fla. 1990). Due process is satisfied if the parties are provided notice of the hearing and an opportunity to be heard. Jennings v. Dade County, 589 So. 2d 1337, 1340 (Fla. 3rd DCA 1991).

Here, the Intervenors were provided notice of the hearing and given an opportunity to be heard on the two issues about which they allege their due process rights were violated. First, the issues regarding whether the cost for the CTs and the Rail Facility should have been included in the company's test year, were included in the Prehearing Order and fully litigated at the hearing.[2] The issues litigated at the hearing were:

> Is the pro forma adjustment related to the annualization of five simple cycle combustion turbine units to be placed in service in 2009 appropriate?
>
> Is the pro forma adjustment related to the annualization of the Big Bend Rail Project to be placed into service in December 2009 appropriate?

Both sides presented witnesses' testimony and exhibits that they believed we should consider when making our decisions whether pro-forma adjustments related to the annualization of the

[2] Order No. PSC-09-0033-PHO-EI, issued January 16, 2009, in Docket No. 080317-EI, In re: Petition for rate increase by Tampa Electric Company, at 17-18.

CTs and Rail Facility were appropriate for the 2009 test year. The Intervenors were given an opportunity to argue why pro forma adjustments for the CTs and Rail Facility in 2009 were not appropriate and to present us with possible alternative ways to account for the cost of the CTs and Rail Facility.

Second, during the hearing, TECO's witness Chronister recommended a step increase as an alternative that we could use to account for the expenses the company would incur to place the CTs and Rail Facility in service. Witness Chronister stated:

> If not included in this particular proceeding... then we would come back because they are significant projects and ask for recovery of them, you know, as they went in service. So, you know, I know everybody -- we have been talking about rate case expense and no one wants to come back in for rates. You know, there is an interim step that you can do, too, where you can have a step increase, you know, when a facility goes in after a rate case, and that is an option available, as well.

Moments after this statement, the Chairman gave each Intervenor's counsel an opportunity to cross-examine witness Chronister. Each Intervenor's counsel failed to cross-examine witness Chronister about the step increase that he recommended as an alternative method of recovery for the expenses the Company would incur to place the CTs and Rail Facility in service. Thus, the Intervenors were given an opportunity to challenge any alternative treatment for the CTs and Rail Facility.

Moreover, TECO requested in Exhibit 112, filed February 5, 2009, that we use a step increase as an alternative to account for the expenses the company would incur to place the CTs and Rail Facility in service if we determined that pro forma adjustments were not appropriate for the 2009 test year.[3] The Intervenors did not object to this exhibit being admitted into the record, nor did they address it in their post-hearing briefs.

Third, the Intervenors were given an opportunity to argue against a step increase deferring recovery of the cost for the remaining portion of the CTs and the cost for the Rail Facility in their post-hearing briefs. The Intervenors failed to take advantage of this opportunity, but TECO argued in its brief for a step increase. In its brief, TECO stated:

> Should the Commission determine that one or more of the September 2009 CTs should not be annualized, Tampa Electric would urge that a subsequent year adjustment to base revenues be ordered effective January 1, 2010. This adjustment would allow the company an opportunity to earn a fair return on this significant investment while delaying the associated base rate increase until after the units are placed in service. It would also help avoid the effort and expense of

[3] Late-filed Exhibit No. 112 states "Tampa Electric continues to support the appropriateness of an annualized adjustment for the CTs and Rail Facility with in-service dates that occur subsequent to the implementation of new rates in May. However, it also recognizes that concerns raised by various parties and, as was suggested by company witnesses during the hearing, it could also support a 'step increase' in base rates after the assets are placed in service."

> having an additional base rate proceeding to recover the significant costs attributable to the addition of these CTs.

TECO made a similar argument for the rail facility.

Fourth, the step increase was not a departure from the essential requirements of law and not a violation of the Intervenors' due process rights because it was within the range of alternatives that we could consider when setting rates for TECO. Section 366.041, F.S., provides:

> In fixing the just, reasonable, and compensatory rates, charges... for service within the state by any and all public utilities under its jurisdiction, the commission is authorized to give consideration, among other things, to the... cost of providing such service and the value of such service to the public; the ability of the utility to improve such service and facilities...

We have discretion in fixing rates and charges for public utilities. Our discretion in the ratemaking process is well documented in decisions by the Florida Supreme Court. For example, in Gulf Power Co. v. Bevis, 296 So. 2d 482, 487 (Fla. 1974), the Court held that "as pointed out by the Commission, it has considerable discretion and latitude in the rate fixing process;" in Storey v. Mayo, 217 So. 2d 304, 307 (Fla. 1968), the Court held that "the regulatory powers of the Commission ... are exclusive and, therefore, necessarily broad and comprehensive;" and in City of Miami v. Florida Public Service Commission, 208 So. 2d 249, 253 (Fla. 1968), the Court held that "it is quite apparent that these statutes repose considerable discretion in the Commission in the ratemaking process." It is presumed that the Legislature is aware of the judicial constructions of a law. Essex Ins. Co. v. Zota, 985 So. 2d 1036 (Fla. 2008). The Legislature is presumed to have adopted prior judicial constructions of a law unless a contrary intention is expressed in the statute. ContractPoint Florida Park, LLC v. State, 958 So. 2d 1035 (Fla. 1st DCA 2007). The Legislature has not amended Section 366.041, F.S., since these decisions were issued.

We agree with TECO that the step increase that we approved is within our broad ratemaking authority. The step increase was within a range of alternatives we considered when deciding whether a pro forma adjustment relating to the annualization of the cost for the CTs and Rail Facility was appropriate for 2009. After extensive testimony at the hearing about annualizing the cost and considerable discussion at the Agenda Conference, we decided to defer the cost recovery for a portion of the cost for the CTs and the cost of the Rail Facility instead of annualizing the cost for both for the entire 2009 test year. By doing so, we acted within our discretion and sought to balance the public interest by ensuring ratepayers were not paying the total amount for the CTs and Rail Facility that were not in service, with the Company's interest of recognizing the significant capital expenditures TECO will be undertaking to place the CTs and Rail Facility into service.

Our ability to choose a reasonable alternative is well documented in Gulf Power Company v. Florida Public Service Commission, 453 So. 2d 799, (Fla. 1984). In Gulf Power Company v. Florida Public Service Commission, the Court held that:

> The PSC was confronted with competing testimony from Gulf and the commission staff regarding what is to be a reasonable coal inventory. It is the PSC's prerogative to evaluate the testimony of competing experts and accord whatever weight to the conflicting opinions it deems necessary. United Telephone Co. v. Mayo, 345 So. 2d 648, 654 (Fla. 1977). Although the PSC rejected both Gulf's 60-day nameplate policy and the staff's 90-day projected burn level as necessarily proper, it was presented with sufficient evidence to enable it to choose a reasonable alternative. Inasmuch as the PSC was not convinced that Gulf's position was supported by substantial competent evidence, it was left with three possible alternatives; to allow Gulf's fuel inventory proposal without competent substantial evidence, to allow Gulf no coal inventory at all or, to make some other reasonable determination. The PSC properly recognized its responsibility of not only setting fair and reasonable rates but also of "promoting the convenience and welfare of the public and securing adequate service or facilities to those reasonably entitled thereto." Section 366.05(1), F.S. Cognizant of the fact that Gulf needs coal to fire its base-load facilities, the PSC was precluded by statute and common sense from totally disallowing all funds for coal inventory.

Id. at 805.

Our exercise of discretion in approving the step increase is similar to exercising our discretion to increase TECO's storm damage reserves from $4 million to $8 million, our decision to approve a higher return on equity than that requested by the Intervenors, or amortizing rate case expense over four years, instead of TECO's proposed three years or the Intervenors' proposed five years. Final Order, pp. 18, 48, and 65-67. Thus, we believe that the step increase was an appropriate rate-making mechanism, an exercise of our authority "to make some other reasonable determination," and within our discretion to use when setting rates for the test year and future years. Id. at 805

The Step Increase is not a Violation of Chapter 120, Florida Statutes

Approval of the step increase deferring the recovery of the cost for the CTs and Rail Facility was not a violation of Chapter 120, F.S. Section 120.569(2)(b), F.S., provides that before any agency implements a decision that affects the substantial interest of any person, the agency must provide a point of entry giving any substantially affected persons the opportunity to request and have a hearing on the merits of any disputed issues of material fact. Here, the Intervenors were given a meaningful, fair, reasonable, and timely point of entry to dispute whether the September CTs were needed and whether those CTs should be annualized over the 2009 test year, and they took full advantage of their opportunities to argue those points.

The Intervenors disputed the need for the September CTs on cross-examination of TECO's witnesses, on direct examination of their respective witnesses, and in their briefs. For example, TECO's witnesses were cross examined during the hearing on whether the September CTs were needed. The Intervenors argued in their briefs that the September CTs were not needed.[4] We weighed the evidence and the parties' arguments and decided that the September CTs were needed. We included part of the cost to complete the September CTs in TECO's revenue requirement for the 2009 test year and deferred the recovery of the remaining unannualized cost to complete the September CTs cost until January 1, 2010, conditioned upon a continuing need for the CTs. Final Order, pp. 6 and 134. Also at the Agenda Conference, when responding to a question, our staff stated that "a part of the cost to construct the September CTs was included in the recommended revenue requirement for 2009."

