

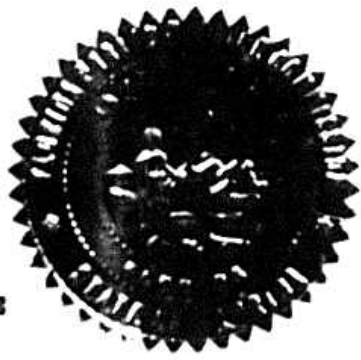
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of

Determination of appropriate cost
allocation and regulatory treat-
ment of total revenues associated
with wholesale sales to Florida
Municipal Power Agency and City of
Lakeland by Tampa Electric Company

: DOCKET NO. 970171-EU
:



PROCEEDINGS: **PREHEARING CONFERENCE**

BEFORE: **COMMISSIONER J. TERRY DEASON**

DATE: **Thursday, May 29, 1997**

TIME: Commenced at 1:30 p.m.
 Concluded at 2:45 p.m.

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

REPORTED BY: **ROWENA NASH
Official Commission Reporter**

DOCUMENT NUMBER - DATE
05469 MAY 30 97
FPC - FLORIDA PUBLIC SERVICE COMMISSION REPORTING

1 **APPEARANCES:**

2 **LEE L. WILLIS, JAMES D. BEASLEY, KENNETH**
3 **HART**, Ausley & McMullen, P.O. Box 391, Tallahassee,
4 Florida 32302, and **HARRY W. LONG, JR.**, TECO Energy,
5 Inc, Post Office Box 111, Tampa, Florida 33601-0111,
6 appearing on behalf of **Tampa Electric Company.**

7 **VICKI GORDON KAUFMAN**, McWhirter, Reeves,
8 McGlothlin, Davidson, Rief and Bakas, 117 South
9 Gadsden Street, Tallahassee, Florida 32301, appearing
10 on behalf of **Florida Industrial Power Users Group.**

11 **JOHN ROGER HOWE**, Office of Public Counsel,
12 c/o of the Florida Legislature, 111 West Madison
13 Street, Suite 801, Tallahassee, Florida 32399-1400,
14 appearing on behalf of the **Citizens of the State of**
15 **Florida.**

16 **LESLIE J. PAUGH**, FPSC Division of Legal
17 Services, 2540 Shumard Oak Boulevard, Tallahassee,
18 Florida 32399-0850, appearing on behalf of the
19 **Commission Staff.**

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P R O C E E D I N G S

(Hearing convened at 1:33 p.m.)

COMMISSIONER DEASON: Call the prehearing conference to order. Can I have the notice read, please?

MS. PAUGH: Pursuant to notices issued May 12, 1997 and May 27, 1997, this time and place have been set for a prehearing conference in Docket No. 970171-EU, determination of appropriate cost allocation and regulatory treatment of total revenues associated with wholesale sales to Florida Municipal Power Agency and City of Lakeland by Tampa Electric Company.

Leslie Paugh appearing on behalf of Staff with Robert Elias on behalf of Staff.

MR. WILLIS: I'm Lee L. Willis appearing together with James D. Beasley and Kenneth R. Hart with the firm of Ausley & McMullen, Post Office Box 391, Tallahassee, Florida. Also appearing on behalf of Tampa Electric Company will be Harry W. Long Jr., Post Office Box 111, Tampa, Florida 33601.

MR. HOWE: I'm Roger Howe with the Office of Public Counsel, appearing on behalf of the citizens of the State of Florida.

MS. KAUFMAN: Vicki Gordon Kaufman and John

1 McWhirter, Jr., of the law firm McWhirter, Reeves,
2 McGlothlin, Davidson, Rief & Bakas, on behalf of the
3 Florida Industrial Power Users Group.

4 **COMMISSIONER DEASON:** Preliminary matters?

5 **MS. PAUGH:** None that we are aware of.

6 **COMMISSIONER DEASON:** Parties have any
7 preliminary matters?

8 **MR. WILLIS:** Commissioner Deason, we have
9 over the last several days had several discussions
10 with the parties and with Staff with respect to the
11 handling of certain information which Tampa Electric
12 Company has requested that the Commission treat on a
13 confidential basis. We have filed motions for
14 protective order and filed motions of an intent to
15 seek confidential treatment of these documents and
16 have produced on very short notice, at the request of
17 Staff, a great deal of material, somewhat over 1,000
18 pages of materials.

19 These materials have been subject to
20 discussion among the parties at the deposition held
21 yesterday, and we have tried very diligently to both
22 produce the information that we were requested to
23 produce on -- really on one working day's notice, and
24 to accord the various parties reasonable access to the
25 material. We think that it would be appropriate to

1 discuss that and let's get a reasonable method of
2 handling this material from this point forward.

3 We have entered into a confidentiality
4 agreement, a nondisclosure agreement, with the expert
5 witness for Public Counsel. We have -- the documents
6 are being delivered to Detroit this evening for
7 production in the offices of Hugh Larkin tomorrow
8 morning. We have provided access to the materials to
9 Staff beginning at 10:00 on Tuesday morning after the
10 Memorial Day holiday and have retained those documents
11 in -- however, in the possession of the company giving
12 the Staff access to them.

13 We have offered to FIPUG a nondisclosure
14 agreement. However, they have -- for reasons I'm sure
15 Ms. Kaufman will address later, have chosen not to
16 execute that agreement.

17 We have no problem whatsoever with producing
18 the documents to each of the parties in this
19 proceeding and to Staff, as we've indicated. We do
20 have a concern, however, with respect to producing the
21 very confidential information to a couple of
22 individuals that have been involved in this case for
23 FIPUG, and we have named those individuals, because
24 they have a concurrent ongoing interest in a separate
25 matter of -- in negotiations in which that information

1 will be specifically and immediately beneficial to the
2 detriment of Tampa Electric and its customers.

3 Mr. Long will address that in a moment.

4 We have brought the documents back to
5 Tallahassee from Tampa and wish to file them with the
6 clerk so that they'll be physically here in the
7 building. We will provide reasonable -- we do not
8 object to FIPUG having access to that material upon
9 the execution of the nondisclosure agreement that
10 we've provided, and I think we can move forward with
11 the proceeding.

12 So what we would request that you do is
13 enter an order, which would be a temporary protective
14 order, which would protect this material, allow them
15 to be filed with the clerk without us going through
16 the laborious, difficult and time consuming effort to
17 highlight all the material, to provide redacted copies
18 and go through all of the mechanics that will take us
19 several days to go through, which we'd rather not
20 spend that time with that effort and rather have the
21 time available for Staff and others to view the
22 documents if they want to.

23 COMMISSIONER DEASON: Have you discussed
24 this with the other parties, Mr. Willis?

25 MR. WILLIS: We have discussed this general

1 subject matter. The specific proposal -- Staff
2 requested, as I understand it, at the end of the
3 deposition yesterday that we bring the material back
4 and file it with the clerk's office. And we would
5 like to do that but in a way that's not so time
6 consuming and mechanically difficult. We'd rather
7 spend the time, you know, for them to review the
8 documents.

9 So we discussed it with Staff yesterday, and
10 Mr. Howe was on the telephone at the deposition. We
11 have not specifically discussed that procedure with
12 FIPUG with respect to filing the documents.

13 **COMMISSIONER DEASON:** Now, is this the
14 information that was produced at the deposition
15 yesterday?

16 **MR. WILLIS:** Yes, sir.

