

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 030001-EI

In the Matter of:

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

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VOLUME 7

Pages 981 through 1111

PROCEEDINGS:

HEARING

BEFORE:

CHAIRMAN LILA A. JABER  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER BRAULIO L. BAEZ  
COMMISSIONER RUDOLPH "RUDY" BRADLEY  
COMMISSIONER CHARLES M. DAVIDSON

DATE:

Wednesday, November 13, 2003

TIME:

Commenced at 9:00 a.m.  
Concluded at 6:35 p.m.

PLACE:

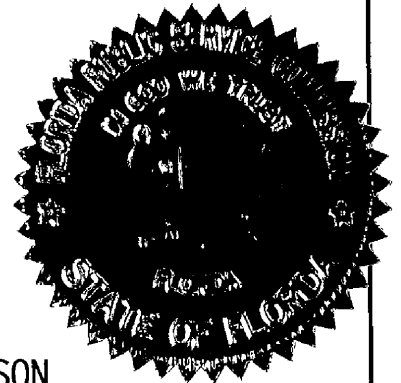
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Tallahassee, Florida

REPORTED BY:

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(850) 413-6736

APPEARANCES:

(As heretofore noted.)



DOCUMENT NUMBER DATE

FLORIDA PUBLIC SERVICE COMMISSION

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## I N D E X

## WITNESSES

NAME:	PAGE NO.
MATTHEW BRINKLEY	
Direct Examination by Mr. Keating	984
Prefiled Direct Testimony Inserted	987
Cross Examination by Mr. Butler	996
WILLIAM T. WHALE (Rebuttal)	
Direct Examination by Mr. Beasley	1001
Prefiled Rebuttal Testimony Inserted	1004
Cross Examination by Mr. Vandiver	1027
Cross Examination by Mr. Keating	1031
Redirect Examination by Mr. Beasley	1039
J. DENISE JORDAN (Rebuttal)	
Direct Examination by Mr. Beasley	1042
Prefiled Revised Rebuttal Testimony Inserted	1046
Cross Examination by Mr. McWhirter	1071
Cross Examination by Mr. Keating	1079
CERTIFICATE OF REPORTER	1111

## EXHIBITS

	NUMBER:		ID.	ADMTD.
1				
2				
3	36	MGB-1 through MGB-3	986	1001
4	37	7/25/03 Letter from S. Romig to B. Bayo	999	1001
5	38	WTW-2	1003	1042
6	39	(Confidential) TECO's Response to OPC's POD 20	1027	1042
7				
8	40	JDJ-4	1045	1090
9				
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## P R O C E E D I N G S

(Transcript continues in sequence from Volume 6.)

CHAIRMAN JABER: Okay. Let's get back on the record.

Staff, your next witness is Mr. Brinkley?

MR. KEATING: Yes. Staff calls Matthew Brinkley.

MATTHEW BRINKLEY

was called as a witness on behalf of the Staff of the Florida Public Service Commission and, having been duly sworn, testified as follows:

## D I R E C T E X A M I N A T I O N

BY MR. KEATING:

Q Mr. Brinkley, were you sworn in yesterday?

A Yes, I was.

Q Could you please state your name and business address for the record.

A Matthew Brinkley. My address is 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

Q And what is your position?

A I'm a regulatory analyst with the division of economic regulation.

Q Mr. Brinkley, did you prepare or cause to be prepared direct testimony filed November 3rd, 2003 in this docket?

A Yes, I did.

Q Do you have any corrections or clarifications to make to that testimony?

1           A     Yes, I do. I wanted to clarify that my testimony was  
2 directed toward Issue 30 which discusses security costs. And  
3 in my testimony, I reference hedging costs as well, and I'd  
4 like for the hedging costs to be stricken.

5           Q     And I believe that sole reference to hedging costs is  
6 at Page 3, Line 7 to your testimony?

7           A     That is correct.

8           Q     Did you also prepare or cause -- well, let me stop  
9 there.

10           CHAIRMAN JABER: Mr. Keating, so the change to the  
11 testimony is on Page 3, Line 7. You would delete the words  
12 "and hedging"?

13           MR. KEATING: That's correct.

14           CHAIRMAN JABER: Okay.

15           MR. KEATING: Staff would ask that Mr. Brinkley's  
16 testimony prefiled November 3rd be moved into the record.

17           CHAIRMAN JABER: The prefiled testimony of Matthew  
18 Brinkley filed November 3rd shall be inserted into the record  
19 as though read.

20 BY MR. KEATING:

21           Q     And, Mr. Brinkley, did you also prepare or cause to  
22 be prepared Exhibits MGB-1, MGB-2, and MGB-3 to your direct  
23 testimony?

24           A     Yes, I did.

25           Q     Do you have any corrections to those exhibits?

1 A No, I don't.

2 MR. KEATING: Staff would like to have those exhibits  
3 marked as a composite exhibit.

4 CHAIRMAN JABER: MGB-1 through MGB-3 are identified  
5 as composite Exhibit 36.

6 (Exhibit 36 marked for identification.)  
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## DIRECT TESTIMONY OF MATTHEW BRINKLEY

DOCKET NO. 030001-EI

NOVEMBER 3, 2003

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Q. Please state your name and business address.

A. My name is Matthew Brinkley. My business address is 2540 Shumard Oak Blvd., Tallahassee, Florida, 32399.

Q. By whom are you employed and in what capacity?

A. I am employed by the Florida Public Service Commission as a Regulatory Analyst IV in the Bureau of Surveillance/Finance, Division of Economic Regulation.

Q. Please provide a brief description of your educational background and your professional experience.

A. I received a Bachelor of Science degree with a major in Accounting and a minor in Finance from Florida State University in 1991. I received a Master of Business Administration from Florida State University in 1992. I received my Certified Public Accountant license in 1992 and practiced public accounting from 1992 to 1994.

Since joining the Florida Public Service Commission in 1994, I have held responsibilities relating to accounting, finance, and economic research and other accounting and ratemaking matters. Within the ratemaking

1 area, I prepare the rate base, net operating income, capital structure,  
2 and other related schedules for electric and gas utilities under a rate  
3 review. These schedules are the basis for deriving base rates.  
4

5 **Q. What is the purpose of your testimony?**

6 A. The purpose of my testimony is to recommend to the Commission that base  
7 amounts used for calculating incremental security ~~and hedging~~ costs for  
8 recovery through the ~~fuel or~~ capacity cost recovery <sup>clause</sup> ~~clauses~~ should be  
9 adjusted for growth in kilowatt-hours sales. To not convert historic  
10 amounts to rates, i.e., adjust historic expenses for growth, results in  
11 costs being recovered implicitly in base rates and explicitly in a cost  
12 recovery clause. This a form of double recovery.  
13

14 **Q. Why is such an adjustment appropriate?**

15 A. It is overly simplistic and wrong to say that base rates were set to  
16 recover a particular dollar amount of a given expense, so anything above  
17 that is incremental and not recovered in rates. That analysis is  
18 equivalent to saying that base rates were set to generate revenues of  
19 a given amount and anything above that was not contemplated to be  
20 generated. The conclusion reached by that logic is to refund all  
21 revenues above the revenues determined in a rate case. If the assertion  
22 that rates are not set to cover increasing expenses were true, another  
23 conclusion one could reach is that every year or two the utility would  
24 be back in for a rate increase. Clearly, rates are expected to generate  
25 more revenues which will cover increased costs as the utility grows.



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Q. **How would an adjustment be made?**

A. In a rate case, expenses are used to determine total revenue requirements which are ultimately translated into rates based on billing determinants approved in the rate case. Similarly, any expense can be converted to a cents per unit based on the billing determinants in the rate case. Since the utility collects that cents per unit on every unit sold, as the utility sells more energy, it recovers proportionally more for the expense (or less if the company sells less energy.) To determine if base rates recover a cost in a later year, the cost in the later year would be divided by the billing determinants for the later year and if the recovery rate exceeds the cost rate, it would be concluded that no additional cost recovery is necessary. To the extent that the cost rate exceeds the recovery rate, that incremental rate could be applied to the later year billing determinants to calculate the amount for consideration for separate recovery.

Q. **Can you provide an example?**

A. Yes. If \$100,000 was allowed for an expense item in the last rate case and rates were set based on 25,000,000 KWH sales, the expense represents a recovery rate of \$0.0004/KWH. If the KWH's sold today were 50,000,000 KWH, then the utility would implicitly recover \$200,000 by the rate. To compare an actual expense today of \$300,000 to the original \$100,000 used to set rates instead of \$200,000 ignores the impact of growth in revenues.

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Q. Do historic and current expenses have to be converted to cents per KWH to determine what is incremental to base rates?

A. No. A shortcut method is to multiply the base year expense by the percentage change in energy sold from the base year to the current year. If energy sales increased 100%, the base year expense of \$100,000 would be grossed-up to \$200,000 which is then the basis of determining what is incremental.

Q. Is this methodology appropriate when the base year used is a year subsequent to a projected test year in a rate case?

A. Yes. Regardless of the year chosen as a base year, the base year expense should be adjusted for sales growth from the time of the base year to the year in question. Adjusting for growth is just a short-cut for looking at a base cost as a per unit rate and can be thought of as a fallout.

Q. Has this methodology ever been proposed before the Commission?

A. Yes. On page 7 of Korel M. Dubin's testimony in Docket No. 001148-EI, Ms. Dubin proposed "in order to ensure that there is no double recovery, FPL's proposed methodology calls for the GridFlorida costs to be adjusted for Transmission Costs in Base Rates. Each year the amount of transmission costs currently in base rates is to be adjusted for sales as described below. This amount would then be subtracted from the

1 GridFlorida costs before inclusion in the Capacity Cost Recovery Factor  
2 calculation.” After walking through an example, she goes on to say,  
3 “This results in the transmission cost in base rates escalated to 2003  
4 to reflect the increase in sales in 2003.” Further on page 11 of her  
5 testimony, she says “FPL believes it is appropriate for the Commission  
6 to expressly approve the methodology to recover the GridFlorida  
7 transmission costs, to the extent they exceed the amount reflected in  
8 base rates, through the Capacity Cost Recovery Clause. Such approval  
9 would; 1) avoid double recovery, 2) avoid under/over recovery of costs,  
10 3) would be administratively efficient and would greatly facilitate  
11 review of the level and basis for transmission costs in the future, and  
12 4) appear to be the type of costs the Commission acknowledged would be  
13 appropriate in establishing the Capacity Cost Recovery Clause.” (See  
14 Exhibit MGB-1.)  
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1 Q. Does the existence of a rate case settlement have implications with  
2 grossing-up?

3 A. Yes and no. Adjusting an expense for growth in order to calculate what  
4 should be recovered through a cost recovery clause is not a change in  
5 base rates and is apart from the stipulations approved in Docket Nos.  
6 001148-EI and 000824-EI. It only a short-cut method of converting  
7 historical and current year expenses to *rates* to see if an actual  
8 expense rate exceeds the base rate the company charges. The goal is to  
9 prevent double recovery which occurs where normal growth in base rate  
10 expenses is allowed separate recovery through a clause. In fact, the  
11 existence of rate case settlements makes it even more important to do  
12 this.

13

14 Q. Why is it more important to gross-up under rate case settlements?

15 A. With normal rate of return regulation, if expenses rise faster or slower  
16 than revenues, the company's ROE will rise or fall in part, accordingly.  
17 If ROE's rise or fall too far, base rates can be reset according to the  
18 new levels. If a company were to double recover in a large enough  
19 fashion, the ROE would be higher than it would otherwise, and it would  
20 at least afford the *possibility* of a change in base rates. Under the  
21 settlements approved for FPL and PEFI, the ROE is no longer the basis  
22 for determining if a refund or change in rates is required. Under  
23 settlements that limit the use of ROE's to trigger rate reviews, it is  
24 even more important to prevent double recovery of expenses by adjusting  
25 base year expenses for growth in KWH sales.

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Q. What is the impact of revenue caps in rate case settlements as far as grossing up base year expenses?

A. The existence of a revenue cap with escalation clauses does not necessarily result in a refund. The revenue caps in place for FPL and PEFI are set high enough to account for normal growth. If a cap does result in a refund, it could be argued that it would be necessary to reduce the gross-up amount proportionally across all expenses so a refund wouldn't be made once through base rates and again in a cost recovery clause. The argument for that approach is that since the "allowed" growth of the company's revenues were capped, any base amounts should be adjusted only for the allowed growth, not the pre-refund revenue growth. The problem with that approach is that it takes what would be a straightforward calculation of a growth adjusted expense and backs out the refund which raises cost recovery through a clause by an equivalent amount. In essence, it would force ratepayers to give back their base rate refund through a cost recovery clause. The calculation of what is allowable through a cost recovery clause should be made in isolation of any base rate refunds to prevent clauses from being used to undermine base rate refunds ordered by stipulation.

Exhibit MGB-2 shows a sample calculation of how to determine gross-up amounts in the absence of rate-case stipulations. Adjusting for growth keeps neutral the utility's rate of return. That is, the projected NOI equals the required NOI. Exhibit MGB-3 shows a sample calculation of

1 allocating a revenue refund to reduce the expense growth adjustments.  
2 If done, the utility's NOI is what it was before the revenue refund;  
3 i.e., the utility gets back its refund in the cost recovery clause.  
4 Although only considering one line item expense out of all expenses  
5 would not completely undermine the ordered refund if it is a small  
6 enough percentage, in principle the refund ordered by the settlement  
7 agreement should not be reduced at all.

8

9 **Q. Briefly, could you summarize your testimony?**

10 A. Yes. If the Commission decides to allow recovery of incremental costs  
11 where the incremental cost is based on an historic year, the Commission  
12 should gross up (or down) the historic (base) year for the growth (or  
13 decline) in energy sales in kilowatt-hours from the base year to the  
14 current year. Grossing up a base year amount is merely a mathematical  
15 short-cut to converting historic and current year expenses into *rates*  
16 and examining what is incremental on that basis.

17

18 **Q. Does this conclude your testimony?**

19 A. Yes, it does.

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1 BY MR. KEATING:

2 Q Mr. Brinkley, have you prepared a summary of your  
3 testimony?

4 A Yes, I have.

5 Q Could you please provide that summary.

6 A Thank you. The purpose of my testimony is to propose  
7 that the Commission, when using a historical base year to  
8 determine what is incremental and proper for recovery through a  
9 cost recovery clause, look at the expenses on a per unit basis  
10 using the respective kilowatt hours sold for the base and  
11 current years.

12 The Florida Public Service Commission is responsible  
13 for setting rates that allow the recovery of costs prudently  
14 incurred by a rate-regulated utility under its jurisdiction.  
15 In doing so, the Commission is also responsible for ensuring  
16 that costs are not recovered through both base rates and cost  
17 recovery clauses simultaneously.

18 When rates are set, consumption increases, new  
19 customers come on-line, revenues increase, expenses increase.  
20 In other words, the company grows. In between rate cases, on  
21 an aggregate basis, all areas grow relatively proportionally  
22 such that ROE fluctuates within its authorized range.  
23 Therefore, in between rate cases, rates recover normal growth  
24 and expenses. Without accounting for this growth, cost  
25 recovery is given twice. Once implicitly and once explicitly.

1           With regards to the rate case settlements effective  
2 for Florida Power & Light and Progress Energy Florida,  
3 calculating incremental costs with regards to growth should be  
4 a nonissue. The effect of a base rate refund ordered because  
5 of those settlements is apart from the issues affecting cost  
6 recovery in clauses. In fact, if a growth adjustment were to  
7 be reduced because of a refund, it would amount to ratepayers  
8 giving the refund back to the utilities through the clause,  
9 likely not what the parties have intended. This concludes my  
10 summary, and I'm available for questions.

11           MR. KEATING: Staff would tender Mr. Brinkley for  
12 cross.

13           CHAIRMAN JABER: Thank you, Mr. Keating.  
14 Mr. McWhirter, do you have any questions?

15           MR. McWHIRTER: No questions.

16           CHAIRMAN JABER: Mr. Vandiver?

17           MR. VANDIVER: No questions.

18           CHAIRMAN JABER: Mr. LaFace?

19           MR. LaFACE: No questions.

20           CHAIRMAN JABER: Mr. Butler?

21           MR. BUTLER: Yes, I have a few questions.

22           CHAIRMAN JABER: Go ahead.

23                                   CROSS EXAMINATION

24 BY MR. BUTLER:

25           Q     First of all, Mr. Brinkley, just as a sort of



1 clarifying housekeeping matter, on your testimony, Page 3,  
2 Line 7, you had taken out the words "and hedging" in a revision  
3 to the prefiled testimony; correct?

4 A Yes.

5 Q On Line 8, it refers to "for recovery through the  
6 fuel or capacity cost recovery clauses." Would you agree that  
7 consistent with the change you made deleting the words "and  
8 hedging," that you ought to take out the words "fuel or" and  
9 then just make it capacity cost recovery clause?

10 A Yes.

11 CHAIRMAN JABER: Where is that, Mr. Butler?

12 MR. BUTLER: It's on Line 8, Page 3, the next line  
13 after where "and hedging" came out.

14 CHAIRMAN JABER: And, Mr. Brinkley, the change you  
15 are now articulating is what exactly?

16 THE WITNESS: Since we're only looking at incremental  
17 security costs, we're only looking at the capacity cost  
18 recovery clause and not the fuel recovery clause.

19 CHAIRMAN JABER: So you would recommend deleting  
20 which words? This is your testimony, so you need to tell me  
21 what --

22 THE WITNESS: "Fuel or" in the next line, Line 8.

23 CHAIRMAN JABER: All right.

24 BY MR. BUTLER:

25 Q And then just for grammar, the "clauses" would end up

1 being "clause" a few words later. You would agree with that as  
2 well?

3 A Correct. Yes. Thank you.

4 Q Mr. Brinkley, you cite Kory Dubin's testimony in the  
5 original GridFlorida proceeding for her proposal to gross-up  
6 base transmission costs for increases in sales. Do you know if  
7 Ms. Dubin's proposal was adopted by the Commission?

8 A I'm not aware that it was. I think it was deferred,  
9 the decision.

10 Q Do you know whether FPL ultimately suggested to the  
11 Commission that there are a variety of acceptable approaches to  
12 recovering incremental GridFlorida costs?

13 A I'm not aware.

14 Q You don't know one way or the other?

15 A No.

16 Q Did you examine the record of the various GridFlorida  
17 proceedings to determine how FPL's position on that issue might  
18 have changed during the course of the proceedings?

19 A No, I did not.

20 Q Okay.

21 A I did not rely on her testimony for my own, but I did  
22 cite that.

23 Q Is it your understanding that the Commission has  
24 deferred determination of the specific mechanism for recovery  
25 of incremental GridFlorida costs until utilities actually file

1 for recovery of those costs?