The Final Order did not grant staff the authority to approve the step increase. The Order itself approved the step increase. The Final Order states:

> To avoid a significant cost to the consumers and significant length of time to conduct a limited proceeding, we have decided to grant TECO a step increase in rates, effective January 1, 2010, for the cost of the five CT units. We authorize an increase in base rates to a maximum of $28.3 million for the five CT units in a manner consistent with the cost allocation methodology we have approved in this Order with the condition that these investments are completed and in commercial operation by December 31, 2009. TECO shall submit a revision of the revenue requirement impact for these projects. This step increase is based upon the condition that the units must be needed for load generation.

Final Order, p. 6. The Final Order stated certain conditions TECO must meet to recover the deferred cost for the September CTs. Our staff's role is to continue its assessment of the continuing need for the September CTs, based upon the conditions discussed at the Agenda Conference and reflected in the Final Order. A new docket will be opened to evaluate whether there continues to be a load generation need for the CTs, including whether there has been a change in circumstances to warrant the Company not completing the CTs, and to verify and evaluate the reasonableness of the cost associated with these projects. Interested persons may conduct an independent evaluation of the continuing need for the September CTs and the associated cost to place those CTs in service. Before TECO recovers the costs for the CTs through base rates, our staff will prepare a recommendation for our consideration. Staff's recommendation will be limited to whether the conditions established in the Final Order have been met. Persons who may be substantially affected will have an opportunity to protest our decision on staff's future recommendation.

The Commission Order Does Not Reflect the Commission's Vote

Our approval of the step increase is within our discretion. However, the Intervenors' argument that our Final Order does not reflect our vote at the Agenda Conference has merit and should be clarified. The Final Order states:

[4] OPC BR 6; FRF BR 14; FIPUG BR 7-8; AG adopted OPC's position, and AARP adopted OPC's position.

> the decision to complete any or all of these projects by year end, considering changed circumstance such as, but not limited to, decreased electricity consumption, shall be subject to our staff's review and approval.

Final Order, p. 6. The language that the company's decision "shall be subject to our staff's review and approval" was a scrivener's error. The Final Order should have stated "subject to Commission's review and rate adjustment," as we voted at the Agenda Conference. Therefore, the Final Order shall be modified to correct this error.

The Step Increase was not a Violation of the Used and Useful Requirement

Our approval of the step increase deferring the recovery of the remaining portion of the cost to complete the CTs and the cost of the Rail Facility was not a violation of the used and useful requirement prescribed by Section 366.06(1), F.S. When approving the step increase to defer the recovery of the cost for the CTs and Rail Facility, we weighed the evidence and determined that the costs were legitimate. We included part of the cost in TECO's revenue requirement for the 2009 test year. We then deferred recovery of $26.5 million for the CTs and $7 million for the Rail Facility until January 1, 2010, predicated on TECO meeting specific requirements. We found the projected costs for the CTs and Rail Facility to be reasonable and appropriate and not speculative. Thus, our approval of the step increase deferring the recovery of the remaining portion of the cost to complete the CTs and the cost of the Rail Facility until they are placed in service is not a violation of the used and useful requirement prescribed by Section 366.06(1), F.S, but a decision made in compliance with it. Therefore, we deny the Intervenors' motion for reconsideration on this ground.

The Step Increase was not a Violation of the Requirements Governing the Conduct of Rate Cases

Our approval of a step increase deferring the recovery of the remaining portion of the cost to complete the CTs and the cost of the Rail Facility was not a violation of the requirements governing the conduct of rate cases. We agree with TECO that we could have approved the pro forma adjustment for the entire 2009 test year. Balancing the consumers' and TECO's interests, we chose to grant a portion of the relief requested by TECO, and defer cost recovery of the remaining portion based upon a showing of continuing need.

The Intervenors' argument regarding our failure to adopt so-called "meaningful rules" to implement Section 366.076(2), F.S., to allow for a subsequent adjustment under a limited proceeding, is without merit. The Florida Supreme Court has recognized our broad authority when setting rates. In Floridians United, supra, the Court held that our authority to grant subsequent year increases has always existed, even prior to the enactment of Section 366.076, F.S. Here, we acted within our authority to approve the step increase deferring the recovery of the remaining portion of the cost for the CTs and the Rail Facility until January 1, 2010, conditioned upon the need for the CTs, and both projects being completed and in commercial service by December 31, 2009.

The Step Increase will not result in a Substantive Mismatch of Revenues and Sales

Finally, we considered the Intervenors' argument that the step increase would result in a substantive mismatch of the 2010 revenue requirement and 2009 billing determinants when we approved the step increase. We addressed the probability of a substantive mismatch of revenue and sales. For example, at the Agenda Conference, our staff stated:

> If there's a precipitous increase in revenue, because we did have some testimony that if the economy turns right at the end of the year and we've got a lot of homes down in the Tampa area that are ready... there could be a spike in revenue... This provision (the third condition) would be there to at least protect the ratepayers from an undue windfall, if you will, in revenue.

We ultimately decided to approve the step increase without the third condition that if TECO exceeds its newly authorized midpoint Return on Equity (ROE) based on the Commission's Earning Surveillance Report for the 12 month period ending May 31, 2010, TECO shall refund, or credit rate base, an amount necessary to bring its ROE down to its midpoint.[5] It was questioned whether the economy would rebound substantially and earnings would increase. Moreover, if TECO was earning over and above 100 basis points of its authorized midpoint return on equity, our staff could recommend that an overearning investigations be opened. The need to match revenue and expenses was also addressed. There was an analysis whether the step increase would result in a substantive mismatch of revenues and sales. We deny the Intervenors' motion for reconsideration on this ground.

Conclusion

For the reasons stated above, the Intervenors' motion for reconsideration is denied. The Intervenors have failed to identify a point of law or fact that we overlooked or failed to consider when we approved the step increase deferring the recovery of the cost for the CTs and Rail Facility. The approval of the step increase was within the range of alternatives that we considered when setting rates. Rather than annualize the costs for the CTs and Rail Facility as requested by TECO, we decided that a better approach was to defer the recovery of the cost for both the CTs and Rail Facility. The step increase was not a violation of the Intervenors' due process rights or Chapter 120, F.S., was not a violation of Commission rules and statutes, and will not result in a substantive mismatch of the 2010 revenue requirements and 2009 billing determinants. We will review whether there is a continuing need for the CTs and whether the

[5] Staff's Handout 3 (Staff's alternative recommendation describing the third condition): TECO should not gain a windfall in revenues because a step increase is authorized now rather than conducting a limited proceeding at a later date. If TECO exceeds its newly anthorized midpoint Return on Equity (ROE) based on the Commission's Earning Surveillance Report for the 12 month period ending May 31, 2010, TECO shall refund, or credit rate base, an amount necessary to bring its ROE down to its midpoint. Unlike a limited proceeding, the Commission will not be evaluating updated revenue and cost information before implementation of the step increase. In the event of an upturn in the economy, TECO's electric sales and ROE may increase significantly. Many homes are vacant with meters in place so growth in sales is not dependant on construction of new homes. If growth increases beyond what is projected in the test year data, the need for a rate increase is reduced. The second condition is consistent with the notion that rates are set to achieve the midpoint ROE for the first year of new rates.

CTs and Rail Facility are completed and in commercial service by December 31, 2009, prior to ratepayers paying for the CTs and Rail Facility. It will be TECO's burden to show that the conditions have been met in order to recover the cost for the remaining portion of the CTs and the cost for the Rail Facility.

TECO'S MOTION FOR RECONSIDERATION

In its Motion for Reconsideration, TECO requests that we reconsider that portion of our Final Order[6] which reconciles the rate base to capital structure to determine the weighted average cost of capital. In its motion, TECO's primary concern relates to whether the adjustments necessary to reconcile rate base and capital structure should be made over all sources of capital as proposed by the Company or over only investor sources of capital as we decided in the Final Order. TECO states that our calculation of the weighted average cost of capital is incorrect because 1) it is inconsistent with Order No. PSC-02-0787-FOF-EI (Gulf Order),[7] and 2) it may violate the normalization rules under former Section 167(1) and Section 168(i)(9)(B) of the Internal Revenue Code (IRC) and Sections 1.167(1)-1(a) and 1.167(a)-11(b)(6) of the Income Tax Regulations.[8]

In determining the appropriate weighted average cost of capital for TECO's 2009 projected test year, we approved an adjustment to reverse the Company's initial pro rata adjustment over all sources of capital and replaced it with an adjustment over only investor sources of capital. In doing so, we stated that this treatment was consistent with precedent and cited the 2002 order involving Gulf Power Company (Gulf). TECO asserts that this statement from the Final Order is incorrect. The Company notes that on page 24 of the Gulf Order, we stated that because Gulf's per books capital structure included accumulated deferred income taxes (ADITs) and investment tax credits (ITCs) that were being recovered through cost recovery

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[6] Order No. PSC-09-0283-FOF-EI, issued April 30, 2009, in Docket No. 080317-EI, In re: Petition for rate increase by Tampa Electric Company.

[7] Order No. PSC-02-0787-FOF-EI, issued June 10, 2002, in Docket No. 010949-EI, In re: Request for rate increase by Gulf Power.