17 **COMMISSIONER DEASON:** And you have that
18 here. And let me see if I understand. You are
19 willing to file that here at the Commission if it will
20 be filed subject to a protective order?

21 **MR. WILLIS:** Yes, sir.

22 **COMMISSIONER DEASON:** And that protective
23 order would specify what?

24 **MR. WILLIS:** Well, it would specify that the
25 matter be accorded confidential treatment and that the

1 Staff would have access to it in the clerk's office
2 and upon the execution of an appropriate nondisclosure
3 agreement, that FIPUG would also have access to the
4 materials in the clerk's office.

5 And to that we have filed a specific
6 pleading entitled "Tampa Electric Company's Motion for
7 Temporary Protective Order."

8 **COMMISSIONER DEASON:** When was that filed?

9 **MR. WILLIS:** It was filed today. The terms
10 and conditions would be as follows, Commissioner
11 Deason; that the document submitted by Tampa Electric
12 on a notice of intent to seek confidential
13 classification would remain confidential and exempt
14 from public disclosure on a temporary basis, that any
15 of the above-referenced documents not identified for
16 use at the hearing in this proceeding would be
17 returned to Tampa Electric Company without any of the
18 content thereof being publicly disclosed, that any of
19 the documents identified for use in the final hearing
20 shall continue to be treated as confidential pursuant
21 to the order establishing procedure, which was Order
22 PSC-97-0350-PCO-EU and that Tampa Electric will be
23 afforded the 21-day period following the hearing in
24 this proceeding to submit a formal request for
25 confidential treatment of any of the above-referenced

1 materials identified for use in the final hearing.

2 This just allows us to take only these
3 materials, get temporary protection from it and then
4 we will deal with the mechanics with respect to just
5 the materials that are intended to be used, and the
6 rest of it would be returned to us.

7 We feel that once they are reviewed, then
8 the numbers of documents that would need to be
9 retained would be -- boil down to a very few.

10 **COMMISSIONER DEASON:** So the advantage of
11 this procedure as you recommend or suggest is that
12 information would be available and it would not
13 necessitate you going through the mechanics of
14 actually requesting confidential treatment until after
15 the fact when the information that -- whatever
16 information is used in the proceeding, that you would
17 then file the necessary filing to seek confidential
18 treatment.

19 **MR. WILLIS:** That's right. This is just a
20 practical solution to a situation that's come up that
21 we would look to deal expeditiously with today.

22 **COMMISSIONER DEASON:** Mr. Howe?

23 **MR. HOWE:** Commissioner Deason, I just
24 received a copy of the motions for temporary
25 protective order. However, I understand that

1 Mr. Larkin is going to have the opportunity to review
2 certain documents in his office tomorrow and that will
3 satisfy my office's interest in those documents.

4 **COMMISSIONER DEASON:** So you have no
5 objection to the procedure as outlined by Mr. Willis?

6 **MR. HOWE:** No, sir.

7 **COMMISSIONER DEASON:** Ms. Kaufman?

8 **MS. KAUFMAN:** Thank you, Commissioner
9 Deason. We sort of have two different matters on the
10 table here, one concerns the motion for temporary
11 protective order that we just received. And based on
12 Mr. Willis' explanation, I'd be happy to respond in
13 regard to that procedure.

14 And the other matter involves Tampa
15 Electric's motion for protective order, which
16 essentially asks that you deny FIPUG access to all the
17 documents that we are discussing here, as well as to
18 some discovery that we have requested. And I would be
19 happen to give you FIPUG's position on that when you
20 think it's appropriate.

21 **COMMISSIONER DEASON:** Okay. I'm just trying
22 to get everything straight in my own mind as to when
23 different things were filed.

24 The motion for temporary protective order
25 was filed today, correct, Mr. Willis?

1 **MR. WILLIS:** Yes, sir.

2 **COMMISSIONER DEASON:** Now, Ms. Kaufman you
3 are referring to another motion that was filed. What
4 was the date of that filing?

5 **MS. KAUFMAN:** I believe it was May 19th.
6 Tampa Electric filed a motion for a protective order
7 in an objection to some of FIPUG's discovery.

8 **COMMISSIONER DEASON:** All right. Since we
9 are on the subject right now of the temporary
10 protective order which was filed today, if you would
11 address that first, and then the May 19th filing
12 concerning the objection to discovery and a motion for
13 protective order.

14 **MS. KAUFMAN:** I'd be glad to. I haven't
15 reviewed the motion that was just handed to me, but I
16 guess my initial reaction to this is that the
17 Commission has some very stringent procedures in place
18 if a party intends to seek confidential classification
19 of material. I know that they're not particularly
20 fun, I've had to do it myself, but I think the purpose
21 of that is to require the party with the burden to
22 demonstrate confidentiality to winnow down that
23 information that they believe is truly confidential.

24 And I think we would object to the wholesale
25 filing of a lot of documents and giving them, as I

1 understand it, confidential protection, sort of a
2 carte blanche. I think that the burden is on Tampa
3 Electric to identify those portions of documents that
4 they believe are confidential and to follow the normal
5 routines and rules of this Commission in seeking
6 confidentiality, including justifying their basis in
7 allowing the other parties to respond as to whether
8 they think that justification is appropriate.

9 Now, we have not --

10 **COMMISSIONER DEASON:** Let me ask you a
11 question on that point. I think you make a valid
12 point, but I think -- and correct me if I'm wrong.
13 And this is information that was produced at a
14 deposition that was just held yesterday, and there's
15 no outstanding discovery per se on this information.
16 And correct me if -- and if that is the case, then the
17 company would have 30 days under a normal discovery
18 process to actually produce the information and that
19 is probably not going to facilitate having that
20 information available in time to utilize at this
21 hearing.

22 Now where am I wrong in that analysis?

23 **MS. KAUFMAN:** Well, I have to preface my
24 remarks by saying that I have not been privy to seeing
25 any of these documents, so I can't really comment on

1 that. It's my understanding that Staff issued a
2 subpoena duces tecum for Ms. Branick to bring these
3 items to the deposition. And, again, FIPUG was not
4 permitted to attend the deposition. I only know that
5 as a preliminary matter Ms. Branick was asked to
6 identify those parts of the documents that Tampa
7 Electric intended to claim confidential classification
8 for.

9 I certainly wouldn't have any problem with
10 Tampa Electric having a shorter period to file their
11 justification. I just have some concern that the
12 Commission would without any type of review or
13 justification grant these documents confidential
14 status. And I understand that we are under some time
15 constraints, we are going talk to about those in
16 regard to Tampa Electric's total denial of access to
17 FIPUG to these documents. But I do think that some
18 justification is required. I think it's required
19 under the statute governing confidentiality and under
20 this Commission's rules.

21 MR. WILLIS: Commissioner, one thing that
22 needs to be pointed out, we did not produce this
23 information subject to a subpoena. We produced it
24 subject to a list of materials that Staff listed in a
25 notice of deposition, which is a big difference. We

1 did so, therefore, voluntarily. The notice was
2 provided to us, I believe, last Thursday, and we
3 responded after one working day over the Memorial Day
4 holiday, which a number of Tampa Electric people
5 worked very hard to have this material available
6 Tuesday morning at 10:00. And that what we are
7 trying -- the appropriate way to do this, handle the
8 material, would be for them to remain in Tampa
9 Electric Company's possession and allow the parties an
10 opportunity to come see it in our offices. We have
11 tried to do something that is more convenient for the
12 Staff in response to the request that they made of us
13 yesterday, that it be made available here, which is
14 more convenient for Staff.

