

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In Re: Prudence review to determine regulatory treatment of Tampa Electric Company's Polk Unit	) DOCKET NO. 960409-EI
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IN RE:	PREHEARING CONFERENCE
BEFORE:	COMMISSIONER JOE GARCIA PUBLIC SERVICE COMMISSION
PLACE:	BETTY EASLEY CONFERENCE CENTER, ROOM 148 4075 ESPLANADE WAY TALLAHASSEE, FLORIDA
TIME:	COMMENCED AT 9:30 A.M. CONCLUDED AT 10:30 A.M.
DATE:	JULY 2, 1996
REPORTED BY:	NANCY S. METZKE, RPR, CCR C & N REPORTERS POST OFFICE BOX 3093 TALLAHASSEE, FLORIDA 32315

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APPEARANCES:

ROBERT V. ELIAS, ESQUIRE, Staff Counsel, Florida  
Public Service Commission, 2540 Shumard Oak Boulevard,  
Gerald L. Gunter Building, Room 370, Tallahassee, Florida  
32399-0863.

JAMES D. BEASLEY, ESQUIRE, LEE L. WILLIS, ESQUIRE  
and KENNETH HART, ESQUIRE, for Tampa Electric Company,  
McFarlane, Ausley, Ferguson & McMullen, 227 South Calhoun  
Street, Tallahassee, Florida 32301 and HARRY W. LONG, JR.,  
ESQUIRE, TECO Energy, Inc., Post Office Box 111, Tampa,  
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JOHN ROGER HOWE, ESQUIRE, Office of the Public  
Counsel, c/o The Florida Legislature, 111 West Madison  
Street, Suite 812, Tallahassee, Florida 32399-1400.

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COMMISSIONER GARCIA: Good morning. As you can see by my color, I got an excessive sunburn over the weekend, so let's try to make this quick and efficient.

Counsel, will you read the notice?

MR. ELIAS: Notice issued by the clerk of the Florida Public Service Commission advises that a prehearing will be held in Docket Number 960409-EI, on Tuesday, July 2nd, 1996, at 9:30 a.m. in Room 148 of the Betty Easley Conference Center that is located at 4075 Esplanade Way, Tallahassee, Florida.

COMMISSIONER GARCIA: Okay. We'll take appearances.

MR. WILLIS: I'm Lee L. Willis appearing together with James D. Beasley and Kenneth R. Hart and Harry Long. Mr. Willis, Beasley and Hart are members of Ausley and McMullen, Post Office Box 391, Tallahassee, Florida. Mr. Long's address is Post Office Box 111, Tampa, Florida, 33601.

Commissioner, I've also provided you a sponsorship of Harry W. Long, Jr. Mr. Long is a member of the California bar, has practiced for many years, and we are sponsoring his appearance in this proceeding.

1 COMMISSIONER GARCIA: Very good.

2 MS. KAUFMAN: Good morning. Vicki Gordon Kaufman  
3 of the law firm of McWhirter, Reeves, McGlothlin,  
4 Davidson, Rief and Bakas, 117 South Gadsden Street,  
5 Tallahassee, 32301, appearing on behalf of the Florida  
6 Industrial Power Users Group.

7 COMMISSIONER GARCIA: The office of public  
8 counsel --

9 MR. ELIAS: Commissioner, Mr. Howe is not here  
10 yet. He certainly is aware of the prehearing. I  
11 spoke with him about an hour ago, and I have every  
12 expectation that he'll be here momentarily.

13 COMMISSIONER GARCIA: To some degree we'll give  
14 him some latitude if he shows up a little bit late.

15 MR. ELIAS: I am Robert V. Elias, representing  
16 the Commission staff in this matter.

17 COMMISSIONER GARCIA: Okay. Mr. Elias, are there  
18 any preliminary matters?

19 MR. ELIAS: Just a couple. Tampa Electric has  
20 pending a motion to -- for an order declaring certain  
21 issues to be beyond the scope of this proceeding to  
22 which the Office of Public Counsel and FIPUG have  
23 filed responses. It would probably be appropriate to  
24 either make a ruling, or if you are inclined to hear  
25 discussion, argument on that motion to do so at this

1 time.

2 COMMISSIONER GARCIA: All right. I would like to  
3 hear some argument on it. Let's keep it short.

4 Thank you for joining us, Mr. Howe. I assume  
5 that you assumed that since I was a Cuban I would be  
6 starting a little bit late, but we'll go from there.

7 Why don't you begin, and then we'll allow  
8 Ms. Kaufman and Mr. Howe to make their arguments.  
9 Let's try and keep it under five minutes.