[8] Normalization requirements are outlined in Section 168 of the Internal Revenue Code (IRC). In pertinent part, Section 168 permits the use of accelerated depreciation methods. However, accelerated depreciation is permitted with respect to public utility property only if the taxpayer uses a normalization method of accounting for ratemaking purposes. Under a normalization method of accounting, a utility calculates its ratemaking tax expense using depreciation that is no more accelerated than its ratemaking depreciation (typically straight-line). In the early years of an asset's life, this results in ratemaking tax expense that is greater than actual tax expense. The difference between the ratemaking tax expense and the actual tax expense is added to a reserve (the accumulated deferred income tax reserve, or ADIT). The difference between ratemaking tax expense and actual tax expense is not permanent and reverses in the later years of the asset's life when the ratemaking depreciation method provides larger depreciation deductions and lower tax expense than the accelerated method used in computing actual tax expense. This accounting treatment prevents the immediate flow through to utility ratepayers of the reduction in current taxes resulting from the use of accelerated depreciation. Instead, the reduction is treated as a deferred tax expense that is collected from current ratepayers through utility rates, and thus is available to utilities as cost-free investment capital. When the accelerated method provides lower depreciation deductions in later years, only the ratemaking tax expense is collected from ratepayers and the difference between the actual tax expense and ratemaking tax expense is charged to ADIT, depleting the utility's stock of cost-free capital.

clauses, it was appropriate for Gulf to make a pro rata adjustment over all sources of capital so as not to double count the lower cost of capital items in both rate base and in the recovery clauses.

TECO asserts that the pro rata adjustment in its initial filing is consistent with the treatment discussed in the Gulf Order. The Company states that, because no ADITs or ITCs were removed with our adjustment over investor sources of capital only, the amounts being excluded are now inconsistent with the amounts being recovered through cost recovery clauses. The Company asserts that this is not only an effective disallowance of the Company's full cost of capital, but that it appears to be a violation of normalization under the IRC.

The normalization rules imposed by the IRC employ an accounting and ratemaking concept, normalization, to ensure that the capital subsidies associated with accelerated depreciation and ITCs provide an investment incentive for regulated utilities. Normalization is a comprehensive system of control over the reflection of the benefits of accelerated depreciation in ratemaking. As part of these rules, any ratemaking adjustment with respect to a utility's tax expense, depreciation expense, or reserve for deferred taxes must also be consistently applied with respect to the other two items and with respect to rate base. The consequence of a normalization violation is that the taxpayer loses the ability to use accelerated tax methods of depreciation with respect to all of its jurisdictional assets.

The Company states that, per the Final Order, the same ADITs are included in the calculation of the overall cost of capital in both base rates and cost recovery clause rates. Thus, TECO contends that ADIT benefits are being passed through to consumers twice. The Company asserts that our overlapping inclusion of the same ADITs in both base rates and cost recovery clause rates appears to violate normalization rules.

TECO notes that while removing Construction Work in Progress (CWIP) from rate base without adjusting the balance of ADITs is not likely a violation of normalization, CWIP should also be removed pro rata over all sources of capital. The Company argues for this treatment because 1) it is consistent with the Gulf Order in that a significant portion of Gulf's pro rata adjustment was to remove CWIP earning Allowance for Funds Used During Construction (AFUDC), 2) historical regulatory treatment of CWIP, and 3) the AFUDC rate which capitalizes the cost of capital associated with CWIP for future recovery includes all sources of capital, including ADITs and ITCs.

Intervenors' Response

The Intervenors did not file a response to TECO's Motion for Reconsideration. Nor did the Intervenors address the rate base/capital structure reconciliation issue in their Motion for Reconsideration.

Analysis and Discussion

While TECO accurately quoted the language from page 24 of the Gulf Order, what was not addressed in the Company's pleading was competing language from elsewhere in this same

Order. On page 37 of the Gulf Order, we stated, "Finally, a pro-rata adjustment was made over investor sources to reconcile capital structure to rate base." In addition, on page 103 of the Gulf Order, it is clear that our incremental adjustments to rate base were removed from the capital structure on a pro rata basis over investor sources of capital only. We have identified seven additional orders in which the incremental adjustment to rate base was made through a pro rata adjustment over investor sources of capital only.[9] One of these orders, Order No. PSC-03-0038-FOF-GU, issued January 6, 2003, in Docket No. 020384-GU, In re: Petition for rate increase by Peoples Gas System., is an order for TECO's sister company, Peoples Gas System. With these orders, there is sufficient precedent for us to make the pro rata adjustment over investor sources of capital only.

Although there is ample precedent for us to make the pro rata adjustment over only investor sources of capital, TECO's argument in the instant case with respect to assets being removed from rate base for recovery through cost recovery clauses is persuasive. Removing plant from rate base for recovery through cost recovery clauses without removing the associated ADITs and ITCs may lead to a normalization violation. Therefore, we agree with the Company that plant removed from rate base for recovery through cost recovery clauses should be removed from the capital structure through a pro rata adjustment over all sources of capital.

While we agree with the Company with respect to the treatment of amounts associated with plant investment to be recovered through cost recovery clauses, we do not believe this same argument should necessarily apply to all rate base adjustments. TECO conceded in its pleading that removing CWIP from rate base without adjusting ADITs in the capital structure is not likely a violation of normalization. Additionally, the Company has overstated the significance of CWIP in Gulf's pro rata adjustment in the Gulf Order. The pro rata adjustment in the Gulf case was comprised primarily of investment to be recovered through cost recovery clauses (approximately 84 percent of the total). CWIP represented only 13 percent of the pro rata adjustment and other items represented the remaining 3 percent.

That said, we are concerned that the issue regarding the removal of CWIP may not have been adequately vetted in the record. The decisions cited earlier as precedent dealt with Commission-ordered incremental adjustments to rate base, not all adjustments to rate base. In the instant case, our staff's initial recommendation regarding the reconciliation of rate base and capital structure that was approved in the Final Order not only reconciled the incremental adjustments to rate base pro rata over investor sources of capital consistent with past practice, but also reversed the Company's proposed pro rata adjustment over all sources of capital and replaced it with a pro rata adjustment over investor sources of capital only. The Company was

[9] Order No. PSC-09-0375-PAA-EI, issued May 27, 2009, in Docket No. 080366-EI, In re: Petition for rate increase by Florida Public Utilities Company; Order No. PSC-08-0436-PAA-GU, issued July 8, 2008, in Docket No. 070592-GU, In re: Petition for rate increase by St. Joe Natural Gas Company, Inc.; Order No. PSC-04-1110-PAA-GU, issued November 8, 2004, in Docket No. 040216-GU, In re: Application for rate increase by Florida Public Utilities Company; Order No. PSC-04-0128-PAA-GU, issued February 9, 2004, in Docket No. 030569-GU, In re: Application for rate increase by City Gas Company of Florida; Order No. PSC-01-1274-PAA-GU, issued June 8, 2001, in Docket No. 001447-GU, In re: Request for rate increase by St. Joe Natural Gas Company, Inc.; and Order No. PSC-01-0316-PAA-GU, issued February 5, 2001, in Docket No. 000768-GU, In re: Request for rate increase by City Gas Company of Florida.

only made aware of staff's intent to apply the Commission-approved methodology for incremental adjustments to all adjustments in the reconciliation of rate base and capital structure when our staff's recommendation was filed. As a result, we do not believe the record is sufficient to reverse TECO's proposed treatment of CWIP in the instant case. Therefore, CWIP shall be removed from the capital structure through a pro rata adjustment over all sources of capital. Our decision on this point is specific to the record in this case and shall not be considered precedent regarding our position on this or similar issues in future proceedings.

Finally, we disagree with the Company's proposed adjustment to remove non-plant related items from the capital structure through a pro rata adjustment over all sources. If an adjustment does not involve plant, then it is likely that the account in question did not give rise to deferred taxes or ITCs. Absent a showing that specifically identifies ADITs and ITCs associated with a non-plant related adjustment, all adjustments for amounts unrelated to plant shall continue to be removed from the capital structure through a pro rata adjustment over investor sources of capital only.

Conclusion

For the reason stated above, we removed the various plant amounts, CWIP, and the amount to be recovered through cost recovery clauses from rate base and capital structure in the same manner that these investments were reflected in the Company's initial filing. With respect to our ordered adjustment to remove the amount of over-projected plant in service, we removed this amount through a pro rata adjustment over all sources of capital except ITCs. This treatment is consistent with how the Company included the investment in other projected plant accounts, e.g., the CT annualization and the Rail Facility annualization, in its filing. Finally, all other adjustments to rate base that do not relate to plant accounts were removed from the capital structure through a pro rata adjustment over investor sources of capital only.

The net effect of our decision is an increase in the overall weighted average cost of capital from the 8.11 percent approved in the Final Order to the 8.29 percent reflected on Schedule 2 attached herein. This incremental change in the overall cost of capital represents an increase in the annual revenue requirement of approximately $9.3 million for the 2009 test year and an additional increase in the annual revenue requirement of approximately $516 thousand for the 2010 step increase. The determination of the impact on revenue requirement is addressed below and is shown on Schedules 5 and 6, which are attached and incorporated herein.