2 A Yes, that's what I understand.

3 MR. BUTLER: Thank you. Madam Chairman, I had handed  
4 out during the break a three-page document that -- a letter  
5 from FPL dated July 25, 2003 to Ms. Bayo with an attachment to  
6 it, and I think that it should be marked as Exhibit 37.

7 CHAIRMAN JABER: The July 25th, 2003 letter from  
8 Steve Romig will be marked as Exhibit 37.

9 MR. BUTLER: Thank you.

10 (Exhibit 37 marked for identification.)

11 BY MR. BUTLER:

12 Q Mr. Brinkley, do you have a copy of Exhibit 37 in  
13 front of you?

14 A Yes, I do.

15 Q Have you seen this before?

16 A Very recently. I have looked it over though.

17 Q Okay. If you turn to Page 2, would you agree that  
18 this letter is a report or attaches a report on a revenue  
19 refund for 2002, calendar year 2002 under FPL's existing  
20 revenue sharing refund mechanism and its stipulation of about  
21 \$11 million?

22 A It appears to be a partial year beginning April 15,  
23 2002.

24 Q And that would be because that's when the settlement  
25 went into effect; is that correct?

1 A Correct.

2 Q Okay. Mr. Brinkley, are you familiar with the terms  
3 of FPL's rate case settlement, 2002 rate case settlement?

4 A Yes.

5 Q Okay. Would you agree that Paragraph 3 states that  
6 the revenue sharing mechanism in the stipulation will be the  
7 appropriate and exclusive mechanism to address earnings levels?

8 A Yes.

9 Q Okay. Now, this settlement was approved by the  
10 Commission in April of 2002; correct?

11 A Yes.

12 Q Okay. And Ms. Dubin filed her GridFlorida testimony  
13 that you excerpted as an attachment to your testimony in  
14 August 2001; correct?

15 A Correct. She provided her testimony during the time  
16 that a similar revenue sharing plan was in place.

17 Q Right. You would be referring to FPL's 1999 revenue  
18 stipulation?

19 A Correct.

20 Q Okay. But at that point FPL would not have had any  
21 way of knowing whether that 1999 settlement, which was due to  
22 expire in April of 2002, would or wouldn't be replaced by  
23 another stipulation, did it?

24 A I would agree with that.

25 MR. BUTLER: That's all the questions that I have.

1 Thank you, Mr. Brinkley.

2 THE WITNESS: Thank you.

3 CHAIRMAN JABER: Mr. Beasley.

4 COMMISSIONER DEASON: No questions.

5 CHAIRMAN JABER: Commissioners. Staff.

6 MR. KEATING: No redirect.

7 CHAIRMAN JABER: Okay. Thank you. Exhibit 36,  
8 staff, without objection, will be admitted into the record.  
9 FPL Exhibit 37, without objection, will be admitted into the  
10 record.

11 (Exhibits 36 and 37 admitted into the record.)

12 CHAIRMAN JABER: Mr. Brinkley, thank you for your  
13 testimony.

14 (Witness excused.)

15 MR. KEATING: Chairman, could I ask if Exhibit 35,  
16 Mr. McNulty's, was moved into the record?

17 CHAIRMAN JABER: It was.

18 MR. KEATING: Okay. Thank you.

19 CHAIRMAN JABER: We're on the rebuttal witnesses,  
20 Commissioners.

21 TECO, you had William Whale?

22 COMMISSIONER DEASON: Yes, ma'am. Call Mr. Whale.

23 WILLIAM T. WHALE

24 was called as a rebuttal witness on behalf of Tampa Electric  
25 Company and, having been duly sworn, testified as follows:

## DIRECT EXAMINATION

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BY MR. BEASLEY:

Q Mr. Whale, you have prepared testimony, have you not, entitled, "Rebuttal Testimony of William T. Whale"?

A Yes, sir.

Q And that was filed October 16th; correct?

A Yes, sir.

Q Do you have any changes or corrections to make?

A No, sir.

Q If I were to ask you the questions in that rebuttal testimony, would your answers be the same?

A Yes.

MR. BEASLEY: I ask that Mr. Whale's testimony be inserted into the record --

CHAIRMAN JABER: The prefiled rebuttal testimony of William T. Whale shall be inserted into the record as though read.

BY MR. BEASLEY:

Q Mr. Whale, was the exhibit identified WTW-2 that accompanied your October 16th testimony, was that prepared under your direction and supervision?

A Yes, sir.

MR. BEASLEY: I'd ask that Mr. Whale's rebuttal exhibit be marked for identification.

CHAIRMAN JABER: WTW-2 will be marked as Exhibit 38.

(Exhibit 38 marked for identification.)

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1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**2                                   **PREPARED REBUTTAL TESTIMONY**3                                                           **OF**4                                                           **WILLIAM T. WHALE**5  
6       **Q.**     Please state your name, address, occupation and employer.7  
8       **A.**     My name is William T. Whale. My business address is 702  
9               North Franklin Street, Tampa, Florida 33602. I am employed  
10              by Tampa Electric Company ("Tampa Electric" or "company")  
11              as Vice President, Energy Supply - Operations.12  
13       **Q.**     Are you the same William T. Whale who filed direct  
14              testimony in this proceeding on September 12, 2003?15  
16       **A.**     Yes, I am.17  
18       **Q.**     Have you prepared an exhibit to support your testimony?19  
20       **A.**     Yes. Exhibit \_\_\_\_ (WTW-2), consisting of two documents,  
21              was prepared under my direction and supervision. Document  
22              No. 1 is titled "2000-2003 Safety Budget," and Document  
23              No. 2 is "Response to Interrogatory No. 37."24  
25       **Q.**     What is the purpose of your rebuttal testimony?



1   **A.**   The purpose of my rebuttal testimony is to address  
2           inaccurate statements and conclusions included in the  
3           direct testimonies of Mr. William Zaetz and Mr. Michael  
4           Majoros, testifying on behalf of the Office of Public  
5           Counsel.

6  
7   **Q.**   Is witness Zaetz qualified to make a determination as to  
8           the safe operational capability of the Gannon units?

9  
10   **A.**   No.   The documents submitted by Mr. Zaetz in support of  
11           his expertise indicate that he was a boilermaker for 33  
12           years and has never been a plant manager, maintenance  
13           manager or operations manager.  In addition, there is no  
14           indication that he has experience in the decision-making  
15           process of determining when a unit would need to be shut  
16           down, whether for safety or any other reason.  
17           Furthermore, his testimony does not indicate that he is a  
18           Certified Safety Professional or has obtained any  
19           industry-recognized safety credentials.

20  
21   **Q.**   Does Mr. Zaetz's testimony indicate that he has a basic  
22           knowledge of the operations of Tampa Electric's Gannon  
23           units?

24  
25   **A.**   No.  In fact, his testimony indicates the opposite.  For

1 example, one safety concern Tampa Electric has cited has  
2 been the escape of harmful gases such as carbon monoxide  
3 into employee work areas. On page 5 of his testimony Mr.  
4 Zaetz suggests that carbon monoxide production is an  
5 atypical event in boiler operations and that its presence  
6 in the Gannon units was caused by Tampa Electric's  
7 failure to perform adequate maintenance. In fact,  
8 harmful gases, including carbon monoxide, are produced as  
9 a normal part of the combustion process that takes place  
10 in boilers. Therefore, any leaks in the boiler walls and  
11 ductwork create a safety concern because they allow the  
12 gases to escape.

13  
14 **Q.** On page 3, lines 13 through 16 of his testimony, Mr. Zaetz  
15 makes the statement that neither safety nor reliability  
16 was a factor in Tampa Electric's decision to shut down  
17 Gannon Units 1 through 4 in 2003. Is that correct?

18  
19 **A.** No, it is not correct. Tampa Electric arrived at the  
20 decision to shut down the Gannon units in 2003 after  
21 consideration of many complex factors including safety,  
22 reliability and other issues. As I stated on page 11 of  
23 my direct testimony, by late 2002 it became apparent that  
24 the units needed to be shut down in 2003 due primarily to  
25 four factors: the declining availability and reliability

1 of the units; the significant expenditures that would need  
2 to be incurred in an effort to keep the units running  
3 reliably; the potential for safety incidents; and, the  
4 short window of time until the units would be required to  
5 shut down under the Consent Final Judgment ("CFJ") and  
6 Consent Decree ("CD"), regardless of how much the company  
7 might invest in an effort to keep them operating. A  
8 formalized plan was developed that took into account all  
9 of these considerations. As a result of that plan, on  
10 February 6, 2003, Tampa Electric notified its employees  
11 that it planned to shut down Gannon Units 1 and 2 on March  
12 15, 2003 and Gannon Units 3 and 4 in September 2003.  
13 Tampa Electric also began implementation of the final  
14 stages of its employee retraining and transition plan.

15  
16 **Q.** On pages 7 and 8 of his testimony, Mr. Zaetz cites lack  
17 of bowl mill maintenance as a cause of the carbon  
18 monoxide that was escaping from Gannon Station through  
19 leaks in casings and ductwork. Is his statement correct?

20  
21 **A.** No, that statement is not correct. Mr. Zaetz quotes  
22 Karen Sheffield's deposition transcript at page 35.  
23 However, Ms. Sheffield's deposition statements were in  
24 reference to a section of the Big Bend Station business  
25 plan. (Deposition Transcript, p. 26, lines 2-3) The Big

1 Bend Station business plan contains information about the  
2 units at that station, not about the Gannon units. In  
3 actuality, the boiler of Big Bend Unit 4 is the only unit  
4 in Tampa Electric's system that has bowl mills. The  
5 boilers of Gannon Units 1 through 4 are cyclone-fired  
6 boilers, which do not have bowl mills. Gannon Units 5  
7 and 6 have Riley turbo-fired boilers, which also do not  
8 have bowl mills.

9  
10 **Q.** On page 4, lines 12 through 13 of his testimony, Mr.  
11 Zaetz indicates that the increases in Tampa Electric's  
12 safety budgets for Gannon Station from 2000 to 2002  
13 illustrate that the company's biggest concern was  
14 budgetary. How do you respond?

15  
16 **A.** The safety budget for Gannon Station increased during the  
17 period referenced by Mr. Zaetz for the implementation of  
18 a company-wide expanded safety initiative. The purpose  
19 of the initiative was to improve safety at all of the  
20 company's facilities. The initiative included the hiring  
21 of Certified Safety Professionals as safety coordinators  
22 for each location as well as purchases of safety  
23 equipment and additional safety training. This is  
24 reflected in the costs included in the budget, shown in  
25 Document No. 1 of Exhibit \_\_\_\_ (WTW-2), which included

1 noise monitoring, chest x-rays, audiometric testing, drug  
2 testing, confined space rescue training and a station  
3 nurse. The station's safety budget does not fund the  
4 operations and maintenance of the units.  
5

6 Q. What is your response to Mr. Zaetz's assertions on page  
7 4, lines 5 through 9, and page 12, lines 12 through 17,  
8 that any plant can be repaired, regardless of its safety  
9 level, and that Tampa Electric's failure to repair the  
10 aging Gannon facilities demonstrates that the company's  
11 concern about continuing to operate the units was truly  
12 and solely budgetary?  
13

14 A. Those assertions are not correct. The fact that a unit  
15 or plant may be repaired does not indicate that making  
16 the repairs is a good business decision. Given the ages  
17 and conditions of its various units and environmental and  
18 CD requirements, Tampa Electric was faced with a question  
19 of how to allocate maintenance funds prudently. Since  
20 Gannon Station would have to be shut down in the near  
21 term, regardless of the amounts of time and dollars spent  
22 repairing and maintaining it, Tampa Electric adopted a  
23 "patch and go" maintenance strategy to maximize the  
24 benefits of its maintenance spending. The company's  
25 maintenance spending was re-focused on the activities

1 that would keep the Gannon units running safely for  
2 limited investment, and improve the operations of the  
3 company's other plants, which were not subject to  
4 shutdown on or before December 31, 2004.

5  
6 Q. On page 8, lines 6 and 7, Mr. Zaetz states, "Tampa  
7 Electric repeatedly disregarded reliability as an issue."  
8 How do you respond?

9  
10 Q. Mr. Zaetz's statement is without merit or fact. Tampa  
11 Electric considered the expected reliability of the  
12 Gannon units at every step of the decision-making  
13 process. The company experienced many failures with  
14 these units that were directly related to the age of the  
15 units. As previously stated, cost-effective investments  
16 and the units' reliability were considered, along with  
17 many other factors, in determining the shutdown schedule  
18 of Gannon Units 1 through 4.

19  
20 The statements that Mr. Zaetz quotes from the deposition  
21 transcript of Craig Cameron, Director of Finance for  
22 Tampa Electric, to reach his conclusions are taken out of  
23 context and mischaracterize Mr. Cameron's responses. Mr.  
24 Cameron was questioned about Gannon Station budget  
25 amounts that he compiled in August 2001. (Deposition

1 transcript, pages 31 through 32) First, August 2001 was  
2 earlier than the dates that the company began finalizing  
3 its shutdown plan for Gannon Station. Second, Mr.  
4 Zaetz ignores the fact that Mr. Cameron's role is to  
5 compile and manage the budgets created by the stations.  
6 When Mr. Cameron described his activities, he could not  
7 comment on what factors were included in setting the  
8 station's budget because he is not responsible for  
9 operations nor does he make operational decisions. In  
10 reality, Mr. Cameron's testimony indicates that he was  
11 working from a set of assumptions provided by the station  
12 management. These assumptions changed over time,  
13 particularly for Gannon Station, as I have previously  
14 described. The stations were responsible for performing  
15 the analyses of safety, performance and other factors  
16 that affected the shutdown decision-making process that  
17 Mr. Cameron stated he did not perform.

18  
19 **Q.** On page 9, lines 13 through 15 of his testimony, is Mr.  
20 Zaetz correct in his statement that, despite Tampa  
21 Electric's failure to spend adequate maintenance dollars,  
22 unit performance was not a valid reason for them to be  
23 shut down?

24  
25 **A.** No. The station's equivalent availability factor ("EAF")

1 declined from 1998 to 2002, as shown on page 3 of Exhibit  
2 \_\_ (WMZ-1). Tampa Electric took action to improve the  
3 availability of the units by operating the units during  
4 2001, 2002 and 2003 at a reduced header pressure compared  
5 to their design specifications. The shift to a "patch  
6 and go" style of maintenance was also designed to improve  
7 availability. This reduced the time the units were off-  
8 line for planned maintenance. These actions were  
9 implemented with the knowledge that the units would be  
10 shut down due to the Consent Decree requirements and for  
11 the Bayside repowering project.

12  
13 **Q.** On pages 9 through 10 of his testimony, Mr. Zaetz lists  
14 four data sources, which he claims demonstrate that unit  
15 performance was not the reason for the Gannon shutdown.  
16 Please describe the inaccuracies of Mr. Zaetz's  
17 characterization of the first item listed in support of  
18 his assertion.

19  
20 **A.** Mr. Zaetz's first data source is a decline in the  
21 station's unplanned outage factor from 2000 to 2002.  
22 However, the information shown on page 4 of Exhibit \_\_  
23 (WMZ-1) actually reflects an increase in the unplanned  
24 outage factor from 1998 to 2002. In 1998, the station's  
25 unplanned outage factor was 18.5 percent. In 2000, it



1 reached a five-year-period high of 35.6 percent. Mr.  
2 Zaetz chose to use the 2000 value as his basis for  
3 comparison. Obviously, any time the highest value during  
4 a period is chosen as a baseline, there will be  
5 comparative reductions in the other years. Furthermore,  
6 the 2000 value was high due to a specific problem with a  
7 unit generator, not due to the 1999 explosion as Mr.  
8 Zaetz alleges.

9  
10 Upon review of the data for a more representative  
11 baseline, it is clear that the actual 2001 and expected  
12 2002 unplanned outage factors of 23.0 and 22.5 percent,  
13 respectively, were greater than the factors for 1998 and  
14 1999. The unplanned outage factor projected for 2003 was  
15 even higher at 30.3 percent. This shows an increasing  
16 trend for the station's unplanned outage factor, which is  
17 a significant availability issue. If units increasingly  
18 experience unplanned outages, the company's ability to  
19 plan to meet generation and load requirements to serve  
20 its customers with economically priced generation and  
21 purchased power is significantly impacted, and the  
22 company may be forced to purchase more expensive power in  
23 the wholesale market to replace the capacity of units  
24 that were forced out of service.

25

1 Q. Please describe the second item that Mr. Zaetz  
2 inaccurately cites in support of his allegations.

3  
4 A. Mr. Zaetz concludes that net capacity data included in  
5 the Gannon Station business plan support his position  
6 because the values do not show a large decline from 1998  
7 to 2002. However, a more thorough reading of page 6 of  
8 Exhibit \_\_ (WMZ-1) shows that it includes a definition of  
9 net capacity, as "maximum dependable generation  
10 capabilities minus station service load." The net  
11 capacity rating shown here is different from the typical  
12 operating capacity ratings of the Gannon units. The  
13 maximum capacity is the capacity that the units could  
14 produce for a short period of time to meet peak load  
15 levels. Tampa Electric modified its operations and  
16 maintenance for the Gannon units as their conditions  
17 worsened in order to maximize their availability,  
18 especially during peak periods. For example, by reducing  
19 the boiler operating pressure and thereby reducing the  
20 unit's net capacity rating by a mere 10 MW, Tampa  
21 Electric could experience an increase of as much as five  
22 to 10 percentage points in the unit's reliability.

23  
24 Mr. Zaetz also cites the net generation values shown on  
25 page 7 of Exhibit \_\_ (WMZ-1) to support his argument.

1 Net generation values are tied to the time required for  
2 the maintenance completed on the units. Therefore, the  
3 data demonstrate that Tampa Electric's strategy of  
4 shifting to a "patch and go" maintenance approach,  
5 specifically to enhance the station's availability, was  
6 successful.

7  
8 **Q.** What is the third inaccurate statement that Mr. Zaetz  
9 made in support of his conclusion?

10  
11 **A.** Mr. Zaetz cites the station's on-peak availability  
12 factor. A reference to the definition of the on-peak  
13 availability factor provided on page 9 of Exhibit \_\_  
14 (WMZ-1) shows that Mr. Zaetz mischaracterizes the data.  
15 On-peak availability factor is defined as, "The on-peak  
16 availability factor is based on peak hours instead of  
17 period hours. Peak hours occur when native load is  
18 greater than 2,900 MW." Due to the load level criterion  
19 applied to this data, the number of hours that the data  
20 represents is necessarily small. As previously stated,  
21 Tampa Electric made a concerted effort to maximize the  
22 units' availability, especially during peak periods.  
23 Consequently, the on-peak availability factor data again  
24 simply demonstrate the success of the company's  
25 strategies.

