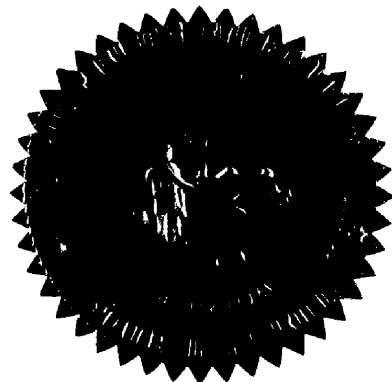


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010001-EI

In the Matter of:

FUEL AND PURCHASED POWER COST
RECOVERY CLAUSE AND
GENERATING PERFORMANCE
INCENTIVE FACTOR.



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PROCEEDINGS: ORAL ARGUMENT

BEFORE: COMMISSIONER LILA A. JABER
Prehearing Officer

DATE: Thursday, May 31, 2001

TIME: Commenced at 1:00 p.m.
Concluded at 2:10 p.m.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: TRICIA DEMARTE
Official FPSC Reporter

1 APPEARANCES:

2 JAMES D. BEASLEY, Ausley & McMullen, Post Office Box
3 391, Tallahassee, Florida 32302, appearing on behalf of Tampa
4 Electric Company (TECO).

5 VICKI GORDON-KAUFMAN, McWhirter, Reeves, McGlothlin,
6 Davidson, Decker, Kaufman, Arnold & Steen, P.A, 117 South
7 Gadsden Street, Tallahassee, Florida 32301, appearing on behalf
8 of Florida Industrial Power Users Group (FIPUG).

9 STEPHEN C. BURGESS, Deputy Public Counsel, Office of
10 Public Counsel, 111 West Madison Street, Room 812, Tallahassee,
11 Florida 32399-1400, appearing on behalf of the Citizens of the
12 State of Florida.

13 WILLIAM COCHRAN KEATING, IV, Florida Public Service
14 Commission, Division of Legal Services, 2540 Shumard Oak
15 Boulevard, Tallahassee, Florida 32399-0870, appearing on behalf
16 of the Commission Staff.

17

18 ALSO PRESENT:

19 DENISE JORDAN, Tampa Electric Company
20 TODD BOHRMANN, FPSC Division of Safety & Electric
Reliability

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P R O C E E D I N G S

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COMMISSIONER JABER: Counsel, read the notice.

MR. KEATING: Pursuant to notice issued May 24th, 2001, this time and place have been set for a motion hearing in Docket Number 010001-EI, fuel and purchased power cost recovery clause and generating performance incentive factor.

COMMISSIONER JABER: Let's take appearances.

MR. BURGESS: I'm Steve Burgess. I'm here for Rob Vandiver who is the counsel of record for Public Counsel's Office representing the Citizens of the State of Florida.

MS. GORDON-KAUFMAN: I'm Vicki Gordon-Kaufman. I'm with the McWhirter, Reeves Law Firm, and I'm here on behalf of the Florida Industrial Power Users Group.

MR. BEASLEY: I'm James D. Beasley with the law firm of Ausley & McMullen. I'm representing Tampa Electric Company. With me at the table today is Denise Jordan who's director of rates and planning for Tampa Electric Company.

MR. KEATING: Cochran Keating, appearing on behalf of Commission Staff.

COMMISSIONER JABER: Okay. Mr. Keating, I understand that the parties are amenable to 20 minutes per side of argument; is that correct?

MR. KEATING: That's my understanding.

COMMISSIONER JABER: All right. But before we get started, I really would like to establish which discovery

1 remains in dispute. It's my understanding from talking to
2 Staff counsel that you have -- the parties have reached
3 resolution on some of the discovery. So let me make sure that
4 I'm clear on which ones remain in dispute. Interrogatory
5 Number 1.

6 MR. BEASLEY: That remains --

7 MS. GORDON-KAUFMAN: Yes, ma'am.

8 MR. BEASLEY: -- to be addressed.

9 COMMISSIONER JABER: Interrogatory Number 2.

10 MR. BEASLEY: As does Interrogatory 2.

11 COMMISSIONER JABER: Number 7.

12 MS. GORDON-KAUFMAN: Yes, ma'am.

13 MR. BEASLEY: That's correct.

14 COMMISSIONER JABER: Interrogatories 11A and 11C.

15 MS. GORDON-KAUFMAN: Right.

16 MR. BEASLEY: That's correct.

17 COMMISSIONER JABER: 18.

18 MS. GORDON-KAUFMAN: Yes.

19 MR. BEASLEY: Correct.

20 COMMISSIONER JABER: Document Request Number 1.

21 MR. BEASLEY: That's correct.

22 COMMISSIONER JABER: Document Request Number 3.

23 MS. GORDON-KAUFMAN: That's correct.

24 COMMISSIONER JABER: All right. Now, Mr. Burgess,
25 are you here to observe?

1 MR. BURGESS: Yes, Commissioner, I'm here to observe,
2 as well as simply if I may so state our position in support of
3 FIPUG's seeking this discovery that we think is discoverable.

4 MS. GORDON-KAUFMAN: Commissioner Jaber, I'd like to
5 go back for a second to the items that have been resolved, and
6 there's two. First of all, as to POD Number 2, Tampa Electric
7 has agreed to provide us the system status reports without a
8 need for a confidentiality agreement. However, because there's
9 been some time passed since we filed our motion and we have
10 come to this hearing today, we just wanted to request that they
11 provide those to us through the end of May or whatever their
12 most current information is. I think our request asked through
13 the end of February at the time we actually -- we originally
14 filed our discovery.

15 COMMISSIONER JABER: So you'd like to modify the
16 request to include the end of May -- information related to the
17 end of May.

18 MS. GORDON-KAUFMAN: Or whatever is their most
19 current information. I don't know if they have it through the
20 end of May or the beginning of the May. But wherever we are at
21 the time they provide it to us, we'd like to have the most
22 current information.

23 COMMISSIONER JABER: Have you established through
24 your discussions when they would provide it to you?

25 MS. GORDON-KAUFMAN: No. It's my understanding that

1 we are going to go on-site and look at that. And we will make
2 arrangements with Tampa Electric to do that.

3 MR. BEASLEY: That's right.

4 COMMISSIONER JABER: Mr. Beasley, do you have any
5 problems with providing it through the date that you provide
6 the actual response?

7 MR. BEASLEY: We'll be happy to do that.

8 COMMISSIONER JABER: Thank you.

9 MS. GORDON-KAUFMAN: And I had one other
10 clarification, and it relates to Item 11E, which deals with
11 cost information, which is also at issue in some of the items
12 we're going to discuss today. And Tampa Electric responded to
13 that request saying, you can have this information if you sign
14 a confidentiality agreement. And as with some of the other
15 items, I think if there's overlap, we're going to discuss today
16 whether or not that's necessary to review the information.

17 COMMISSIONER JABER: Whether it's necessary to enter
18 into a confidentiality agreement?

19 MS. GORDON-KAUFMAN: Yes, ma'am.

20 COMMISSIONER JABER: All right.

21 MR. KEATING: Just for clarification that was 11E?

22 MS. GORDON-KAUFMAN: Yes.

23 MR. KEATING: Okay.

24 COMMISSIONER JABER: And that was not part of your
25 motion to compel.

1 MS. GORDON-KAUFMAN: It was not, but I believe it's
2 the same sort of information that's asked for in 18, so I just
3 wanted to be clear.

4 COMMISSIONER JABER: Mr. Beasley, are you clear on
5 that?

6 MR. BEASLEY: I'm not, but I can defer and hear
7 Ms. Kaufman when she's ready to address that. We're ready to
8 respond on 18 because that was included in the motion to
9 compel.