15 And while this material has some volume to
16 it is because we've been asked to produce backup
17 material that all contains the same information, which
18 is Tampa Electric's projected incremental cost by unit
19 by year in the future, which is the most sensitive
20 information that I can imagine that a company has,
21 particularly as -- where we're involved in a very
22 competitive wholesale market and we are currently,
23 this very day, involved with a negotiation with a
24 company that we believe is a member of FIPUG, which is
25 IMC Agrico. It is a request for proposal, which I'm

1 sure you are familiar with, it's been in the papers,
2 it's been in the trade press as well, where IMC has
3 gone out for a request for proposal.

4 Tampa Electric has submitted a response to
5 it. Brubaker & Associates is the technical advisor to
6 IMC. Mr. McWhirter is the legal adviser for IMC
7 Agrico. We have sat across the table, Mr. Long has,
8 just last Wednesday in a lengthy negotiation with both
9 of those parties present. And the information that we
10 have is not information that we speculate could be
11 used, it is information that could be used today upon
12 our release to it. And it can be used with respect to
13 that particular ongoing negotiation and any similar
14 proceeding or negotiation that Tampa Electric would
15 have with any wholesale customer. So it's extremely
16 sensitive information, and we have just set up
17 something that will provide the information to FIPUG
18 and the Staff and Public Counsel in a much faster way
19 than would be done under normal procedure. You're
20 right.

21 We, first of all, have not received for the
22 second -- there are two waves of material. We
23 requested some materials in response to a request for
24 production for which we requested confidential
25 treatment. Staff looked at those materials and wanted

1 a lot more very detailed information, which we
2 produced, which we have said we produced on this one
3 working day's notice. So I think the company could
4 have taken the position that, well, this needs --
5 should have been done in a request for production, and
6 we've got 30 days to deal with, and we'll see you in
7 30 days, plus five days for mailing. Or we could take
8 this extraordinary effort to make the information
9 available and try to proceed forward.

10 Now, at the deposition, FIPUG chose to have
11 Mr. McWhirter attend. And we had offered these
12 materials to Ms. Kaufman, to any other expert, for
13 FIPUG to work in conjunction with Mr. Larkin or with
14 Staff or any other expert that they chose, but not the
15 people that are sitting across the table from us that
16 can use the information right away.

17 So what we have done, I think, is we have
18 gone well beyond what we are required to do, and it is
19 entirely reasonable. We've accorded all parties a
20 reasonable access to this material, and I think your
21 entering this temporary protective order under the
22 terms that we prescribed earlier just helps facilitate
23 things. What Ms. Kaufman wants to do will delay
24 things.

25 COMMISSIONER DEASON: Ms. Kaufman?

1 **MS. KAUFMAN:** Mr. Deason, I think that we're
2 mixing apples and oranges here. And I'm going to take
3 the opportunity now to respond to what Mr. Willis has
4 said which is the substance of their motion for
5 protective order. And that is different than, I'm
6 assuming, what is in their motion for temporary
7 protective order which, again, I understand it will be
8 asking the Commission to hold these documents
9 confidential until, I guess, after the hearing and
10 then another 21 more days.

11 Now I feel it's incumbent to discuss the
12 allegations that have been made and Tampa Electric's
13 reasons for denying FIPUG access to this information.
14 But I'd kind of like to preface my remarks, and I
15 think that's important to have some perspective on
16 what's going on in this case and not lose sight of the
17 forest for the trees.

18 Tampa Electric filed this case. Tampa
19 Electric has asked for treatment of these wholesale
20 sales which are different than the Commission's policy
21 and different than the norm. Tampa Electric is the
22 party that has burden of proof in this case. Tampa
23 Electric is the party that prefiled the testimony of
24 its witnesses and exhibits, which it says show that
25 there are some sort of net benefit to the ratepayers

1 from their proposed treatment of these sales.

2 The exhibits to Ms. Branick's testimony and
3 the underlying information that Mr. Willis has
4 referred to that FIPUG and your own Staff has
5 requested is what we're talking about in this matter.

6 And this discovery is directly related to
7 Ms. Branick's testimony and it's the heart Tampa
8 Electric's case, as I understand it. I think it
9 probably goes without saying, but I'm going to say it
10 anyway; FIPUG's a party to this case, FIPUG has been
11 granted intervention because they have a substantial
12 interest at stake here, and we want an opportunity to
13 view the very same discovery that your own Staff has
14 asked for and received. And just so you have an idea
15 of what it is, it's a year-by-year analysis of
16 revenues and costs that support Ms. Branick's
17 exhibits. This is FIPUG's Interrogatories 3 and 4 and
18 POD No. 2 to which Tampa Electric has refused to
19 respond. And it's also the information that was
20 supplied again, as I understand it, at Ms. Branick's
21 deposition.

22 The deposition that we were discussing took
23 place yesterday and Tuesday, about a day and a half.
24 It was noticed by your Staff --

25 **COMMISSIONER DEASON:** Let me interrupt just

1 for a second so I can clarify. The information that
2 was provided at the deposition yesterday, which
3 Mr. Willis indicates was done on a one-day turnaround
4 and was done basically on a voluntary basis, is that
5 the same information that is the subject matter of
6 your Interrogatories 3 and 4 in Production of
7 Documents No. 2?

8 **MS. KAUFMAN:** It is. Now, again, as I
9 understand it, when Tampa Electric responded to
10 Staff's discovery, they gave what might be
11 characterized as not complete responses. And, again,
12 as I understand the situation, that is why Ms. Branick
13 was asked to bring these additional materials to her
14 deposition.

15 And I have a copy of the deposition notice
16 if you think it would be helpful for you to review the
17 kind of information that your Staff had asked for.

18 **COMMISSIONER DEASON:** That won't be
19 necessary at this point.

20 **MS. PAUGH:** Commissioner, if I may interrupt
21 for a moment, Staff would like to make a point of
22 clarification. The statement has been made that these
23 documents, particularly the documents produced at the
24 deposition, were done so voluntarily on a one-day
25 notice. It's Staff's position that the information

1 requested in the notice of deposition is subsumed
2 under three discovery requests from Staff, two of
3 which have not been responded to and one of which has
4 been objected to on the basis of timing by Tampa
5 Electric. We just wanted that for the record. Thank
6 you.

7 **COMMISSIONER DEASON:** Thank you. I'm going
8 to allow Ms. Kaufman to continue, and then we'll take
9 that matter back up.

10 **MS. KAUFMAN:** So Ms. Branick's deposition
11 was noticed by your Staff and conducted by your Staff
12 and these materials were requested and I assume were
13 provided and I assume they're the same material as
14 Mr. Willis is talking about in his motion for
15 temporary protective order.

16 As Mr. Willis indicated, my partner,
17 Mr. McWhirter, attempted to attend the deposition and
18 this dispute arose in regard to these materials, and
19 he remained there only for some introductory comments
20 to put FIPUG'S position on the record. So I think
21 that kind of gives you the background here.