1 Q. Finally, please describe Mr. Zaetz's fourth improper  
2 characterization.

3  
4 A. At page 10 of his testimony Mr. Zaetz implies that  
5 because the station's performance was meeting  
6 expectations, performance was not the reason for the  
7 units' shutdown. In actuality, Tampa Electric adjusted  
8 its methods of operating the units as well as its  
9 expectations of the units' performances to more  
10 accurately reflect their aged conditions and declining  
11 reliabilities. It would be ridiculous for the company  
12 not to have adjusted its expectations. To not do so,  
13 would have meant that Tampa Electric simply ignored the  
14 reliability issues that the station experienced. In  
15 fact, Tampa Electric both recognized the issues and  
16 planned and implemented strategies to respond to these  
17 reliability and availability issues.

18  
19 Q. Mr. Zaetz indicates on page 8 of his testimony that the  
20 units' reliability could have and should have been  
21 improved by simply fixing the tube leaks. Would this  
22 strategy have resolved the station's reliability issues?

23  
24 A. No. As shown in Exhibit \_\_\_\_ (WTW-1), Document No. 1,  
25 Page 1 of my direct testimony, Tampa Electric fixed over

1 1,000 tube leaks in the boilers of Gannon Units 1 through  
2 4 during 2002, and it utilized repair techniques such as  
3 pad welding, dutchmen, window welds and replacement of  
4 complete tube sections when necessary. Tampa Electric  
5 also attempted to manage and enhance reliability by  
6 running the Gannon units at reduced header pressure,  
7 which reduced the internal steam pressure in the boiler  
8 tubes and decreased the likelihood of tube failures due  
9 to material degradation and thinning that has reduced the  
10 tubes' ability to withstand pressure. Despite these  
11 actions, the frequency and number of boiler tube leaks  
12 increased. The tube metal had also degraded over time  
13 with normal use. The boiler tubes reached a point where  
14 repair procedures were no longer effective, and complete  
15 boiler component replacement was required. However,  
16 given that the units would be required to be shut down in  
17 the near term and due to the significant planned outage  
18 time necessary to install replacement components, this  
19 was not a cost-effective alternative.

20  
21 Q. Is it typical to conduct a hydrostatic test that requires  
22 the unit to hold one and one half times its operating  
23 pressure after boiler tube repairs are made as Mr. Zaetz  
24 asserts on page 9 of his testimony?

25

1 **A.** No, it is not typical for older units. The hydrostatic  
2 test to determine if the unit will hold one and one half  
3 times its operating pressure is typical of new  
4 construction. For older units, a hydrostatic test to  
5 determine if the unit will merely hold its operating  
6 pressure is typical. It is not reasonable to expect  
7 units of the Gannon units' ages to be in like-new  
8 condition or to operate as if they are brand-new units.

9  
10 **Q.** Did the units experience equipment reliability problems  
11 in areas other than the boiler tubes?

12  
13 **A.** Yes. Although Mr. Zaetz focuses only on the boiler tube  
14 leaks, his proposed solution to that problem would not  
15 have resolved the units' other reliability problems. The  
16 units were experiencing problems with several other types  
17 of equipment, including the feedwater heaters, the steam  
18 turbines, the control wiring, leaks in the duct system  
19 leading to and from the boilers and structural steel  
20 deterioration. To correct these problems would have  
21 required major capital expenditures and component  
22 replacements. Some of the items would require long lead  
23 times, up to six months, to obtain replacement equipment,  
24 along with major planned outages to complete the work.  
25 If these repairs were made, the planned outage time, in

1 conjunction with the shutdown requirement mandated by the  
2 Consent Decree, would have left very little time to  
3 recoup any of the benefits of that investment. As the  
4 company previously stated, the short remaining life of  
5 the units meant that large investments for repairs were  
6 no longer cost-effective.

7  
8 **Q.** Are repair costs the only costs that Tampa Electric would  
9 have incurred in order to improve the safety and  
10 reliability of the Gannon units?

11  
12 **A.** No. Tampa Electric would have had to spend significant  
13 time and dollars planning outages to repair and replace  
14 components, procuring replacement equipment, installing  
15 the new equipment and replacing capacity of the affected  
16 units while they were off-line for the planned outages.

17  
18 **Q.** At page 11 of his testimony, Mr. Zaetz says that Tampa  
19 Electric's \$57 million estimate to keep Gannon running  
20 through 2004 is unrealistic. How do you respond?

21  
22 **A.** First, Mr. Zaetz misstates the amount as \$53 million. As  
23 shown in Document No. 2 of Exhibit \_\_ (WTW-2), Tampa  
24 Electric stated that the expected operations and  
25 maintenance ("O&M") costs range from \$37 million to \$57

1 million to keep Gannon Units 1 through 4 running through  
2 2004, assuming a 60 percent and 85 percent availability,  
3 respectively. Tampa Electric did not determine that the  
4 units were not reliable solely based on an 85 percent  
5 availability criterion. Even the expected costs to  
6 maintain 60 percent availability are significant.  
7 Sinking capital into aged units that must soon be shut  
8 down is not an efficient or cost-effective use of  
9 capital, which apparently Mr. Zaetz ignores. As with any  
10 business, there are limits on the company's ability to  
11 spend, whether for maintenance or any other item.  
12 Consequently, Tampa Electric strives to maximize the  
13 benefits of its expenditures.

14  
15 **Q.** What is your overall assessment of Mr. Zaetz's testimony?  
16

17 **A.** Mr. Zaetz reaches the erroneous conclusion that  
18 preventive boiler maintenance is a cure for all the  
19 issues facing Gannon Station without demonstrating any  
20 knowledge as to the particular operational  
21 characteristics or maintenance requirements of Gannon  
22 Units 1 through 4. Mr. Zaetz also ignores the  
23 requirements of the CD and CFJ to shut down the Gannon  
24 units in the near future. He also ignores the fact that  
25 even if Tampa Electric invested large amounts in the



1 Gannon units, there would be little time remaining for  
2 the company to recoup any of its investments, given the  
3 required outage time to make repairs and replace  
4 components and the shutdown deadline. Tampa Electric  
5 appropriately took into account safety, reliability and  
6 other factors in deciding to shut down the units. The  
7 company has made a prudent business decision, and Mr.  
8 Zaetz has neither the knowledge of the Gannon units nor  
9 knowledge of Tampa Electric's shutdown decision process  
10 to characterize the decision as solely budgetary and  
11 self-interested.

12  
13 **Q.** Does the testimony of Mr. Majoros incorrectly characterize  
14 Tampa Electric's actions?

15  
16 **A.** Yes. First, Mr. Majoros claims, on page 7 of his  
17 testimony, that Tampa Electric's current schedule for  
18 shutting down Gannon Units 1 through 4 in 2003 was  
19 fostered by economic considerations and the desire to  
20 avoid capital or O&M expenses. As I have previously  
21 stated, Tampa Electric's decision to shut down the Gannon  
22 units in 2003 was driven primarily by four factors: the  
23 declining availability and reliability of the units; the  
24 significant expenditures that would need to be incurred in  
25 an effort to keep the units running reliably; the

1 potential for safety incidents; and, the short window of  
2 time until the units would be required to shut down,  
3 regardless of how much the company might invest in an  
4 effort to keep them operating.

5  
6 **Q.** How would you describe Mr. Majoros's approach in relating  
7 how Tampa Electric should have conducted its business, and  
8 in particular how the company should have operated Gannon  
9 Units 1 through 4?

10  
11 **A.** Mr. Majoros's approach appears to be that Tampa Electric  
12 should ignore such factors as safety, reliability and  
13 operational constraints and to throw whatever amount of  
14 capital may be required into operating Gannon Units 1  
15 through 4 through December 31, 2004, without any regard to  
16 how impracticable that approach is or how inconsistent it  
17 is with the realities associated with making an orderly  
18 transition to natural gas-fired generation. In addition,  
19 although Mr. Majoros purports to have an expert  
20 perspective on this issue, his testimony does not address  
21 any specific facts relating to Gannon Station, nor does he  
22 have any independent knowledge as to the safety,  
23 reliability and other operational constraints associated  
24 with continuing to operate Gannon Units 1 through 4.

25

1 Q. Did Tampa Electric ever have a plan to run Gannon Units 1  
2 through 4 up to the December 31, 2004 deadline for  
3 ceasing coal-fired generation at Gannon Station?  
4

5 A. No. As I described in my direct testimony, Tampa  
6 Electric is required by the Consent Decree to shut down  
7 or repower all Gannon units no later than December 31,  
8 2004. However, the company never had a plan to operate  
9 the units until that date. Tampa Electric always  
10 recognized that the units' shutdown would require  
11 flexibility to respond to dynamic conditions as the  
12 deadline approached. The company appropriately refined  
13 the shutdown schedule and transition plan to reflect  
14 current conditions, resulting in Tampa Electric's  
15 adoption of the current shutdown schedule.  
16

17 Q. Mr. Majoros, at pages 8 and 9, criticizes the company's  
18 \$57 million cost estimate to keep Gannon Units 1 through  
19 4 operating through 2004. How do you respond?  
20

21 A. Tampa Electric's estimates of the O&M investments needed  
22 to keep Gannon Units 1 through 4 until December 31, 2004  
23 show a range of costs to achieve different availability  
24 levels. The costs range from \$37 million to \$57 million,  
25 to achieve an approximate 60 percent and 85 percent

1           availability, respectively. As I have previously stated,  
2           keeping the units running through 2004 would be a very  
3           expensive proposition under either scenario, after which  
4           Tampa Electric would have nothing to show for the  
5           expenditures because the units would no longer be  
6           permitted to burn coal.

7  
8   **Q.**   Does this conclude your rebuttal testimony?

9  
10 **A.**   Yes it does.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 BY MR. BEASLEY:

2 Q Mr. Whale, would you summarize your rebuttal  
3 testimony, please?

4 A Yes, sir. Good afternoon, Commissioners. I'm Bill  
5 Whale, vice president of energy supply operations for Tampa  
6 Electric. My rebuttal testimony addresses certain inaccurate  
7 statements and conclusions included in the testimonies of  
8 Mr. William Zaetz and Mr. Michael Majoros testifying on behalf  
9 of the Office of Public Counsel.

10 Mr. Zaetz has stated in his testimony that Tampa  
11 Electric's decision to shut down Gannon station was solely  
12 budgetary. He also states that the company's decision was not  
13 based on safety or reliability. These statements are  
14 inaccurate. In addition, I do not believe that Mr. Zaetz is  
15 qualified to make a determination as to whether the Gannon  
16 units experienced significant safety or reliability issues, nor  
17 is he qualified to state that the company's decision was solely  
18 budgetary because he does not have experience in operating a  
19 plant, budgeting for the operations and maintenance of a plant,  
20 or deciding if or when a unit or a station should be shut down.

21 The information cited by Mr. Zaetz in support of his  
22 position is incorrectly stated or taken out of context and  
23 misinterpreted. The Gannon station has been in operation for  
24 46 years. It is an aged facility that cannot be expected to  
25 operate as a new facility might. In addition, Gannon station's

1 performance declines occurred despite Tampa Electric's  
2 multitude of repairs and creation of operational strategies to  
3 respond to the performance and safety issues. Mr. Zaetz's  
4 testimony that unit performance was not a factor in Tampa  
5 Electric's decision is simply incorrect. My testimony  
6 addresses Mr. Zaetz's inaccurate conclusions and statements in  
7 detail.

8           Witness Majoros incorrectly concludes that Tampa  
9 Electric's schedule for shutting down Gannon station was  
10 determined by the sole desire to avoid capital or operating and  
11 maintenance expenses. In fact, as I stated in my direct  
12 testimony, the company's decision was made after careful and  
13 deliberate consideration of many facts. Tampa Electric  
14 balanced competing constraints as it's tried to keep the units  
15 running as long and safely as possible while also making sound  
16 operating and business decisions.

17           Mr. Majoros's approach dismisses Tampa Electric's  
18 significance and concerns regarding to continue operation of  
19 the Gannon units in the areas of safety, reliability,  
20 operational constraints, and ignores the requirements for the  
21 units to cease burning coal. He also ignores the need the  
22 company had to smoothly transition to operate in a natural  
23 gas-fired power plant. His approach is not a sound approach.

24           Tampa Electric's decision to shut down Gannon Units  
25 1 through 4 was based on careful consideration of many complex

1 factors. The company acted prudently. And both Mr. Zaetz's  
2 and Mr. Majoros's incorrect statements and conclusions should  
3 be disregarded. That concludes my summary.

4 MR. BEASLEY: Thank you. We tender the witness for  
5 questions.

6 CHAIRMAN JABER: Mr. Vandiver.

7 CROSS EXAMINATION

8 BY MR. VANDIVER:

9 Q Good afternoon, Mr. Whale.

10 A Good afternoon.

11 Q Mr. Whale, we're going to hand out an exhibit, and  
12 I'd like to get that -- a number for that, I believe.

13 MR. VANDIVER: What's the next number, please, Madam  
14 Chairman?

15 CHAIRMAN JABER: It looks like it's OPC's second  
16 request for production of document Number 20. Is this TECO's  
17 response to that?

18 MR. VANDIVER: Yes, it is.

19 CHAIRMAN JABER: Okay. TECO's response to OPC's POD  
20 Number 20 will be identified as Exhibit 39.

21 (Exhibit 39 marked for identification.)

22 BY MR. VANDIVER:

23 Q Okay. Before we get to that Mr. Whale, at Page 3 of  
24 your testimony, starting at Lines 22, you cite declining  
25 availability, reliability, the cost to keep Gannon running, and

1 the potential for safety incidents --

2 A Correct.

3 Q -- as the four principal reasons for closing down  
4 Gannon; is that correct?

5 A Correct.

6 Q And I'd like for you to identify the document that's  
7 been identified as Exhibit 37 -- is that correct, Commissioner?

8 CHAIRMAN JABER: 39.

9 Q -- 39. And this is a confidential document, sir, and  
10 so I don't want to verbalize the exact verbiage, but can you  
11 tell me basically what this document is, sir?

12 A Give me a minute here. I just got it.

13 Q Sure thing.

14 My questions relate primarily to that first page,  
15 Mr. Whale, the 3278.

16 A Okay. I got that.

17 Q What's 3278? I believe this is a performance  
18 evaluation for Mr. Maye, is it not?

19 A That's correct.

20 Q You prepared this performance evaluation, did you  
21 not?

22 A No, I did not.

23 Q Do you know who did?

24 A This is a station scorecard that the station keeps  
25 up. This is not the performance evaluation form because that



1 evaluation is the DEP form in the attached.

2 Q Okay. But this is the station scorecard for Gannon  
3 station, is it not?

4 A For 2003, yes, it was.

5 Q Okay. And this is the same Gannon station that's  
6 referred to in your testimony that we just talked about on  
7 Page 3, is it not?

8 A Yes, it is.

9 Q Okay. And as I recall -- I would like to focus  
10 specifically on OPA, and it looks like -- well, let's start at  
11 safety at the top. It looks like it's achieving -- Gannon is  
12 achieving its targets, is it not?

13 A This was through -- I don't see a date. It says year  
14 to date.

15 Q Down at the bottom, sir.

16 A I see at the bottom it says through May.

17 Q Yes, sir.

18 A So through May they were making their goal.

19 Q Yes, sir. And Gannon 1 and 2 was shut down on what  
20 date, sir? Was it April 7th and --

21 A April.

22 Q Okay.

23 A No, it wasn't April 17th. It was April 7th and April  
24 9th.

25 Q Okay. And as I recall, EAF, in your mind, was the

1 most important reliability factor; is that correct?

2 A That's correct.

3 Q And again, Gannon's achieving that?

4 A Yes, it is.

5 Q Okay, sir.

6 A That's Gannon station total.

7 Q Yes, sir. And Mr. Maye's opinion we recall from his  
8 deposition, an earlier encounter, his opinion was that OPA was  
9 the most important one.

10 A Mr. Maye and I don't always agree on everything.

11 Q Yes, sir. I appreciate that. I don't always agree  
12 with my boss either, so.

13 A That's right.

14 Q But again --

15 CHAIRMAN JABER: Who's not sitting in the back of the  
16 room.

17 MR. VANDIVER: I hear you, Ms. Jaber.

18 BY MR. VANDIVER:

19 Q OPA, it looks like Gannon is meeting its goals again,  
20 would you agree?

21 A Yes.

22 Q Okay. This looks like a pretty good scorecard just  
23 going down those -- again, the four indices you had cited,  
24 safety, reliability, availability, would you agree with me that  
25 it's hitting all of those indices, isn't it?

1           A     These goals were adjusted to the -- where we -- you  
2 know, as we thought the station as it's going to continue its  
3 operation, adjust those goals with that in mind.

4           Q     All right, sir. Could we go to 3285, sir? And this  
5 is a very similar scorecard for Gannon again, isn't it, sir?

6           A     That's correct.

7           Q     And 2002 --

8           A     Through December.

9           Q     Yes, sir. And not to belabor it, but again, we have  
10 Gannon meeting the safety goals, the generation goals, and the  
11 OPA goals. Would you agree with me, sir?

12          A     Yes, it is making its goals.

13          Q     And I'm seeing a lot more yeses than nos for meeting  
14 goals for Gannon station. Again, and I'm thinking reliability,  
15 safety, availability, those four things you cited in your  
16 testimony for Gannon station. Would you agree with me, sir?

17          A     It is meeting its goals, yes, it is.

18               MR. VANDIVER: Yes, sir. That's all the questions I  
19 have, Mr. Whales. Thank you.

20               CHAIRMAN JABER: Mr. LaFace.

21               MR. LaFACE: No questions.

22               CHAIRMAN JABER: Staff.

23               MR. KEATING: Just a few questions.

24                               CROSS EXAMINATION

25               BY MR. KEATING:

1 Q Mr. Whale, if you could turn to Page 17 of your  
2 rebuttal testimony. At Line 7, starting at Line 7, you state  
3 that sinking capital into aged units that must soon be shut  
4 down is not an efficient or cost-effective use of capital.  
5 Could you explain why that's not an efficient or cost-effective  
6 use of capital to keep Gannon operating until the end of 2004?

7 A View capital as a major component, those being the  
8 cyclone repairs. Those are major capital pieces that again you  
9 identify it as capital, and it would not have the life -- the  
10 unit would not be able to run long enough to get the life out  
11 of that particular component that you replaced. I guess it  
12 would be like buying new tires on a car that you're going to  
13 end up scrapping in another six months. That's not an  
14 effective way as far as using that money.

15 Q Is it not efficient or cost-effective because there  
16 would be only one year to recover the cost of capital  
17 replacement items?

18 A Basically you would get one more year out of that  
19 component. Yes, you'd cease operation.

20 Q Now, Page 16 of your testimony, starting on Line 24,  
21 you testified that it would have cost between 37 million and 57  
22 million to keep Gannon operating until the end 2004; correct?