10 COMMISSIONER JABER: That's fine. All right. Let's
11 go ahead and get started. Ms. Kaufman, you have 20 minutes.
12 It's your motion; we'll let you start.

13 MS. GORDON-KAUFMAN: Thank you, Commissioner Jaber.

14 COMMISSIONER JABER: Mr. Beasley, you're next.

15 MR. BEASLEY: Commissioner, if I could suggest -- I
16 don't know how Vicki wants to proceed, but it might do well to
17 go item by item after each party makes a preliminary statement,
18 if that's acceptable, where we would address each item as we go
19 by it.

20 COMMISSIONER JABER: What I envisioned was that 20
21 minutes would include all of the items and that you would go in
22 the order of the motion to compel, and you would respond in the
23 same fashion.

24 MR. BEASLEY: That's fine.

25 COMMISSIONER JABER: Is that all right?

1 MS. GORDON-KAUFMAN: So you would like me to go
2 through all the items?

3 COMMISSIONER JABER: Yes.

4 MS. GORDON-KAUFMAN: That's fine. Thank you,
5 Commissioner Jaber. We appreciate you hearing this motion
6 today. And before I get into the individual items, I thought
7 that it might be helpful to you if I gave you a little bit of
8 background, at least from FIPUG's perspective, as to why we're
9 here today, how we came to this point in the proceeding.

10 I know that you know that the Florida Industrial
11 Power Users Group is an ad hoc group of very large consumers of
12 electricity. They have very, very large power bills every
13 month. We're talking millions of dollars a month, and I also
14 know that you know from sitting on the fuel adjustment that
15 they have been long-time participants in the fuel adjustment
16 proceedings and have been very active in trying to keep a
17 handle on their fuel costs and take a look at the activities of
18 the utilities.

19 FIPUG's very concerned, and I know the Commission is
20 as well, with the continuing increases in fuel prices. And we
21 were very concerned about the last mid course correction, which
22 as I know again that you know was quite large, and we appeared
23 at the agenda conference and discussed that with the
24 Commissioners. When we were discussing the mid course
25 correction, FPL and FPC said to the Commission, a lot of the

1 reason for this mid course request has to do with the rising
2 prices of natural gas, and though we took issue with some of
3 their projections and whatnot, that makes some sense. Tampa
4 Electric came in as well and said, well, we need a mid course
5 correction too. And we were puzzled by that because Tampa
6 Electric predominantly is a coal burning utility, and you'd
7 think they would have been in good stead during this time of
8 increase of gas prices.

9 So we've been looking at their fuel information, and
10 we have become very concerned, and we have said this to the
11 Commission before that one reason that we see for Tampa
12 Electric's continuing fuel increases is the fact that we
13 believe they are engaging in wholesale transactions using
14 capacity that should be dedicated to their retail customers.
15 Then when there's a capacity shortfall or a capacity
16 constraint, Tampa Electric has to go out onto the wholesale
17 market and buy capacity to serve its retail customers, and it's
18 our view that it typically pays much more for that capacity
19 than it would -- than the price would be for its own generation
20 which it has sold off into the wholesale market.

21 I want to emphasize that this activity affects all
22 customers, not just FIPUG, not just interruptible customers of
23 which some of FIPUG members are interruptible customers. But
24 as to interruptible customers, their costs are exacerbated
25 because often Tampa Electric will buy through for them, meaning

1 rather than interrupting them, they will go out on the
2 wholesale market and purchase capacity, which again is greatly
3 in excess of the cost of TECO's own generation.

4 Last time, just about this year -- this time of year,
5 FIPUG filed what we entitled a motion for mid course protection
6 in the fuel docket, and we raised some of these issues before
7 the Commission. The Commission listened to us, gave us due
8 consideration, denied our motion. And one of the reasons our
9 motion was denied is the Commission said, well, you don't have
10 enough facts here to back up your allegations. And as I
11 recall, they said to us, this issue is going to be looked at
12 very carefully in the November fuel hearings, and I believe
13 Staff was directed as well to look at this issue of the
14 wholesale versus retail. So part of the reason we're here
15 today is, we're attempting to conduct discovery on this issue
16 and on other issues that are germane to your fuel
17 consideration, and that's what brings us to our motion to
18 compel.

19 Now, as I've said, FIPUG tries do the best job that
20 it can to monitor utility activity, and we oftentimes have
21 complained that we have a hard time doing this for several
22 reasons. The first reason is that utilities have all the
23 information. I mean, it's their system; it's their dispatch;
24 they have all the information. We don't have any other place
25 to get it, and often they object to providing it to us.

1 Secondly, they often claim that the information is
2 confidential. That's another way, in our view, to shield it
3 from public disclosure, to shield it from the customers who are
4 footing the bill. And so we often have a difficult time, and
5 again, that's why we felt it necessary to take the step of
6 moving to compel on to some of this discovery that's
7 outstanding. That's the -- what I view as the factual basis.

8 The legal standard that you have to apply when you
9 look at the motion I think -- I hope we could all agree on.
10 And it's set out in Rule 1.280(b) -- I mean, 280(b)(1) of the
11 Florida Rules of Civil Procedure. And it says, parties may
12 obtain discovery of relevant nonprivileged information if the
13 information sought appears reasonably calculated to lead to the
14 discovery of admissible evidence. It's a very broad standard,
15 and, you know, we're in the discovery mode now; we're not in
16 the trial mode.

17 The Florida Supreme Court has had occasion, many
18 occasions actually, to address this standard, and I just
19 brought one case, but I wanted to read to you how the Florida
20 Supreme Court has characterized this standard to apply to
21 discovery disputes. And the Court has said, and I'm quoting
22 here, parties may obtain discovery regarding any matter not
23 privileged that is relevant to the subject matter of the
24 pending action whether it relates to a claim or a defense of
25 the party seeking discovery or the claim or defense of any

1 party, including the existence, description, nature, custody,
2 condition, and location of any books, documents, or other
3 tangible things, and the identity and location of persons
4 having knowledge of any discoverable matter. It is not ground
5 for objection that the information sought will be inadmissible
6 at the trial if the information sought appears reasonably
7 calculated to lead to the discovery of admissible evidence.
8 And that standard was set forth in its *Amente v. Newman*, which
9 is 653 So.2d 1030. So, as I said, the standard for you to
10 apply is a very broad one in terms of discovery. That's my
11 background of how we got here, and now I'm prepared to go
12 through the items that are outstanding.

13 The first one I think that is still in dispute is
14 Interrogatory Number 1. And Interrogatory Number 1 asked Tampa
15 Electric to identify any contract for the purchase of energy or
16 capacity to which Tampa Electric or any affiliate was a party.
17 And if I understand the dispute correctly, Tampa Electric
18 doesn't object to identifying contracts to which it was a
19 party, but it objects to providing information about its
20 affiliate companies. I think I'll, first of all, start and
21 tell you that, of course, this Commission has the authority to
22 require the production of this information in 366.093(1). It
23 gives you access to public utility records and records of the
24 utility's affiliated companies. So clearly, you have the
25 authority to require it. I believe at some point during the

1 discussions we've had with Tampa Electric they have said, well,
2 you know, they don't have the ability to require their
3 affiliate to produce this kind of information, and clearly, the
4 Commission does have that authority.

5 COMMISSIONER JABER: So, Ms. Kaufman, so that I'm
6 clear, you are asking for both then. You are asking for
7 contracts between TECO and its affiliates for purchased power;
8 correct?

9 MS. GORDON-KAUFMAN: Yes, both.

10 COMMISSIONER JABER: And for contracts of the
11 affiliates with other companies.

12 MS. GORDON-KAUFMAN: Yes, ma'am. And I don't think
13 there's a dispute as to the first category of information.
14 It's only as to the affiliates' activities.