22 Now I want to turn to the substance of
23 what's at issue here. And I want to put aside for a
24 moment the question of whether the documents are
25 confidential. We don't think they are, but I want to

1 put that aside for the moment, and I want to suggest
2 to you that to prohibit FIPUG, who is a party to this
3 case, from having access to this information is a
4 clear violation of FIPUG's due process rights in this
5 matter. And I'd also like to suggest they'd be a due
6 process violation if the Commission were to rely upon
7 or to base its decision in this case on documents
8 which a party to the proceeding does not have access
9 to. Now --

10 **COMMISSIONER DEASON:** On another point of
11 clarification. As I understand it, TECO has suggested
12 a way for FIPUG to have access to those documents. I
13 assume that's not acceptable.

14 **MS. KAUFMAN:** And I was just going to move
15 on to that. Exactly.

16 You heard Mr. Willis represent to you that
17 TECO has suggested a way that FIPUG could have access
18 to these documents. And I would suggest to you that
19 TECO's "offer," we'll put it in quotes, is
20 unreasonable on its face.

21 And I just want to go back and state for you
22 my understanding of Tampa Electric's objection to
23 providing FIPUG with these documents, and that is that
24 Mr. Pollock, who is FIPUG's witness in this case,
25 who's filed testimony in this case and who I know the

1 Commissioners are familiar with because he's testified
2 here many times before, Mr. Pollock has been retained
3 by an industrial customer in a matter that's totally
4 unrelated to this docket. Now Tampa Electric says
5 that's enough to withhold the information from
6 Mr. Pollock who FIPUG has retained to provide expert
7 testimony in this case and, as I understand it, from
8 Mr. McWhirter who is FIPUG's long standing counsel of
9 record.

10 And I just want to go back and stress that
11 the information we're talking about here, it's not
12 information that's just of casual interest to parties
13 to the case, it's information, as I understand it,
14 supports the exhibits Tampa Electric wants the
15 Commission to rely upon in making a decision in this
16 case.

17 Now Tampa Electric makes two points about
18 Mr. Pollock's involvement in this other matter, and
19 I'm going to paraphrase my understanding. The first
20 is that Mr. Pollock would take this information and
21 he'd give it to the industrial customer that he's
22 retained by and this would give this customer some
23 sort of unfair advantage. The TECO proposal to the
24 industrial customer that Mr. Willis mentioned is one
25 of a number of proposals the customer is considering

1 in comparison with self-generation alternatives that
2 the customer has. The customer is going to make a
3 choice, the choice is going to be based on the price.
4 Whether or not TECO has offered its best price,
5 whether or not TECO might have been able to have gone
6 lower, that is irrelevant. The customer is going to
7 compare the offers it's received, and it's going to
8 make a choice.

9 They are coming very close to the end of the
10 process, their choices are out there, it doesn't
11 matter to them if maybe TECO could have come in lower.
12 TECO has made its proposal in that matter.

13 **COMMISSIONER DEASON:** Are you indicating
14 that this request for proposal is akin to a seal bid
15 process and you either take this bid or you reject it?
16 Or is there going to be negotiations after the
17 proposals are received?

18 **MS. KAUFMAN:** Mr. Deason, I am not
19 intimately familiar because there are confidentiality
20 constraints surrounding this process. But it is my
21 understanding that the process is nearing conclusion,
22 that the parties -- or the respondents have made their
23 final, if you will, offers and that the customer will
24 make a selection. And, again, whether Tampa Electric
25 has or has not made its best offer in comparison to

1 the other people who have responded, I think is
2 irrelevant. And so I think it's -- there's not going
3 to be any advantage to this customer from Mr. Pollock
4 having this information.

5 And more importantly, I want to discuss the
6 fact that Tampa Electric's proposal to remedy the
7 situation as they see it is for FIPUG to now on the
8 eve of hearing retain another expert. And I assume
9 they would like us to pay for this expert as well so
10 that this other expert can evaluate the material, and
11 I'm not sure what this other expert would do with it
12 since Mr. Pollock has filed testimony, but that's
13 their solution to the problem here. And I think
14 that -- Mr. Pollock's our witness, Mr. Pollock is
15 entitled to understand not only his own testimony, but
16 Tampa Electric's case. And to suggest we should go
17 and retain someone else now is really going to
18 interfere with us putting on our case and with our
19 expert's preparation. So we don't really see that as
20 a viable solution to the problem that Tampa Electric
21 perceives.

22 **COMMISSIONER DEASON:** Well, how do you
23 envision the utilization of this information given
24 that your witness has already filed his testimony?

25 **MS. KAUFMAN:** The way I would envision it is

1 twofold. Number one, of course, it would be in cross
2 examination. And, number two, I think it's important
3 for Mr. Pollock to be able to have the total picture
4 so that he can appropriately respond to cross
5 questions. I think it's important for him to
6 understand what Tampa Electric's methodology and
7 calculations have been in regard to their net benefit
8 argument.

9 So he would be using it in two ways. He
10 needs to have a complete picture of what's going on in
11 this case. I understand that obviously the time for
12 filing additional testimony is passed.

13 **COMMISSIONER DEASON:** Well, how can he be
14 cross examined on things that he has no knowledge of
15 or is not contained in his testimony. Wouldn't those
16 questions be beyond the scope of his prefiled direct
17 testimony and would not be fair cross examination?

18 **MS. KAUFMAN:** Well, that may be, and we
19 don't know until we hear the questions. But I think
20 often the Commissioners engage in colloquy with the
21 witness, and I think the witness often has an
22 opportunity on cross examination to respond to
23 questions based on his knowledge of the case. And I
24 think essentially what Tampa Electric is suggesting --

25 **COMMISSIONER DEASON:** Can -- I'm sorry. Can

1 he respond that if this information indicates this
2 situation, well, then the policy should be this, and
3 he doesn't actually have to know the exact numbers?

4 **MS. KAUFMAN:** Well, I think he could
5 obviously respond in a hypothetical basis, but I don't
6 think that that is as meaningful, and I don't think
7 that is appropriate or fair to FIPUG to hamstring
8 their expert in that way. I think there's one other
9 point --

10 **COMMISSIONER DEASON:** But you do realize
11 that FIPUG chose this witness realizing that this
12 witness was also retained by another member of FIPUG
13 to engage in this request for proposal process?

14 **MS. KAUFMAN:** I agree with you. And, number
15 one, we don't think there's any relevance to Tampa
16 Electric's objection. And, number two, I think if you
17 permit Tampa Electric to hamstring our expert, you are
18 permitting them to influence our choice of experts.

19 We chose Mr. Pollock because of his
20 expertise, his reputation in this area and his
21 knowledge. We thought he was the best guy for the
22 job, and that's why we picked him. And I don't think
23 that we should be prejudiced because he is engaged in
24 another matter which has nothing to do with the case
25 that's before the Commission.

1 I have one last point, I appreciate you
2 letting me go on; and that is, I believe Tampa
3 Electric's position that not only is Mr. Pollock
4 tainted in some way, but that the other members of
5 FIPUG might use this information to the detriment of
6 Tampa Electric's general body of ratepayers. I think
7 that FIPUG's position is on the record before this
8 Commission. I think it's very clear, and now I'm
9 referring to the Gulf Rider case, that you might
10 recall that FIPUG does not support the idea that a
11 utility can offer a special rate to one customer and
12 then ask the general body of ratepayers to pick up the
13 difference. We've made our position on that very
14 clear.

15 Commissioner Deason, I think Tampa Electric
16 has two choices in this case, and I think that the
17 choices are pretty clear. They can provide FIPUG and
18 its expert with the supporting documentation for their
19 exhibits. They can provide that support for the
20 exhibits they want you to rely on in making a decision
21 in this case. If they don't want to do that, their
22 other option is to withdraw those exhibits. I think
23 what they cannot do is to put forward these exhibits
24 in this case, ask you to base a decision on them and
25 at the same time refuse to provide them to a party to

1 the case.