REVISED ANNUAL BASE RATE INCREASE, REVISED STEP INCREASE, AND REVISED WEIGHTED AVERAGE COST OF CAPITAL

In the Final Order, TECO was granted an annual base rate revenue increase of $104,268,536, effective May 7, 2009. TECO was also granted a step increase of $33,561,370, effective January 1, 2010. The calculation of these revenue requirements was based on an overall rate of return of 8.11 percent. Based on our analysis of the methodology for reconciling the rate base with the capital structure, the revised overall rate of return is 8.29 percent. As a

result, the revenue requirements calculations need to be revised to reflect the 8.29 percent overall rate of return. The calculation of these revenue requirements is shown on Schedules 1 through 6. A summary of those calculations is as follows, and supporting schedules 1-6 are attached and incorporated herein:

Line No.		As Approved in Final Order	Commission-Adjusted	Difference
1.	Rate Base	$3,437,610,836	$3,437,610,836	
2.	Overall Rate of Return	8.11%	8.29%	
3.	Required Net Operating Income (1)x(2)	278,790,239	284,977,938	
4.	Achieved Net Operating Income	215,013,533	215,491,046	
5.	Net Operating Income Deficiency (3)-(4)	63,776,706	69,486,893	
6.	Net Operating Income Multiplier	1.63490	1.63490	
7.	Operating Revenue Increase (5)x(6)	$104,268,536	$113,604,121	$9,335,585
8.	Step Increase	$33,561,370	$34,077,079	$515,709
9.	Total (7)+(8)	$137,829,906	$147,681,200	$9,851,294

Schedule 1 shows the calculation of the 2009 projected test year rate base. No adjustments have been made to this schedule as a result of our decision to recalculate the weighted average cost of capital.

Schedule 2 is a recalculation of the 2009 projected test year weighted average cost of capital. The weighted average cost of capital increased from 8.11 percent to 8.29 percent.

Schedule 3 recalculates the 2009 projected test year net operating income (NOI). As a result of the revisions of the dollar amount of the capital structure components for long-term debt, short-term debt and customer deposits, the interest synchronization adjustment to income taxes decreased from $984,709 to $507,196. Therefore, the amount of NOI increased from $215,013,533 to $215,491,046.

Schedule 4 is the calculation of the NOI multiplier. The 1.63490 NOI multiplier was not affected by our decision to recalculate the weighted average cost of capital.

Schedule 5 shows the revenue requirements calculation for the 2009 projected test year. Based on the revised overall rate of return of 8.29 percent (Schedule 2) and the revised NOI of $215,491,046 (Schedule 3), the revenue requirements increased from $104,268,536 to $113,604,121, an increase of $9,335,585.

Schedule 6 calculates the 2010 step increase revenue requirements. Based on the revised overall rate of return of 8.29 percent (Schedule 2), the step increase revenue requirements of $33,561,370 increased to $34,077,079, a $515,709 increase.

Therefore, we find that the approved annual base rate revenue increase shall be increased from $104,268,536 to $113,604,121, a $9,335,585 increase, to reflect the revised weighted average cost of capital. In addition, the approved 2010 step increase shall be increased from $33,561,370 to $34,077,079, a $515,709 increase.

DISTRIBUTION OF REVISED ANNUAL BASE REVENUE INCREASES AMONG THE RATE CLASSES

Because we are revising the annual base revenue increase, base rates must be revised. The current rates approved in the Final Order have been in effect since May 7, 2009. The revised annual base revenue increase shall be allocated to each rate class, consistent with the cost of service methodology approved in the Final Order to retain the relative class relationships. Once the dollar increase per class is established, the base rate energy and demand charge shall be increased by the percentage increase in class revenues.

The methodology for distributing the step increase has been approved in the Final Order. The step increase has been approved to become effective January 1, 2010, provided that the investments in the five CTs and the Rail Facility are in service by December 31, 2009.

EFFECTIVE DATE FOR TECO'S REVISED RATES AND CHARGES

All new rates and charges shall become effective for meter readings on or after 30 days from the date of our vote approving them. This will ensure that customers are aware of the new rates before they are billed for usage under the new rates.

TECO shall file revised tariffs to reflect the revised annual base rate revenue increase for administrative approval. Pursuant to Rule 25-22.0406(8), F.A.C., customers shall be notified of the revised rates in their first bill containing the new rates. A copy of the notice shall be submitted to staff for approval prior to its use.

This adjustment shall be collected from TECO's customers on a prospective basis. TECO did not request a surcharge going back to the effective date of the Final Order, which was May 15, 2009. Moreover, the rate adjustment resulting from this decision will become final within the 12-month clock established by Section 366.06(3), F.S. The file and suspend law requires us to take final action "and enter [our] final order within 12 months of the commencement date for final agency action." In reaching this conclusion, we reviewed GTE Florida Inc. v. Clark, 668 So. 2d 971 (Fla. 1996), where the Court mandated "that GTE be allowed to recover its erroneously disallowed expenses through the use of a surcharge." GTE is not applicable here because (1) TECO did not request a surcharge, as GTE did; and (2) our corrected order will be entered within the 12-month clock established by statute, whereas there

was a two-year lag between the Commission's erroneous order and the time GTE began collecting the erroneously disallowed expenses from its ratepayers.

The revised annual base rate revenues and the revised rates and charges shall become effective for meter readings on or after 30 days following the date of our vote. TECO shall file revised tariffs to reflect the revised annual base rate increase for administrative approval. Pursuant to Rule 25-22.0406(8), F.A.C., customers shall be notified of the revised rates in their first bill containing the new rates. A copy of the notice shall be submitted to staff for approval prior to its use.

This docket should be closed upon the expiration of the time for appeal.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request by the Intervenors for oral argument on its motion for reconsideration is granted. It is further

ORDERED Tampa Electric Company's request for oral argument on its motion for reconsideration is granted. It is further

ORDERED that Order No. PSC-09-0283-FOF-EI is corrected and clarified as set forth herein. It is further

ORDERED by the Florida Public Service Commission that Tampa Electric Company's motion for reconsideration is granted in part, as set forth herein. It is further

ORDERED by the Florida Public Service Commission that the approved annual base rate revenue increase shall be increased from $104,268,536 to $113,604,121, a $9,335,585 increase, to reflect the revised weighted average cost of capital, and said increase shall be recovered through base rates prospectively. It is further

ORDERED that revised annual base rate revenues and the revised rates and charges shall become effective for meter readings on or after 30 days following our vote, which was on July 14, 2009. It is further

ORDERED that Tampa Electric Company shall file revised tariffs to reflect the revised annual base rate increase for administrative approval. It is further

ORDERED that pursuant to Rule 25-22.0406(8), F.A.C., customers shall be notified of the revised rates in their first bill containing the new rates and a copy of the notice shall be submitted to staff for approval prior to its use. It is further

ORDERED that this docket shall be closed upon the expiration of the time for appeal.

By ORDER of the Florida Public Service Commission this 21st day of August, 2009.

ANN COLE
Commission Clerk

(SEAL)

KY

DISSENT BY: COMMISSIONER ARGENZIANO:

DISSENT

BY COMMISSIONER ARGENZIANO:

I dissent from the decision of the majority.

I am disappointed at the extent to which my colleagues seem focused on the perceived incursion into their "discretion", and limitations on the Commissions "decision making ability"[10] rather than focus on the, to my mind, infinitely more important issue of the parties' right to be heard. I think it may be universally agreed that, in a democracy, the arrogation of unfettered authority by a bureaucracy - for the extent and dimension of FPSC staff influence in FPSC decisions amounts, undeniably, to exactly that - in the exaction of millions of dollars in the instant case, and billions of dollars overall from citizens of the state, is a danger against which every construction of reason, statutory law, and the Constitution should be made.

The Motion for Reconsideration.

Intervenors' Motion for Reconsideration satisfies the standard for granting such – that the Commission overlooked or failed to consider a point of law or fact in rendering its Final Order – inasmuch as the Commission erred in its decisions related to all of the following issues:

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10 See the following sections of the Transcript of the July 14, 2009 Agenda Conference:
By Commissioner Edgar, starting on Page 68, Line 18 through Page 69, Line 4.
By Commissioner Skop, on Page 71, Lines 4-19.
By Commissioner McMurrian on Page 75, Lines 8-15,
By Commissioner Skop on Page 83, Lines 11-20.

Due Process:

Very simply, if a "step increase" and its impact is identical with or is a lesser but completely included aspect of "annualization" and its impact, I agree that the Intervenors were accorded due process to argue their case. It is neither the same, nor included, however, with that distinction even made in staff's analysis.[11] The Commission, in acting to deny a hearing in the matter, eliminates the benefit of the rational arguments to be delivered by two equally equipped adversaries, staff's enthusiastic advocacy aside.

As to that advocacy effort, the argument/analysis of staff fails as an objective effort, and as discussed further in this dissent, in function has provided TECO with both access to the Commission and an opportunity to be heard which has been denied the Intervenors.