15 And we think going back to the standard that we
16 discussed, clearly, the activities of affiliated companies,
17 what kind of purchases, what kind of sales, what kind of deals
18 they are able to craft in the market, whether the regulated
19 entity is able to do is relevant to your inquiry. When I was
20 thinking about this, I was going to say it's almost a
21 benchmark, and that's probably not the correct word, but it's
22 certainly relevant to a consideration of whether the utility is
23 acting prudently if you take a look at the activities of its
24 sister companies of which Tampa Electric has several, as you
25 know, coal company, Hardee power services. They have several

1 affiliates directly involved in the generation production and
2 the sale of electricity. So we think that's clearly relevant
3 and certainly under the standard that we have already
4 discussed.

5 Interrogatory Number 2, it had several subparts, and
6 I believe the subparts that remain in dispute are A, B, and E.
7 And essentially what this interrogatory asks for is information
8 about generation and transmission capacity in the retail rate
9 base that's been used to serve wholesale contracts in the
10 1999 to 2002 period. It asks for how much capacity was
11 committed to the wholesale market, what the value of the
12 capacity was, and what the revenue was that was received;
13 again, I think all relevant to the inquiry. Now, Tampa
14 Electric has said, well, we don't have that information; the
15 Commission doesn't make us report it. And in my view, Tampa
16 Electric has confused the reporting requirements to this
17 Commission with the discovery standard, which is the production
18 of relevant evidence or evidence that might lead to admissible
19 information.

20 In order to make these sales, Tampa Electric's got to
21 know it's got capacity available, it's got to know how much,
22 it's got to know where it's selling to, and it has to know what
23 it's worth. So, you know, I think that they may not collate or
24 collect that information for reporting purposes to you-all, but
25 they certainly have the ability to provide it, and we think you

1 should make them answer this question.

2 I think the next item in dispute is Number 7. Number
3 7, I'm somewhat surprised that there's a dispute over this, but
4 essentially what we're asking Tampa Electric to do here is to
5 explain to us any differences that exist in their calculation
6 of fuel costs for cogenerators versus the sales that are
7 described in Interrogatory 6, which is their wholesale sales.
8 And what Tampa Electric has said is, well, you can look at the
9 COG-1 tariff and Interrogatory 6 and figure it out yourself.
10 We're not asking Tampa Electric for a generic statement on the
11 differences between their COG-1 tariff and their wholesale
12 calculations. We want them to tell us, how do you make these
13 calculations, and what are the differences, if any. So it's a
14 pretty specific question, and I don't think that it is a
15 sufficient answer to refer us to their tariff.

16 Next, we have 11A, C, and 18. Let's talk about 11A
17 and C first, if that's okay. 11A and C -- well, first of all,
18 Question 11 relates only to periods of interruption; and A
19 asked, tell us what generating units were operating when there
20 was an interruption; and C asks, tell us which generators were
21 on a forced outage, and we're asking for the 24 hours before
22 the day of and the day after. And obviously, this is to get a
23 look at Tampa Electric's system, see what they were doing, and
24 compare it with some of the other information in terms of
25 wholesale purchases and sales.

1 Eighteen, I believe, asks for incremental cost
2 information, and again, to make that comparison between what's
3 going on in their wholesale transactions and their retail
4 transactions.

5 Now, if I understand the objection to these
6 interrogatories, one is that I believe on 18 the information is
7 confidential. And let me address that first because that will
8 be quicker. And we offered to Tampa Electric to sign a
9 confidentiality agreement for information for the past 18
10 months because, you know, though, I won't -- I don't know I'd
11 go so far as to admit, I guess there's an argument there that
12 perhaps it might be sensitive. We certainly don't see any
13 reason to keep information from 1998 and 1999 confidential.
14 It's old information; it's stale; and it should be made
15 available. And so we do object to having to sign an agreement
16 for that.

17 And that is the same argument as to the 11E because
18 it's the same kind of incremental cost information. But I
19 think that the more -- the argument that Tampa Electric presses
20 more strongly than the confidential one is the fact that they
21 say it would be burdensome for them to provide the information.
22 And I point out to you, they don't say the information is not
23 relevant, they just say, it would be a lot of work for us to
24 have to do this. And I would say to you that just because they
25 would have to do some work to collect this information is not

1 an appropriate discovery objection. Customers are entitled to
2 have the system operation information and compare that to the
3 times that generation was purchased in order to review the
4 prudence of the actions the utility has taken and to order --
5 and in order to check and see if the prices were being charged
6 are appropriate.

7 Now, Tampa Electric says that we're asking for this
8 information in an attempt to punish them in some way, and I
9 just want the record to reflect that that's not the case, but
10 this is legitimate information that we're entitled to review.
11 And I think, Commissioner Jaber, that your job here is, you're
12 going to have to weigh the fact that Tampa Electric might have
13 to go to some effort to collect the information, and you have
14 to weigh that against FIPUG's need to have it. And I would ask
15 you as you make that judgment to consider two things. And the
16 first thing is, number one, we don't have any other way, we
17 don't have any other place to get this information. If we
18 don't get it from TECO, we won't have it, and we won't be able
19 to make a showing that you found deficient on our mid course
20 protection petition. I'd also say to you that there's a
21 tremendous amount of money at stake here, and we all know that
22 there is more money going through the fuel clauses and the
23 other clauses than are even at issue in rate cases. Ratepayers
24 are entitled to see this information to see if the utility is
25 acting in the best interest of the ratepayers.

1 The case law is absolutely clear. Just because it
2 would take some effort or it would cost some money for a
3 company or, you know, for a plaintiff or defendant to respond
4 to a discovery request, that is not a valid objection. And I
5 want to cite you some case law on that. We cited a couple of
6 cases in our motion. One of them was the Goodyear Tire and
7 Rubber case; that's at 359 So.2d 1200. And that case involved
8 a request for production of a very long list of items at a
9 Goodyear I think it was a tire plant. And one of the
10 objections was that the production was too burdensome, and so
11 they shouldn't have to do it. And the Court said that such an
12 objection would be appropriate only to the extent the request
13 was for irrelevant material, which is not the case here. And
14 the Court said, and I quote, the mere fact that compliance with
15 the Court's order will be costly is not in and of itself a
16 ground for valid objection.

17 In addition, I have some other cases. Carson versus
18 City of Fort Lauderdale, which is at 173 So.2d 743. In that
19 case, the City of Fort Lauderdale received about 200
20 interrogatories and 59 requests for admission, and they said,
21 gosh, it would take us a long time, a lot of research to
22 collect all this information. And the Court said, the fact
23 that the parties are going to have to do some research and
24 compile data is not a sufficient objection.

25 Fischer versus Hofman Wholesale Nurseries, 487 So.2d

1 413, was a breach of contract action involving an accountant.
2 And he was asked to break down the hours that he had worked by
3 client. And he said, again, that is a whole lot of work, that
4 would be burdensome, and again, the Court found the information
5 relevant to the lawsuit there, and said, you are going to have
6 to do this.

7 And I have one more case that's, you know, closer to
8 home for all of us, and that's the Southern Bell versus Deason
9 case, 632 So.2d 1377. And you might remember that case; I know
10 that I do. And that was, a dispute arose between the Public
11 Counsel and BellSouth in regard to giving Bell access to some
12 audits. And in that case, as a contrast with our situation,
13 Public Counsel could have reproduced or duplicated the audits
14 from analyzing a great deal of information, which again I
15 emphasize is not the case here, but nonetheless, the Court
16 found that even though it would have been possible for the
17 Public Counsel to do that, it would have been unrealistic to
18 request, and it required Bell to produce the audits to the
19 Public Counsel, which they did. So the point of the recitation
20 of case law is to let you know that the fact that Tampa
21 Electric may have to put out some effort to provide this
22 relevant information is not a valid objection and that you
23 ought to not entertain it.