2 MR. LONG: Commissioner, may I be heard
3 briefly?

4 COMMISSIONER DEASON: Yes, please.

5 MR. LONG: I will not repeat anything that's
6 been said, but I do have direct knowledge of the
7 discussions with IMC Agrico, and I, too, am bound by a
8 confidentiality agreement that prevents me from
9 disclosing any of the actual negotiations. But what I
10 can say is that I sat across the table not more than a
11 week ago from Mr. Pollock and Mr. McWhirter and that
12 price is very much an issue in those discussions.

13 The claim that our incremental cost is
14 totally irrelevant to those discussions, I don't think
15 can be supported. The fact is that knowing what our
16 projected incremental costs are will give a party that
17 we are negotiating with direct knowledge of what give,
18 if any, there is in the offer that we have on the
19 table. And given the fact that price is an issue, it
20 just strains credulity that that information would not
21 be relevant and useful to a party negotiating for a
22 power sale.

23 Beyond that, it's not our intent to impugn
24 the integrity of Mr. Pollock or Mr. McWhirter. Quite
25 the opposite, we respect both of them greatly. But in

1 our view, they've put themselves in an impossible
2 situation where they have an unavoidable conflict of
3 interest. If, as we assume, both Mr. Pollock and
4 Mr. McWhirter would scrupulously abide by any
5 protective order that might be issued, they would
6 still be faced with the dilemma of advising their
7 client on whether or not to take an offer that's on
8 the table. And if they have knowledge that suggests
9 to them that that offer is either good or bad or can
10 be improved, it seems to me they have a real conflict
11 in not advising their client at least on that very
12 general level of what the client ought to do.

13 We don't think that they should be put in
14 that position, we don't think it's fair to expose the
15 ratepayers to that kind of risk, and it is a ratepayer
16 issue in our view. We are trying very hard to retain
17 IMC Agrico as customer. They are very important to
18 us, and they're very important in terms of the
19 revenues that they produce.

20 Should we lose them as customer? I think
21 that would be to the detriment of both the company and
22 the ratepayers. We're trying to negotiate an offer
23 that's fair and reasonable and that is competitive.
24 Anything that would undercut our ability to do that,
25 we think would not be in the ratepayers' interest.

1 We have from the beginning made it clear
2 that we understand that IMC -- that FIPUG has a right
3 to review this information, and we have not attempted
4 to exclude them. All that we have asked from the
5 beginning is that they review it in such a way that
6 does not produce the potential harm that I've just
7 described. And there are a number of alternatives
8 open to them to pursue that right.

9 As Ms. Kaufman mentioned, one opportunity
10 would be to simply hire another consultant. Another
11 would be to use the expertise of Mr. Larkin. A third
12 possibility would be to work with Staff pursuant to a
13 protective order. There are many ways that FIPUG can
14 get access to this information and make use of it to
15 the extent that they think that is appropriate. And
16 this is all that we're suggesting.

17 We are not trying to prevent anyone from
18 reviewing and making use of the information to the
19 extent that they feel that it's relevant. But I think
20 clearly the nature of the information, the detailed
21 calculation and projection of Tampa Electric's
22 incremental cost, is the kind of information that
23 would seriously undercut the company's ability to
24 negotiate with others to the detriment of the
25 ratepayers.

1 And, you know, the other aspect of this is
2 the wholesale market. Again, to the extent there are
3 incremental cost information or projected information
4 was made publicly available. That would undercut our
5 ability to make sales on the broker. It would
6 undercut our ability to make other wholesale sales of
7 the kind that are at issue in this proceeding, which
8 we believe create significant net benefits for the
9 ratepayer. So on that basis, Commissioner, we would
10 ask that you consider the alternative that we've put
11 forward.

12 **MS. KAUFMAN:** Mr. Deason, may I respond?

13 **COMMISSIONER DEASON:** Yes, briefly.

14 **MS. KAUFMAN:** Thank you, and I will keep it
15 brief. I think Mr. Long has got it backwards. It's
16 Tampa Electric that has put themselves in this
17 position. And I'm not going to reiterate my litany of
18 what brings us before you today.

19 I appreciate Mr. Long pointing out that he
20 thinks that Mr. McWhirter and Mr. Pollock have a
21 conflict of interest. Obviously, we disagree with
22 that. I think they're men of integrity, and if that
23 were the case that they would be the first ones to
24 recognize that.

25 I also think that Mr. Long's suggestions --

1 and no disrespect meant either to Staff, to Mr. Larkin
2 or anyone else in this proceeding, but we have chosen
3 the person that we think will best represent our
4 interests in this case. That's Mr. Pollock. And we
5 think that suggestions that we now hire someone else
6 or utilize an expert retained by Mr. Howe are totally
7 inappropriate and interfere with our ability to manage
8 the case in the way that we see will be most effective
9 for our client.

10 **COMMISSIONER DEASON:** Staff, do you have any
11 comments?

12 **MS. FAUGH:** Commissioner, Staff is unable to
13 make a recommendation on the motion for temporary
14 protective order insofar as we received it as we sat
15 down for this hearing about 1:25. We have not had an
16 opportunity to research the ramifications of a
17 protective order or a partial protective order. It's
18 my understanding from reading our rule on
19 confidentiality that the confidentiality does not
20 exclude a party, it is as to the public. Beyond that
21 Staff really can't make a recommendation.

22 **COMMISSIONER DEASON:** When is Staff going to
23 be prepared to make a recommendation?

24 **MS. FAUGH:** If we could recess the
25 prehearing for, say, 2 hours -- an hour, and reconvene

1 at 3:15, that will give us an opportunity to discuss
2 this and research it.

3 **MR. WILLIS:** Or one other solution to this
4 is that we can make these documents available in our
5 office. We don't have to file them here. That was
6 for Staff's convenience and not go through the trouble
7 to research it and delay. We make that offer. These
8 will be available in our office just upon reasonable
9 notice.

10 **COMMISSIONER DEASON:** This information is
11 being provide to Mr. Larkin; is that correct?

12 **MR. WILLIS:** Yes, sir.

13 **COMMISSIONER DEASON:** So Public Counsel's --
14 I'll just ask Mr. Howe directly. You are satisfied
15 either way because your expert has access to the
16 information?

17 **MR. HOWE:** Yes, sir, Commissioner Deason.
18 And I should say, part of the reason that we're
19 satisfied with this process is our approach to the
20 issue or issues in this case is more philosophical in
21 nature and it is not as fact specific as the approach
22 taken by others.

23 **COMMISSIONER DEASON:** Okay.

24 **MR. WILLIS:** We'll also make them available
25 to FIPUG if they sign the confidentiality

1 nondisclosure agreement or upon your order.

2 **COMMISSIONER DEASON:** Mr. Willis, are you
3 indicating then that you're withdrawing your motion
4 for temporary protective order and just indicating
5 that information will be available at your offices in
6 Tallahassee?

7 **MR. WILLIS:** We'll just leave it pending and
8 if -- we just think that's the easier way for Staff to
9 deal with it. But if that's -- the other approach is
10 really more acceptable to us.

11 **COMMISSIONER DEASON:** When you say "other
12 approach," that being?

13 **MR. WILLIS:** The approach of having the
14 materials available in our office.