The Pre-hearing Order establishes a regime for the conduct of the case. Adherence thereto constitutes a constituent part of "due process", of which the parties are properly noticed. Ignoring the dictates of that Order that the issues will either be set forth at the Pre-hearing Conference or waived, in favor of one party, constitutes denial of that process. (See Footnote 6)

Staff's argument going to the alleged notice and opportunity to be heard provided the Intervenors is preposterous, in citing a reference to a step increase at page 1555 of the record by a TECO witness, in response to Commissioner Edgar's inquiry, and the inclusion of a totally unresponsive note in an exhibit requested by an Intervenor.[12] And one other effort by witness Chronister, in another matter, to irrelevantly introduce the subject.[13] The bizarre proposal that this constituted notice and an opportunity to be heard is made not out of a bona fide belief that due process was actually had, but in the interest of protecting the decision foisted off by staff on the Commission, and covering up a reality: that the Commission actually implements two rate increases although giving notice of only one. The step increase was not mentioned in witness Chronister's pre-filed testimony, in his rebuttal to the Intervenors' pre-filed direct testimony, in the summary of his testimony during the hearing, or in any of his cross examination by OPC. It does not come up until Commissioner Edgar questions him about options, with his response to that - the verbatim response included in staff's analysis - characterized by TECO as a

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[11] As stated by staff on page 15 of the July 6, 2009 Staff Recommendation: "[t]he approval of the step increase was within the range of alternatives the Commission could consider when setting rates. Rather than annualize the costs for the CTs and Rail Facility, as requested by TECO, the Commission decided that a better approach was to defer the recovery of the cost for both the CTs and Rail Facility." Staff's use of the term "step increase" as an option within the "range of alternatives," followed by the next sentence "[r]ather than annualize...as requested by TECO" make it clear that staff consider the step-increase to be something totally different from "annualization."

See also P. Christiansen's response to a question from Commissioner Skop on P 45 of the transcript of the July 14, 2009 Agenda Conference:

"Here the question is not whether or not, how much they recover. That was appropriately before the Commission. The form, the actual accounting treatment is what's at issue. And we're respectfully suggesting that step increase treatment is a completely different type of accounting treatment than what the company requested in annualization."

[12] See Exhibit 112, Document No. 00933-09.

[13] Transcript, pages 1578-1579.

"suggestion" and by staff as a "recommendation."[14] In fact, the failure to introduce the step increase as an issue in the prehearing briefs and Order – with consideration of a step increase as a distinct issue blithely dismissed by the Commission, necessarily, to support its decision – is contrary to well established FPSC practice in the conduct of the case.[15] This cannot stand as adequate notice in the context of due process. If so, it would usher in mischief of infinite dimension, and validate due process by ambush.

Violation of Ch. 120 F.S.

Although staff's analysis roams far afield in the discussion of the titled issue, this may be disposed of in favor of the Intervenors summarily: 1) Will the implementation and cost recovery in the implementation of the 5 CTs affect the substantial interest of any person? Yes; therefore, the PSC must provide a point of entry and grant a hearing related to disputed issues of material facts. 2) Does the provision of a point of entry subsequent to the entry of a decision relating to those issues of material facts comport with the contemplated purpose of providing a point of entry? No; the horse is already out of the barn. 3) Is annualization of the cost of the CTs for the year 2009 the same as a step increase commencing in 2010, thereby providing the Intervenors

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[14] See Page 10 of the July 6, 2009 Staff Recommendation.

[15] As I note in my dissent, the failure of the Commission to promulgate any rules regarding the processing of rate cases is extremely alarming. However, even in the absence of rules, parties to Commission proceedings are put on notice of the issues to be litigated through the issuance of a "Prehearing Order;" this order always contains an enumeration of the issues to be resolved through hearing. As stated by the Parties in their Motion for Reconsideration and the oral argument on that motion, none of the 114 issues in this case even hint that a step increase for January, 2010 is in any way under consideration. And, as stated in Order NO. PSC-08-0557-PCO-EI, the Order Establishing Procedure for this docket, on pages 6-7:

Section VI. Prehearing Procedures
Subsection C. Waiver of Issues

Any issue not raised by a party either before or during the Prehearing Conference shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the Prehearing Conference shall demonstrate each of the following:

(1) The party was unable to identify the issue because of the complexity of the matter.
(2) Discovery or other prehearing procedures were not adequate to fully develop the issue.
(3) Due diligence was exercised to obtain facts touching on the issue.
(4) Information obtained subsequent to the Prehearing Conference was not previously available to enable the party to identify the issue.
(5) Introduction of the issue would not be to the prejudice or surprise of any party.

Specific reference shall be made to the information received and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall take a position on each issue by the time of the Prehearing Conference or by such later time as may be permitted by the Prehearing Officer. If a party is unable through diligence and good faith efforts to take a position on a matter at issue for that party, it shall explicitly state in its Prehearing Statement why it cannot take a position. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue, and the party's position shall be shown as "no position" in the Prehearing Order. **When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.** Commission staff may take "no position at this time" or a similar position on any issue without having to make the showing described above. **(Emphasis Added.)**

with the requisite point of entry, which, in arguing against the inclusion of the CTs for the year 2009, they have been granted? No; annualization involves the inclusion of the amortized CT costs for purposes of establishing a capital cost target; a step increase presumes continued but unmeasured need and operation of the units, and involves a rate increase based on both conjectures.

The "point of entry" alleged by staff to exist is limited to protesting the decision of "... staff (which) will evaluate a revision to the revenue requirements associated with the projects."[16] Being provided with an opportunity to protest the determination of staff is not the same as being provided an opportunity to argue its case before the trier of fact and law – the Commission – in a noticed hearing.

In more comment on the issue of compliance with Chapter 120, should the Commission have seen fit to establish Rules related to proceedings under §366.076, F.S., in all probability there would have been no requirement for filing the Motion for Reconsideration, and the probability/potential/possibility of the operation of the CTs and their cost would be timely considered consistent with their operation.

Violation of §366.061(1) F.S. (Used and Useful):

The Commission, in granting a prospective rate increase for capital plant not yet in service, has paralleled the Legislature's grant of pre-recovery of nuclear, environmental and storm hardening costs. But the FPSC is not the Legislature. The law to which the Commission's decision is subject is encoded at §366.061(1) F.S., which provides:

> 366.06(1): ... The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility in such property used and useful in serving the public, ..."

To pretend compliance with this, the Commission proposes that the costs were not speculative, although they have not yet been incurred, and were somehow fixed, although factors will influence the costs and may even render them non operational. *Floridians United for Safe Energy, Inc. v. Public Service Commission,* 475 So. 2d 241 (Fla. 1985), commended the existence of "factors" existing which should be considered in such determinations: "[w]e long ago recognized that rates are fixed for the future and that it is appropriate for PSC to recognize factors which affect future rates and to grant prospective rate increases based on these factors." (Id. at 242) The record reflects the Commission's understanding that the costs were contemplated and that the projects may not even be completed, depending on conservation

[16] July 6, 2009 Staff Recommendation, page 13.

successes and the economy.[17] Staff concludes ultimately and bizarrely: "Thus, the Commission's approval of the step increase deferring recovery of the remaining portion of the cost to complete the CTs and the cost of the Rail Facility until they are placed in service is not a violation of the used and useful requirement prescribed by Section 366.06(1) F.S., but a decision made in compliance with it." Staff and the Commission posit an interpretation of the words "actual", "actually", and the command to "investigate and determine" differently than Mr. Webster and I.[18]

The Step Increase is a Violation of the Requirements Governing the Conduct of Rate Cases

The Pre-hearing Order (Order Number PSC-08-0557-PCO-EI) governs the conduct of the TECO rate case. The Pre-hearing Order requires issues to be identified, such that all parties not only are alerted to what will be argued, but also so that neither the Commission nor the parties can ad hoc the case to a lingering death. From the Pre-hearing Conference some 114 issues were identified. It is neither foreseeable nor reasonable that a "step increase" of a magnitude of some 35 million rate-payer dollars, would not have been an "issue." And in not being raised, by the Order, it was waived, nonetheless preserving subsequent recourse through the law, specifically a limited proceeding. (See Footnote 6, *supra*)

Staff Analysis of Intervenors' Motion

The staff analysis is seriously defective and misleading, in the particulars set forth at Appendix A.

Conclusion

For the foregoing, as well as the Commission's disregard and denial of essential concepts of fairness, and the brash idea that the discretion of the appointed Commission is not a virtue of such magnitude as to promote the sacrifice of due process, the decision of the Commission in the matter of the Intervenors' Motion for Reconsideration is in error.

[17] See page 6 of the final Order, Order No. PSC-09-0283-FOF-EI; and P. Christiansen's reference to TECO CEO Black's testimony at P. 6 of the transcript of the July 14, 2009 Agenda Conference.
[18] Actual: existing in act and not merely potentially; existing in fact or reality; Actually: in act or fact; really; Investigate: to observe or study by close examination; Determine: to fix conclusively or authoritatively .

APPENDIX A

Notes on PSC staff analysis contained in the July 6, 2009 Staff Recommendation:

Staff's analysis related to Intervenors' Motion for Reconsideration is so replete with errors, mischaracterizations and bias as to be not only unavailing to assist in an understanding and appreciation of the matters pled by the Intervenors in their Motion, but also to be fatal in the accord of any respect for the Commission decision relying upon it. The Commission can expect to be afforded an analysis which includes both sides of the arguments, not just that pre-favored by staff. Reliance upon staff's conclusions and false rationale in this case are materially responsible for the Commission's Order on the Motion being in error.