24 I think that that's all the interrogatories. I hope
25 I haven't missed any that are in dispute. And then we have two

1 production requests. The first one asks for all documents
2 reviewed or rely upon in responding to the interrogatories.
3 And again, I was surprised to get an objection because this is
4 a standard production request, and we simply want to see the
5 backup information that supports any interrogatory answers.
6 And to me, it's akin for -- it's akin to the situation where
7 you receive, say, a spreadsheet in a case, and you say to the
8 party, I would like to see the backup information. And that's
9 what we're asking for here. It's a check on the information
10 that has been provided.

11 I think we said that POD2 has been resolved. And
12 then the last production request has to do with the
13 documentation regarding this Commission's directions to Tampa
14 Electric as to the FMPA/Lakeland separation. And we were a
15 little confused by Tampa Electric's response originally because
16 they said, I believe, that they didn't have any documents. And
17 then they referred to these HAP, historical allocation pricing,
18 programs. It's my understanding now, and Mr. Beasley can
19 correct me if I'm wrong, that they will agree to produce those.
20 We would ask they produce them for the entire term of the
21 contract. And again, we would object to signing a protective
22 agreement. These reports, some of them go back to 1996 is my
23 understanding. The sale went from December 16th, '96 through
24 March 15th, 2001. It's over now.

25 COMMISSIONER JABER: Let me make sure I understand.

1 TECO -- you believe TECO is willing to produce the documents as
2 long as you sign a confidentiality agreement?

3 MS. GORDON-KAUFMAN: That's my understanding.

4 MR. BEASLEY: That's correct.

5 MS. GORDON-KAUFMAN: So I guess the remaining
6 dispute, if you will, on that just has to do with our view that
7 that should not be required, that there is nothing confidential
8 in that information. And you might have sensed that this
9 question of confidentiality is one that FIPUG is very sensitive
10 to and that we strongly object to this information being
11 shielded from the public view. And I know that in the telecom
12 area routinely parties enter into these agreements between
13 them, between different telecom companies for the protection of
14 information, but we think this is a very different situation.
15 We think --

16 COMMISSIONER JABER: Educate me on what happens in
17 electric with respect to confidentiality. Traditionally, is
18 the information provided with a notice of intent to seek
19 confidential classification?

20 MS. GORDON-KAUFMAN: Well, I can only speak for the
21 situations in which FIPUG has been involved. They will not
22 provide us with the information at all unless we execute a
23 confidentiality agreement. And as I said, this is an issue
24 that's very -- it's near and dear to our hearts, and we
25 strenuously object to keeping this information secret. We

1 don't think there's been any appropriate justification for it,
2 and we are very interested in this information being in the
3 public domain. And as I said, I would contrast that with some
4 of the other cases we might be familiar with in the telecom
5 arena where two competitors might say, okay, we'll execute an
6 agreement, and we will provide you with this information.
7 We're talking about customers here that are paying the bill
8 that have a right to see this information and review it. And I
9 think that that's it.

10 COMMISSIONER JABER: Okay. Let me ask you some
11 questions before Mr. Beasley makes his oral argument. With
12 respect to Interrogatory 1 --

13 MS. GORDON-KAUFMAN: Yes, ma'am.

14 COMMISSIONER JABER: -- regarding the wholesale
15 transactions, I do recall the discussion at agenda by the
16 Commissioners asking that we make sure that that issue is
17 covered in the fuel adjustment hearing. Have you-all had an
18 issue ID conference yet, an issue ID meeting between the
19 parties and the Staff?

20 MR. KEATING: Not in the fuel adjustment docket.

21 COMMISSIONER JABER: All right. So you have not yet
22 identified that issue.

23 MR. KEATING: Not formally. Typically, we'll have
24 preliminary issue lists filed roughly in the October time frame
25 before the November hearing in the fuel adjustment docket.

1 Where Staff has wished to raise issues to be addressed in the
2 fuel hearing, we found that it's better for us to raise those
3 earlier, perhaps in the summer at some point, so that the
4 parties are on notice that the testimony needs to address those
5 issues.

6 COMMISSIONER JABER: Ms. Kaufman, is it your
7 assertion that Interrogatory 1 relates to that potential issue?

8 MS. GORDON-KAUFMAN: Absolutely.

9 COMMISSIONER JABER: All right. To the degree that
10 TECO's assertion that some of the responses would be burdensome
11 to produce, is FIPUG willing to go to TECO's offices and
12 inspect the documents and copy them themselves?

13 MS. GORDON-KAUFMAN: Absolutely. And we have done
14 that in the past.

15 COMMISSIONER JABER: All right. And with respect to
16 the production being costly, is FIPUG willing to reimburse for
17 the costs associated with producing any of those documents?

18 MS. GORDON-KAUFMAN: No, ma'am. I don't think that's
19 our burden.

20 COMMISSIONER JABER: Do you know if the Rules of
21 Civil Procedure speak to that at all or any of the cases?

22 MS. GORDON-KAUFMAN: I don't believe that the rules
23 speak to that. Whether that it's been required in an
24 individual case, I can't tell you. I haven't done any
25 exhaustive survey on that issue. I know that in a prior case

1 when production was required, that there was no requirement on
2 FIPUG that we reimburse them.

3 COMMISSIONER JABER: And with respect to the time
4 period for producing all of the responses, the interrogatories,
5 and the PODs, do you have a recommendation or a request for me
6 for the time?

7 MS. GORDON-KAUFMAN: I wanted to look back and see
8 when we filed our discovery. I think we filed our discovery in
9 March. You know, we're not intending to be unreasonable.
10 We're at June 1st. I don't have the fuel testimony filing
11 schedule with me. Do you know when intervenor testimony -- I
12 would just like to have the information in time for us to make
13 use of it in our testimony.

14 MR. KEATING: Roughly October 10th time frame.

15 MS. GORDON-KAUFMAN: Well, I would say then if we got
16 it within, you know, 30 days, if we got it by July 1, that
17 would be sufficient.

18 COMMISSIONER JABER: Okay. Thank you. Mr. Beasley.

19 MR. BEASLEY: Thank you, Commissioner. Although 23
20 in number, if you count all the subparts of FIPUG's
21 interrogatories, it comes to a total of 62 with 6 additional
22 requests for production of documents. We originally filed
23 specific objections only with respect to Interrogatories 1, 4,
24 11A and C, and 18, along with Document Request Numbers 1 and 2.
25 We did provide FIPUG with voluminous information and

1 documentation in response to their discovery. We have offered
2 to provide certain confidential proprietary information to
3 FIPUG to review subject to them executing a nondisclosure
4 agreement. We have provided them a draft of that nondisclosure
5 agreement. And I don't know yet whether we've gotten a
6 commitment that they'll sign it. It hasn't been signed yet.

7 FIPUG moved to compel with respect to ten
8 interrogatories and three requests for production of documents,
9 not only the ones that we objected to but some that we
10 answered. And since FIPUG's motion to compel was filed, we
11 have been in informal discussions with both FIPUG and the
12 Staff, and we've been able to agree to respond to 6 of the 13
13 items addressed in FIPUG's motion. We have also offered to
14 respond to other FIPUG requests if they are limited in a manner
15 that we consider reasonable and which will protect the company.

16 I think Tampa Electric has demonstrated good faith
17 through this process, and I think the Staff and FIPUG likewise
18 have shown a desire to get this amicably resolved, but we do
19 have these remaining items that I wish to proceed to discuss.
20 The first one is Interrogatory Number 1. That seeks each firm
21 contract purchase capacity and energy to which Tampa Electric
22 or an affiliate was purchasing during the period 1999 through
23 2000. In our motion to compel, we pointed out that this is
24 overbroad. It doesn't ask Tampa Electric to produce contracts
25 which Tampa Electric and an affiliate were parties to. It goes

1 on and asks that second phase: Give me your contracts that
2 your affiliate and some other nonregulated third party are
3 involved in. And we think that goes well beyond the scope of
4 what FIPUG is entitled to review.