15 **MS. KAUFMAN:** Mr. Deason, I guess I'm
16 confused, you'll have to forgive me. I just want to
17 be clear that this offer to FIPUG to sign a
18 confidentiality agreement, it's still attempting to
19 exclude Mr. McWhirter and Mr. Pollock from reviewing
20 the information.

21 **MR. WILLIS:** That's correct.

22 **MS. KAUFMAN:** Of course that would not be
23 acceptable to FIPUG.

24 **COMMISSIONER DEASON:** I understand.

25 **MS. KAUFMAN:** Thank you.

1 **COMMISSIONER DEASON:** Staff, are you
2 prepared to make a recommendation on the May 19th
3 filing objecting to discovery and a motion for
4 protective order filed by TECO?

5 **MS. FAUGH:** Yes, Commissioner. Staff agrees
6 with the confidentiality request of the May 19th
7 filing.

8 **COMMISSIONER DEASON:** If the objection to
9 discovery is granted and the motion for protective
10 order is also granted, in effect what does that do?
11 The information does not have to be provided to FIPUG
12 unless FIPUG agrees to under the conditions as
13 specified by Mr. Willis?

14 **MS. FAUGH:** I'm sorry, Commissioner, I don't
15 understand the question. Is this relative to the May
16 19th filing --

17 **COMMISSIONER DEASON:** The May 19th filing by
18 TECO, if the objection to discovery is granted as well
19 as the motion for protective order, what does that do
20 in effect? I'm referring to the May 19th filing.

21 Mr. Willis, let me ask you, what is your
22 understanding of the effect if your motion is granted?

23 **MR. WILLIS:** Well, we have specifically
24 asked that we not be required to produce this
25 information to --

1 **COMMISSIONER DEASON:** It only pertains to
2 FIPUG; is that correct?

3 **MR. WILLIS:** To FIPUG, that is all. And our
4 initial objection was not to produce it to FIPUG for
5 the reasons that we stated. Now, since then we have
6 offered this reasonable opportunity to give them
7 access to the material but under the conditions that
8 we have stated.

9 **COMMISSIONER DEASON:** And the protective
10 order that you seek would basically specify that the
11 information sought by FIPUG would not have to be
12 produced?

13 **MR. WILLIS:** Not to FIPUG. But we've
14 offered to do so under the conditions that we have
15 stated. The FIPUG members themselves are not -- I
16 mean, under any condition, it should be produced to
17 representatives of FIPUG, not the underlying FIPUG
18 members.

19 **COMMISSIONER DEASON:** Are there any other
20 preliminary matters, other than the May 19th filing by
21 TECO objecting to discovery and the motion for
22 protective order and the motion for temporary
23 protective order?

24 **MR. WILLIS:** Could we just have one moment
25 to --

1 **COMMISSIONER DEASON:** Surely.

2 **MS. PAUGH:** Commissioner, there is another
3 outstanding item, and that is Tampa Electric's
4 objection to Staff's discovery that was filed on May
5 22nd. The substance of that objection is essentially
6 as to timing. We had requested a shortened discovery
7 period because of the accelerated nature of this
8 docket. Tampa Electric's response was that the rules
9 of civil procedure govern. Taken to its logical
10 conclusion, they would submit that discovery after the
11 hearing.

12 We have requested a couple of times of Tampa
13 Electric a date on which they thought they could
14 provide us with those discovery responses, as well as
15 the discovery responses to Staff's third set. To
16 date, we do not have an answer to that question.

17 **COMMISSIONER DEASON:** Well, I understand
18 there's a question of timing, but wasn't there also an
19 objection to some of the discovery concerning cost
20 information when the standard applied for cost
21 recovery as a market test?

22 **MS. PAUGH:** Yes, that's correct. They have
23 objected to some of the substance of the discovery as
24 well.

25 **COMMISSIONER DEASON:** Mr. Willis?

1 **MR. WILLIS:** One thing I wanted to make
2 clear is that while we -- and this is with respect to
3 timing of getting the material. We have -- while we
4 did interpose an objection which we were required to
5 do within 10 days of filing, we have also diligently
6 moved forward with working toward getting that
7 information, and we are filing today -- we've got it
8 in our office and are working as hard as we can back
9 there to get quite a bit of the information, the
10 responses to Nos. 3, 4, 5, 6 and 7 to Staff's second
11 request for production of documents, and answers 6, 7,
12 14, 16, 17, 20, 21, 24, 25, 26, 27 and 28 to the
13 second set of interrogatories and are working
14 diligently to fill in those that we haven't.

15 What I'm saying is that we are filing them
16 as we complete them, not when they are finally done,
17 in an effort to get Staff the information that they
18 have asked for.

19 **COMMISSIONER DEASON:** And it's still your
20 position that the information requested concerning
21 cost information, affiliate cost information, is not
22 relevant?

23 **MR. WILLIS:** Yes, sir.

24 **COMMISSIONER DEASON:** Okay. Staff?

25 **MS. PAUGH:** We believe that information is

1 vitally important to our analysis of this case,
2 Commissioner.

3 **COMMISSIONER DEASON:** And what about the --
4 Mr. Willis, you're indicating that you have in your
5 office at this time information that you will be
6 filing shortly?

7 **MR. WILLIS:** Yes, sir.

8 **COMMISSIONER DEASON:** When will that
9 information be filed?

10 **MR. WILLIS:** The answers to the discovery
11 that I read earlier will be available this afternoon.
12 Ms. Branick worked -- and her staff worked
13 simultaneous -- well worked over the weekend, worked
14 simultaneously with this day and a half deposition
15 going on, and this morning -- and she brought with her
16 the one copy of the answers. And we're trying to make
17 the copies and assemble it to file, and we expect to
18 do that this afternoon.

19 **COMMISSIONER DEASON:** All right. Any other
20 preliminary matters? Very well. I'm going to start
21 working backwards then with the last item we just
22 discussed.

23 Staff, I'm going to allow you the
24 opportunity to make a filing concerning the need for
25 the cost information. I'm not at this point convinced

1 that information is relevant to this proceeding. So
2 as of now that information does not have to be
3 produced until such a showing is made by Staff and I
4 agree.

5 It appears that TECO is making an effort to
6 provide information on an as timely a basis as
7 possible. To the extent Staff disagrees with that,
8 you can make a filing with me, and I will address that
9 at an appropriate time.

10 Concerning the May 19, 1997, motion for
11 protective order and objection to discovery by FIPUG
12 that was filed by TECO, I'm going to grant that. I am
13 convinced that this information is of a nature that it
14 could be detrimental to TECO and to its ratepayers,
15 that it could be utilized in the very sensitive
16 negotiations that are currently proceeding. I do
17 realize that TECO has made an offer to FIPUG to
18 provide the information under certain conditions
19 that's not acceptable to FIPUG; I understand that. If
20 there is a way to make it acceptable, I guess the
21 parties are still free to negotiate that, but as of
22 this point, I'm granting the motion filed by TECO.

23 As to the motion for temporary protective
24 order, I'm going to reserve ruling on that. It
25 appears that the information is available at the

1 Ausley law firm offices here in Tallahassee. To the
2 extent that is an accommodation to Staff, perhaps that
3 will benefit Staff. If this motion for temporary
4 protective order needs to be ruled upon and the
5 situation with the information being provided in the
6 law offices is not satisfactory, Staff can pursue that
7 by making a filing with the Prehearing Officer. Is
8 there anything else of a preliminary nature?