10 MR. WILLIS: All right, sir. Commissioner, we  
11 believe that this proceeding needs to be focused a  
12 little bit more than it is now and that three issues  
13 should be dropped, and that by dropping these issues  
14 it will not prejudice any party to this proceeding or  
15 the Commission. Our position is that these -- the  
16 consideration of these issues now is simply  
17 premature.

18 First of all, the Commission approved a  
19 stipulation, a very forward-looking, very innovative  
20 stipulation among the parties that settled Tampa  
21 Electric Company's rate design, its level of return on  
22 equity during the period that will end December 31st,  
23 1998. In that proceeding, there -- or the  
24 stipulation, there are a couple of provisions, one in  
25 Paragraph 12, which says the agreement does not

1 preclude the review of investment of the Polk Power  
2 Station and the Manatee site.

3 By implication we believe that matters that are  
4 beyond that investment in Polk should be beyond the  
5 scope of this proceeding. This language we believe  
6 has in effect the deferral of rate-case type issues --  
7 such as cost allocation, capital structure and rate  
8 design -- until after 1998. There are other practical  
9 considerations that we need to consider here too,  
10 Commissioner. That is, that we have just two days of  
11 hearings here. We've got a challenge to finish these  
12 hearings even on a limited scope, and the inclusion of  
13 extraneous matters in the proceeding will make it even  
14 more challenging. In any event, we are dedicated to  
15 making the process work regardless of what you rule,  
16 but it will be difficult with adding these extra  
17 issues.

18 With regard to capital structure, the stipulation  
19 provides that, in Paragraph 11, that the actual ROE  
20 calculation for each calendar year is done on a PSC  
21 adjusted basis with the adjustments approved in the  
22 last four revenue requirements proceedings; that  
23 included adjustments for capital structure. There is  
24 a method for doing that, and to the extent that that  
25 would -- other parties would care to do that, make a

1 change in it, that should be done in the next rate  
2 case, not here.

3 With regard to jurisdictional separation, there  
4 is no doubt that a portion of the Polk investment will  
5 be allocated to wholesale, but the separation  
6 procedures, again, were approved in the company's last  
7 rate case. And the fuel issue portion of this issue  
8 is pending in a separate proceeding right now. So we  
9 have duplicative procedures here, and we don't have  
10 testimony on -- or much testimony on any of these  
11 issues, so it would have to be developed through cross  
12 examination, which will take time. This issue, again,  
13 has nothing to do with the prudence of the Polk  
14 station.

15 Again, the third issue is with regard to cost  
16 recovery mechanisms. We voluntarily entered into a  
17 stipulation that resolves matters of rate design over  
18 the next several years. Our rates are frozen. There  
19 is no issue of how -- of cost recovery over this time  
20 period. And what we have done is we will absorb into  
21 commercial operation a major power plant without  
22 making any change in rates while at the same time  
23 providing a significant refund of 25 million dollars  
24 plus the possibility of additional refunds. There  
25 couldn't be a more creative alternative regulatory

1 mechanism than the one that is already in place, and  
2 there is no useful purpose that is served here with  
3 dealing with rate design type issues in this  
4 proceeding.

5 Paragraph 11 of the stipulation again provides  
6 that all reasonable and prudent expenses and  
7 investment will be allowed in the computation of  
8 return on equity during this time period, so there is  
9 not any room for phase-ins or for other alternative  
10 proceedings or procedures during the time that the  
11 stipulation is in effect, and to determine what would  
12 be done thereafter is just simply premature here.

13 What we are saying, Commissioner, is that the  
14 focus of this proceeding is on the prudence and  
15 expenditures in connection with the Polk Power  
16 Station. This is not a rate case. It's not an issue  
17 of rate design or cost allocation or capital  
18 structure. Those are rate-case issues, and no useful  
19 purpose will be served in deciding those issues now.

20 Now public counsel says that we need to determine  
21 separation factors for surveillance purposes. Well,  
22 of course we do, but we have a procedure to do that,  
23 and it was decided in the last rate case. He brings  
24 up the question of whether there would be a sale of  
25 the Polk assets. Well, we have indicated that no sale



1 is contemplated and suggest to you that that is a red  
2 herring with regard to the sale of the Polk assets.

3 FIPUG seems to say that we are contending that  
4 the Commission can't bring these issues up. What we  
5 are saying is that it's premature to bring these  
6 issues up now; they are just not ripe. They should be  
7 considered when they are ripe, and there is no  
8 explanation given by FIPUG of how they would be  
9 prejudiced by a consideration of the issues when they  
10 are ripe.

11 One particular example that is brought up by  
12 FIPUG in the testimony of Mr. Falkenberg is what  
13 should be done in the event that retail wheeling comes  
14 about and what should be done with stranded investment  
15 in that event. Those are broad issues. They are way  
16 premature. There is -- as you know, the legislature  
17 rejected that very concept this time, and that in any  
18 event, when those issues come up, those are broad  
19 policy questions that need to be considered in the  
20 context of the time, not now. For those reasons we  
21 would urge that those issues be stricken from this  
22 proceeding.