5 And I think there is some guiding language in Section
6 366.093 which addresses what the Commission should have access
7 to in order to ensure that there is no cross-subsidization or
8 harm to the ratepayers. In drafting that section, the
9 Legislature saw fit to give this Commission access to records
10 regarding, quote, transactions or cost allocations among the
11 utility and its affiliated companies. It didn't say, "between
12 the affiliated companies and some other party not related to
13 Tampa Electric Company." We have offered to answer this
14 interrogatory to the extent that it relates to firm capacity
15 and energy purchases where Tampa Electric and an affiliate are
16 parties. And we submit to you that's all that FIPUG is
17 entitled to. This Commission, to my knowledge, has not
18 required utilities to provide documents that are private
19 contractual agreements between an affiliated company and some
20 other third party unrelated to the utility. And I don't think
21 FIPUG would want us asking them to provide us contracts between
22 their unregulated members and other third parties.

23 COMMISSIONER JABER: Mr. Beasley, to the best of your
24 knowledge, has the Commission ever identified the issue in a
25 formal fashion with respect to, does TECO make wholesale sales

1 during retail sale shortages, basically?

2 MR. BEASLEY: Does TECO make --

3 COMMISSIONER JABER: Well, I recall from the
4 workshops we had in Tampa, the Commissioners wanted to take a
5 look at how much TECO was doing with respect to wholesale sales
6 when there were shortages or shortfalls with respect to -- it
7 was in the context of interruptible.

8 MR. BEASLEY: Right, right. Well, you know, we're
9 willing to say what Tampa Electric does either during shortages
10 or in the absence of shortages. All we're reluctant to do is
11 give FIPUG access to agreements that don't affect Tampa
12 Electric Company or what it does during a shortage or in the
13 absence of a shortage. I mean, we're willing to comply and
14 bare all regarding what Tampa Electric does and what it does in
15 its relationship with its affiliates.

16 COMMISSIONER JABER: But to explore the issue of what
17 TECO is allegedly not doing, would you agree that it makes
18 sense to look at TECO's affiliates with respect to how it's
19 behaving?

20 MR. BEASLEY: I don't know how that would affect what
21 Tampa Electric is doing unless it's some relationship between
22 Tampa Electric and its affiliate.

23 COMMISSIONER JABER: Okay. Well, I think what
24 Ms. Kaufman is trying to say, or has said at least as I
25 understood it, is they want to show that TECO's purchases of

1 energy are not consistent with the behavior that TECO's
2 affiliates use to purchase energy. Is that your understanding?

3 MR. BEASLEY: That may be what they are saying, but
4 we see a disconnect between what Tampa Electric does and what
5 an affiliate which we don't -- there's a code of conduct
6 separating these nonregulated affiliates from what Tampa
7 Electric does. We don't have access to their agreements.

8 COMMISSIONER JABER: Okay. So then is your objection
9 that it's overbroad, or is your objection that the information
10 is not relevant?

11 MR. BEASLEY: It's both. It's not relevant to
12 anything on a regulated basis that Tampa Electric does; it is
13 overbroad. And there's another important reason why it's
14 inappropriate for FIPUG to be asking for this information. We
15 believe and we are going to pursue through discovery that FIPUG
16 has members who generate electricity and who sell that
17 electricity in the wholesale market in competition with Tampa
18 Electric's unregulated affiliate. And if their purpose for
19 trying to get this information is to gain some sort of
20 competitive advantage over Tampa Electric's unregulated seller
21 of electricity, then we think that's highly inappropriate and
22 should not be allowed. We will be pursuing discovery to
23 determine the extent to which FIPUG is making sales or its
24 members and their affiliates are making sales in the wholesale
25 market, but that's highly sensitive, competitive information

1 which should not be disclosed to FIPUG.

2 COMMISSIONER JABER: Do you think the Rules of Civil
3 Procedure allow you to withhold responses to discovery until a
4 confidentiality agreement is executed?

5 MR. BEASLEY: I do. And we've done that before.
6 We've had an in camera review, Commissioner, by then Prehearing
7 Officer Joe Garcia who reviewed the very reports that
8 Ms. Kaufman is referring to, the HAP reports, and who concluded
9 that those indeed are entitled to confidential protection, and
10 he ordered that we provide them upon FIPUG executing a
11 nondisclosure agreement, which we did.

12 COMMISSIONER JABER: Okay. Cite me to the procedural
13 rules or case law that supports your position. And I'll repeat
14 the question. What I'm looking for, I'm looking for a rule of
15 civil procedure or any case law that allows you to withhold
16 discovery responses until a confidentiality agreement is
17 executed. That's what I'm looking for.

18 MR. BEASLEY: I don't have that to present to you at
19 this point.

20 COMMISSIONER JABER: Okay. And you can think about
21 it some more as you continue your presentation.

22 MR. BEASLEY: Thank you. But again, I can't stress
23 enough the importance that we not be required to provide
24 contracts that don't relate to Tampa Electric Company. It's
25 just -- it's unfair, particularly if FIPUG has members or

1 member affiliates who are engaging in that same competitive
2 activities.

3 COMMISSIONER JABER: Would you have the same
4 objection if Commission Staff sent that interrogatory? And let
5 me tell you where I'm going. It's not a trick question. The
6 Commissioners did send me and Staff and I'm pretty sure the
7 parties that we will look at that issue in this proceeding. We
8 will look at TECO's behavior in wholesale sales.

9 MR. BEASLEY: We encourage you to do that.

10 COMMISSIONER JABER: Right. Now, in identifying that
11 issue, one might want to look at other parts of the company to
12 see if the behavior is consistent. So, you know, my question
13 to you is, would you have the same objection if Commission
14 Staff sent you that interrogatory, and if you wouldn't, what's
15 the difference?

16 MR. BEASLEY: I don't think we control that
17 information. And it's done by an unregulated separate
18 affiliate.

19 COMMISSIONER JABER: Okay. So then the assertion is,
20 those are documents -- that's information and documents that
21 are not within the control of TECO.

22 MR. BEASLEY: That's correct, Tampa Electric Company.

23 COMMISSIONER JABER: All right. And what's the case
24 law on that? Do you know?

25 MR. BEASLEY: No case law. It's just the way it

1 exists.

2 COMMISSIONER JABER: Do you have a burden to show
3 that that's information not within your control?

4 MR. BEASLEY: We can if we -- if you would like for
5 us to.

6 COMMISSIONER JABER: Okay. All right. I've
7 interrupted you enough. Keep going. There will probably be
8 other questions.

9 MR. BEASLEY: Interrogatory Number 2, in this
10 interrogatory they seek various types of information on rate
11 base value of capacity and carrying costs committed to serve
12 firm wholesale customers during a four-year period. We didn't
13 object to this. We answered saying that we -- that the
14 comparison FIPUG has requested us to make cannot be provided
15 since nonseparated sales are not assigned cost responsibility
16 through a jurisdictional separation process. These sales are
17 not assigned to any kind of rate base book value or cost
18 responsibility. We don't keep the category of information
19 requested. It's not that we're saying we don't have to report
20 it that way, we don't keep it that way. It's not required to
21 be kept any by regulatory agency, and the company is at a loss
22 to really figure out how to start assembling that information.

23 We would agree, though, to supplement our answer to
24 say the company hasn't entered into any of these types of
25 contracts in a long time. The last one being the FMPA sale

1 back in 1996, which this Commission found to be cost-effective
2 for Tampa Electric's retail customers.