9 Very well. We'll proceed now to the draft
10 Prehearing Order. We'll begin with Section 1, the
11 case background. Section 2, procedure for handling
12 confidential information. Section 3, prefiled
13 testimony and exhibits. Section 4, order of
14 witnesses.

15 **MR. WILLIS:** Commissioner, Karen Branick did
16 not file rebuttal testimony. When we filed our
17 prehearing statement, we had not finally determined
18 who would be our rebuttal witnesses. But Ms. Branick
19 should be stricken from the rebuttal list.

20 **COMMISSIONER DEASON:** Very well. Any other
21 changes to the order of witnesses?

22 **MS. KAUFMAN:** Commissioner Deason, I don't
23 have a change, I just in an abundance of caution want
24 to advise you and the parties that Mr. Pollock has an
25 engagement to testify in another state the day

1 following this hearing, and I see he's fourth on the
2 list and, hopefully, that won't be a problem, but I
3 just want to let you know that he does need to leave
4 the hearing by 5 p.m.

5 **COMMISSIONER DEASON:** By 5 p.m. of the
6 second day of the hearing?

7 **MS. KAUFMAN:** I thought this was only set
8 for one day, was my understanding.

9 **COMMISSIONER DEASON:** Is it a one-day
10 hearing?

11 **MR. WILLIS:** One day. It's set for
12 June 11th.

13 **COMMISSIONER DEASON:** Does Staff anticipate
14 that this matter is going to be able to be handled in
15 a one-day hearing?

16 **MS. PAUGH:** Repeat the question, please?

17 **COMMISSIONER DEASON:** Is it Staff's
18 intention that this matter can be heard in one day?

19 **MS. PAUGH:** I think it can. It may be a
20 very long day. And because of the extent of discovery
21 that's coming in at this time, it may be that the
22 questioning is more detailed than otherwise would have
23 happened with the docket with a longer time period for
24 discovery.

25 **MR. WILLIS:** Commissioner, we would not

1 object to an earlier start time than the traditional
2 9:30 to ensure that we could finish in a day, which I
3 think is all of our objectives.

4 **COMMISSIONER DEASON:** Well, Staff can pursue
5 that with the Chairman's office to the extent that
6 Staff believes an earlier start time would be helpful.
7 First of all, is there any objection to an earlier
8 start time by any of the parties?

9 **MS. KAUFMAN:** We have no objection.

10 **MR. HOWE:** No objection.

11 **COMMISSIONER DEASON:** Staff can pursue that
12 then with the Chairman's office to see if that can be
13 accommodated. And I would ask Staff to make a
14 notation in the Prehearing Order that Mr. Pollock
15 needs to be off the witness stand by 5:00 so that it's
16 obvious to the presiding officer at the hearing that
17 that accommodation needs to be made.

18 **MS. PAUGH:** Okay.

19 **COMMISSIONER DEASON:** Any other questions or
20 concerns with the order of witnesses? Section 5,
21 basic positions?

22 **MS. KAUFMAN:** Commissioner, we have an
23 objection to the basic position as set forth by Tampa
24 Electric. And, essentially, our objection is to the
25 length of it, which is some five single spaced pages.

1 Looking at the rule and the procedural order in this
2 case, they both ask for a statement of basic position,
3 and I think that what TECO has given us here is in
4 essence, perhaps, a prehearing memoranda. We think
5 it's inappropriate and it's an abuse of the prehearing
6 statement process. If the Commission had wanted a
7 summary of witnesses' testimony and rebuttal of
8 intervenor testimony, I think they would have directed
9 the parties to file a prehearing memoranda, and we
10 would have been glad to do so. We would ask that you
11 direct TECO to file a more appropriate statement of
12 basic position as the other parties have done.

13 **COMMISSIONER DEASON:** What do you consider
14 more appropriate?

15 **MS. KAUFMAN:** Well, 50 words, I know that
16 applies to the posthearing statement, and I don't
17 count words, but I think it's obvious when you review
18 the length and the substance of what's been provided
19 here it's not a statement of basic position.

20 **MR. LONG:** Commissioner, may I be heard?

21 **COMMISSIONER DEASON:** Yes, please.

22 **MR. LONG:** Commissioner, as Ms. Kaufman in
23 effect pointed out, there's nothing in the
24 Commission's rules that specifies a limit for a
25 statement of basic position. And I believe that her

1 pronouncement that this is excessive is arbitrary.
2 Our attempt was to outline our position in a manner
3 that would give you and the other Commissioners a
4 basis for understanding what the issues were, as we
5 saw them, without having to initially spend a lot of
6 time on the testimony. I mean, I'm sure that that
7 will come, but this was an attempt to give you a good
8 overview of at least how we saw the case and how the
9 issues were presented as we saw them. Our attempt was
10 to be helpful to the Commission, to help in providing
11 a full record. And we believe that that is an
12 appropriate thing to do.

13 I would point out that if FIPUG felt that
14 they needed to express their position in more detail,
15 they certainly had the freedom to do that, and that
16 would certainly not have been objectionable to Tampa
17 Electric. So under the circumstances, I don't see
18 that any party is harmed by this, and I would say that
19 I believe that it helps the record.

20 COMMISSIONER DEASON: Staff?

21 MS. PAUGH: Staff has no position on the
22 length of the submission.

23 COMMISSIONER DEASON: Public Counsel, have
24 any position?

25 MR. HOWE: No, sir.

1 **COMMISSIONER DEASON:** Ms. Kaufman, do you
2 care to respond to Mr. Long?

3 **MS. KAUFMAN:** Commissioner, my response is
4 that I agree that the rules do not specify length. I
5 think that practice at the Commission has been that
6 these be paragraph-long statements. I would point out
7 to you that in another case in which I was involved,
8 the Tiger Bay case, a different utility submitted a
9 very, very lengthy statement of basic position and was
10 asked to revise it and submit one of a more
11 appropriate length.

12 I think that the length and the detail of
13 this is excessive, and it does not fulfill the purpose
14 of a statement of basic position. I think that's
15 illustrated by the fact that in some portions they're
16 using a statement to rebut the testimony of other
17 parties to this case. I don't think that that fits
18 within the definition of a basic statement of
19 position. I think that if you permit parties to
20 expound at such length in the Prehearing Statement,
21 you're going to see parties do that, and I think that
22 that's something that the Commission perhaps would
23 want to discourage. I think it's prejudicial to the
24 other parties.

25 **COMMISSIONER DEASON:** Is there anything in

1 the basic position statement that is inaccurate or
2 goes beyond the scope of testimony that's been filed
3 in this proceeding?

4 **MS. KAUFMAN:** Commissioner, I cannot answer
5 that at this time. I have not reviewed it in detail
6 except to note the length and to skim over it to note
7 that there have been comments made in there in an
8 attempt to rebut the testimony of other parties in
9 this case.

10 **COMMISSIONER DEASON:** I'm not going to
11 require that the basic position statement of TECO be
12 modified. I would note, though, that the position is
13 quite long, especially when you compare it to
14 positions of other parties and to historically what
15 has been the length of basic positions in numerous
16 other proceedings at the Commission. There is no rule
17 and there's nothing in the order on procedure in this
18 case that would dictate a certain length. However,
19 Staff may need to consider including such language in
20 future orders on procedure.

21 I would note that at this time it's within
22 TECO's discretion to have a statement of this length.
23 And if that's what they see fit to include, I'm not
24 going to modify it.