23 COMMISSIONER GARCIA: Ms. Kaufman.

24 MS. KAUFMAN: Thank you, Commissioner Garcia. As  
25 Mr. Elias indicated, FIPUG did file a written response

1 to Tampa Electric's motion; and in short, our response  
2 states that the first two issues, the one on capital  
3 structure and the one on separations, need to remain  
4 in this case. And the third issue, the alternative  
5 rate treatment, we suggested a rewording of that issue  
6 that may help the parties agree that that is an  
7 appropriate issue.

8 I don't disagree with Mr. Willis that we are here  
9 to look at the prudence of Tampa Electric's actions  
10 regarding the Polk unit. But as we do that, I think  
11 the capital structure issue and the separation issue  
12 are integral parts of that analysis. Tampa Electric  
13 says in their motion that capital structure issues  
14 should be dealt with on a prorata basis because that  
15 is what has been done in the past, and that is  
16 certainly one option that the Commission has; but the  
17 Commission is not foreclosed from looking at other  
18 ways to deal with capital structure issues. That is  
19 an issue the Commission is going to have to reach in  
20 dealing with whether or not this plant should be  
21 included in rate base or whether or not some other  
22 treatment should be accorded to it.

23 The issue of separations is a very important  
24 issue to FIPUG. We have a half a billion dollar plant  
25 here that Tampa Electric is talking about, and we

1 think it's critical to determine what portion of that  
2 plant is going to be serving retail customers and what  
3 portion is going to be serving wholesale customers.  
4 The separations process that the Commission has used  
5 in the past may or may not be appropriate for this  
6 investment. And again, the Commission should not be  
7 foreclosed from looking at other ways of dealing with  
8 this investment.

9 The last issue, cost recovery, on Page 3 of our  
10 motion we suggest a rewording of that issue. And  
11 again, FIPUG agrees with Mr. Willis that cost  
12 allocation, rate design issues are not appropriate  
13 here; and in fact, FIPUG withdrew a significant  
14 portion of its testimony based upon its understanding  
15 that rate design would not be at issue. I think what  
16 we are really talking about in that regulatory  
17 treatment issue is not so much cost recovery as we are  
18 talking about whether a different kind of regulatory  
19 treatment, perhaps one that Mr. Falkenberg has  
20 proposed, is appropriate for this plant. And so we  
21 suggest that that issue be reworded to say, should the  
22 Commission consider alternative regulatory treatment  
23 as opposed to cost recovery for the Polk unit.

24 We think, again, that that is a very important  
25 issue. And I think in all candor what TECO is trying

1 to do is kind of hamstringing the Commission into it's  
2 this or it's that. I think at this point the  
3 Commission probably is going to want to keep its  
4 options open until it hears the evidence and considers  
5 what the appropriate treatment of this investment  
6 should be. So we'd urge you to keep in the first two  
7 issues and to reword that last one as we have  
8 suggested. Thank you.

9 COMMISSIONER GARCIA: Mr. Howe.

10 MR. HOWE: I'll be brief, Commissioner Garcia.  
11 Mr. Willis is correct that this docket is intended to  
12 deal with the prudence of their investment in Polk  
13 Unit One; however, I would suggest that the style of  
14 the docket is correctly stated. It is the prudence  
15 review to determine the regulatory treatment of Tampa  
16 Electric Company's Polk Unit One.

17 That investment cannot be viewed in isolation.  
18 Their investment is tied to which portion of that  
19 investment is properly allocable to the retail  
20 jurisdiction. That issue is also tied to the capital  
21 structure.

22 Also, on the issue of alternative ratemaking,  
23 cost recovery or regulatory treatment, we don't know  
24 what is going to come out of this docket. Discovery  
25 that we have engaged in throughout this proceeding so

1 far has indicated that this company has variously  
2 considered selling the gasifier. They've considered  
3 selling the power block. They've considered UPS  
4 sales. And as we point out in our response, a UPS  
5 sale out of that unit would mean that the company  
6 retains the total investment but the cost is being  
7 picked up by somebody else, and that type of a  
8 transaction would not be captured by the  
9 jurisdictional allocation used in the company's last  
10 rate case.

11 And I don't think anybody could seriously contend  
12 that the stipulation or the Commission's order  
13 approving the stipulation meant to foreclose the  
14 Commission from reaching such scenarios. We simply do  
15 not know what is going to come out of this hearing. I  
16 would suggest that what Tampa Electric is -- where  
17 they are arguing to eliminate the issues from  
18 consideration, that they can represent and protect  
19 their interests by taking those positions on those  
20 issues.