23 A That's correct.

24 Q What was the incremental cost of the replacement  
25 capacity and energy purchased by TECO in lieu of operating

1 Gannon until the end of 2004?

2 A I don't know that figure.

3 Q Have Tampa Electric's ratepayers paid more in fuel  
4 adjustment charges because of TECO's decision to shut down  
5 Gannon when it did rather than operate it until the end of  
6 2004?

7 A Again, that's not my area of responsibility or  
8 expertise.

9 Q Has Tampa Electric performed any cost-effectiveness  
10 analyses of its decision to shut down Gannon when it did and  
11 buy replacement capacity and energy?

12 A Again, I did not look at replacement power.

13 Q At Page 6 of your rebuttal testimony, starting at  
14 Line 24, you discuss Tampa Electric's strategy regarding the  
15 expenditure of O&M dollars on Gannon and Tampa Electric's other  
16 units.

17 A I'm sorry, Page 6, which line?

18 Q Beginning at Line 24 and then continuing on to the  
19 top of Page 7.

20 A Yes, sir.

21 Q What do you mean when you say, "improve the  
22 operations of the company's other plants"?

23 A Basically we're reallocating the dollars in the  
24 budget that we had. The dollars that would not be spent at  
25 Gannon were reallocated as far as spending at Big Bend. And

1 you see our budget line, basically we had some fluctuations,  
2 but the sum stayed the same, and so those dollars that would  
3 not be spent at Gannon would be spent at Big Bend or Polk.

4 Q If those dollars aren't spent on other units, do  
5 Tampa Electric's shareholders benefit from the 37 million to  
6 57 million that's not spent on Gannon?

7 A And I've never -- as Madam Chairman pointed out, I've  
8 exceeded my budget every year, so I haven't had a savings in a  
9 sense. I'm always having to go back and find additional funds  
10 from other sources to support that -- support the operation.

11 Q But if you somehow managed to come under the budget,  
12 would TECO's shareholders benefit from any amounts not spent on  
13 Gannon?

14 A Again, I just worry about my particular budget and  
15 how it rolls into the Tampa Electric --

16 Q And I guess I just want to get a yes-or-no answer,  
17 and if you don't know the answer, that's fine, but I would ask  
18 again, if the money -- the \$37 million to \$57 million saved on  
19 Gannon, if not all of that is used for other units, would that  
20 money be to Tampa Electric shareholders' benefit?

21 A It was never budgeted. So I know you asked for a  
22 yes-or-no question (sic), but it was never budgeted there, so.  
23 It wasn't there.

24 Q If those amounts weren't budgeted, do Tampa  
25 Electric's shareholders benefit?

1           A     I don't know because the whole budget -- you know, I  
2 don't know what the whole budget would look like.

3           MR. KEATING: Thank you. That's all the questions I  
4 have.

5           CHAIRMAN JABER: Commissioners.

6           Mr. Beasley, redirect.

7           COMMISSIONER DAVIDSON: Chairman.

8           CHAIRMAN JABER: Oh, I'm sorry. Commissioner  
9 Davidson.

10           COMMISSIONER DAVIDSON: Thank you, Chairman. If you  
11 would, please, turn to Page 18 of your rebuttal testimony, the  
12 last paragraph beginning with the word "as." In that paragraph  
13 running over to Page 19, you identify four factors that drove  
14 TECO's decision to shut down the Gannon units in 2003.

15           If you could, turn to the -- keep that testimony  
16 open, turn to the confidential exhibit that was handed out by  
17 Office of Public Counsel, and specifically I'm going to ask you  
18 to make ready reference to three pages: Page 3278, which is  
19 the table of the Gannon/Bayside 2003 goals; Page 3285, the  
20 Gannon station 2002 goals; and the 3291 Gannon station 2001  
21 goals; and there's a 32 -- I apologize, 3297 also which appear  
22 to be Gannon station 2001 goals.

23           Using those three scorecards, and if there are other  
24 scorecards in that document that are useful, just let me know,  
25 but using those three documents, please point us to the

1 information for 2001, 2002, 2003 that would support each of  
2 those four factors. Your first one, for example, is the  
3 declining availability and reliability of the units. Give us  
4 the information on those scorecards that allow us to see in  
5 objective measures what TECO saw as the declining availability  
6 and reliability of the units. And if you need to just rip that  
7 exhibit apart, that's fine.

8 Sorry, OPC, for destroying your exhibit.

9 MR. VANDIVER: Just as long as we get it back, sir.

10 THE WITNESS: What I'm trying to correlate,  
11 Commissioner, why it's taking some time is the goals weren't  
12 the same for each year. The first one I can take is the safety  
13 side, and, you know, the station was performing better on the  
14 safety side. We institute a major program as far as  
15 instituting safety, and the other thing is we don't use  
16 incidences as a measure of safety. We use more of the near  
17 misses and those rates and in looking at what incidences  
18 occurred and avoid having recordables.

19 COMMISSIONER DAVIDSON: In terms of what appears on  
20 this document to the person reading these documents, does it  
21 appear that from 2001 to 2003 Gannon in terms of the safety  
22 measure actually improved?

23 THE WITNESS: It appears it improved, yes. The  
24 number of incidences dropped.

25 COMMISSIONER DAVIDSON: And just on that issue, given



1 that safety has been given as a fundamental reason for TECO's  
2 decision to close the plant, walk me through -- help me  
3 understand the process by which we reconcile your statement  
4 that based on this data safety appears to have improved with  
5 the decision to close for deteriorating safety.

6 THE WITNESS: Sure. Safety -- you can use  
7 recordables as a measure of safety, and that is recording the  
8 number of events that actually happen, and -- which we try to  
9 be as proactive on the front end as far as preventing the  
10 accident before it actually happens. I'll take the external  
11 tube leaks. We can wait until one actually happens, and then  
12 say, we've got to address that, or we've got to look at it,  
13 identify the risk and mitigate that risk away.

14 Gannon station had a major safety incident in  
15 1999 where several fatalities occurred, and we really  
16 readjusted how we looked at it and saying, how do we minimize  
17 and reduce the safety risk. That's one of the reasons why we  
18 went to the reduce header operation.

19 The structural steel areas, we had several cases  
20 where an individual stepped through the grating, so we blocked  
21 those areas off. The gas leaks, we brought in monitors to put  
22 in the control room to make sure that if the monitor went off,  
23 the individual cleared out of the control room. We didn't have  
24 those particular tools at that time.

25 COMMISSIONER DAVIDSON: On the next category on the

1 2003 scorecard, Page 3278, is environmental. Can you tell us  
2 how the Gannon units performed from 2001 to 2003 using that  
3 measure, the environmental measure? Did the Gannon units  
4 improve or deteriorate based on the information provided  
5 herein?

6 THE WITNESS: Basically it deteriorated in 2002.  
7 They did not make their goal in 2002. And 2003 year to date,  
8 and again I'm taking a -- 2003 is to May. 2001 and 2002 are 12  
9 months of data. So we don't have an apples-to-apples  
10 comparison here. But in 2002 there appear to be eight  
11 environmental incidences at Gannon station, and in 2001 they  
12 had zero; 2003 they had zero up to May.

13 COMMISSIONER DAVIDSON: And let me just ask about two  
14 more measures that have been mentioned. First, OPA, if you  
15 could give the same analysis, 2001 to 2003, and then EAF, 2001  
16 to 2003.

17 CHAIRMAN JABER: And if I could just interrupt the  
18 witness. Earlier it was represented that this was a  
19 confidential document. Mr. Beasley, I don't know -- is the  
20 entire document confidential or the numbers? Just caution your  
21 witness -- remind him what is exactly confidential before we  
22 answer that question.

23 MR. BEASLEY: The numbers and not the categories.

24 CHAIRMAN JABER: And you heard Commissioner  
25 Davidson's question. You can respond to that without giving

1 what the numbers are?

2 THE WITNESS: Yes, ma'am. OPA is improving at Gannon  
3 from 2001 and 2003. And what was supportive of this -- why  
4 this would be occurring is because of the fact of the patch and  
5 go which let the unit be available when a peak came in. We  
6 would go in, do the repair and get the unit back on for the  
7 peak. Again, this is -- 2003 is six months' worth of data  
8 versus 12 months'.

9 COMMISSIONER DAVIDSON: And for EAF, please.

10 THE WITNESS: EAF is not stated on the 2001 goals.  
11 It is not stated on the 2002 goals. It is stated on the 2003,  
12 and it was -- had a goal of 63 -- I won't state the numbers.

13 CHAIRMAN JABER: Mr. Whale, the question related to  
14 can you represent how the company performed as it relates to  
15 EAF in a general fashion.

16 THE WITNESS: Yes, it did. EAF for Gannon 1 through  
17 4 deteriorated.

18 COMMISSIONER DAVIDSON: Thank you. That's all I had,  
19 Chairman.

20 CHAIRMAN JABER: Okay. Redirect, Mr. Beasley?

21 MR. BEASLEY: Yes, ma'am.

22 REDIRECT EXAMINATION

23 BY MR. BEASLEY:

24 Q Mr. Whale, when the goals were set for 2003, do you  
25 know when that was, what time frame that would have been?

1           A     No, I do not remember when the goals were set for  
2 2003.

3           Q     Were the goals set in light of the condition that the  
4 units were in when the goals were set?

5           A     Yes, they were.

6           Q     What would the goals have been, say, ten years  
7 earlier for these units?

8           A     Ten years earlier, the goals for the availability for  
9 EAF would have been in the mid-80s; OPA we did not measure at  
10 that time; environmental we always shoot for zero on a goal;  
11 and the safety incident at that time, I don't know what the  
12 rate was at that time.

13          Q     Well, in the last three years, has it been easy for  
14 Mr. Maye and his staff to meet the goals that have been set for  
15 them out at Gannon station?

16          A     No. They've been very challenging. We set  
17 challenging goals for them.

18          Q     Well, can you give us an example with respect to  
19 these units back in March? And I believe I would be referring  
20 to Gannon Units 1 and 2 and the efforts that were made to keep  
21 those units running.

22          A     Yes. Gannon 1 and 2, again, we were doing a patch  
23 and go to try to keep them running. The reason why we didn't  
24 shut down on the 15th was because there was needs that -- we  
25 had some warmer weather coming in, we had some outages that

1 occurred. And those particular units, we kept them running,  
2 then we shut them down. There seemed to be a call that one of  
3 the Seminole units came down, and we called and asked them to  
4 put them back on. They did get out there. They did get them  
5 back on, but they only lasted a couple of days, and they came  
6 back off again with forced outages.

7 Q Did you have to start them up again after that for  
8 any particular reason?

9 A Not after April.

10 Q And did you do some stack welding at Gannon station?

11 A Yes, we do pad welding that is part of the patch and  
12 go in the boiler tubes. You go in, you open a door, you find  
13 the leak, the welder can get in there and put a pad weld on the  
14 tube. It's a patch and go. It let's the welder get back out,  
15 close the door and get the unit back on-line.

16 Q Mr. Whale, if you avoided spending certain O&M  
17 dollars on the Gannon units and you instead took those dollars  
18 and applied them to programs at your other generating stations  
19 to enhance those programs and make them work better, would  
20 there be any benefit from those dollars to the shareholders of  
21 Tampa Electric Company? Do you understand my question?

22 A Those costs would be to keep the units running and  
23 again to meet the needs of the customers, so I don't know  
24 because my particular position is the operations.

25 Q Well, if your overall energy supply O&M dollars is

1 roughly the same as between two years but in the first year  
2 you're applying a good portion of those dollars to the O&M  
3 expenses associated with Gannon station but in the next year  
4 instead of spending that money on Gannon station, you're  
5 spending it on your other generating plants at your other  
6 stations, is there any benefit to the shareholders when you're  
7 spending the same amount of money on O&M?

8 A No, I think it's neutral.

9 MR. BEASLEY: Thank you. I'd like to move the  
10 Exhibit 38.

11 CHAIRMAN JABER: Exhibit -- what, Mr. Vandiver?

12 MR. VANDIVER: I was going to move for 39.

13 CHAIRMAN JABER: Oh, okay. Without objection,  
14 Exhibit 38 is admitted into the record. And without objection,  
15 Exhibit 39 is admitted into the record.

16 MR. BEASLEY: Thank you.

17 (Exhibits 38 and 39 admitted into the record.)

18 CHAIRMAN JABER: Thank you, sir, for your testimony.

19 (Witness excused.)

20 CHAIRMAN JABER: And, Mr. Beasley, that takes us to  
21 Ms. Jordan's rebuttal.

22 MR. BEASLEY: Ms. Jordan.

23 J. DENISE JORDAN

24 was called as a rebuttal witness on behalf of Tampa Electric  
25 Company and, having been duly sworn, testified as follows:

## DIRECT EXAMINATION

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BY MR. BEASLEY:

Q Ms. Jordan, did you prepare and submit rebuttal testimony in this proceeding on October 16, 2003?

A Yes, I did.

Q Did you also submit revised rebuttal testimony on November 7, 2003?

A Yes.

Q Can you tell us what the nature of the revisions in that testimony were?

A Yes, sir.

CHAIRMAN JABER: Give me the dates, again, Mr. Beasley.

MR. BEASLEY: October 16th was the original filing, and that's when it was due. And then she filed revisions on November 7. Mr. Willis has copies of the revised rebuttal testimony.

CHAIRMAN JABER: I have it. Okay.

THE WITNESS: The changes from the original rebuttal testimony that I filed versus the revised testimony, on Page 10, Line 5, due to some changes that Ms. Brown made in her calculation, I removed the numbers that referred back to her now original analysis.

And on Page 21, starting at Line 8, continuing through to Page 21, ending on Line 23, I responded to

1 additional information Ms. Brown provided in her filing on  
2 November the 5th.

3 BY MR. BEASLEY:

4 Q Okay. If I were to ask you the questions contained  
5 in your revised rebuttal testimony, would your answers be the  
6 same?

7 A Yes.

8 MR. BEASLEY: Madam Chairman, I'd ask that  
9 Ms. Jordan's revised rebuttal testimony filed November 7th be  
10 inserted into the record as though read.

11 CHAIRMAN JABER: The revised testimony of J. Denise  
12 Jordan filed November 7th shall be inserted into the record as  
13 though read.

14 BY MR. BEASLEY:

15 Q Ms. Jordan, did that November 7th revised rebuttal  
16 testimony also include a revised Exhibit JDJ-4?

17 A That is correct.

18 Q And what were the nature of the revisions in that  
19 exhibit from the one previously filed?

20 A There was no change.

21 MR. BEASLEY: I'd ask that Ms. Jordan's revised  
22 exhibit be marked for identification.

23 CHAIRMAN JABER: Give me the exhibit number one more  
24 time, Mr. Beasley.

25 MR. BEASLEY: It's JDJ-4 and it's the version that



1 was filed with the November 7th revised rebuttal testimony.

2 CHAIRMAN JABER: And was that exhibit revised at all?

3 MR. BEASLEY: I don't think so. I think it was just  
4 included in order to have a full package for you.

5 CHAIRMAN JABER: Okay. JDJ-4 will be identified as  
6 Exhibit 40.

7 (Exhibit 40 marked for identification.)

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TAMPA ELECTRIC COMPANY  
DOCKET NO. 030001-EI  
FILED: 10/16/03  
REVISED: 11/07/03

1                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2                               PREPARED REBUTTAL TESTIMONY

3                                               OF

4                                               J. DENISE JORDAN

5  
6   Q.   Please state your name, address, occupation and employer.

7  
8   A.   My name is J. Denise Jordan. My business address is 702  
9       North Franklin Street, Tampa, Florida 33602. I am  
10      employed by Tampa Electric Company ("Tampa Electric" or  
11      "company") as Director, Rates and Planning in the  
12      Regulatory Affairs Department.

13  
14   Q.   Are you the same Denise Jordan who submitted Prepared  
15      Direct Testimony in this proceeding?

16  
17   A.   Yes, I am.

18  
19   Q.   What is the purpose of your rebuttal testimony?

20  
21   A.   The purpose of my rebuttal testimony is to address  
22      certain inaccuracies and deficiencies in the assertions  
23      and conclusions of the testimonies of Ms. Sheree L.  
24      Brown, testifying on behalf of the Florida Industrial  
25      Power Users Group ("FIPUG") and the Florida Retail

1 Federation ("FRF"), and Mr. Michael J. Majoros, Jr.,  
2 testifying on behalf of the Office of Public Counsel  
3 ("OPC").  
4

5 Q. Have you prepared any exhibits to support your testimony?  
6

7 A. Yes. My Exhibit No. \_\_\_ (JDJ-4), consists of three  
8 documents. Document No. 1 is the company's notification  
9 to the Commission regarding the Hardee Power Partners,  
10 Ltd. ("HPP") transfer of ownership and Document No. 2 is  
11 furnished to correct Ms. Brown's math errors and address  
12 the inappropriate assumptions Ms. Brown used to calculate  
13 Gannon replacement fuel costs for 2003 and 2004 based on  
14 2002 generation.  
15

16 **Testimony of Ms. Sheree L. Brown**

17 Q. Are there references made in Ms. Brown's testimony that  
18 you will not address? If so, why not?  
19

20 A. Yes, there are. I will not address Ms. Brown's  
21 statements concerning Tampa Electric's cancellation of  
22 rights to four combustion turbines (Pages 11 and 12), the  
23 acceleration of depreciation and dismantlement charges on  
24 Gannon Station (Pages 22 through 24), and the treatment  
25 of dismantlement costs on Gannon Station (Pages 24 and

1 25) because they are neither germane to nor appropriate  
2 for inclusion in the fuel and purchased power docket.  
3 Additionally, it is my understanding that the  
4 cancellation of rights to the four combustion turbines  
5 was included in the company's monthly surveillance  
6 reporting as a below-the-line write-off, resulting in no  
7 impact to ratepayers. It is also my understanding that  
8 the proposed depreciation rates and dismantlement  
9 accruals associated with Gannon Station are being  
10 addressed in Docket No. 030409-EI, further supporting my  
11 conclusion that those references by Ms. Brown should not  
12 be included in this proceeding.

13  
14 **Q.** Please address your overall assessment of Ms. Brown's  
15 testimony.

16  
17 **A.** While Ms. Brown expresses concern over what she  
18 characterizes as feared subsidies of Tampa Electric's  
19 affiliates by Tampa Electric's ratepayers, she has not  
20 provided any concrete examples of such subsidies. She  
21 simply describes her version of how any utility might  
22 take steps to game base rate type expenses and those  
23 expenses collected through cost recovery clauses. Then,  
24 she merely assumes bad faith on the part of Tampa  
25 Electric and concludes that some type of subsidy may have

1 occurred. Her assumed subsidies appear to reflect Ms.  
2 Brown's lack of familiarity with the facts, and they  
3 certainly don't serve as a basis for the erroneous and  
4 unwarranted adjustment she recommends.