25 I would point out to TECO, though, that if

1 you want Commissioners to read things, sometimes
2 conciseness is a good thing.

3 Section 6, issues and positions, beginning
4 with Issue 1.

5 MR. HOWE: Commissioner Deason, on Public
6 Counsel's position on Issue 1, apparently it's been
7 picked up as a repeat of FIPUG's issue. Our position
8 is as stated on Page 2 of our prehearing statement.

9 COMMISSIONER DEASON: That correction will
10 be made. Any other changes or corrections to
11 positions on Issue 1? Issue 2? Issue 3? Issue 4?
12 Issue 5? Issue 6?

13 Issue 7? I have a question for you,
14 Mr. Howe. Your position indicating that the
15 transmission revenue should be flowed through to the
16 retail customer, that's through the fuel adjustment
17 clause, is that your intent?

18 MR. HOWE: Yes, sir.

19 COMMISSIONER DEASON: Okay. Would it be
20 permissible then to include that phrase in your
21 position? Because when I read it, I had a question as
22 to whether you meant just book those above the line or
23 whether you meant an actual dollar-for-dollar flow
24 through the fuel adjustment process.

25 MR. HOWE: It would be reasonable to add it.

1 I guess when this whole issue arose in the fuel
2 docket, its impact would be felt in the fuel, I just
3 treated it as being implicit.

4 **COMMISSIONER DEASON:** I assumed that's what
5 you meant, but I wasn't 100% sure. Staff, can you
6 clarify that then? There's no objection from the
7 public counsel to clarify that's the position.

8 **MS. PAUGH:** We will clarify it.

9 **COMMISSIONER DEASON:** Issue 8? Issue 9? I
10 have a question on Issue 9, and it pertains to the
11 latter part of the issue where the phrase is used
12 "return through retail rates for its wholesale sales."
13 Is that a factual issue that we have in this
14 proceeding, or is it more one of a philosophical
15 issue, Mr. Howe?

16 **MR. HOWE:** I raised it and addressed it as a
17 legal issue. I guess there is a factual issue, though
18 I don't think it would be one subject to dispute
19 whether the company's proposed treatment would require
20 retail customers, through the sharing mechanism the
21 company's asking for, to provide an increment of
22 return on a wholesale sale.

23 **COMMISSIONER DEASON:** Well, I guess the
24 problem I'm having is for purposes of this issue are
25 we to assume that that is the factual situation? And

1 if we assume that, well, then, what benefit is the
2 issue if we don't know, if we just make a statement or
3 a finding concerning a situation which may not exist
4 factually.

5 **MR. HOWE:** Your point's well taken. I guess
6 the issue itself could be clarified to make it
7 conditioned upon that. In other words, if the
8 company's proposal were to require a retail return for
9 a wholesale transaction, then continue with what it
10 has here, would the Commission exceed its
11 jurisdiction.

12 **COMMISSIONER DEASON:** And is it your
13 intention that you are going to make that showing in
14 this case, that there is a retail return -- I'm sorry,
15 a wholesale return of being earned through retail
16 rates?

17 **MR. HOWE:** Yes, sir. I think the record of
18 the proceeding at the conclusion of the hearing will
19 demonstrate that.

20 **COMMISSIONER DEASON:** But that's not a
21 separate issue anywhere, or does it just kind of fall
22 out from all the other issues?

23 **MR. HOWE:** A fallout from the other issues.

24 **COMMISSIONER DEASON:** Okay. I have a
25 question for TECO. I had some difficulty

1 understanding the position as it pertains to the
2 possible relitigation of matters that were addressed
3 in a previous Commission order. How does this issue
4 relate to the question of potential relitigation?

5 **MR. WILLIS:** Well, Commissioner, we had --
6 last summer I think it was -- we tried the issue of
7 how the costs should be treated in the fuel adjustment
8 proceeding. And that what we believe here is that by
9 raising this issue that Public Counsel really is
10 trying to retry those issues again. And that it's
11 through a little different angle of maybe a little --
12 more of clarification of what they presented earlier.
13 But, in essence, the position was that if there was
14 any effect on the fuel adjustment clause, that
15 regardless of the net benefits of the transaction,
16 then you should credit average fuel. So we, in
17 essence, feel that this is just retrying that case
18 again.

19 **COMMISSIONER DEASON:** But was there any
20 finding in that order concerning the extent of the
21 Commission's jurisdiction?

22 **MR. WILLIS:** No, sir.

23 **COMMISSIONER DEASON:** Okay. Any other
24 questions on Issue 9? We'll move then to Section 7,
25 the exhibit list. Any changes or corrections to that

1 list? Section 8, proposed stipulations, I assume
2 there are no proposed stipulations.

3 MS. FAUGH: That's correct, Commissioner.

4 COMMISSIONER DEASON: Section 9, pending
5 motions. Are there any other motions that have not
6 yet been addressed by the Prehearing Officer at this
7 time?

8 MS. FAUGH: None that we are aware of.

9 COMMISSIONER DEASON: Is there any other
10 matters to be brought to the Prehearing Officer at
11 this time?

12 MS. FAUGH: None from Staff at this time.

13 COMMISSIONER DEASON: Any of the parties
14 have any final matters?

15 MR. WILLIS: One moment.

16 There should be listed an addition to the
17 exhibit list, Mr. Ramil has a rebuttal exhibit which
18 should be added to the exhibit list. Is it JBR-1?

19 COMMISSIONER DEASON: Mr. Ramil has an
20 exhibit in rebuttal?

21 MR. WILLIS: Yes, sir.

22 COMMISSIONER DEASON: And it's being
23 designated as what?

24 MR. WILLIS: JBR-1, is the rebuttal exhibit
25 of John B. Ramil.

1 **COMMISSIONER DEASON:** I understand that --
2 first of all, is there anything else concerning the
3 exhibit list?

4 I understand that there were a number of
5 late-filed exhibits requested at yesterday's
6 deposition. Is that correct, Staff?

7 **MS. PAUGH:** That's correct, Commissioner.

8 **COMMISSIONER DEASON:** Has a date been set
9 for the filing of those late-filed exhibits?

10 **MS. PAUGH:** Tampa Electric has indicated
11 that they will try to submit the late-filed exhibits
12 by Wednesday, June 4th.

13 Would it be possible for Staff to renew its
14 request for a date from Tampa Electric as to when it
15 could respond to Staff's second and third sets of
16 discovery?

17 **MR. WILLIS:** Yes, give us a moment. (Pause)

18 By June 4th at the outside. We're working
19 as hard as we can to do it, you know, quicker than
20 that.

21 **MS. PAUGH:** Thank you, Mr. Willis.

22 **COMMISSIONER DEASON:** Okay. Anything else?
23 Hearing none, this prehearing conference is adjourned.
24 Thank you all.

25 (Thereupon, the hearing concluded at 2:45 p.m.)

1 STATE OF FLORIDA)
2 :
3 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3 I, ROWENA NASH Official Commission Reporter,

4 DO HEREBY CERTIFY that the Prehearing
5 Conference in Docket No. 970171-EU was heard by the
6 Florida Public Service Commission at the time and
7 place herein stated; it is further

8 CERTIFIED that I stenographically reported
9 the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript, consisting of 53 pages, constitutes a true
12 transcription of my notes of said proceedings

13 DATED this 30th day of May, 1997.

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13 ROWENA NASH
14 Official Commission Reporter
15 (904) 413-6736