21 I would also suggest that it probably is not  
22 appropriate for the prehearing officer to pass at this  
23 stage on the full meaning and import of the  
24 stipulation and the full Commission order approving it  
25 where there is no clear language either in the

1 stipulation or the order clearly agreeing with the  
2 company's position. I think it's one of the things  
3 the Commission may need to hash out in the proceeding  
4 exactly what was the scope and intent of that prior  
5 order, but it would be premature to foreclose those  
6 issues at this time. Thank you.

7 COMMISSIONER GARCIA: Thank you, Mr. Howe.

8 Mr. Elias.

9 MR. ELIAS: We would recommend that the motion be  
10 denied. We believe it is premature to limit the scope  
11 of the issues in this proceeding pending receipt of  
12 the evidence.

13 As to the suggested wording change to the  
14 alternative ratemaking treatment issue, we have no  
15 objection to making the change proposed by FIPUG.

16 MR. WILLIS: Commissioner, that change is  
17 cosmetic only. I think that the basic underlying  
18 concerns that we would have would still be there. I  
19 think we would still be dealing with things that were  
20 premature.

21 And to respond very briefly to Mr. Howe's point  
22 about the sales of assets, there would be regulatory  
23 approval required if we did that, and of course we  
24 have said that we have no such plans at the moment,  
25 and we would urge that you strike these issues from

1 this proceeding. They are just too -- will require  
2 just too much time. There is no sense in doing it  
3 now.

4 COMMISSIONER GARCIA: I wanted to ask you,  
5 Mr. Howe, tell me about timing. Is there enough time  
6 to fully explore these issues?

7 MR. HOWE: I honestly don't know, Commissioner  
8 Garcia. But I would suggest that that would -- even  
9 if there is not enough time, that we would have to  
10 find additional time in the future. This is a very  
11 important issue, and if it takes longer to resolve  
12 whether their investment was prudent and how that  
13 investment -- to what extent the investment was  
14 prudent and how it should be treated for regulatory  
15 purposes, if it takes more time, it takes more time.  
16 You can't foreclose relevant issues because of the  
17 schedule. So we are prepared to go night and day if  
18 necessary to finish in two days, and if more time is  
19 necessary, I think we would just have to ask the  
20 Commission to find the time to complete the docket.

21 COMMISSIONER GARCIA: Ms. Kaufman.

22 MS. KAUFMAN: I would agree with Mr. Howe,  
23 Commissioner Garcia. I think that the issues that  
24 have to be tried in this case are the ones that are  
25 listed, and to the extent that we can't do it in two

1 days, we'll have to find some additional time.

2 COMMISSIONER GARCIA: Very well, I'm going to  
3 deny TECO's motion. We are going to leave it in as an  
4 issue. If the full Commission after hearing this  
5 wants to exceed or limit the scope, that's fine, but I  
6 don't feel that it would be correct at this stage of  
7 the proceedings. Are there any preliminary, other  
8 preliminary matters?

9 MR. ELIAS: I just want to mention that last  
10 Friday and/or Monday Tampa Electric Company served  
11 additional discovery on various parties to this  
12 proceeding and to a couple of entities which are not  
13 parties to the proceeding and just state affirmatively  
14 that we believe that based on the requirements of the  
15 prehearing order that discovery was served out of  
16 time.

17 COMMISSIONER GARCIA: Well, let me just say that  
18 I haven't had a chance to look at that, and so we'll  
19 come up with a response. If you want to comment on it  
20 briefly, that's fine, Mr. Willis, but I'm not going to  
21 be making any determination at this point.

22 MR. WILLIS: Okay. We'll save our comment for it  
23 later. I would like, however, with regard to what we  
24 provided to staff, they were not very extensive, and  
25 we would just request that staff work with us and



1 cooperate with us to get the responses to that  
2 information. I think to the extent we have asked for  
3 documents in their possession, if not through  
4 discovery, just through a public records request, you  
5 know, we could receive that information.

6 COMMISSIONER GARCIA: Okay.

7 MR. WILLIS: Commissioner, I don't know whether  
8 you want us to bring up at this juncture the relevance  
9 of certain testimony that has been filed or whether  
10 you want to do that when we get to the list of  
11 witnesses, but we do have a point that we want to  
12 raise with regard to the testimony filed by staff of  
13 depositions of other utility witnesses.

14 COMMISSIONER GARCIA: Maybe we can go through  
15 that when we get to the witnesses a little bit later  
16 on, and let's just try to get through as much of this  
17 as possible, and then we can -- There are no other  
18 preliminaries, correct?

19 (NO RESPONSE)

20 COMMISSIONER GARCIA: All right. So let's,  
21 hopefully we can go through them en masse.  
22 Corrections or changes to the basic case background?