5  
6 In addition, her claims of subsidies and the need for  
7 "further study" of utility and affiliate transactions are  
8 a recurrent theme of FIPUG. This was the approach taken  
9 by FIPUG two years ago in the fuel and purchased power  
10 docket in which FIPUG also challenged Tampa Electric's  
11 wholesale transactions with HPP. That case was also  
12 built on assumptions, presumed bad faith and an apparent  
13 lack of familiarity with the facts by FIPUG witnesses.  
14 After careful consideration, the Commission soundly  
15 rejected FIPUG's arguments as did the Florida Supreme  
16 Court in affirming the Commission's decision. FIPUG has  
17 made the same erroneous arguments on a number of  
18 occasions. These arguments have been rejected by this  
19 Commission and should be rejected again in this docket.

20  
21 Q. On pages 3 through 8 of her testimony, Ms. Brown suggests  
22 that the financial needs of Tampa Electric's parent could  
23 have affected Tampa Electric's ratepayers. How do you  
24 respond?  
25

1     **A.**   Ms. Brown's assumptions in this regard do not have any  
2     basis in fact.   If anything, Tampa Electric's parent,  
3     TECO Energy, Inc., has repeatedly emphasized its focus  
4     and efforts on strengthening, not weakening, its core  
5     business of providing regulated public utility services.  
6     Ms. Brown only hints that actions "could" have been taken  
7     for ulterior purposes without any demonstration that that  
8     has happened.

9  
10    **Q.**   On pages 8 through 9 of her testimony, Ms. Brown  
11    addresses Tampa Electric's contractual relationship with  
12    its affiliates, particularly with respect to coal  
13    purchases and waterborne coal transportation services,  
14    and suggests that Tampa Electric might pursue "above  
15    market costs" to subsidize the affiliate at the expense  
16    of Tampa Electric's retail utility customers.   How do you  
17    respond?

18  
19    **A.**   Once again, Ms. Brown must rely on unsupported  
20    assumptions about what a utility "might do."   She  
21    apparently is unaware that Tampa Electric does not have a  
22    contract with an affiliate to purchase coal.   The  
23    company's last long-term coal contract with an affiliate  
24    ended in 1999.   In addition, she seems to be unaware of  
25    the hundreds of millions of dollars of coal

1 transportation cost savings Tampa Electric's coal  
2 transportation affiliate has brought to Tampa Electric's  
3 retail customers over many years as previously discussed  
4 in the direct testimony of Tampa Electric witness J. T.  
5 Wehle. She also completely overlooks the careful  
6 scrutiny this Commission has always given to affiliate  
7 transactions to ensure that utility customers are not  
8 harmed by those relationships. It is noteworthy that Ms.  
9 Brown does not testify that Tampa Electric's arrangement  
10 with its affiliate has exceeded market-based costs. She  
11 just says "to the extent that" it is above market costs  
12 TECO Energy benefits while higher costs are passed on to  
13 Tampa Electric ratepayers (Page 9, lines 6-8). In fact,  
14 as required by Commission Order No. 20298, Tampa Electric  
15 has consistently demonstrated that its affiliated coal  
16 transportation prices are at or below the transportation  
17 benchmark which the Commission established as "a  
18 reasonable market price indication," a fact Ms. Brown may  
19 not be aware of or chooses to ignore.

20  
21 Q. How do you respond to Ms. Brown's suggestion, at page 9,  
22 that retail customers are impacted by TECO Power  
23 Services' ("TPS") sale of the Hardee Power Station?

24  
25 A. Ms. Brown states that if the facility had been owned by

1 Tampa Electric any gain may have been shared with  
2 ratepayers. Ms. Brown simply assumes away any  
3 distinction between regulated public utility property and  
4 property that is owned by an unregulated affiliate.  
5 Moreover, her suggestion that Tampa Electric's purchase  
6 agreement supported the sale ignores the fact that the  
7 power purchase agreements between and among Tampa  
8 Electric, Seminole Electric Cooperative, Inc. ("SEC") and  
9 HPP provided the basis for the Commission's determination  
10 of need for the Hardee Power Station initially. That  
11 determination was based on the Commission's finding that  
12 the contracts in question would save ratepayers millions  
13 of dollars over the life of the Hardee Power Station  
14 project.

15  
16 In approving the determination of need, the Commission  
17 found that the TPS proposal was the most cost effective  
18 alternative available. In its order the Commission  
19 stated:

20 We base this finding on the economics inherent  
21 in the three wholesale contracts and the ground  
22 lease introduced as evidence in this  
23 proceeding: the ground lease between Acuera  
24 Corporation (a subsidiary of SEC) and TPS; the  
25 agreement for sale and purchase of capacity and



1 energy from Big Bend Unit No. 4 between TECO  
2 and TPS; the agreement for sale and purchase of  
3 capacity and energy from Big Bend Unit No. 4  
4 between TECO and TPS; the agreement for sale  
5 and purchase of capacity and energy between TPS  
6 and SEC; and the agreement for sale and  
7 purchase of capacity and energy from the Hardee  
8 Power Station between TPS and TECO, all dated  
9 July 27, 1989. As these contracts are written,  
10 Phases I and II of the TPS proposal will result  
11 in projected present worth of revenue  
12 requirements (PWRR) savings to SEC of  
13 approximately \$57 million (1987 \$) compared to  
14 SEC's proposed construction and projected PWRR  
15 savings of \$90 million (1989 \$) to TECO, most  
16 of which is associated with the payments for  
17 145 MW of Big Bend 4 capacity during phase I  
18 (1993-2003). (Order No. 22335, issued in  
19 Docket No. 880309-EC on December 22, 1989.  
20 (emphasis supplied)

21  
22 Q. How do you respond to Ms. Brown's statement that Tampa  
23 Electric's power purchase agreement with HPP supported  
24 the sale?  
25

1 A. As I previously stated, the power purchase agreements  
2 that supported the determination of need did so because  
3 they supported the economics for retail ratepayers of SEC  
4 and Tampa Electric. At the top of page 10, Ms. Brown  
5 erroneously states that the power purchase agreement  
6 between Tampa Electric and HPP is being assigned to the  
7 new owner of the facility. In fact, no power purchase  
8 agreements are being assigned. Instead, it is the  
9 ownership of HPP that is being assigned. As previously  
10 stated in the direct testimony of Tampa Electric witness  
11 B. F. Smith and as indicated in Exhibit No. \_\_\_ (JDJ-4),  
12 Document No. 1, Tampa Electric's notification to the  
13 Commission regarding the HPP transfer of ownership, the  
14 power purchase agreements will go forward as they have in  
15 the past, completely unchanged.

16  
17 Q. Has witness Brown stated any basis for further  
18 examination of the HPP power purchase agreement?

19  
20 A. No, she has not. She has failed to present any new  
21 material fact to justify revisiting the recent  
22 determinations by the Commission and the Florida Supreme  
23 Court; therefore, FIPUG and FRF's efforts in this regard  
24 should be rejected.

25

1 Q. Beginning on page 12 and continuing through page 22, line  
2 6, Ms. Brown describes her evaluation of the scheduled  
3 shutdown of Gannon Units 1 through 4, culminating in a  
4 recommendation that Tampa Electric be required to offset  
5 replacement power costs by O&M savings. How do you  
6 respond?

7  
8 A. Ms. Brown's recommended adjustment has no basis in fact  
9 and ignores Tampa Electric's consideration of a myriad of  
10 factors including safety, reliability, the age of the  
11 units, risks inherent in attempting to keep the units  
12 running, the need to retrain and redeploy Gannon Station  
13 employees and numerous other factors. In addition, there  
14 are mathematical errors and several inappropriate  
15 assumptions in her analysis. Even if you accept her view  
16 that an adjustment is in order, which I clearly do not,  
17 upon review of Ms. Brown's calculation of the adjustment,  
18 I note the following regarding Ms. Brown's analysis and  
19 provide Exhibit No. \_\_\_ (JDJ-4), Document No. 2 which  
20 corrects Ms. Brown's math error and incorrect  
21 assumptions:

22  
23 First, the total net generation for Gannon Unit 5 of  
24 836,201 MWH used by Ms. Brown is incorrect. The correct  
25 total is 801,713 MWH. In addition, Ms. Brown erroneously

1 includes the impact of Gannon Unit 5 in her calculation,  
2 while acknowledging on page 20, lines 19 through 21, that  
3 the calculation is associated with Gannon Units 1 through  
4 4 and 6 only.

5  
6 Second, Gannon Unit 6 is being repowered to Bayside Unit  
7 2 and the transmission facilities of Gannon Unit 4 will  
8 be utilized by Bayside Unit 2; consequently, it is not  
9 appropriate to include either unit in the calculation.  
10 Therefore, Ms. Brown has overstated the MWH of lost  
11 generation by 1,068,669 MWH.

12  
13 Third, the Bayside cost used by Ms. Brown is a cost  
14 estimate that includes the natural gas pipeline  
15 transportation costs. These costs will not change  
16 regardless of Bayside or Gannon generation. Therefore,  
17 Ms. Brown should have used the 2002 cost of \$0.0328 per  
18 kWh.

19  
20 Fourth, the Gannon cost used by Ms. Brown incorrectly  
21 includes generation from Gannon Units 4, 5 and 6. After  
22 appropriately adjusting the cost to include only Gannon  
23 Units 1 through 3, the resulting cost is \$0.0233 per kWh.

24  
25 Fifth, as previously stated in the direct testimony of

1 Tampa Electric witness Wehle, the company currently  
2 expects the impact of coal contract penalties to  
3 ratepayers to be neutral at worst, and there remains the  
4 potential for ratepayers to experience net gains. In  
5 addition, during negotiations with TECO Transport for the  
6 new coal waterborne transportation contract effective  
7 January 1, 2004, the company successfully negotiated the  
8 elimination of any dead freight expenses under the  
9 existing contract. Therefore, Ms. Brown's assumed dead  
10 freight and coal contract penalties of \$6.555 million and  
11 \$7.67 million respectively are not valid and should be  
12 excluded in the calculation.

13  
14 Given the aforementioned corrections and using the same  
15 methodology as Ms. Brown, the resulting analysis yields  
16 an impact of \$8.2 million as compared to Ms. Brown's  
17 original result of \$61.6 million, an overstatement of  
18 \$53.5 million. By any standard, Ms. Brown's calculation  
19 is grossly incorrect. In any event, the calculation  
20 itself is based on faulty logic and must be entirely  
21 rejected.

22  
23 Q. At the bottom of page 21 through the top of page 22, Ms.  
24 Brown states five factors she believes would make her  
25 adjustment fair and equitable. Assuming her calculations

1           were correct, how do you respond to her five points?  
2

3       **A.** Her first point is that the decision regarding when to  
4       shut down Gannon Units 1 through 4 "was a voluntary  
5       decision by the company within its control." As should  
6       any business, Tampa Electric makes "voluntary" company  
7       decisions after careful and complete analysis, as was the  
8       scheduling decision for shutting down Gannon Units 1  
9       through 4. That is no reason to mix or offset base rate  
10      revenue or expenses with fuel adjustment revenue or  
11      expenses.  
12

13       Her second basis that the requirement to shut down the  
14      units by the end of 2004 was a direct result of claimed  
15      violations by the U. S. Environmental Protection Agency  
16      ("EPA") is patently wrong. Tampa Electric did not admit  
17      violations nor did it bring a lawsuit against itself.  
18      The company settled litigation initiated by the EPA and  
19      DEP because settlement appeared to be the most prudent  
20      and cost-effective alternative in light of the litigation  
21      and the risks inherent in such litigation.  
22

23       Ms. Brown's third point, that ratepayers will suffer  
24      "continued harm through additional replacement power  
25      costs from 2005 through 2007" is, likewise, ridiculous

1 because any such additional costs stem directly from the  
2 fact that the coal units at Gannon Station are required  
3 to cease operation after December 31, 2004. In essence,  
4 Ms. Brown's third point is linked to her second alleged  
5 basis for penalizing Tampa Electric and must be rejected  
6 out of hand.

7  
8 Ms. Brown's fourth point that the ratepayers have paid  
9 Tampa Electric for the environmental modifications that  
10 were challenged by the EPA is, likewise, cumulative and  
11 ignores the fact that those modifications were in the  
12 economic interest of Tampa Electric's customers. Again,  
13 Tampa Electric did not concede the validity of the EPA's  
14 challenge either in the litigation or in the Consent  
15 Decree. In essence, Ms. Brown advocates punishing Tampa  
16 Electric for attempting to pursue the most economic  
17 alternatives for its customers.

18  
19 Ms. Brown's fifth and final point alleges that Tampa  
20 Electric has benefited from contractual relationships  
21 with its subsidiaries. This point is more of an excuse  
22 than a reason for any adjustment, particularly when one  
23 considers the benefits that Tampa Electric's customers  
24 have derived from the creation and operation of the  
25 integrated waterborne transportation services provided by

1 Tampa Electric's affiliate, TECO Transport.  
2

3 Q. At page 22 Ms. Brown points to certain costs allowed for  
4 recovery through the cost recovery clauses that she  
5 claims would normally be authorized through base rates.  
6 How do you respond?  
7

8 A. Ms. Brown is correct that on a case-by-case basis the  
9 Commission has allowed recovery of certain expenses  
10 through the fuel and purchased power clause that would  
11 traditionally be recovered through base rates. In those  
12 specific instances, the expenses were fuel-related and  
13 recovery through the fuel and purchased clause was  
14 allowed because 1) the expense resulted in net fuel  
15 savings to ratepayers, 2) assisted with mitigating fuel  
16 price volatility or 3) helped to insulate ratepayers from  
17 additional fuel and purchased power expenses by  
18 protecting generating facilities to ensure their  
19 continued operation. The items Ms. Brown references for  
20 adjustment through the clause are in no way fuel-related  
21 and are selectively chosen and improperly viewed in  
22 isolation without any consideration of other Tampa  
23 Electric rate base adjustments. For example, Ms. Brown  
24 ignores the fact that Tampa Electric has absorbed the  
25 addition of Polk Units 1 through 3 and Bayside Units 1



1 and 2 without requesting additional base rates.

2  
3 Q. On page 26, Ms. Brown states the belief that her concerns  
4 support additional Commission investigation of various  
5 items. How do you respond?

6  
7 A. Again, FIPUG's traditional goal is to "further  
8 investigate". Tampa Electric's purchased power agreement  
9 with HPP has been reviewed time and again by this  
10 Commission and as I stated earlier, both the Commission  
11 and the Florida Supreme Court have recently rejected  
12 FIPUG's arguments in this regard. Also, the existence of  
13 a gain on the sale of HPP does not mean that the power  
14 purchase agreement was not cost based; it simply reflects  
15 increased value of the asset. In addition, the HPP  
16 agreement does not need to be addressed because the terms  
17 and conditions of the power purchase agreement will  
18 continue completely unchanged from the manner in which  
19 they existed prior to the transfer of ownership.

20  
21 **Testimony of Mr. Michael J. Majoros, Jr.**

22 Q. Mr. Majoros's direct testimony states that Tampa  
23 Electric's fuel clause should be credited with an amount  
24 of O&M savings he has calculated. How do you respond?

25

1 A. Similar to Ms. Brown, Mr. Majoros has taken bits and  
2 pieces from discovery testimony submitted by Tampa  
3 Electric completely out of context and reached erroneous  
4 conclusions. There are several problems with Mr.  
5 Majoros's calculations. First, the fundamental basis of  
6 his analysis of the impact to fuel and purchased power  
7 costs, which is the supposed reason for his claim that  
8 the increase in fuel costs should be offset by O&M  
9 amounts, is flawed [Exhibit MJM-7]. He incorrectly  
10 attributes the entire difference between two separate  
11 analyses and fuel cost projections submitted by Tampa  
12 Electric to the revised Gannon units' shutdown schedule.  
13 Many different factors changed and assumptions were  
14 revised between the time that the first and second  
15 studies referenced by Mr. Majoros were prepared. Yet Mr.  
16 Majoros ignores this fact. Furthermore, Mr. Majoros ties  
17 the calculation of his \$116 million estimated impact on  
18 fuel and purchased power costs due to the Gannon shutdown  
19 schedule to Tampa Electric's August 12, 2003  
20 actual/estimated filing, rather than to the February 24,  
21 2003 filing in which the revised shutdown scheduled was  
22 first modeled and included. This is yet another example  
23 of how Mr. Majoros takes isolated bits of information  
24 from discovery and testimony and uses them out of context  
25 to string together his argument.

1 In addition, to simply assume that the entire difference  
2 between any two filings is related to the revision of the  
3 expected Gannon units' shutdown dates is incorrect. As  
4 Tampa Electric stated in its response to Interrogatory  
5 No. 46 of OPC's Third Set, the interrogatory request was  
6 written such that it assumed the hypothetical that the  
7 units would be dispatchable. Tampa Electric stated the  
8 accuracy of such an assumption is highly doubtful. Other  
9 factors of safety, reliability, employee utilization, and  
10 the time required to make repairs are all significant in  
11 determining the validity of this assumption. Thus, the  
12 company appropriately included them in its decision-  
13 making process. To simply ignore these operational  
14 constraints and to utilize a hypothetical value that is  
15 based on assumed dispatchability that no longer reflects  
16 current conditions or appropriate assumptions, as Mr.  
17 Majoros has done, is clearly erroneous.

18  
19 Q. At page 10 of his testimony, Mr. Majoros states that O&M  
20 amounts not spent at Gannon Station represent a savings  
21 for Tampa Electric. He then implies that the savings will  
22 result in increased earnings to benefit shareholders.  
23 Finally, he proposes an offset of the alleged O&M savings  
24 to costs recovered through the fuel clause. Are his  
25 allegations grounded in fact?

1     **A.**   No.   First, as stated in the rebuttal testimony of Tampa  
2     Electric witness W. T. Whale, Tampa Electric did not  
3     simply cut O&M spending at Gannon Station.  The company  
4     focused its investment strategies to obtain a better value  
5     from its O&M expenditures.  Second, Mr. Majoros does not  
6     provide support, presumably because he does not have any,  
7     for his allegation that the company's O&M spending  
8     decisions resulted in savings for shareholders.  He simply  
9     makes the statement on page 10, line 15 that "as a general  
10    proposition increased earnings benefit shareholders."  Mr.  
11   Majoros also ignores the structure of cost-based  
12   ratemaking in Florida.  Investor-owned utilities collect  
13   base rates and operate within an allowable earnings range.  
14   Tampa Electric is currently striving to add over \$700  
15   million in the form of the repowered Bayside Station to  
16   its rate base, without requesting additional base rates to  
17   do so.  To insinuate that shareholders might benefit from  
18   increased earnings, without even showing evidence of such  
19   earnings, is simply not a sufficient reason to assign a  
20   penalty to Tampa Electric as Mr. Majoros proposes.

21  
22   **Q.**   What do the O&M savings amounts that Mr. Majoros lists  
23   represent and is his proposed adjustment to fuel clause  
24   cost recovery to reflect his calculated O&M savings,  
25   appropriate?