1.
P.7: In citing *Floridians United for Safe Energy, Inc. v. Public Service Commission,* 475 So. 2d 241 (Fla. 1985) staff briefed that "[t]he Supreme Court found that the Commission had authority, and had always had authority, to grant subsequent year rate increases." (Reiterating that interpretation at page 15) Actually, the Court held: "[w]e long ago recognized that rates are fixed for the future and that it is appropriate for PSC to recognize factors which affect future rates and to grant prospective rate increases based on these factors." Id at 242 "Long ago recognized" is not the same as "had ...and had always had..." Additionally, staff failed totally to note for the benefit of the Commission the Court's language relating to the consideration of factors in granting prospective increases, and failed to advise and identify the extent to which such factors must be or had been considered.

Further, staff's citation to *Floridians United* is misplaced even without the inventively erroneous emphasis, in the following particulars: 1) The case was appealed on the narrow grounds that a) the statute (genesis Chapter 83-222 Laws Of Florida) was not in place when the case was filed, and b) enactment of the statute violated the Constitution. This latter point, the Court noted, did not need to be determined, inasmuch as the PSC authority pre-dated Chapter 83-222. 2) In *Floridians United* the appellants did not "...challenge the need for a subsequent year adjustment, the factors considered in making such adjustment, nor the correctness and fairness of the adjustment." (Id.) In the instant case, OPC challenged all three. 3) While prospective rate increases are held to be within the purview of the PSC in *Floridians United,* it appears from the record that the separate rate increases for both 1984 and 1985 were specifically at issue, were litigated, and were determined. In the instant case, the issue was ONE rate increase that was set to take effect in 2009, without notice of prospective increases. Staff's failure to distinguish the case - to which it refers numerous times – misleads the Commission.

2.
P. 10 Staff wrote: "...during the hearing, TECO's witness Chronister recommended a step increase as an alternative...." But a reading of Chronister's testimony, abstracted by staff and included in its analysis, reflects no "recommendation". In response to Commissioner Edgar's inquiry about alternatives to annualization, Chronister says: "[s]o, you know, I know everybody - we have been talking about rate case expense and no one wants to come back for rates. You know, there is an interim step you can do, too, where you can have a step increase, you know,

when a facility goes in after a rate case, and that is an option available, as well."[19] "Too" and "as well" refer to a limited proceeding, or some other undisclosed short-cut, and to the extent Chronister "recommends" a step increase, he also "recommends" a limited proceeding, with Rule modified efficiency (abetting the term "limited") should such Rules have existed.

3.
P. 11: The recitation of portions of §366.041 F.S. – without adequately identifying omitted portions - serves no purpose other than to provide a flimsy springboard into the "broad discretion" pool, with reference to cases pre-dating *Floridians United*, supra. Staff's citation to *ContratPoint Florida Park, LLC v. State*, 958 So.2d 1035 (Fla. 1st DCA 2007) invites inspection of §366.041. Staff's lack of distinguishing this tension between the statute and the trumpeted "broad discretion" rather reflects an abandonment of what must be expected by staff: an objective analysis. Too, staff erroneously declares that "[t]he Legislature has not amended Section 366.041 F.S., since these decisions were issued." The statute was amended, relevantly, with the addition of subparagraph 4, in 1989, post dating the staff cited cases of *Gulf Power* (1974), *Storey v. Mayo* (1968), and *City of Miami* (1968). Thus, staff's citation to *ContratPoint* actually defeats its arguments related to the unhampered exercise of discretion.

4.
P. 14: The Commission hardly needs staff's editorializing insight that "[i]n fact, TECO is currently incurring the costs to complete the CTs and Rail Facility." Also, reflecting that "the Commission's approval of the step increase deferring the recovery of the remaining portion of the cost to complete the CTs and the cost of the Rail Facility...is not a violation of the used and useful requirement...but a decision made in compliance with it" makes a mockery of the purpose of language in communication. The definition of used and useful is:

> Used and Useful: A test used by regulators to evaluate the justification for particular corporate investments, used for cost of service and price cap regulation. The test checks whether a plant or piece of equipment is actually being utilized to provide service, and that it is contributing to the provision of the service. [20]

How any construction of "used and useful" permits pre-determination is quite beyond this Commissioner, ands teeters on staff's inventive interpretation of the word "is". Staff's argument is that of an advocate, self-serving in defense of its advice to the Commission, and specious.

5.

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[19] Transcript, page 1555.
[20] Source, UF PURC Glossary For The Body Of Knowledge On The Regulation Of Utility Infrastructure And Service.
http://www.regulationbodyofknowledge.org/documents/bok/glossary.pdf

P. 14: The statement by staff that "[t]he Intervenors' argument regarding the Commission's failure to promulgate so-called "meaningful rules" to implement Section 366.076(2) F.S....." is staff editorializing, which does not assist in the discussion. Unless, of course, it is staff's position that merely reciting the statute constitutes a "meaningful" Rule.

6.
P. 8: Staff's characterizes TECO as saying that "...the Intervenors' argument is an assault against the use of a projected test year and the Commission's judicially recognized authority to approve prospective rate increases." TECO actually wrote that the Intervenors' argument "appears" to be an assault, and thus staff changes a TECO premise into a conclusion.[21]

7.
P. 10: In reciting the Intervenors' failure "to cross examine the witness about the step increase he "recommended" staff reinforces its mischaracterization of Chronister's testimony. Staff's recital of the Intervenors' failure "to challenge any alternative treatment..." must include failure to challenge the statutory limited proceeding, which Intervenors had no need to challenge, because it is the law, the protection of which they may properly rely on, and which provides them with the right to appear and be heard disallowed them in the embrace of the prospectively awarded, but neither noticed nor given the opportunity to be argued, step increase.

8.
P. 4: A "scrivener's error" is a clerical error (5.00 for 50.00), a typographical error (scrivenors' for scriveners'), or an inarguable error in nomenclature (Southern Regional Medical Center for Southeastern Regional Medical Center). It is not where an error of judgment, mis-statement, or quality has occurred. That is merely an error, and should be fessed up to as such. Staff's effort to characterize its construction as a de minimis scrivener's error is hollow. See note 15, below.

9.
P 4. "... [T]he Intervenors request that the Commission reconsider certain aspects of the decision memorialized in its Final Order..." "Memorialized" means to commemorate, e.g.: "The dead were memorialized in the dedication by the President of the battleground as a cemetery." The Commission simply renders, and the language "...reconsider certain aspects of its Final Order,..." appropriately accomplishes that. The use of the word in an analysis is misleadingly imprecise.

10.
P. 8: "clearly articulated conditions" The need to "clarify", correct the "scrivener's error", and the staff observation that oral argument on the complex issues will assist the Commission, argues against acceptance of staff's interpretation of whether the conditions set forth are "clearly articulated." Arguing that the "clearly articulated conditions" somehow rectify the denial of due process should have, in an objective analysis, led to a discussion on how that also might not occur.

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[21] TECO's Response to the Intervenors' Motion for Reconsideration, filed May 22, 2009, Page 10.

11.
P. 10: Staff states: "[m]oreover, TECO requested in Late Filed Exhibit 112, ..., that the Commission use a step increase as an alternative ..... The Intervenors did not object to this exhibit..." One need only look at Exhibit 112[22] which was a response to Mr. Wright's request for calculations based on eliminating the costs of the five CTs, to determine that the step increase comment was extraneous to the discovery request, and refers to the term in Chronister's testimony as a "suggestion". Also, note that the Exhibit reflects that the measure of when it would be appropriate is "after the assets are placed in service". Also see note 18.

12.

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22 TAMPA ELECTRIC COMPANY
DOCKET NO. 080317-EI
FPSC HEARING
WITNESS: JEFFREY CHRONISTER
LATE FILED HEARING EXHIBIT NO. 112
PAGE 1 OF 1
FILED: 02/05/09

Q. Calculate the revenue requirement impact of removing the September combustion turbines ("CTs") from the 2009 test year
A. In accordance with the hypothetical example of removing the three September CTs, the company's revenue requirement would be reduced by approximately $27.7 million. This assumes the following rate base and net operating income ("NOI,") jurisdictional amounts and the company's overall cost of capital of 8.82 percent:

	$000's
Annualized Rate Base	
Electric Plant in Service	$140,390
Accumulated Reserve for Depreciation	(3,018)
Annualized NOI	
O&M	987
Property Taxes	3,227
Depreciation	6,051

While there was some discussion during the hearing about the company's reevaluation of the need for the three September CTs, Tampa Electric reached a final decision on February 2 to proceed with their installations. Specifically, Bayside CT's 3 and 4 will be placed in service in mid-August 2009. Big Bend CT 4 will be placed in service in mid-October 2009. The May CTs (Bayside CTs 5 and 6) will be placed in service in mid-April. The other annualized asset, the Big Bend rail facility, remains on schedule and will be placed in service in December 2009. Tampa Electric continues to support the appropriateness of an annualized adjustment for the four assets (three September CTs and rail facility) with in-service dates that occur subsequent to the implementation of new rates in May. However, it also recognizes the concerns raised by various parties and, as was suggested by company witnesses during the hearing, it could also support a "step increase" in base rates after the assets are placed in service. The step increase could be designed to reflect the revenue requirements for actual in-service costs and could be implemented one month after the in-service date of the last of the four assets. Based on the current schedules, this "step change" would occur in January 2010.