23 (NO RESPONSE)

24 COMMISSIONER GARCIA: Corrections or changes to  
25 the witness list?

1 MR. WILLIS: Commissioner, we have one additional  
2 witness that, as we had indicated in our prehearing  
3 statement, that since the rebuttal testimony was not  
4 due to be filed --

5 COMMISSIONER GARCIA: Mr. Willis, I can barely  
6 hear you.

7 MR. WILLIS: I said since the -- Can you hear  
8 me now?

9 COMMISSIONER GARCIA: Yes.

10 MR. WILLIS: Our rebuttal case was filed just  
11 yesterday, our prehearing statement was filed earlier,  
12 we have an additional witness, Steven L. Thumb. And  
13 Commissioner, in view of the time required to try the  
14 case, we have suggested -- wanted to suggest for  
15 consideration that we consolidate the direct and  
16 rebuttal presentation of Witnesses Smith and Black and  
17 that Witness Thumb's testimony come just before  
18 Witness Smith. While he is a rebuttal witness, if we  
19 begin changing the order around for convenience, that  
20 would be our preference. He is from out of town. He  
21 could testify and be excused. And then we would --

22 COMMISSIONER GARCIA: Let's make sure we have the  
23 first part.

24 MR. WILLIS: Okay.

25 COMMISSIONER GARCIA: What you have asked, repeat

1 it for us.

2 MR. WILLIS: All right. What I'd --

3 COMMISSIONER GARCIA: No one seems to have a  
4 problem with this, right, staff, Ms. Kaufman,  
5 Mr. Howe?

6 MR. HOWE: Commissioner Garcia, I'll tell you my  
7 concern having just heard it. We received the  
8 company's rebuttal testimony yesterday, and I've  
9 skimmed it; but to be honest with you, I'm concerned  
10 that the company may be, through this process, be  
11 allowed to introduce evidence as part of their direct  
12 case that we may move to strike it as not being  
13 properly rebuttal. I can't tell you that for sure  
14 because I haven't had the opportunity to review that  
15 testimony in detail.

16 MR. WILLIS: I think when you review it, you'll  
17 find that it's clearly rebuttal.

18 COMMISSIONER GARCIA: Mr. Howe, in the interest  
19 of time, let's go ahead; and if you do have any  
20 problem with it, let us know. But I, we'll take  
21 Mr. Willis' word for it right now and move forward.  
22 So state it again for the record.

23 MR. WILLIS: All right. In the order of  
24 witnesses on Page 5, you would insert the name of  
25 Steven L. Thumb after Witness Hernandez, and then

1 Witnesses Smith and Black would be direct and  
2 rebuttal. And then on Page 6, the order of our  
3 remaining rebuttal witnesses would be Thomas Hernandez  
4 followed by John R. Rowe.

5 COMMISSIONER GARCIA: Okay. That's fine.

6 MS. KAUFMAN: Can I ask why Mr. Rowe and  
7 Mr. Hernandez aren't going to do their direct and  
8 rebuttal together if Mr. Black and Smith are?

9 MR. WILLIS: It is -- we would prefer, I think,  
10 to do the direct and then the rebuttal case, but in  
11 the interest of time, it was a compromise position,  
12 that's all.

13 COMMISSIONER GARCIA: Very well. That's how  
14 we'll do it then. Anything else?

15 (NO RESPONSE)

16 COMMISSIONER GARCIA: All right. Corrections or  
17 changes to the basic positions?

18 MR. WILLIS: Commissioner, as Mr. Elias indicated  
19 to us, that we may be providing some edits to our  
20 position, but we would just provide that to him and  
21 provide him a disk so they can incorporate it in the  
22 order.

23 COMMISSIONER GARCIA: Very good.

24 MR. ELIAS: And I would note that as far as any  
25 changes, corrections, additions or deletions, if the

1 parties would have those to me by the close of  
2 business on July 9th, it would be my intention to have  
3 the prehearing order issued on or before Thursday,  
4 July 11th, and on a disk if possible.

5 MR. WILLIS: Certainly.

6 COMMISSIONER GARCIA: Do we need to go issue by  
7 issue on corrections, on changes on the issues?

8 (NO RESPONSE)

9 COMMISSIONER GARCIA: That's fine. Let's start  
10 that way, and if you find anything as we go through  
11 it. Issue 1.

12 (NO RESPONSE)

13 COMMISSIONER GARCIA: Issue 2.

14 MR. WILLIS: Commissioner, with regard to staff's  
15 position on Issue 2, we would just respectfully  
16 request that staff take a position on the various  
17 issues. You know, the prehearing procedures are  
18 adopted to prevent surprise and confusion, and to --  
19 and the reason that is in place is to enable us to  
20 create an appropriate record.