1 A. Again, Mr. Majoros's O&M savings represent an estimate of  
2 the additional dollars the company did not invest in the  
3 Gannon units due to the age of the units and near-term  
4 shutdown requirements. While Mr. Majoros continues to  
5 present O&M amounts not spent at Gannon Station as savings  
6 for Tampa Electric and its shareholders, he completely  
7 disregards Tampa Electric's witness testimony that the  
8 company used prudent decision making and chose to focus  
9 its spending on other generating units given the shutdown  
10 commitment for the Gannon units. Furthermore, Mr.  
11 Majoros's flawed analyses are no reason to mix or offset  
12 base rate revenues and costs with fuel clause revenues and  
13 costs, as he proposes to do with his adjustment.

14  
15 Q. How would you characterize Mr. Majoros's testimony on an  
16 overall basis?

17  
18 A. As I previously stated, Mr. Majoros inappropriately  
19 strings bits and pieces of testimony and deposition  
20 transcripts together to reach an erroneous result. Mr.  
21 Majoros has presented no independent evaluation of  
22 important issues concerning safety, reliability,  
23 operational considerations and the economics of the  
24 appropriate shutdown schedule for Gannon Units 1 through  
25 4. As a matter of fact, at page 12 of his testimony, he

1 states that the company's current schedule for shutting  
2 down Gannon Units 1 through 4 in and of itself does not  
3 harm ratepayers. Mr. Majoros's analysis that determined  
4 his proposed penalty, or cost recovery offset, is flawed,  
5 and his proposed offset of fuel cost recovery dollars  
6 with O&M amounts is inappropriate.

7  
8 **Testimony of Ms. Sheree L. Brown**

9 **Q.** On November 5, 2003, Ms. Brown filed revised testimony  
10 that included among other items, modifications to her  
11 calculation of the O&M savings due to the shutdown of the  
12 Gannon units. How do you respond?

13  
14 **A.** It should be noted that this is Ms. Brown's third attempt  
15 to make such a calculation and, much like the calculation  
16 Ms. Brown provided for the fuel replacement costs, her  
17 O&M savings evaluation is flawed with inappropriate  
18 assumptions. This calculation is substantially different  
19 than the ones provided in her original direct testimony  
20 and her deposition on October 30, 2003. Notwithstanding  
21 my disagreement with Ms. Brown's recommendation of  
22 offsetting fuel replacement costs with O&M savings and  
23 her methodology, I observe the following regarding her  
24 calculation:

1 First, in Ms. Brown's original testimony and her  
2 deposition, she incorrectly applies \$57.4 million as an  
3 incremental avoided O&M savings for 2003. As stated by  
4 witness Whale, the \$57.4 million was never included in  
5 the budget or business plan given the near-term required  
6 shut down of Gannon Units 1 through 4. It was simply an  
7 assessment that confirmed the significant capital  
8 requirements needed for the continued operation of the  
9 units for 2003 and 2004.

10  
11 Second, Ms. Brown assumes a full year of avoided O&M  
12 savings in 2003 for Gannon Unit 6 even though the company  
13 did incur O&M expenses for most of the year. The unit  
14 was not shut down until September 30, 2003.

15  
16 Third, as I stated earlier, Bayside Unit 2 must utilize  
17 the transmission facilities for Gannon Unit 4;  
18 consequently, it is not appropriate to attribute any  
19 avoided O&M savings for that unit in the calculation.

20  
21 Finally, Ms. Brown never accounts for the company's  
22 actual 2003 O&M expenses incurred for the Gannon units,  
23 but does attribute company expenses in 2004.

24  
25 Q. Does this conclude your rebuttal testimony?

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- 20

A. Yes it does.



1 BY MR. BEASLEY:

2 Q Ms. Jordan, would you please summarize your rebuttal  
3 testimony.

4 A My rebuttal testimony addresses the significant  
5 deficiencies and inaccuracies in the testimonies of Ms. Brown  
6 testifying on behalf of FIPUG and the Florida Retail Federation  
7 and Mr. Majoros testifying on behalf of OPC.

8 Ms. Brown's testimony includes her estimates of fuel  
9 and purchased power cost impact and O&M expense savings due to  
10 the shutdown of the Gannon units. She proposes offsetting  
11 Tampa Electric's fuels costs by her estimated O&M savings.

12 First, Ms. Brown's proposed adjustment is  
13 inappropriate because it mixes base rate and fuel cost -- fuel  
14 clause recovery. This Commission has in the past authorized  
15 recovery of certain specific costs through the fuel clause that  
16 would traditionally be recovered through base rates in cases  
17 where those expenses were fuel related and resulted in net fuel  
18 savings to ratepayers. However, the adjustments that Ms. Brown  
19 proposes is not fuel related, and she has selectively chosen  
20 one item for adjustment without considering other significant  
21 items that would have been taken into account in the context of  
22 a base rate proceeding.

23 Even if such an adjustment were warranted, which it  
24 is not, Ms. Brown's calculations are incorrect. There are a  
25 number of inaccuracies in Ms. Brown's calculations, and her

1 methodology is inappropriate. Ms. Brown's utilization of the  
2 \$57.4 million value in her calculation of O&M savings is  
3 inappropriate because it is not a savings to Tampa Electric.  
4 The company never budgeted nor planned to spent 57.4 million  
5 because it would not have been prudent to do so.

6 Ms. Brown also recommends a review of Tampa  
7 Electric's purchased power agreement with Hardee Power Partners  
8 in light of the station sale, but she provides no new evidence  
9 or support for this action. These efforts have been heard  
10 before by this Commission and the Florida Supreme Court, and  
11 FIPUG's arguments have been rejected. There is no need to  
12 investigate because the sale of the station has no impact on  
13 Tampa Electric's purchased power agreement.

14 Similar to Ms. Brown, Mr. Majoros takes bits and  
15 pieces of information from discovery and testimony submitted by  
16 Tampa Electric completely out of context. And as a result, he  
17 has reached erroneous conclusions. The reasons he gives for  
18 his proposed O&M savings offset to fuel cost recovery is his  
19 calculation of an increase in fuel and purchased power costs.  
20 He attributes the entire difference between two projections to  
21 the Gannon -- excuse me. He attributes the entire difference  
22 between two projections to the Gannon shutdown without regard  
23 for the fact that many assumptions were updated and many  
24 conditions have changed in the interval between preparing the  
25 two estimates. Even if I agreed that his reason was

1 appropriate for one -- for adjusting fuel cost recovery, which  
2 I definitely do not, his calculation is flawed.

3 Mr. Majoros's proposed O&M savings amount is  
4 inaccurate and he uses outdated estimates. In any event, his  
5 offsetting methodology is inappropriate because Mr. Majoros  
6 like Ms. Brown selectively mixes two different types of cost  
7 recovery to suit his purpose. He recommends offsetting a base  
8 rate item with fuel cost recovery. As I've previously stated,  
9 such mixing of base rate and fuel cost recovery is  
10 inappropriate. The erroneous statements and conclusions of  
11 both of these witnesses should be rejected, and no  
12 consideration should be given to their proposed adjustments to  
13 the fuel clause due to supposed O&M savings. That concludes my  
14 summary.

15 MR. BEASLEY: Thank you. We tender Ms. Jordan for  
16 questions.

17 CHAIRMAN JABER: Thank you. Mr. McWhirter.

18 CROSS EXAMINATION

19 BY MR. McWHIRTER:

20 Q Ms. Brown (sic), I have about two and a half hours of  
21 cross-examination for you, but I'm going to limit it just to  
22 the things you talked about in your summary. And as I  
23 understand it, the first thing you talked about was --

24 CHAIRMAN JABER: What does that mean exactly,  
25 Mr. McWhirter, that we still have two and a half hours of

1 cross, or you've limited it to just a few minutes?

2 THE WITNESS: Well, maybe if we start with --

3 MR. McWHIRTER: What does it mean? I don't know  
4 exactly what I mean, Ms. Jaber.

5 THE WITNESS: -- the fact that I'm Ms. Jordan.

6 CHAIRMAN JABER: Well, there you go. Go ahead,  
7 Mr. McWhirter.

8 BY MR. McWHIRTER:

9 Q What Ms. Brown suggests is that customers are being  
10 charged an additional \$180 million or so in 2003 and 2004 for  
11 the difference between natural gas and coal price. And she  
12 suggests a sharing of the benefits, as others have done, by  
13 setting it off against O&M costs that the utility has saved at  
14 the Gannon plant. For instance, you reduced 176 employees to  
15 42, according to Mr. Whale. And your argument against that is  
16 principally that you can't mix up base rates and fuel cost  
17 recovery, it's inappropriate to do it, and the Commission  
18 wouldn't do it.

19 A Is that your question?

20 Q Yes or no?

21 A To an extent, yes. First of all, I'd like to say  
22 that I'm not in agreement with her calculation of the  
23 \$180 million --

24 Q I understand that.

25 A -- so we'll move past that. I'm not clear on the

1 others that you're referring to that have shared as you so  
2 stated earlier. With regards to the mixing, the concern is  
3 that it is inappropriate to take something and to strictly  
4 isolate it without looking at the entirety of the situation.  
5 It is not as if Gannon is going off-line and nothing is  
6 replacing it. There is the fact that the Bayside units are  
7 coming on-line; then to couple that with the fact that there  
8 are other aspects to the company. So to look at it on totality  
9 is more appropriate than to look at it in isolation.

10 Q From the information available to you, did you  
11 conclude that the O&M costs for Bayside are the same or greater  
12 than the O&M costs for Gannon?

13 A I did not conclude that. I didn't conclude anything  
14 about the O&M.

15 Q So you don't know whether the Bayside costs are less  
16 or more; right?

17 A And that was part of the reason for saying that it's  
18 not appropriate to look at just the --

19 Q Because you don't know?

20 A No, no. It's not because I don't know. It's because  
21 I don't think it's appropriate to look at one piece of the  
22 puzzle without looking at all the rest.

23 Q All right. Were you involved at all in the  
24 discussions concerning early on collecting the full cost of the  
25 Bayside plant through the fuel clause?

1 A Excuse me?

2 Q Are you familiar with the discussions your company  
3 had about collecting the entire costs of the Bayside plant  
4 through the fuel clause as opposed to base rates?

5 A I'm not aware that the company had discussions on  
6 putting a power plant through the fuel clause.

7 Q Okay. You're not aware of that. Is the total cost  
8 of Bayside divided between new generation and environmental  
9 cost? Is any portion of it coming through the environmental  
10 clause?

11 A The consumables are coming through. I think that's  
12 about \$250,000.

13 Q And no capital costs are going -- you're not going to  
14 ask to collect any capital costs through the environmental  
15 clause?

16 A I can never say never, but at this point, we have not  
17 requested anything to go through the clause.

18 Q Now, I'm going to go to Hardee Power Partners  
19 contract, and you say we keep revisiting that. And the last  
20 time we visited it, do you recall that the problem we talked  
21 about was that you were selling power to Hardee for \$26 a  
22 megawatt hour and at the same time buying power back from  
23 Hardee at \$26 a megawatt hour --

24 A That was my understanding --

25 Q -- I mean, \$52 a megawatt hour?

1           A     That was my understanding of your allegation, but  
2 that was not ever substantiated.

3           Q     And you argued then and you argue now that the  
4 projected present worth revenue requirement savings that the  
5 Commission found back in 1988 (sic) was \$90 million. This is  
6 on your testimony at Page 6, beginning at around Line 13.

7           A     Page 8 of my testimony, Line 15?

8           Q     Well, I may be looking at the prepared rebuttal. Let  
9 me show you the page just to save time.

10          A     I think what I filed, it's on Bates stamp Page 8 of  
11 my testimony. You've got a different printout.

12          Q     On Line 16 on my page it says, most of those savings  
13 is associated with the payments for 145 megawatts of Big Bend,  
14 and that contract expired on December 31st of 2002; is that  
15 correct?

16          A     That's correct.

17          Q     Now, what are the other savings, according to your  
18 analysis, that customers are getting from the Hardee continued  
19 contract?

20          A     I have not updated this analysis since this was done.

21          Q     So you've done no test to see that customers are  
22 still benefiting under the new contract?

23          A     You asked me specifically with regards to the other  
24 associated items. If you're asking with regards to do we look  
25 at whether or not the purchase towards -- compared to the

1 forward market is still cost-effective, that has been, I think,  
2 testified on several occasions in different proceedings before  
3 the Commission that it is still very valid.

4 Q Can you tell me what your Schedule J power, what you  
5 project for Schedule J during the year 2004?

6 A Schedule J purchases?

7 Q Yes.

8 A That would be in my testimony that was filed  
9 September 12th. It would be Bates stamp Page 47. January  
10 through December 2004, Schedule J purchases. You want total  
11 dollars or on a unit basis?

12 Q No. I want to know the price per megawatt hour.

13 A \$75.42 a megawatt hour.

14 Q And what is Schedule J?

15 MR. BEASLEY: Madam Chairman, we're going back now to  
16 earlier testimony. This is on rebuttal testimony  
17 cross-examination.

18 CHAIRMAN JABER: Mr. McWhirter.

19 MR. McWHIRTER: Is that on objection?

20 MR. BEASLEY: It is.

21 MR. McWHIRTER: Well, she is saying that Hardee is  
22 still cost-effective, and I'm going to try to distinguish in  
23 just a few questions what the difference in cost is for power  
24 purchased from Hardee with respect to Schedule J power.

25 CHAIRMAN JABER: Are you trying to use the direct



1 testimony to lay a foundation for your question on rebuttal?

2 If that's the case, I will allow it.

3 MR. McWHIRTER: All right. Thank you.

4 THE WITNESS: Schedule J purchases are just various  
5 purchases that are made on the market on the hour.

6 BY MR. McWHIRTER:

7 Q And that happens generally when you're not able to  
8 supply power and it's during peak periods?

9 A It happens at any point in time. It could be an  
10 economic purchase that happens at 3:00 in the morning.

11 Q But if you compare that \$75 to the \$129 you say that  
12 Tampa Electric is purchasing from Hardee Power Partners, it  
13 looks like it would be more cost-effective to go to Schedule J  
14 than to go to Hardee, doesn't it?

15 A Well, I wouldn't agree with that because you have  
16 taken the capacity costs that are located in the capacity  
17 filing for the Hardee but you have not done anything to match  
18 up the J capacity costs as well. In addition, this is not one  
19 single purchase. This is a multitude of purchases. So there  
20 could be some costs in there that are \$100, \$150 a megawatt  
21 hour, and there could be, as I said, the 3:00 a.m. purchase in  
22 the middle night that's been projected that may only be at \$22.  
23 So I can't necessarily agree with you that to look at it you  
24 can make that determination.

25 Q But the average over the year is \$75; right?

1 A That's correct.

2 Q And the average, just the energy component without  
3 the capacity payment is \$58 for Hardee Power?

4 A That's correct.

5 Q And for other various market -- the average over the  
6 year for various market-based purchases is \$49?

7 A Right. But, Mr. McWhirter, I guess the more  
8 convenient way to look at it is that, as you pointed out, the  
9 capacity costs for Hardee are sunk costs. They are going to be  
10 paid whether we take one megawatt hour or a thousand megawatt  
11 hours. So really, you're looking at the increments. So you're  
12 really looking at the 58 really as the more appropriate  
13 comparison because, as you stated yourself, we are going to pay  
14 the \$19.6 million and --

15 Q Is 58 more or less than 49?

16 A It is more.

17 Q I see.

18 A But it's also less than the 75.42 that you pointed  
19 out.

20 Q What are the specific benefits that customers are  
21 getting from the new CT that was installed at the Hardee Power  
22 station before you sold that station?

23 A The specific benefits they are getting is the fact  
24 that we are able to serve them. They are getting reliable  
25 power.

1 Q What if instead of entering into that contract you  
2 would have taken one of those four CTs that you spent  
3 \$65 million for and put them into operation in the rate base?  
4 Have you considered that as a possible alternative in your  
5 analysis?

6 A Well, if you remember correctly, Mr. Smith stated  
7 earlier that this agreement, the contract came into play in  
8 2000. I don't even think the purchase of the CTs was on the  
9 horizon at that point. So your hypothetical is a little  
10 difficult to deal with because we're not really doing a fair  
11 comparison there.

12 Q And your responsibility is planning. Do you know  
13 what the plan was for the CTs that you're going to put on-line  
14 in the next five or six years?

15 A No, I do not.

16 MR. McWHIRTER: All right. I have no further  
17 questions of the witness.

18 CHAIRMAN JABER: Mr. Vandiver.

19 MR. VANDIVER: No questions.

20 CHAIRMAN JABER: Mr. LaFace.

21 MR. LaFACE: No questions.

22 CHAIRMAN JABER: Staff.

23 MR. KEATING: Just three or four questions.

24 CROSS EXAMINATION

25 BY MR. KEATING:

1 Q Ms. Jordan, do you know what the incremental cost of  
2 the replacement capacity and energy was that was purchased for  
3 Tampa Electric in lieu of operating Gannon until the end of  
4 2004 or what it's projected to be?

5 A I would say the closest thing obviously, as was  
6 stated earlier, with all of the various changes that occur,  
7 just with the change in a fuel commodity price, for example,  
8 can change the projection, but Mr. Vandiver yesterday  
9 referenced a page of confidential information, Page 1187, and  
10 there were five scenarios listed on that particular page. The  
11 fifth scenario is probably the closest to what the company did  
12 implement in terms of the shutdown of the Gannon unit.

13 Q And that scenario includes replacement fuel?

14 A That scenario includes an impact for fuel and  
15 purchased power.

16 Q Have Tampa Electric's ratepayers paid more or will  
17 they pay more in fuel adjustment charges because of its  
18 decision to shut down Gannon when it did rather than operate it  
19 until the end of 2004?

20 A I don't think you can emphatically say they would or  
21 they will or won't primarily because of the availability of the  
22 Gannon units. You would have to assume that you would not have  
23 the forced outages or that the units would not on their own  
24 take themselves out of operation.

25 Q For 2003 do you know if Tampa Electric's ratepayers

1 paid more in fuel adjustment charges as a result of the  
2 decision to shut down Gannon prior to the end of 2004?

3 A Again, I don't know that they paid more per se  
4 because, as I stated, I don't really know the performance of  
5 the units, or I can't guess the performance of the units. And  
6 it would primarily be the Gannon Units 1 and 2 that we're  
7 talking about because 3 or 4 were on-line for basically the  
8 entire year.

9 Q Just one more question. Has Tampa Electric performed  
10 any cost-effective analyses of its decision to shut down Gannon  
11 when it did and to buy replacement capacity and energy?

12 A I think the information that's provided on the  
13 confidential Page 1187 is the company's analysis at that time  
14 to make a determination on the projected impacts.

15 Q Has the company performed any more recent analyses?

16 A The company provided I think in an interrogatory  
17 response to the staff some additional information that was  
18 requested that updated some of that information.