P. 11: Avoidance of the "effort and expense of having an additional base rate proceeding..." as TECO noted in its brief and as echoed elsewhere, would not amount to an economic obstacle, if Rules, as contemplated by the APA, were in place to provide for precisely this type of legitimate addition to the capital base, and could expeditiously be accomplished via minimal number crunching and agreement, in a proceeding called a limited proceeding, and provided for at F.S. §366.076.

13.
P.11 Simply, if a step increase was "within the range of alternatives the Commission considered when deciding whether a pro forma adjustment ...was appropriate" as proclaimed by staff, and was in fact considered by the Commission, an abstract of that discussion would have far more appropriately and conclusively made that point. The failure to introduce such suggests a lack of consideration by the Commission, and staff's characterization is grossly overly broad and merely after the fact justification.

14.
P.12: Staff's recitation of TECO storm damage reserves and amortization of rate case expense, as analogous to the instant case in support of Commission discretion broad enough to deny due process, is an inapplicable stretch because those issues were THE issues, of which the parties had notice and an opportunity to be heard.[23]

15.
P.13: "scrivener's error": Despite the substantial discussion by the Commission regarding the matter of delegating to staff the determination of compliance before implementation, staff disregarded that outcome, and appears to have acted self aggrandizingly.

16.
P. 13: Staff's recitation of the five speculative "wills" that are to occur before TECO recovers the costs for the CTs is neither reassuring nor amendatory.

17.
P. 15: Staff mis-represents, again, *Floridians United*, supra, reflecting an advocacy and bias, rather than objective analysis.

18.
P. 10: Staff states: "The Intervenors did not object to this exhibit being admitted into the record, nor did they address it in their post-hearing briefs." While true on its face, staff omits to advise that the Intervenors did object to the inclusion of any extraneous material in the Exhibit, *which they had not then yet seen.*

[23] See Issues 16 and 63.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

TAMPA ELECTRIC COMPANY
DOCKET NO. 080317-EI
13-MONTH AVERAGE RATE BASE
DECEMBER 2009 TEST YEAR
As Approved in Order No. PSC-09-0283-FOF-EI

SCHEDULE 1

Issue No.		Plant in Service	Accumulated Depreciation	Net Plant in Service	CWIP	Plant Held for Future Use	Net Plant	Working Capital	Total Rate Base
	Adjusted per Company	5,483,474,000	(1,934,489,000)	3,548,985,000	101,071,000	37,330,000	3,687,386,000	(30,586,000)	3,656,800,000
	Commission Adjustments:								
4	Non-Utility Activities	0	0	0	0	0	0	0	0
5	Combustion Turbine Annualization	(134,439,000)	3,750,000	(130,689,000)	0	0	(130,689,000)	0	(130,689,000)
6	CSX Credit - Big Bend Rail Project	0	0	0	0	0	0	0	0
7	Big Bend Rail Project Annualization	(45,206,000)	452,000	(44,754,000)	0	0	(44,754,000)	0	(44,754,000)
8	Plant in Service Amount	(35,671,000)	1,248,485	(34,422,515)	0	0	(34,422,515)	0	(34,422,515)
9	Customer Information System	0	0	0	0	0	0	0	0
10	Total Plant in Service	0	0	0	0	0	0	0	0
11	Total Accumulated Depreciation	0	0	0	0	0	0	0	0
12	ECRC Costs	0	0	0	0	0	0	0	0
13	Total CWIP	0	0	0	0	0	0	0	0
14	Total PHFFU	0	0	0	0	0	0	0	0
15	Deferred Dredging Costs	0	0	0	0	0	0	(1,346,649)	(1,346,649)
16	Storm Damage Reserve	0	0	0	0	0	0	6,000,000	6,000,000
17	Prepaid Pension Expense	0	0	0	0	0	0	0	0
18	Other Accounts Receivable (143)	0	0	0	0	0	0	(10,959,000)	(10,959,000)
19	Accts Rec. Associated Cos. (146)	0	0	0	0	0	0	(390,000)	(390,000)
20	OPEB Liability	0	0	0	0	0	0	0	0
21	Coal Inventory	0	0	0	0	0	0	0	0
22	Residual Oil Inventory	0	0	0	0	0	0	0	0
23	Distillate Oil Inventory	0	0	0	0	0	0	0	0
24	Natural Gas & Propane Inventories	0	0	0	0	0	0	0	0
25-S	Clause Over/Under Recoveries	0	0	0	0	0	0	0	0
26	Rate Case Expense	0	0	0	0	0	0	(2,628,000)	(2,628,000)
27	Total Working Capital	0	0	0	0	0	0	0	0
32	Imputed Equity Infusion	0	0	0	0	0	0	0	0
				0			0		0
				0			0		0
				0			0		0
				0			0		0
				0			0		0
---	Total Commission Adjustments	(215,316,000)	5,450,485	(209,865,515)	0	0	(209,865,515)	(9,323,649)	(219,189,164)
28	Commission Adjusted Rate Base	5,268,158,000	(1,929,038,515)	3,339,119,485	101,071,000	37,330,000	3,477,520,485	(39,909,649)	3,437,610,836

TAMPA ELECTRIC COMPANY
DOCKET NO. 080317-EI
13-MONTH AVERAGE CAPITAL STRUCTURE
DECEMBER 2009 TEST YEAR
RECONCILIATION OF RATE BASE AND CAPITAL STRUCTURE
COMMISSION ADJUSTED FOR RECONSIDERATION OF THE WEIGHTED AVERAGE COST OF CAPITAL

SCHEDULE 2

Commission Adjusted	($) TECO Adjusted Amount	Equity Infusion Not Made	Imputed Equity	2 CTs May 2009	3 CTs September 2009	BB Rail Project	Rate Case Expense	Dredging O&M	Storm Damage Reserve	Commission Total Specific Adjustments	Adjusted Total
Common Equity	1,835,985,000	(50,000,000)	(38,340,000)	(19,430,142)	(50,592,280)	(23,161,474)	(874,000)	(447,257)	1,994,250	(180,850,903)	1,655,134,097
Long-term Debt	1,397,565,000	50,000,000	29,428,000	(15,308,917)	(39,861,080)	(18,248,521)	(688,000)	(352,636)	1,571,250	6,540,096	1,404,105,096
Short-term Debt	8,002,000	0	169,000	(32,746)	(86,682)	(39,489)	(1,000)	(975)	3,750	11,858	8,013,858
Preferred Stock	0	0	0	0	0	0	0	0	0	0	0
Customer Deposits	103,724,000	0	2,184,000	(1,136,491)	(2,958,736)	(1,354,168)	(51,000)	(26,338)	116,250	(3,226,483)	100,497,517
Deferred Income Taxes	302,744,000	0	6,375,000	(216,704)	(1,065,222)	(1,950,348)	(1,014,000)	(519,443)	2,314,500	3,923,783	306,667,783
Tax Credits - Zero Cost	0	0		0	0	0	0	0	0	0	0
Tax Credits - Weighted Cost	8,780,000	0	184,000	0	0	0	0	0	0	184,000	8,964,000
Total	3,656,800,000	0	0	(36,125,000)	(94,564,000)	(44,754,000)	(2,628,000)	(1,346,649)	6,000,000	(173,417,649)	3,483,382,351
Equity Ratio	56.64%										53.96%

	Adjusted Total	Ratio	Projected Level of Plant in Service	Other Accounts Receivable (143)	Accounts Receivable Associated Cos.	Staff Total Pro Rata Adjustments	($) Commission Adjusted	Ratio	Cost Rate	Weighted Cost
Common Equity	1,655,134,097	47.52%	(16,398,105)	(5,913,635)	(210,450)	(22,522,190)	1,632,611,907	47.49%	11.25%	5.34%
Long-term Debt	1,404,105,096	40.31%	(13,911,056)	(5,016,732)	(178,531)	(19,106,320)	1,384,998,776	40.29%	6.80%	2.74%
Short-term Debt	8,013,858	0.23%	(79,397)	(28,633)	(1,019)	(109,048)	7,904,810	0.23%	2.75%	0.01%
Preferred Stock	0	0.00%	0	0	0	0	0	0.00%	0.00%	0.00%
Customer Deposits	100,497,517	2.89%	(995,671)	0	0	(995,671)	99,501,846	2.89%	6.07%	0.18%
Deferred Income Taxes	306,667,783	8.80%	(3,038,286)	0	0	(3,038,286)	303,629,497	8.83%	0.00%	0.00%
Tax Credits - Zero Cost	0	0.00%	0	0	0	0	0	0.00%	0.00%	0.00%
Tax Credits - Weighted Cost	8,964,000	0.26%	0	0	0	0	8,964,000	0.26%	9.19%	0.02%
Total	3,483,382,351	100.00%	(34,422,515)	(10,959,000)	(390,000)	(45,771,515)	3,437,610,836	100.00%		8.29%
Equity Ratio	53.96%						53.96%			