21 Now staff has taken a very strong adversary  
22 position in this case, and it's not really in the  
23 position of a neutral arbiter in this instance. That  
24 is fine, but we believe in this instance that they  
25 should follow the same procedures that the other

1 parties are required to follow and that under your  
2 rules, unless a matter is not at issue for a party,  
3 the party shall diligently endeavor in good faith to  
4 take a position on each issue prior to the issuance of  
5 the prehearing order.

6 Since staff, we believe, does have positions,  
7 that they can be caveated that they are preliminary as  
8 they have done for the issues where they have taken a  
9 position, and I think the issues in the case will  
10 become in greater, sharper focus for us to try.

11 COMMISSIONER GARCIA: Mr. Elias.

12 MR. ELIAS: As our statement of basic position  
13 indicates, these positions are preliminary and based  
14 on materials that have been received to date. There  
15 is still discovery that is outstanding that won't be  
16 filed until the 9th or 10th of July I do believe.

17 I believe each position where we have not taken a  
18 position, the other parties have. It would be our  
19 preference not to have to take a position because as  
20 to certain -- as to the issues that we haven't taken a  
21 position, we do not have a feeling one way or the  
22 other as to what may or may not be appropriate. If  
23 it's the prehearing officer's determination that we  
24 take a preliminary position, we will be prepared to do  
25 that by the time the prehearing order is forwarded to

1 you for signature.

2 MR. WILLIS: I'm not aware of outstanding  
3 discovery issues that impact -- Is there anything  
4 specific that --

5 MR. ELIAS: We have rebuttal witnesses that we  
6 may opt to depose. We have a set of interrogatories,  
7 I believe, that are not due until July 9th that were  
8 served on the 19th. And I'm not sure if there is  
9 anything beyond that, but those are the two things  
10 that first come to mind. And we have not even -- you  
11 know, we saw the rebuttal testimony for the first time  
12 yesterday afternoon about 4:30, and I skimmed it  
13 yesterday afternoon, but I've not had a chance to  
14 review it in detail or as a number of the other staff  
15 members have -- have not.

16 COMMISSIONER GARCIA: Mr. Willis, while I  
17 understand your position, it's generally been a  
18 practice to allow staff, that if they don't have a  
19 strong feeling on an issue, to stay neutral. And  
20 while you may have a feeling that staff has already  
21 taken a position, I have not yet found that to be the  
22 case. So if staff wants to add anything later on  
23 because they have come to a conclusion or at least a  
24 position on some of this, then staff can do so, but  
25 right now I'm not going to force staff to do that.

1 Issue Number 3?  
2 (NO RESPONSE)  
3 COMMISSIONER GARCIA: Issue 4.  
4 (NO RESPONSE)  
5 COMMISSIONER GARCIA: Issue 5.  
6 (NO RESPONSE)  
7 COMMISSIONER GARCIA: Issue 6.  
8 (NO RESPONSE)  
9 COMMISSIONER GARCIA: Issue Number 7.  
10 (NO RESPONSE)  
11 COMMISSIONER GARCIA: Issue Number 8.  
12 (NO RESPONSE)  
13 COMMISSIONER GARCIA: Issue Number 9.  
14 (NO RESPONSE)  
15 COMMISSIONER GARCIA: Number 10.  
16 (NO RESPONSE)  
17 COMMISSIONER GARCIA: Eleven.  
18 (NO RESPONSE)  
19 COMMISSIONER GARCIA: Twelve.  
20 (NO RESPONSE)  
21 COMMISSIONER GARCIA: Thirteen.  
22 (NO RESPONSE)  
23 COMMISSIONER GARCIA: Fourteen.  
24 (NO RESPONSE)  
25 COMMISSIONER GARCIA: Fifteen.



1 MR. ELIAS: If we could just go back to Issue 14  
2 for a minute. FIPUG had suggested a change to the  
3 wording. Where do we stand with that?

4 COMMISSIONER GARCIA: No, that --

5 MR. ELIAS: Okay. I wasn't sure.

6 COMMISSIONER GARCIA: We are going to stay with  
7 staff wording. If Mr. Willis feels it's cosmetic,  
8 then we'll leave it as is.

9 All right. Are there any corrections or changes  
10 to the exhibit list?

11 MR. WILLIS: Commissioner, again, we will be  
12 providing an additional list to cover the rebuttal  
13 exhibits that we filed, but we will provide that to  
14 staff.