19 MR. KEATING: Thank you.

20 CHAIRMAN JABER: Commissioners, do you have any  
21 questions of Ms. Jordan? Commissioner Deason.

22 COMMISSIONER DEASON: Ms. Jordan, I'm looking at  
23 Page 22 of your revised rebuttal testimony. And on Lines 2 and  
24 3, you indicate in reference to Ms. Brown's testimony that she  
25 incorrectly applied 57.4 million as incremental avoided O&M

1 savings for 2003. And I believe she also -- she made an  
2 estimate for 2004 as well; is that correct?

3 THE WITNESS: Yes.

4 COMMISSIONER DEASON: And this page, you go and you  
5 identify several reasons that you disagree with her. Did you  
6 calculate what you consider to be an appropriate amount of O&M  
7 savings attributable to the early shutdown of Gannon Units  
8 1 through 4?

9 THE WITNESS: I did not, sir.

10 COMMISSIONER DEASON: Do you have an opinion as to  
11 what that number is?

12 THE WITNESS: I'm looking for a particular document  
13 that was filed. Actually, probably the closest information  
14 would be the information that is also contained on the  
15 confidential Page 1187 that also has information that pertains  
16 to the O&M.

17 COMMISSIONER DEASON: Okay. You've lost me. 1187.

18 THE WITNESS: Yes.

19 CHAIRMAN JABER: What is the confidential document  
20 you're referring to?

21 THE WITNESS: Hold on one second.

22 CHAIRMAN JABER: Mr. Beasley, was that one of the  
23 interrogatory responses?

24 THE WITNESS: We've got that information available.

25 MR. VANDIVER: That's one of our exhibits,

1 Commissioner.

2 CHAIRMAN JABER: Can you remind me which one it was,  
3 Mr. Vandiver?

4 MR. VANDIVER: Yes, ma'am, if you give me just one  
5 second. I believe it's MJM-5.

6 THE WITNESS: It's MJM-5. It is. We've got it  
7 available.

8 MR. VANDIVER: It's MJM-5, Commissioner.

9 CHAIRMAN JABER: Thank you.

10 MR. VANDIVER: It's in the record.

11 CHAIRMAN JABER: Mr. Majoros's exhibit.

12 MR. VANDIVER: Yes, ma'am.

13 CHAIRMAN JABER: The scenario sheet.

14 MR. VANDIVER: Yes.

15 THE WITNESS: Yes.

16 COMMISSIONER DEASON: Okay. Realizing that this is  
17 confidential and I don't want to discuss the specific numbers,  
18 I guess it's okay to indicate that there are a number of  
19 scenarios here?

20 THE WITNESS: Yes.

21 COMMISSIONER DEASON: Is there a particular scenario  
22 that you feel is superior?

23 THE WITNESS: I think the one that represents more  
24 closely to when the units were actually shut down is Scenario  
25 Number 5.

1 COMMISSIONER DEASON: Now, back to Page 22 of your  
2 revised rebuttal testimony, you indicated a number of flaws, in  
3 your opinion, a number of flaws in Ms. Brown's assumptions and  
4 calculations. Are there similar flaws in Scenario 5 of  
5 Mr. Majoros's testimony, or those flaws do not apply to MJM-5?

6 THE WITNESS: There are not similar flaws necessarily  
7 in the O&M. He did utilize some of the company's information.  
8 I would say that the flaws that I saw were primarily on the  
9 fuel replacement power analysis that he completed. And I think  
10 I indicated that in my rebuttal testimony.

11 COMMISSIONER DEASON: Okay. Let's talk about that  
12 for a moment. I'm looking at your JDJ-4 which is attached to  
13 your revised rebuttal testimony.

14 THE WITNESS: Yes, sir.

15 COMMISSIONER DEASON: And on Page 2 of 2, there at  
16 the bottom of that page, you have an estimated impact. And I  
17 don't think that number is confidential.

18 THE WITNESS: No.

19 COMMISSIONER DEASON: Okay. You've calculated an  
20 estimated impact of 8.2 million. I know that you don't agree  
21 with their methodology, but you've made corrections to the  
22 calculation methodology. In your opinion, what does the  
23 8.2 million represent?

24 THE WITNESS: The 8.2 million represents the impact  
25 based on the methodology that Ms. Brown put forth.



1           COMMISSIONER DEASON: And this impact is the  
2 additional fuel cost attributable to the early shutdown of  
3 Gannon Units 1 through 4?

4           THE WITNESS: Correct, based on her methodology.

5           COMMISSIONER DEASON: Okay. Thank you.

6           CHAIRMAN JABER: Ms. Jordan, I'd like to try to put  
7 to bed the issue of dead freight. Were you here when I was  
8 asking Ms. Brown questions related to whether she would modify  
9 her testimony after she heard your direct testimony that  
10 appeared to me to indicate that you didn't believe dead freight  
11 was an issue any longer because there was no dead-freight  
12 charge under this new contract; is that correct?

13          THE WITNESS: Yes, ma'am.

14          CHAIRMAN JABER: Did you hear the exchange between  
15 she and I?

16          THE WITNESS: Yes, ma'am. And I would still state as  
17 I stated earlier that there are no dead-freight charges within  
18 this -- for this existing contract that expires at the end of  
19 the year. They are not in a new name, a new form. There are  
20 no dead-freight charges associated.

21          CHAIRMAN JABER: And in that regard, she expressed a  
22 concern with regard to not knowing or suspecting that in a  
23 future proceeding or in another area of cost recovery, you may  
24 attempt to recover dead freight. Would you address that  
25 concern and suspicion, please.

1 THE WITNESS: We will not attempt to recover dead  
2 freight for the existing contract. There is no dead freight.

3 CHAIRMAN JABER: And if our staff or this Commission  
4 or any of the parties involved in the case would want to verify  
5 that for the next year's fuel proceeding, what might they look  
6 at to verify that information?

7 THE WITNESS: Well, all of the costs obviously as  
8 your audit staff would see will be invoiced. So there will be  
9 the opportunity to look at all of the invoices that come in.  
10 And if we're not following the terms of the contract, that will  
11 be very obvious.

12 CHAIRMAN JABER: And to the degree there would be any  
13 sort of charge, it would be specifically itemized?

14 THE WITNESS: Yes, it would.

15 CHAIRMAN JABER: When this confidential exhibit was  
16 initially brought to our attention, I believe it was yesterday,  
17 the days are running together, but I think it was yesterday, I  
18 asked one of the witnesses if he knew what the purpose of the  
19 exhibit was. Primarily, I was looking at -- we referenced this  
20 yesterday, I assume it's safe to reference again today, if he  
21 would look at the line average customer bill impact and then  
22 the net savings line. And in that spirit, what is the purpose  
23 of this exhibit?

24 THE WITNESS: The purpose of this document was to try  
25 to summarize in a very short format the potential impacts given

1 various dates of shutting down the Gannon units.

2 CHAIRMAN JABER: And what for purpose? Specifically  
3 I'm trying to understand if it was for the purpose of  
4 mitigating the impact to the customer's bill or for the purpose  
5 of understanding which scenario would give you more savings for  
6 your shareholders.

7 THE WITNESS: It was not for the purpose of  
8 determining which would give us more savings for the  
9 shareholders. I'm not sure that that actually occurs in the  
10 totality. It was to understand the potential impacts on all  
11 sides of the equation.

12 CHAIRMAN JABER: And the reference to net savings,  
13 those are savings to whom?

14 THE WITNESS: Those are savings potentially to the  
15 budget for that particular station.

16 CHAIRMAN JABER: And savings to the budget benefit  
17 whom?

18 THE WITNESS: Savings to the budget could ultimately  
19 benefit the ratepayers or the company. It does not say that  
20 the company is not going to expend the dollars. It says that  
21 particular organization will not expend those dollars, but if  
22 it's found, then it could be used in another area of the  
23 company.

24 CHAIRMAN JABER: And in response to Commissioner  
25 Deason's question, I believe you said Scenario 5 is the

1 scenario of your preference.

2 THE WITNESS: It's not the scenario of my preference,  
3 it's the one that more closely aligns with what actually  
4 occurred with regards to the shutdown of the units. It's not  
5 exactly -- the dates that were assumed in the analysis don't  
6 exactly match, but it's the closest one to what actually  
7 occurred.

8 CHAIRMAN JABER: Again, without revealing any of the  
9 numbers, am I correct in interpreting Scenario 5 to result in  
10 the least amount of customer bill impact but not necessarily  
11 the highest net savings to the budget?

12 THE WITNESS: Actually, Scenario 3 does have a lower  
13 impact, but you are correct that it is not the harshest -- most  
14 harshest scenario on the page.

15 CHAIRMAN JABER: What would you consider the harshest  
16 scenario on the page?

17 THE WITNESS: In terms of an impact to the retail  
18 customers, Scenario 2.

19 CHAIRMAN JABER: And am I correct in interpreting  
20 this chart that that scenario results in the greatest savings  
21 to the budget?

22 THE WITNESS: Yes.

23 CHAIRMAN JABER: Thank you. Commissioner Deason.

24 COMMISSIONER DEASON: Yeah, I have a few follow-up  
25 questions. If you could refer again to your Exhibit JDJ-4, and

1 I'm looking at Page 1 of 2. First of all, let me ask you this.  
2 The 8.2 million which we discussed earlier which is found on  
3 Page 2 of 2 of that exhibit, what period of time does that  
4 8.2 million cover?

5 THE WITNESS: 2003.

6 COMMISSIONER DEASON: Only 2003?

7 THE WITNESS: Yes.

8 COMMISSIONER DEASON: Now, did Ms. Brown make a  
9 calculation for 2003 and 2004?

10 THE WITNESS: She did a high-level calculation, yes.

11 COMMISSIONER DEASON: Did you attempt to make a  
12 calculation for 2004?

13 THE WITNESS: No, I did not.

14 COMMISSIONER DEASON: And why not?

15 THE WITNESS: Because I didn't really agree with her  
16 methodology. I was just trying to make a determination to show  
17 that even with the methodology that she utilized, she did not  
18 follow it all the way through correctly.

19 COMMISSIONER DEASON: Referring to Page 1 of 2, why  
20 are there no amounts on Section 2 there at the bottom of the  
21 page, why are there no amounts listed for Gannon Unit 4?

22 THE WITNESS: There are no amounts listed for Gannon  
23 Unit 4 because Gannon Unit 4, the transmission facilities will  
24 be utilized for Bayside Unit Number 2. So it was not as if  
25 there was a determination to take the unit off-line as a

1 business decision. It was a determination to take it off  
2 because the facilities were needed for Bayside Unit 2.

3 COMMISSIONER DEASON: Okay. And why are there no  
4 amounts for Gannon Units 5 and 6?

5 THE WITNESS: 5 and 6 are Bayside Units 1 and 2, that  
6 were repowered to Bayside Units 1 and 2.

7 COMMISSIONER DEASON: Here again, referring to  
8 Page 2 of 2, the 8.2 million for 2003, would the amount  
9 attributable to 2004 be at least equal to the 2003 amount?

10 THE WITNESS: Probably based on the methodology, yes.

11 COMMISSIONER DEASON: But it probably would be  
12 substantially more since it's a full year; correct? What is  
13 your opinion on that? How would they compare?

14 THE WITNESS: I haven't utilized her methodology, so  
15 I'm really not sure. But because, like, as you said that it is  
16 a full year, I would expect it to be greater than the 8.2.

17 COMMISSIONER DEASON: Okay. Thank you.

18 CHAIRMAN JABER: Mr. Beasley, redirect?

19 MR. BEASLEY: No redirect, but I would like to move  
20 Exhibit 40.

21 CHAIRMAN JABER: Without objection, Exhibit 40 is  
22 admitted into the record.

23 (Exhibit 40 admitted into the record.)

24 CHAIRMAN JABER: And let's see, parties double-check  
25 me on this, and, Commissioners, I have that Ms. Jordan was our

1 last witness. And you are excused, Ms. Jordan. Thank you for  
2 your testimony.

3 (Witness excused.)

4 CHAIRMAN JABER: Is that what you all have? No other  
5 witnesses to be taken up today?

6 MR. BEASLEY: That's correct.

7 CHAIRMAN JABER: Commissioners, just so you know,  
8 staff has informed me a couple of parties have requested the  
9 opportunity to provide closing arguments on -- Ms. Davis,  
10 Mr. Twomey, remind me which issue.

11 MS. DAVIS: I believe it's Issue 13E, the waterborne  
12 transportation issue for Progress Energy.

13 CHAIRMAN JABER: 13E. And the request for closing  
14 arguments is limited to that issue?

15 MS. DAVIS: Yes, ma'am.

16 CHAIRMAN JABER: Commissioners, I'm inclined to grant  
17 that request for closing arguments if you all don't object. I  
18 intend to provide a time specific opportunity for such closing  
19 arguments. And just so you know, in terms of planning for the  
20 evening, with those closing arguments I intend to close the  
21 hearing. In terms of participation, we'll close the hearing  
22 for this evening, come back in the morning and take up whatever  
23 recommendation staff may have in this proceeding. That  
24 conversation will be limited -- it will be a posthearing part  
25 of the proceeding. That participation will be limited to

1 Commissioners and staff. Do you all have any objections to  
2 that or concerns?

3 COMMISSIONER DAVIDSON: No objections. I would just  
4 ask that perhaps we make sure that all the parties here are  
5 aware that we're going to do that, and if they would like to  
6 make a closing, they're free to make a closing as well.

7 CHAIRMAN JABER: Absolutely. Okay. Mr. Twomey,  
8 Ms. Davis, I'm thinking ten minutes per party on the issue of  
9 13E. I can't imagine you need any more time than that. Okay.  
10 Maximum of ten minutes. Tell me who exactly wants to make a  
11 closing argument on that issue.

12 MS. KAUFMAN: I would like to, Madam Chairman. I  
13 won't need nearly ten minutes, however.

14 CHAIRMAN JABER: Okay. Ms. Kaufman.

15 MR. VANDIVER: Very briefly.

16 CHAIRMAN JABER: Mr. Vandiver, Mr. Twomey, and  
17 Ms. Davis. Just for the sake of order, we're going to start  
18 with Ms. Kaufman unless you've agreed to something else.

19 MS. KAUFMAN: We have not discussed the order. That  
20 would be fine with me.

21 CHAIRMAN JABER: Go ahead, Ms. Kaufman.

22 MS. KAUFMAN: As I said, Commissioners, the hour is  
23 late, and so I'm going to be very brief about this. I think I  
24 have two points to make. Point number one is I think that you  
25 are all well aware that the burden is on the utility to prove



1 the reasonableness of the costs that it comes in here seeking  
2 to recover from the ratepayers. It's their burden. It's their  
3 burden in every fuel adjustment to do so.

4           You've heard your own staff member testify and be  
5 cross-examined at length that the payments that we're talking  
6 about that come from this waterborne coal transportation proxy  
7 are excessive, unreasonable, not appropriate to be used for a  
8 prudence determination. I won't reiterate all of his  
9 testimony. I know that you all looked carefully at the  
10 confidential document that provided the various margins that  
11 Mr. McNulty discussed. And I have to say that I was amazed  
12 before the revisions were made and even more so after the  
13 corrections were made that Mr. McNulty handed out. We've got  
14 dollars at stake here in '02, '03, and then going forward to  
15 '04, and I would urge you to be sure that the only costs that  
16 are collected from the ratepayers are reasonable costs, costs  
17 that are not excessive and costs that are appropriate for cost  
18 recovery in this proceeding. Thank you.

19           CHAIRMAN JABER: Thank you, Ms. Kaufman.

20           Mr. Vandiver.

21           MR. VANDIVER: Very briefly. The Florida Progress  
22 proxy is broken. The margins are not high but rather they're  
23 so high as to shock, I believe, the conscious of the  
24 Commission. You saw the margins. The margins are clearly  
25 excessive. There's no other word to describe them. Your staff

1 testimony has stated that they are unreasonable. This body has  
2 a duty to set fair, just, and reasonable rates. I believe it's  
3 incumbent upon you to exercise that responsibility. And your  
4 staff has laid this out before you. This issue was identified  
5 last December for your consideration, and so I don't believe  
6 there's equities involved that would suggest any other result.  
7 Thank you.

8 CHAIRMAN JABER: Thank you.

9 Mr. Twomey.

10 MR. TWOMEY: Thank you, Madam Chairman,  
11 Commissioners. First, I think what you've heard from the four  
12 witnesses that testified on this issue gives you an awareness  
13 of what you know as well as what you don't know. In the  
14 category of what I think you know from the testimony and the  
15 evidence -- pardon me for this cough -- is that you-all have a  
16 statutory responsibility to only include costs in customers'  
17 rates that are fair, reasonable, and necessary. It's the law.

18 You know your staff witness testified that based on a  
19 factual staff audit and the discovery associated with it that  
20 the waterborne coal transportation for this company for 2002  
21 were excessive, unreasonable, and that they were, in his words,  
22 a detriment to the utility's ratepayers.

23 You also know that the confidential margins you saw  
24 are clearly excessive, if not obscene. And you have to know  
25 that there is no efficient company theory that can serve to

1 defend these profit levels when these rates and profits become  
2 public, as they eventually will. You know or should know that  
3 retroactive ratemaking has no place in fuel adjustment  
4 proceedings, especially whereas here Commission jurisdiction is  
5 specifically maintained over the years 2002 and 2003. There is  
6 no retroactive ratemaking here, none, period.

7           You know or should know as well that your staff's  
8 justification for ignoring excessive and unreasonable costs  
9 both in the past and on an ongoing basis is absurd. Progress  
10 Energy had a year's notice of this review and has an  
11 inescapable burden of proof that can't be absolved by some  
12 legally untenable theory of shared responsibility. It simply  
13 doesn't exist.

14           You also know that your staff apparently negotiated  
15 with the utility to limit cross-examination and the scope of --  
16 or the existence of rebuttal testimony in exchange for this  
17 stipulation. That seems somewhat inconsistent with the  
18 Chairman's -- if it happened, it seems inconsistent with the  
19 Chairman's direction to talk to all parties. You have to know  
20 that you cannot accept this stipulation, especially over the  
21 strenuous objections over each and every customer party to  
22 these proceedings.

23           You know now that the proxy mechanism in the words of  
24 your staff witness was broken the first five years of its  
25 operation and that it remains broken now a full decade later.

1 You know your staff wants you to fix or replace this broken  
2 proxy mechanism as soon as is possible, what I would suggest  
3 that you don't know as a result of the testimony heard today --  
4 yesterday. You probably don't have sufficient evidence to know  
5 how much to adjust the transportation costs being sought here  
6 even as you know that you must adjust them downward. You don't  
7 know exactly how to fix or replace the broken proxy even though  
8 you know in the words of your staff that you should do it as  
9 soon as possible and that you probably shouldn't wait another  
10 full year.