3 With respect to Interrogatory Number 3, this asks for
4 our rationale for the conclusion that the sale described in
5 Interrogatory Number 2 provides net benefits. We've agreed to
6 do this. We've agreed also to supplement our answer to
7 Interrogatory Number 4. We've also agreed to respond to
8 Interrogatory Number 5. These are all during the settlement
9 and mediation discussions we had with Staff and Ms. Kaufman.

10 Interrogatory Number 7 asked Tampa Electric to
11 explain the differences in methodology used to calculate
12 wholesale sales and the methodology TECO uses to pay
13 cogenerators. We have supplied FIPUG with full and complete
14 written descriptions of both of those procedures. And we
15 submit to you that we should not be required in essence to
16 depose our own company on paper by speculating which aspects of
17 these two methodologies FIPUG considers interesting or
18 something they want further information about. If they have
19 further questions, specific questions, we'll be happy to answer
20 them or try to answer them.

21 COMMISSIONER JABER: You believe you've provided the
22 documents related to Interrogatory Number 7 that make it
23 sufficient for them to glean the difference in the methodology.

24 MR. BEASLEY: We do, Commissioner, as contemplated in
25 the rules of procedure as an alternative to answering the

1 interrogatory.

2 COMMISSIONER JABER: They've come back and said they
3 can't figure out what the difference in the methodology is.

4 MR. BEASLEY: Have they said that? I don't know that
5 they've said that they can't. They don't want to.

6 COMMISSIONER JABER: I know I saw that in the motion
7 to compel. But in any case, let's say that their motion to
8 compel has indicated that they are unable to understand what
9 the methodology is.

10 MR. BEASLEY: Right.

11 COMMISSIONER JABER: You don't believe you have a
12 burden to respond to that interrogatory question by explaining
13 the difference in the methodology?

14 MR. BEASLEY: Once given the methodology and if they
15 have any specific questions, we'll be happy to attempt to
16 respond to them, but the methodology speak for themselves. I
17 mean, any differences it would be, what's the difference
18 between a Ford and Chevy, here they are, and do you have
19 anything further or specific you need to know. That's our
20 response.

21 COMMISSIONER JABER: What are the documents? Help me
22 understand what it is -- you think the documents themselves
23 answer the difference in the methodology.

24 MR. BEASLEY: That's correct.

25 COMMISSIONER JABER: What are the documents?

1 MR. BEASLEY: It's the cogeneration tariff and --
2 it's the cogeneration tariff which is in very great detail, and
3 then it compared to our response to Interrogatory Number
4 6 which is in detail as well. Now, if there are any specific
5 questions FIPUG has after looking at those, I mean, we're
6 willing to work with them, Commissioner, but we need to know
7 what their concerns are. We could go on item for item
8 attempting to determine what they might consider to be
9 differences in between these two documents. We might not hit
10 on what they really consider to be important.

11 COMMISSIONER JABER: What witness would be able to
12 answer these questions?

13 MR. BEASLEY: We can determine that, and I'm not
14 certain at this moment, but we can find that information for
15 you.

16 COMMISSIONER JABER: All right. And FIPUG has not
17 sought a deposition of any of the witnesses on this issue?

18 MR. BEASLEY: Not to date.

19 COMMISSIONER JABER: Okay.

20 MR. BEASLEY: And that's one of the ways to do
21 this -- exactly what they are asking to do. In other words, we
22 shouldn't depose ourselves. If they want to take our
23 deposition, we'll comply with the rules.

24 COMMISSIONER JABER: Go ahead, Mr. Beasley.

25 MR. BEASLEY: 11A and C, this asked for a list of

1 TECO-owned generating units that were in operation during each
2 interruption and those that were forced outages during each
3 interruption. And I'm advised it would take over a half a day
4 just to copy the documents necessary to prepare a response, and
5 it would also involve a Tampa Electric person devoting two full
6 weeks of effort in ferreting out the information from the
7 documents that were copied. Balancing this against the
8 usefulness of this information strongly weighs in favor of the
9 company not being required to devote its resources to that very
10 consuming effort.

11 In its motion to compel, FIPUG hasn't demonstrated
12 what usefulness the information would provide. What does it
13 matter, for example, which particular units happen to be in
14 service or forced out of service when a particular interruption
15 occurs? That escapes us. We don't know what value that would
16 provide to anyone, and certainly it's not -- it doesn't
17 outweigh the need to avoid the burden that the company would
18 have to incur in order to respond.

19 COMMISSIONER JABER: Mr. Beasley, can you-all reach
20 agreement with respect to what the legal standard is related to
21 an issue of discovery? Do you agree with Ms. Kaufman's
22 assertion that the legal standard is that the information has
23 to be reasonably calculated to lead to admissible evidence?

24 MR. BEASLEY: I agree to that.

25 COMMISSIONER JABER: Okay.

1 MR. BEASLEY: I would also point out that the rules
2 contemplate protective orders protecting parties from undue
3 burden or expense, particularly when the value of the
4 information is marginal at best and doesn't outweigh the burden
5 the company would face.

6 Interrogatory 18 pertains to the system hourly
7 incremental cost for 1998 through 2000, and they ask that it be
8 reconciled with some information contained in a FERC form that
9 FIPUG obviously has because they've referred to it. We
10 objected to this on the grounds that it would be probably the
11 biggest example of undue burden that we can muster in our
12 thoughts. The rule or procedure contemplates protecting a
13 party from an undue burden or expense, as I just mentioned.
14 How burdensome would this be? I quizzed the company on this
15 myself, and it would involve analyzing approximately 52,000
16 hours of data, reconciling that and discussing it. It would
17 also -- I mean, this is not the kind of information which is
18 easily retrievable. You can't push a button and have it come
19 out of a computer. You have to do it manually. The system
20 operation would have to be replicate -- or duplicated because
21 we don't keep this kind of information in the form that they
22 are asking for. The system operation would have to be
23 recreated for every hour of every day for the number of years
24 that they have asked for. Tampa Electric has estimated that it
25 would require approximately three months of programming time

1 and an additional six months of analyst time to answer the
2 interrogatory, and this is after we even decide what it is we
3 need to put together because there is so many unanswered
4 questions about what they're asking for.

5 This huge burden is real. It's not something that we
6 have come up with or created. It's a real burden that Tampa
7 Electric would face. Plus FIPUG hasn't specifically presented
8 any explanation of how this will provide any relevant or useful
9 information for purposes of this docket. So we strongly
10 encourage you to recognize the burden that that would impose on
11 Tampa Electric and its ratepayers.

12 With respect to the production of documents,
13 Production Number 1 asks for copies of all documents relied on
14 in response to our interrogatories. We objected because there
15 is really no specificity here. We didn't keep track of what
16 everybody within the company looked at or referred to during
17 the course of time they were preparing answers. Some answers
18 may not rely on any specific documents but only memory. But
19 our problem is, we don't have a handle on what everything was
20 that was looked at. This is one of those kind of questions
21 that's very easy to ask but very difficult to answer
22 accurately. Probably this would require giving FIPUG the keys
23 to the building to ensure that we responded with respect to
24 every document the parties look at -- or the employees in the
25 company looked at in coming up with their answers. And I think

1 probably FIPUG would object in a heartbeat if we asked them the
2 same kind of question. If there is something specific they
3 want, again, as opposed to something all inclusive and
4 difficult, if not impossible, to muster, we'll work with them
5 on it. But we certainly are willing to respond to any
6 reasonable request, but we think this goes beyond that scale.

7 COMMISSIONER JABER: Mr. Beasley, when -- this is a
8 case that's going to hearing. If you have potential witnesses
9 or TECO staff that have responded to interrogatories, wouldn't
10 you want to know what they relied on and wouldn't you be
11 keeping track of that just for trial preparation?