15 COMMISSIONER GARCIA: That's fine.

16 Mr. Howe, Ms. Kaufman, fine?

17 MR. HOWE: I'm fine with this prehearing order.

18 MS. KAUFMAN: We have no changes, Commissioner  
19 Garcia.

20 COMMISSIONER GARCIA: Okay.

21 MR. WILLIS: Commissioner, we do have one other  
22 item to raise, and this is with regard to the  
23 relevance of certain testimony that was filed by  
24 staff. Mr. Long would like to address that with you.

25 MR. LONG: Commissioner, in reviewing staff's

1 prehearing statement, we noticed that they intended to  
2 rely on testimony from Florida Power and Light and  
3 Florida Power Corporation.

4 COMMISSIONER GARCIA: Some of the people in the  
5 back of the room are not able to hear you, so if you  
6 can speak right into the mike.

7 MR. LONG: I'm sorry. Is this better?

8 COMMISSIONER GARCIA: That's fine.

9 MR. LONG: We noticed in looking at the staff's  
10 prehearing statement that they intend to rely on  
11 depositions taken of Samuel Waters of Florida Power  
12 and Light Company and Robert Niekum and Eric Major of  
13 Florida Power Corporation. In looking at the brief  
14 statement of substance, we are very concerned with  
15 regard to the relevance of this testimony.

16 As I understand the purpose of bringing these  
17 witnesses here, it would be to provide testimony on  
18 parallels that might be drawn between the cost of  
19 units on the systems of those utilities and the cost  
20 of the Polk unit that Tampa Electric has constructed  
21 and also to delve into the reasons behind the decision  
22 of those two utilities to defer construction of an  
23 IGCC unit and contrast that with Tampa Electric's  
24 decision to go ahead following the Commission approval  
25 on the need hearing.

1 I would submit that that information has no  
2 probative value whatsoever with regard to the question  
3 before the Commission here; namely, the prudence of  
4 Tampa Electric's investment in its Polk IGCC unit. As  
5 both of these companies have readily acknowledged in  
6 deposition, a unit that is cost effective on Tampa  
7 Electric's system might not be cost effective on their  
8 system, and the reason is because those decisions are  
9 very utility specific, very system specific.

10 If the question is whether our unit was cost  
11 effective, and we believe that it is, the proper focus  
12 would be on the assumptions that we used and testing  
13 the reasonableness of those assumptions. Comparing  
14 the cost of our unit to the cost of a unit on FPL's  
15 system, I submit, doesn't really tell you anything  
16 about the reasonableness of what we have done. And I  
17 think that given that reality, there is a great deal  
18 of room for mischief and confusion if this testimony  
19 were to be permitted. It simply is not relevant, and  
20 on that basis, we would ask you to so rule.

21 COMMISSIONER GARCIA: Mr. Elias.

22 MR. ELIAS: For starters, we don't think that  
23 it's appropriate for a prehearing officer to be asked  
24 to rule on the relevance of certain testimony. We  
25 think that is best left to the commissioner running

1 the hearing.

2 Secondly, Mr. Long mentioned that one of the  
3 issues in the case is the reasonableness of the  
4 assumptions that Tampa made in continuing -- Tampa  
5 Electric made in continuing to construct this unit,  
6 and we believe that the testimony of Mr. Waters,  
7 Mr. Niekum and Mr. Major contain substantial probative  
8 relevant evidence which -- from which a decision maker  
9 could make determinations as to the reasonableness of  
10 certain assumptions that were made by Tampa Electric  
11 Company in its decision to continue to construct this  
12 particular unit.

13 I have asked but not yet received a definitive  
14 answer as to whether or not any of the other parties  
15 saw a need to cross examine these individuals at the  
16 hearing. Tampa Electric Company was aware of and  
17 represented at both depositions that were taken in  
18 this matter, had an opportunity to cross examine. I  
19 expressed to Mr. Willis and Mr. Long my willingness to  
20 reopen the deposition if need be, if they felt that  
21 additional questions were appropriately required of  
22 these witnesses in due regard for their right to cross  
23 examine them. If need be, we will make every attempt  
24 to subpoena these individuals and have them appear  
25 before the Commission at the July 17th and July 18th

1 hearing. Failing that, or absent an agreement of the  
2 parties to excuse the witnesses, that would be our  
3 plan.

4 MR. HOWE: Commissioner Garcia, we think these  
5 witnesses, whether through deposition or live  
6 testimony, will offer very relevant testimony to this  
7 Commission.

8 The facts are that in 1994 Florida Power and  
9 Light brought on line its Martin Units 3 and 4 in a  
10 natural gas-fired, combined cycle configuration.  
11 Florida Power and Light specifically considered and  
12 rejected using coal-fired--- or I should say  
13 coal-gasification technology.

14 Florida Power Corporation is scheduled to bring  
15 on line its own Polk units right down the road from  
16 Tampa Electric in 1998, and Florida Power Corporation  
17 considered and rejected coal gasification technology  
18 as being uneconomic.