11           On behalf of my clients, I'd like to recommend that  
12 you consider the following: I'd like to recommend that you  
13 maintain your jurisdiction over the cost for 2002, hold them  
14 subject to continued resolution and jurisdiction and refund; do  
15 the same with 2003 even though by your procedures and by law  
16 they would carry over into next year; have your staff conduct a  
17 full and more complete audit for the year 2003 so that you'd  
18 have a full and complete awareness of all of the costs, the  
19 current costs that the company's fuel subsidiary pays for its  
20 affiliate and non-affiliate transactions.

21           Lastly, I would ask that in conjunction with that,  
22 that you spin this off. You don't need to make a decision on  
23 this tomorrow. If you hold the money subject to refund, you  
24 don't need to make a decision based on incomplete, insufficient  
25 evidence. Hold it off, spin it off, and consider combining it

1 with the spinoff docket that you've established for TECO and  
2 now scheduled hearings in the month of May of next year. The  
3 issues affecting this company are substantially the same as  
4 TECO.

5 CHAIRMAN JABER: Mr. Twomey, a Prehearing Officer has  
6 issued an order that establishes May as hearing dates?

7 MR. TWOMEY: I was given, I believe, either through  
8 e-mail message or telephone message that there was a prehearing  
9 and a hearing date in May. I may be mistaken.

10 CHAIRMAN JABER: You may not be. It's just  
11 interesting because I don't have that information, staff.

12 MR. TWOMEY: Irrespective of the time, I would  
13 suggest to you that the issues confronting the Commission  
14 vis-a-vis TECO in its waterborne transportation and this  
15 company and its waterborne transportation and the lack of  
16 competition or the use of a proxy or a benchmark are  
17 substantially the same, and it seems to me desirable to be --  
18 that they would be heard together and that they be resolved in  
19 a manner that is consistent with one another. So that's what I  
20 would recommend to you, and I appreciate the opportunity to  
21 make these comments.

22 CHAIRMAN JABER: Thank you, Mr. Twomey.

23 MR. TWOMEY: Thank you.

24 CHAIRMAN JABER: Ms. Davis.

25 MS. DAVIS: Commissioners, we find ourselves in an

1 odd position of agreeing with many of the policy assertions  
2 made by the other parties to this docket but would urge you to  
3 reach a very different conclusion. I think it bears indulgence  
4 for a few minutes to go back and look at the history of how  
5 this developed.

6           When waterborne transportation first came about, cost  
7 recovery was established on a cost plus basis; that is, the  
8 company had the burden to prove up what its actual costs were  
9 plus an allowed return on its equity investments that were  
10 needed to provide the service. In about 1989 in this fuel  
11 docket, you made a decision that you did not wish to continue  
12 setting the basis for cost recovery for water transportation on  
13 the basis of cost, that you wanted to move the cost recovery  
14 mecca to a market price methodology.

15           Then you went on to find as a matter of fact that  
16 there was not a market price that was established in a  
17 third-party market for all parts of the chain that we use to  
18 provide waterborne transportation. As a result of that  
19 decision, the parties, all of whom are here today, entered into  
20 a stipulation that said that they would set a proxy price for  
21 waterborne transportation that was, in their opinion at the  
22 time, the best way to try to establish what a market price for  
23 the service might be if there was a market. And everyone  
24 agreed to that. Everyone agreed to the indices and their  
25 weightings and you all approved it. Thereafter, on an annual

1 basis, the company has presented in the fuel adjustment  
2 proceedings the computation of the index price and the amount  
3 of tons shipped by water. And it's been out there for review  
4 and approval by the Commission every year the price system has  
5 been in effect.

6 Now, when you went to this price methodology in 1993,  
7 it essentially said, thereafter, you are not going to examine  
8 the company's costs. If your costs exceed the market price,  
9 you will eat the difference. If you beat the market price,  
10 then you get to keep the difference. And that is, to my way of  
11 thinking, exactly what Mr. Twomey meant yesterday when he said  
12 that the price proxy was intended to function as a double-edged  
13 sword. And we are not here today to argue that we are entitled  
14 to keep that method of cost recovery without any review on your  
15 part forever and ever. We knew last year that this was going  
16 to be subject to review this year. It has been the subject of  
17 ongoing discovery for a year. Mr. Portuondo filed his  
18 testimony in September and said, as far as he could tell, that  
19 this proxy had functioned and could continue to function as the  
20 basis for cost recovery. The staff filed their testimony in  
21 the middle of October that said, we don't think it should  
22 continue in the future, but we think that the change should be  
23 prospective only.

24 Now, the company looked at the staff testimony in its  
25 entirety, and I think we concluded and made no secret of our

1 conclusion that while we might not like all of the  
2 characterizations in the testimony, we could live with the  
3 result in its entirety. And that result in its entirety was  
4 that there would be no change to the methodology for the years  
5 that were already past because we would have no opportunity to  
6 respond to that change in method.

7           In the future, we have agreed to adopt the staff  
8 process for seeing whether there is a market for each segment  
9 of the change where there is a market to move to that as the  
10 actual cost recovery basis, and where there's not, the burden  
11 would be on us to propose what an alternative market proxy  
12 might be for that segment on a going-forward basis. But to our  
13 way of thinking, it is fundamentally unfair to say to a  
14 company, I'm not going to look at your costs, I'm going to look  
15 at this market price, and then after the game is over, to come  
16 back and say, no, I don't like that price. I wish I hadn't  
17 given it to you. I'm going to now go back and look at your  
18 cost, which we told you at the time was not going to be the  
19 basis for cost recovery. So we think as a matter of  
20 fundamental regulatory fairness that if you want to change the  
21 methodology, no problem looking at it and changing it on a  
22 prospective basis, but to change it retrospectively after you  
23 had announced that it was not going to be the basis for cost  
24 recovery is not fundamentally fair.

25           I would say this. When you talk about what the



1 continuing jurisdiction of the Commission is in the fuel  
2 adjustment docket, those decisions have always been premised on  
3 the notion that the basis for cost recovery was going to be  
4 your prudent and reasonable cost. And I don't think we would  
5 be here today arguing with you if for the year '02, '03, and  
6 '04 our waterborne costs were subject to your review because I  
7 do agree that through the process of projecting, experiencing  
8 actual costs and truing-up, you would have jurisdiction to  
9 adjust cost on the basis of whether you found them to be  
10 reasonable and prudent. But what you are being urged to do is  
11 to take a methodology that says, we will take a proxy and go  
12 back and recast the proxy now that the company has no  
13 opportunity to respond to that regulatory change is not the  
14 same thing as saying we're going to go back and look at your  
15 cost. It's saying your cost didn't count when you experienced  
16 them. Now that it's over, they do. And we don't like the game  
17 as it was played. At the time we would have had a chance to  
18 respond to it.

19 In that vein, I would respectfully suggest that had  
20 we been here in a different year when we didn't beat the market  
21 proxy and said, you know what? We knew that this was an  
22 independently established proxy, and we knew that that was what  
23 we had to deal with, but it turns out that our cost exceeded  
24 the market proxy, so we would like you to go back and adjust  
25 the basis for cost recovery and give us more than the market

1 proxy was established for that year, I would respectfully  
2 suggest that the people who are arguing today that this is not  
3 fair would be saying, ha, a deal is a deal. And I think that  
4 that sword is truly double-edged and it ought to cut both ways.

5 And if you want to change it in the future, we're on  
6 board with the change. We'll work with the staff and parties  
7 to find something that we hope is mutually satisfactory to  
8 everybody. But we would respectfully suggest and urge you to  
9 recognize the fact that we abided by an order that was in place  
10 and that told us that we had a market proxy to respond to to  
11 either beat it or eat it, and that if look at the staff audit  
12 results, you will see that based on the staff audit, we  
13 faithfully computed the market proxy in accordance with your  
14 order and applied that as the basis for cost recovery.

15 So we would suggest, respectfully, that you accept  
16 the proposed resolution of this docket in that there would be  
17 no change to the methodology for '02, '03, and '04, and that we  
18 adopt the process outlined in Mr. McNulty's testimony on a  
19 going-forward basis beginning with the year 2005. And we ask  
20 that you consider that we took this position based on it  
21 comprehensively addressing the issues in this docket, and that  
22 the matter has been out there and everyone has had a chance to  
23 address it, and we do not see a basis for not making a final  
24 decision on it in the normal course of events, which would  
25 suggest that it either happen this morning or tomorrow as the

1 Commission finds it to be acceptable. Thank you.

2 CHAIRMAN JABER: Ms. Davis, let me ask you a  
3 clarification question. You said you ask that we accept  
4 Mr. McNulty's recommendation on a going-forward basis. Are you  
5 using that interchangeably with requesting that the Commission  
6 approve the proposed stipulation that was handed out to us  
7 yesterday?

8 MS. DAVIS: Yes. In this sense, it was not our  
9 intention to change the spirit of what Mr. McNulty recommended  
10 in his testimony, and it was our understanding based on  
11 discussions with the staff that the stipulation faithfully  
12 incorporated in a going-forward basis what it was that he had  
13 recommended.

14 CHAIRMAN JABER: Okay. You're trailing off a little  
15 bit.

16 MS. DAVIS: I'm sorry.

17 CHAIRMAN JABER: That's okay.

18 MS. DAVIS: We believed that the stipulation was  
19 written to faithfully incorporate the recommendations in  
20 Mr. McNulty's testimony. So if there's any difference between  
21 what's in his stipulation and what's in his testimony, I would  
22 say that's eminently resolvable.

23 CHAIRMAN JABER: All right. Well, let me follow up.  
24 That's why I asked. Mr. McNulty, I heard at least two areas  
25 where he disagreed -- there may be more. I heard two areas

1 where he disagreed with the proposed stipulation. The first,  
2 if I'm not mistaken, related to Paragraph 1, the trans-Gulf  
3 component. The proposed stipulation says that it should be  
4 equal to 26 percent of the 2005 market price. I don't recall  
5 what Mr. McNulty said he believed the percentage was, but I do  
6 remember that he disagreed with that. So are you suggesting  
7 that Paragraph 1 be modified to reflect whatever Mr. McNulty  
8 would support in his testimony?

9 MS. DAVIS: Well, I think that we would be happy to  
10 do whatever you all want us to do on that. As we understood  
11 Mr. McNulty's testimony, he was saying that as the contracts  
12 expire, they should be replaced with this RFP process. And as  
13 we understood that, we thought that he was maybe not aware that  
14 that particular contract didn't expire until the end of the  
15 first quarter of '05. So that was an attempt to take the  
16 spirit of what he said and adjust it to the reality of when the  
17 contract expired. But the intent was not to extend the  
18 contract beyond its natural expiration date.

19 CHAIRMAN JABER: The second area of disagreement I  
20 thought he articulated related to Paragraph 2 -- no, sorry,  
21 Paragraph 3A, Number 3, a maximum term of five years before  
22 subsequent review of the Commission. Mr. McNulty believed it  
23 should be a four-year period.

24 MS. DAVIS: Again, as I recall Mr. McNulty's  
25 testimony, he suggested that the -- if there had to be a market

1 proxy for any particular segment of the transportation chain,  
2 that it should be periodically reviewed and that that review  
3 would probably best be conducted as the contract expired, which  
4 he recommended would be somewhere between four and five years.

5 So it was our understanding that if we signed a  
6 contract for four years, that at the end of that contract  
7 expiration, we would review the market proxy, but in no event  
8 would it go more than five years.

9 CHAIRMAN JABER: Okay. So it sounds like you're  
10 agreeing to a modification of that Number 3 that would make  
11 clear that whatever review should coincide with the termination  
12 of a contract.

13 MS. DAVIS: Yes, ma'am.

14 CHAIRMAN JABER: Okay. I have a legal question with  
15 respect to trying to rule and accept on a proposed stipulation  
16 that's only offered by you all and perhaps our staff  
17 recommending that we accept it. This is not a stipulation  
18 entered into between all of the parties in this case that,  
19 frankly, have taken strong positions related to that issue.  
20 This doesn't resolve the issue in my mind if we accept this  
21 stipulation. So my question to you is, how is it legally  
22 possible for us to rule and accept a stipulation that parties  
23 are adamantly opposed to?

24 MS. DAVIS: Well, I'm sorry if the term "stipulation"  
25 didn't accurately convey who's agreed and who hasn't agreed.

1 As we understood it, we read the staff testimony and said, you  
2 know, we could live with this. And we entered an agreement  
3 with the staff that if this recommendation of Mr. McNulty was  
4 acceptable to you, it was acceptable to us, and it would  
5 resolve all of the issues in this docket. And I think whether  
6 we had agreed with the staff or not, it would be within your  
7 purview to say, of all the options offered to us, we think  
8 that's the wisest regulatory option for disposing of the issues  
9 in this docket.

10 CHAIRMAN JABER: So let me make sure I understand.  
11 Regardless of whether you call this a stipulation or resolution  
12 or an offer of settlement, you acknowledge as a stipulation  
13 it's not legally possible for us to accept it as the ultimate  
14 resolution of the case without having all of the parties sign  
15 off?

16 MS. DAVIS: No, ma'am. I think what we would urge  
17 you to decide is that reaching a decision on the merits, this  
18 recommendation that the staff and we have agreed to would be  
19 the best decision that you could make on this case.

20 CHAIRMAN JABER: You want us to independently find --

21 MS. DAVIS: Yes.

22 CHAIRMAN JABER: -- that this issue is resolved by  
23 using your idea.

24 MS. DAVIS: Yes, ma'am.

25 CHAIRMAN JABER: Commissioners, do you have any

1 questions of any of the parties before we adjourn?

2 COMMISSIONER DEASON: I just have a question for  
3 staff.

4 CHAIRMAN JABER: Go ahead, Commissioner Deason.

5 COMMISSIONER DEASON: The discussion that staff had  
6 with Progress concerning the issue of waterborne coal  
7 transportation, were any of the other parties invited to  
8 participate in that?

9 MR. KEATING: Yes. I think one of the first few  
10 drafts of this document was presented at a meeting with all the  
11 parties which did not include Mr. Twomey at the time as he's  
12 recently intervened in this case. It became apparent sometime  
13 after that meeting that Public Counsel and FIPUG would not  
14 agree to particularly the term that would not require the proxy  
15 to end until the end of 2004.

16 COMMISSIONER DEASON: So all parties that were  
17 parties at the time were invited to participate in these  
18 discussions.

19 MR. KEATING: That's correct. Now, I will say after  
20 it was clear that Public Counsel and FIPUG would not agree to a  
21 market price proxy that would continue until the end of 2004,  
22 through bilateral discussion between staff and the party, we  
23 had fine tuned that document. And it was clear to us that even  
24 with the -- with the fine tuning we were doing, we were not  
25 modifying the sticking point for Public Counsel and FIPUG,

1 which was that they would not agree to it if the market price  
2 proxy wasn't going to end before the end of 2004.

3 COMMISSIONER DEASON: Okay. Thank you.

4 COMMISSIONER BRADLEY: I have a question.

5 CHAIRMAN JABER: Commissioner Bradley.

6 COMMISSIONER BRADLEY: Yes, just to clear something  
7 up. I'm looking at Issue 13E, and it says that this was  
8 established by order, PSC Order 93-1331-FOF-EI in 1993; is that  
9 correct?

10 MR. KEATING: Yeah, I believe it was a 1993 order.

11 COMMISSIONER BRADLEY: Okay. Well, my question is  
12 this. Is this order still in effect, or is it that we are  
13 thinking about arbitrarily dismissing this order and  
14 implementing a new process?

15 MR. KEATING: No. The process that's established in  
16 that order is still in effect basically until we change it.  
17 There was no -- the stipulation that was approved in that order  
18 among the parties had no termination date.

19 COMMISSIONER BRADLEY: Okay. Well --

20 MR. KEATING: And our approval did not have a  
21 termination date either.

22 COMMISSIONER BRADLEY: So this order is in effect,  
23 but on a going-forward basis, we can implement to change the  
24 order. This order is in effect for this particular procedure.  
25 Is that what is at issue here? The parties disagree?



1 MR. KEATING: That is my view, is that the order is  
2 in -- it's still in effect right now until we do something to  
3 change it, until there is a vote. If there's a vote tomorrow  
4 to change it, that's when it will no longer be in effect. That  
5 market price proxy mechanism will no longer be in effect when  
6 you vote to change it. Now, your vote may indicate when that  
7 procedure formally ends, but right now it's still in effect.

8 COMMISSIONER BRADLEY: Okay.

9 CHAIRMAN JABER: Commissioners, any other questions?

10 MR. BEASLEY: Madam Chairman, I would like to say one  
11 thing. I don't want to address any of the Progress Energy  
12 specific issues, but I do take issue with Mr. Twomey's  
13 suggestion that if those issues aren't decided here tomorrow,  
14 that they be consolidated with a separate proceeding that you  
15 set up for Tampa Electric. While the issues are waterborne  
16 coal transportation, the parties, their circumstances are  
17 completely different and the issues are different, and we think  
18 it would be -- on top of that, it would be an administrative  
19 nightmare for you to handle confidential information pertaining  
20 to competing interests in the same docket. So we would urge  
21 that you find that be ill-advised and not do that.

22 CHAIRMAN JABER: Okay. Staff, before we adjourn for  
23 the evening, is there anything else we need to take care of  
24 tonight? And I pose this question to the parties as well  
25 because tomorrow we're in our posthearing mode and

1 participation will be limited to Commissioners and staff.

2 MR. KEATING: I am not aware of anything else that  
3 needs to be taken care of tonight.

4 CHAIRMAN JABER: Mr. Beasley.

5 MR. BEASLEY: I'm not either.

6 CHAIRMAN JABER: Mr. Butler.

7 MR. BUTLER: (Shaking head.)

8 CHAIRMAN JABER: Ms. Davis.

9 MS. DAVIS: (Shaking head.)

10 CHAIRMAN JABER: Mr. LaFace.

11 MR. LaFACE: (Shaking head.)

12 CHAIRMAN JABER: Mr. Twomey.

13 MR. TWOMEY: No, ma'am.

14 CHAIRMAN JABER: Mr. Vandiver.

15 MR. VANDIVER: No, ma'am.

16 CHAIRMAN JABER: Ms. Kaufman.

17 MS. KAUFMAN: (Shaking head.)

18 CHAIRMAN JABER: This hearing is adjourned. It  
19 concludes the hearing stage of this proceeding. Tomorrow at  
20 9:00 a.m., Commissioners, staff, we'll reconvene and be in our  
21 agenda mode.

22 (Hearing adjourned at 6:35 p.m.)

23 (Transcript continued in sequence with Volume 8.)

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25


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

4  
5 I, TRICIA DeMARTE, RPR, Official Commission Reporter, do  
6 hereby certify that the foregoing proceeding was heard at the  
7 time and 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 21st DAY OF NOVEMBER, 2003.

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