12 MR. BEASLEY: I'm not sure that you would keep track
13 of everything that you looked at. You might keep track of
14 anything you thought that was important or relevant, but not
15 everything that was looked at. If there is any kind of
16 specific or specific request or --

17 COMMISSIONER JABER: What was the actual question?
18 What was Production Request Number 1?

19 MR. BEASLEY: Copies of all documents relied on in
20 responding to the interrogatories.

21 COMMISSIONER JABER: Relied on.

22 MR. BEASLEY: Right. I don't know for example -- you
23 know, this is probably a pretty absurd example, but I don't
24 know if somebody didn't turn around and look on their credenza
25 and read a dictionary in writing up a response. Now, if we got

1 something more specific, it might -- I mean, rather than the
2 universe, that's one of the problems we deal with on this kind
3 of question is, we want to answer interrogatories correctly and
4 production of document requests, but there needs to be some
5 specificity in order to give us a reasonable chance to do that.

6 COMMISSIONER JABER: So are you saying if they
7 reworded the production request and made it more specific to
8 each interrogatory --

9 MR. BEASLEY: Yes, ma'am.

10 COMMISSIONER JABER: -- TECO would be more than
11 willing to respond?

12 MR. BEASLEY: We would certainly attempt to respond
13 in good faith, yes, ma'am.

14 COMMISSIONER JABER: Okay.

15 MR. BEASLEY: Production Request Number 2 asks for
16 the system status reports. We've indicated we would provide
17 that to them on a nonconfidential basis. Production Number 3,
18 this asks for documentation to support Tampa Electric's
19 compliance with a Commission order regarding treatment of the
20 FMPA and Lakeland contracts. We don't necessarily have any
21 documents saying that we conformed with the Commission's
22 requirements. We did conform with the Commission's
23 requirements, and we filed a final FMPA compliance report and
24 served a copy of that on FIPUG. Also, if Ms. Kaufman and
25 Mr. McWhirter sign a nondisclosure agreement, as we've

1 indicated and as they did previously with respect to the very
2 same exact documents, we'll let them look at the HAP reports,
3 which are the reports that they looked at last time, so they
4 can verify that our reported costs are the same as those the
5 company incurred. I mean, if they want to do that, we're
6 willing to let them do it, but we need a confidentiality
7 agreement as was required last time they looked at those
8 reports. They are the same reports. The time frame is going
9 back the same period of time as what they used last time. I
10 have the agreement that both Mr. McWhirter and Ms. Kaufman
11 signed the last time they looked at these reports, and I think
12 if they'd sign it again, we would give them access again.

13 COMMISSIONER JABER: And you don't know of a rule of
14 civil procedure that allows you to require that, do you?

15 MR. BEASLEY: Well, we filed a -- as the rule
16 contemplates for protective orders, we filed our objections and
17 our alternative motion for a protective order within the
18 ten-day time period prescribed in the order on prehearing
19 procedure. So we have a pending request for a protective
20 order, and what we're asking to do pursuant to the very rule of
21 civil procedure addressing that is -- and you get many options.
22 As justice requires, you can order any one of the following:
23 That the discovery not be had; that it be had on specific terms
24 and conditions, including a designation of time or place; or
25 that the discovery may be had only by a method of discovery

1 other than that selected by the party seeking discovery. So
2 it's all within your discretion to require that they, in fact,
3 sign the nondisclosure agreement prior to having access to this
4 confidential cost-related information. And that's --

5 COMMISSIONER JABER: Does the Commission have to make
6 a finding that the information is proprietary in nature?

7 MR. BEASLEY: I think that was done previously by
8 Commissioner Garcia when he ruled, and he ruled in camera
9 looking at the documents. We had a telephonic hearing. He was
10 satisfied. We can do that again, if you like. But we think
11 FIPUG has set their own precedent by signing the
12 confidentiality agreement pursuant to his order in the reserve
13 margin docket. And again, it's the same documents covering the
14 same number of years back as we had previously.

15 COMMISSIONER JABER: Go through the interrogatories
16 and the PODs and tell me which ones you will provide with a
17 confidentiality agreement. The information related to
18 Interrogatory Number 1, for example.

19 MR. BEASLEY: We indicated that we'll answer that
20 with regard to any agreement that Tampa Electric and an
21 affiliate are parties to. And the only part that we objected
22 to were agreements which Tampa Electric is not a party to or
23 not affected by and which is solely between the nonregulated
24 affiliate and some other third party unrelated to Tampa
25 Electric Company.

1 COMMISSIONER JABER: Right. But for that information
2 that would be related to the TECO affiliate and some other
3 party, would you provide that information with a
4 confidentiality agreement?

5 MR. BEASLEY: The difficulty there is the fact -- as
6 I mentioned, that FIPUG, we believe, has members or member
7 affiliates who engage in the same competitive activity. So
8 giving them that information even under a protective agreement
9 would be very harmful to the competitive interest of a
10 nonregulated Tampa Electric affiliate.

11 COMMISSIONER JABER: Isn't that what a
12 confidentiality agreement is designed to protect?

13 MR. BEASLEY: We addressed this once previously when
14 Mr. McWhirter was representing IMC, and the Commission
15 concluded that once you know something, if you're a lawyer for
16 a party, once you know it, it's hard to get it out of your mind
17 later on when you're advising that party on contractual
18 negotiations. So that's a difficulty we see with letting them
19 have this information even under a nondisclosure agreement.

20 COMMISSIONER JABER: All right.

21 MR. BEASLEY: Because they could be advising parties
22 who are competing with the entity supplying the confidential
23 information.

24 COMMISSIONER JABER: Okay. What other interrogatory
25 then would you provide with a confidentiality agreement?

1 MR. BEASLEY: I think production of documents number
2 3 with respect to the HAP reports, and that went smoothly last
3 time. We met with Mr. McWhirter and complied with his every
4 request with respect to those documents.

5 COMMISSIONER JABER: Okay. Mr. Beasley, I
6 interrupted you a lot. Is there anything else you want to
7 bring up?

8 MR. BEASLEY: Only that we encourage Commission
9 review and examination of Tampa Electric's operations and its
10 treatment of its retail customers. We urge you strongly not to
11 adversely affect Tampa Electric or its unregulated affiliates
12 in their dealings which all could result in ultimate detriment
13 to the overall organization and the customers that we serve.
14 And I think that -- I'll be happy to respond to any specific
15 questions you have, but those are our comments.

16 COMMISSIONER JABER: Ms. Kaufman, with respect to the
17 difference in methodology interrogatory, Interrogatory Number
18 7, could that be resolved by setting up a deposition with
19 TECO's identification of a witness that could answer that
20 question for you?

21 MS. GORDON-KAUFMAN: Well, I think that that's
22 certainly an option, but I don't think that Tampa Electric gets
23 to pick which discovery method it would prefer to use. FIPUG
24 has the ability as a party litigant in this case if it chose to
25 send written interrogatories, and often what you do is, you

1 send the written interrogatories, you get the answers, and then
2 you take the deposition. So I certainly would say to you that
3 perhaps that would be an option, but the person receiving the
4 discovery doesn't get to say, well, we would prefer you take
5 our deposition rather than send us a written interrogatory.

6 COMMISSIONER JABER: And I don't think they did. I'm
7 asking the question because I'm looking for the most efficient
8 way of obtaining the response. And if you send -- there is the
9 potential of sending the question again even with more
10 specifics and not being satisfied with the response, and having
11 a witness in a room with you where you can follow up on
12 questions, you know, it might be more efficient. So just in an
13 effort to look for ways to resolve these disputes, might it be
14 quicker and more efficient to do this one as a deposition?