19 In between those two utilities you have Tampa  
20 Electric bringing on line its IGCC and portraying it  
21 to be the most economic alternative on its system.  
22 Now I'll have to paraphrase, but I think it's in the  
23 APA, I believe it's probably in 120.58. It states  
24 that an administrative agency should consider evidence  
25 of a type reasonably relied upon by a prudent person

1 in the conduct of their affairs. I would suggest that  
2 any regulatory agency in the position in which  
3 yourself and the other Commissioners sit would be very  
4 interested in those factual circumstances that led two  
5 out of the three utilities that have recently  
6 considered this technology to reject it as  
7 uneconomic.

8 Our testimony of Mr. Larkin addresses this issue  
9 somewhat, and he identifies the issue as this, that  
10 the differences -- if there is any difference between  
11 the utilities, it must be in the cost of the gas  
12 supply or in the nature of their systems and the way  
13 their units are dispatched.

14 The only way the Commission could get at that  
15 issue would be to hear from the other utilities and  
16 hear exactly why those utilities, after having  
17 considered coal gasification technology, opted instead  
18 for natural gas-fired, combined cycle units. We think  
19 it's very relevant for those reasons.

20 COMMISSIONER GARCIA: Ms. Kaufman, do you have  
21 anything to add?

22 MS. KAUFMAN: Well, we would agree with  
23 Mr. Howe. I think the Commission would be interested  
24 in hearing why in a very similar time frame two of  
25 three utilities made very different planning

1 decisions, and I think it's probative and very  
2 relevant to the issues that you are going to hear.

3 And in response to Mr. Elias' comment I would  
4 tell you that FIPUG does not have an objection to the  
5 depositions of these three witness being inserted in  
6 the record with their exhibits without the necessity  
7 of their appearance, but I do think that that is  
8 evidence that the Commission needs to consider in this  
9 case.

10 MR. LONG: If I could be heard briefly.

11 COMMISSIONER GARCIA: Sure, of course.

12 MR. LONG: Our view of this is that this  
13 Commission reviewed our project in a need order. They  
14 reviewed FP&L's project in a need order and FPC's  
15 project in a need order. In all three instances we  
16 are certain that the Commission looked at all the  
17 relevant evidence and made the best decision possible  
18 given the circumstances known at the time.

19 Given that fact, it seems to me that it's  
20 apparent that the system economics between the three  
21 systems are vastly different. The generation mix  
22 between the three systems is vastly different. And  
23 unlike the other two companies, Tampa Electric had a  
24 very substantial grant from the Department of Energy,  
25 which, as the Commission acknowledged in the need

1 order, was one of the primary factors making the  
2 project cost effective for Tampa Electric while it  
3 might not be cost effective for others.

4 None of the comment that you've heard really  
5 rebuts those points, and I think given those points  
6 it's very clear that while one could draw parallels,  
7 those parallels would be meaningless in terms of the  
8 issue before this Commission, whether or not what  
9 Tampa Electric did was prudent.

10 COMMISSIONER GARCIA: Very good. Well, I'm going  
11 to allow it. If the company wants to raise it again  
12 when we get to the full panel, then that's fine, and  
13 they have a right to do so; but as of right now, it's  
14 part of what we are going to look at.

15 MR. LONG: Commissioner, with that ruling, we  
16 would not object to the use of the depositions, but we  
17 would like to reserve our right to raise this before  
18 the full Commission.

19 COMMISSIONER GARCIA: That's absolutely fine.

20 MR. LONG: Thank you.

21 MR. ELIAS: So that we can be -- so that the  
22 record can be clear, your objection is to the  
23 relevance and not to the introduction of the  
24 deposition and exhibits?

25 MR. LONG: That's correct.



1 COMMISSIONER GARCIA: Okay.

2 MR. ELIAS: So then the only objection that will  
3 be raised is the relevance?

4 MR. LONG: That's correct.

5 COMMISSIONER GARCIA: Very good. Mr. Elias, do  
6 you have anything else?

7 MR. ELIAS: Not that I'm aware of.

8 COMMISSIONER GARCIA: I want to thank all of you,  
9 and thank you, Mr. Elias. This went very quickly and  
10 efficiently.

11 (WHEREUPON, THE HEARING WAS ADJOURNED)

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COURT CERTIFICATE

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STATE OF FLORIDA )  
COUNTY OF LEON )

I, NANCY S. METZKE, Certified Shorthand Reporter and Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 3rd day of July, 1996.

*Nancy S Metzke*  
NANCY S. METZKE, CCR, RPR



NANCY S. METZKE  
MY COMMISSION # CC316252 EXPIRES  
September 13, 1997  
BONDED THRU TROY FAIR INSURANCE, INC.