Interest Synchronization Dollar Amount Change	($) Adjustment Amount	Cost Rate	($) Effect on Interest Exp.	Tax Rate	($) Effect on Income Tax
Long-term Debt	(12,566,224)	6.80%	(854,503)	38.575%	329,625
Short-term Debt	(97,190)	4.63%	(4,500)	38.575%	1,736
Customer Deposits	(4,222,154)	6.07%	(256,285)	38.575%	98,862
					430,222
Cost Rate Change					
Short-term Debt	8,002,000	-1.88%	(150,438)	38.575%	58,031
Tax Credits - Weighted Cost	8,780,000	-0.56%	(49,106)	38.575%	18,943
					76,974
TOTAL					507,196

TAMPA ELECTRIC COMPANY
DOCKET NO. 080317-EI
NET OPERATING INCOME
DECEMBER 2009 TEST YEAR

SCHEDULE 3

COMMISSION ADJUSTED FOR RECONSIDERATION OF THE WEIGHTED AVERAGE COST OF CAPITAL

		Operating Revenues	O&M - Fuel & Purchased Power	O&M Other	Depreciation and Amortization	Taxes Other Than Income	Total Income Taxes	(Gain)/Loss on Disposal of Plant	Total Operating Expenses	Net Operating Income
	Adjusted per Company	865,359,000	7,614,000	370,934,000	194,608,000	62,275,000	48,492,000	(1,534,000)	682,389,000	182,970,000
	Commission Adjustments:									
2	Revenue Forecast	0	0	0	0	0	0	0	0	0
8	Plant in Service Amount	0	0	0	(1,248,485)	0	481,603	0	(766,882)	766,882
39	Total Operating Revenues	0	0	0	0	0	0	0	0	0
40-S	Inflation Factors	0	0	0	0	0	0	0	0	0
41	Total O&M Expense	0	0	0	0	0	0	0	0	0
42-S	FAC Revenues and Expenses	0	0	0	0	0	0	0	0	0
43-S	ECCR Revenues and Expenses	0	0	0	0	0	0	0	0	0
44-S	CCRC Revenues and Expenses	0	0	0	0	0	0	0	0	0
45-S	ECRC Revenues and Expenses	0	0	0	0	0	0	0	0	0
46	Advertising Expenses	0	0	0	0	0	0	0	0	0
47	Lobbying Expenses	0	0	0	0	0	0	0	0	0
48	Salaries and Employee Benefits	0	0	(5,195,129)	0	0	2,004,021	0	(3,191,108)	3,191,108
49	OPEB Expenses	0	0	0	0	0	0	0	0	0
50	Vacant Positions	0	0	0	0	0	0	0	0	0
51	Service reliability Initiatives	0	0	0	0	0	0	0	0	0
52	Incentive Compensation Plan	0	0	(540,000)	0	0	208,305	0	(331,695)	331,695
53	Generating Units - CSAs	0	0	0	0	0	0	0	0	0
54	Generation Maintenance Expense	0	0	(2,850,000)	0	0	1,099,388	0	(1,750,613)	1,750,613
55	Preventive Maintenance Expense	0	0	0	0	0	0	0	0	0
56	Dredging Expense	0	0	(650,056)	0	0	250,759	0	(399,297)	399,297
57	Economic Development Expense	0	0	0	0	0	0	0	0	0
58	Pension Expense	0	0	0	0	0	0	0	0	0
59	Storm Damage Accrual	0	0	(12,000,000)	0	0	4,629,000	0	(7,371,000)	7,371,000
60	Injuries & Damages Accrual	0	0	0	0	0	0	0	0	0
61	Executives' Liability Insurance	0	0	0	0	0	0	0	0	0
62	Meter & Meter Reading Expenses	0	0	0	0	0	0	0	0	0
63	Rate Case Expense Amortization	0	0	(557,750)	0	0	215,152	0	(342,598)	342,598
64	Bad Debt Expense	0	0	0	0	0	0	0	0	0
65	Office Supplies	0	0	0	0	0	0	0	0	0
66	Tree Trimming Expense	0	0	(1,314,000)	0	0	506,876	0	(807,125)	807,125
67	Pole Inspections	0	0	0	0	0	0	0	0	0
68	Transmission Inspection Expense	0	0	0	0	0	0	0	0	0
69	Outage Normalization	0	0	0	0	0	0	0	0	0
70	CIS Expenses	0	0	0	0	0	0	0	0	0
71	Combustion Turbine Annualization	0	0	(870,000)	(5,425,000)	(5,453,000)	4,531,791	0	(7,216,209)	7,216,209
72	Big Bend Rail Project Annualization	0	0	0	(906,000)	(1,039,000)	750,284	0	(1,194,716)	1,194,716
73	Depreciation Study	0	0	0	0	0	0	0	0	0
74	Total Depreciation Expense	0	0	0	0	0	0	0	0	0
75	Taxes Other Than Income	0	0	0	0	0	0	0	0	0
76	Parent Debt Adjustment	0	0	0	0	0	(9,657,000)	0	(9,657,000)	9,657,000
77	Income Tax Expense	0	0	0	0	0	0	0	0	0
	Interest Synchronization	0	0	0	0	0	507,196	0	507,196	(507,196)
	Total Commission Adjustments	0	0	(23,976,935)	(7,579,485)	(6,492,000)	5,527,374	0	(32,521,046)	32,521,046
78	Fall Out - Adjusted NOI	865,359,000	7,614,000	346,957,065	187,028,515	55,783,000	54,019,374	(1,534,000)	649,867,954	215,491,046

SCHEDULE 4

TAMPA ELECTRIC COMPANY
DOCKET NO. 080317-EI
DECEMBER 2009 PROJECTED TEST YEAR
NET OPERATING INCOME MULTIPLIER
As Approved in Order No. PSC-09-0283-FOF-EI

Line No.		(%) As Filed	(%) Commission Approved
1	Revenue Requirement	100.000	100.000
2	Gross Receipts Tax	0.000	0.000
3	Regulatory Assessment Fee	(0.072)	(0.072)
4	Bad Debt Rate	(0.349)	(0.349)
5	Net Before Income Taxes	99.579	99.579
6	Income Taxes (Line 5 x 38.575%)	(38.413)	(38.413)
7	Revenue Expansion Factor	61.166	61.166
8	Net Operating Income Multiplier (100%/Line 7)	1.63490	1.63490

SCHEDULE 5

TAMPA ELECTRIC COMPANY
DOCKET NO. 080317-EI
DECEMBER 2009 PROJECTED TEST YEAR
REVENUE REQUIREMENTS CALCULATION
ADJUSTED FOR RECONSIDERATION OF
THE WEIGHTED COST OF CAPITAL

Line No.		Commission As Approved	Commission Adjusted
1.	Rate Base	$3,437,610,836	$3,437,610,836
2.	Overall Rate of Return	8.11%	8.29%
3.	Required Net Operating Income (1)x(2)	278,790,239	284,977,938
4.	Achieved Net Operating Income	215,013,533	215,491,046
5.	Net Operating Income Deficiency (3)-(4)	63,776,706	69,486,893
6.	Net Operating Income Multiplier	1.63490	1.63490
7.	Operating Revenue Increase (5)x(6)	$104,268,536	$113,604,121
	DIFFERENCE		**$9,335,585**

SCHEDULE 6

TAMPA ELECTRIC COMPANY
DOCKET NO. 080317-EI
CALCULATION OF JANUARY 1, 2010 STEP INCREASE
ADJUSTED FOR RECONSIDERATION OF THE WEIGHTED AVERAGE COST OF CAPITAL

Step Increase Revenue Requirement

	REVISED	APPROVED	**DIFFERENCE**
Big Bend Rail Facility	7,138,274	7,006,720	**131,554**
May 2009 CTs	8,030,533	7,924,344	**106,189**
September 2009 CTs	18,908,273	18,630,306	**277,967**
Total Step Increase	34,077,079	33,561,370	**515,709**

Line No.		Big Bend Rail Facility	May CTs (2 Units)	September CTs (3 Units	Total CTs (5 Units)
1	Net Plant in Service	44,754,000	36,125,000	94,563,000	130,688,000
2	Rate Of Return*	8.29%	8.29%	8.29%	8.29%
3	Required Return (2x3)	3,710,107	2,994,763	7,839,273	10,834,035
4	O&M Expenses	0	212,000	658,000	870,000
5	Depreciation	906,000	1,391,000	4,034,000	5,425,000
6	Taxes Other Than Income	1,039,000	2,226,000	3,227,000	5,453,000
7	Income Taxes (4+5+6)x-.38575	(750,284)	(1,477,037)	(3,054,754)	(4,531,791)
8	Income Tax Effect of Interest*	(538,639)	(434,784)	(1,138,118)	(1,572,903)
	[(1) x 3.12% x -.38575]	------	------	------	------
9	Total NOI Requirement (3+4+5+6+7+8)	4,366,184	4,911,941	11,565,400	16,477,342
10	NOI Multiplier*	1.6349	1.6349	1.6349	1.6349
11	Revenue Requirement (9x10)	7,138,274	8,030,533	18,908,273	26,938,806

	Amount	Ratio	Cost Rate	Weighted Cost
Common Equity*	1,632,611,907	53.96%	N/A	N/A
Long Term Debt*	1,384,998,776	45.78%	6.80%	3.11%
Short Term Debt*	7,904,810	0.26%	2.75%	0.01%
Total	3,025,515,493	100.00%		3.12%

*Based on Staff's Recommendation