15 MS. GORDON-KAUFMAN: Well, perhaps. You know, I
16 would say that the interrogatory is very specific. It's very
17 straightforward. They are the ones that do these calculations,
18 not FIPUG. We're just asking them to identify the differences
19 to the extent they did that, and then we had questions, then
20 perhaps a deposition would be appropriate. You know, I think
21 that we could attempt to do it through a deposition. I don't
22 think that that's the most efficient nor is it the most
23 cost-effective way for us to do it.

24 COMMISSIONER JABER: Okay. With respect to POD
25 Request Number 1, TECO makes the allegation that they are not

1 clear what documents you are seeking with respect to that
2 request. Can you reword that POD request today to make it
3 clear? Can you explain to Mr. Beasley what it is you are
4 looking for?

5 MS. GORDON-KAUFMAN: I think so. Again, I think we
6 discussed this. Tampa Electric, I am assuming, received our
7 interrogatories, routed them to the appropriate person to
8 answer. This is a production request, so it only relates to
9 documents that the responsible person relied upon when they
10 answered the interrogatory. It doesn't ask for, you know, if
11 you thought about something, write it down. It asks for, what
12 documents did you rely on when you answered this
13 interrogatory -- the prior interrogatories. I mean, and as I
14 said, you know, this is a standard discovery request, and I'd
15 be hard-pressed -- maybe I've gotten objections to it before,
16 but it's a backup. You've answered these questions; you've
17 given us your written responses. What did you look at to
18 formulate your responses? If they didn't look at anything,
19 then so be it, but if there are documents that they relied upon
20 in formulating their answers, then I believe that that -- this
21 is certainly an inbounds request.

22 The only way I could make it more specific, and I
23 guess I could do this, but I don't think it adds a whole lot,
24 is, you know, I could say, provide all documents you relied
25 upon in responding to Interrogatory Number 1. I could do it

1 that way, and this was just a time-saver. And I think that, as
2 I said earlier, when a party provides a response whether it's a
3 spreadsheet or whether it's a pro's response, the person that
4 asked the question is entitled to have access to any documents
5 that the party relied upon when they formulated their response.

6 MR. BEASLEY: Commissioner Jaber, we will make an
7 attempt to do that. We will respond to that interrogatory --
8 or that production request.

9 COMMISSIONER JABER: All right. With that
10 clarification, you believe you can respond.

11 MR. BEASLEY: Yes.

12 COMMISSIONER JABER: By when?

13 MR. BEASLEY: Three weeks.

14 COMMISSIONER JABER: Within three weeks of today's
15 date. Mr. Beasley, you have heard a lot of discussion, and I'm
16 asking some of these questions on purpose because I want
17 you-all to have clarification. Are there any other
18 interrogatories or PODs that you really believe TECO can answer
19 in light of today's discussion?

20 MR. BEASLEY: Can answer?

21 COMMISSIONER JABER: Can, c-a-n.

22 MR. BEASLEY: There's some, Commissioner, that could
23 be answered with a great degree of difficulty, as I mentioned,
24 with respect to Number 18.

25 COMMISSIONER JABER: Right. Let's talk about those.

1 For those that you believe are burdensome and will take time,
2 go through and tell me how much time.

3 MR. BEASLEY: Well, 18, again, would involve the
4 recreation of information that no longer exists from a
5 multitude of data. It would require programming. It would
6 require an estimated three months of programming time, and that
7 would come after we got the ground rules set on what it is
8 we're going to create, and that's subject to discussion. And
9 after that, it would require an additional six months of
10 analyst time to -- and it would have to be informed analytical
11 work by people who are involved in that aspect of the company.
12 It wouldn't be something that could be performed by temporary
13 help, for example. It would have to be someone knowledgeable in
14 that area of the company. So we're talking nine months or more
15 to respond to that interrogatory or that request -- that
16 interrogatory, I'm sorry.

17 COMMISSIONER JABER: Which is the one I wrote down on
18 my notes here that one of them would take you a half a day to
19 produce a response and two weeks to sift through?

20 MR. BEASLEY: That's 11A and C, Commissioner.

21 COMMISSIONER JABER: All right. So 11A and C you
22 could respond to within 30 days, it sounds like.

23 MS. GORDON-KAUFMAN: That's what I wrote.

24 MR. BEASLEY: We could. But again, if you balance
25 the time involved there with the benefit to FIPUG, we think

1 it's not worth the effort.

2 COMMISSIONER JABER: But that's not the legal
3 standard; right? The legal standard I'm supposed to follow is
4 whether the information is reasonably calculated to lead to
5 admissible evidence.

6 MR. BEASLEY: And also whether it's unduly burdensome
7 in response to our motion for a protective order.

8 COMMISSIONER JABER: And if it's information that can
9 be provided within 30 days, maybe it's not unduly burdensome.

10 MR. BEASLEY: Well, we believe it is, but it probably
11 could be responded to within 30 days, but again, it's going to
12 involve two weeks of someone's time within the company.

13 COMMISSIONER JABER: Okay. All right. Let me tell
14 you what I'm going to do. I had not planned on making a
15 ruling, and certainly I told Staff I would not make a ruling
16 today. I'm going to make a partial ruling because there's so
17 much room here for compromise. With respect to Interrogatories
18 11A and 11C, Mr. Beasley, have TECO respond to those by
19 July 1st. Is that 30 days? Yeah. By July 1st. That's not
20 a -- is that a weekend?

21 MR. BOHRMANN: It's a Sunday.

22 COMMISSIONER JABER: Never mind. July 5th. That's
23 safe; right? July 5th should be a Tuesday. By July 5th.

24 With respect to Interrogatory Number 7, Ms. Kaufman,
25 Mr. Beasley, I want you to give her a name of a witness that

1 can answer Interrogatory Number 7 in a short deposition that
2 should be held really, really soon. So why don't the parties
3 agree on a date and a witness and have a deposition? And if
4 you still have trouble getting the information, file something
5 that let's me know. So that will take care of Interrogatory
6 Number 7, 11A, and 11C. We have reached a resolution on POD
7 Number 1; correct?

8 MR. BEASLEY: That's correct.

9 MS. GORDON-KAUFMAN: Yes. Did we -- did you set a
10 time frame for that? I might be --

11 MR. BEASLEY: Three weeks from today.

12 MS. GORDON-KAUFMAN: Okay. Thank you.

13 COMMISSIONER JABER: With respect to the rest of the
14 interrogatories and the POD requests, I will issue a separate
15 order. Before we adjourn this oral argument, are you
16 absolutely sure there can be no further agreement on any of the
17 other interrogatories and the PODs?

18 MR. BEASLEY: Yes, ma'am. And I think we've come a
19 long way in the concessions that we've made.

20 COMMISSIONER JABER: I think you have, and I do want
21 to commend both of you. I think that you did some legwork
22 before this oral argument, and you did it today, and I
23 appreciate it. But we'll issue a separate order on the rest of
24 them.

25 MR. BEASLEY: Thank you.

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COMMISSIONER JABER: Thank you all.

MS. GORDON-KAUFMAN: Thank you, Commissioner Jaber.

(Prehearing concluded at 2:10 p.m.)

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

4
5 I, TRICIA DeMARTE, Official Commission Reporter, do hereby
6 certify that the foregoing proceeding was heard at the time and
7 place herein stated.

8 IT IS FURTHER CERTIFIED that I stenographically
9 reported the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript constitutes a true transcription of my notes of said
12 proceedings.

13 I FURTHER CERTIFY that I am not a relative, employee,
14 attorney or counsel of any of the parties, nor am I a relative
15 or employee of any of the parties' attorneys or counsel
16 connected with the action, nor am I financially interested in
17 the action.

18 DATED THIS 5TH DAY OF JUNE, 2001.

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TRICIA DeMARTE
FPSC Official Commission Reporter
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