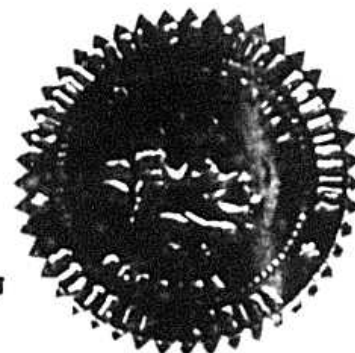


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of : DOCKET NO. 970171-EU

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



FIRST DAY - MORNING SESSION

VOLUME 1

Pages 1 through 124

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

DATE: Wednesday, June 11, 1997

TIME: Commenced at 9:30 a.m.

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

REPORTED BY: JOY KELLY, RPR
Chief, Bureau of Reporting
(904) 413-6732

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22 **on behalf of the Commission Staff.**

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P R O C E E D I N G S

(Hearing commenced at 9:40 a.m.)

CHAIRMAN JOHNSON: I'm going to go ahead and call the hearing to order. Counsel, would you please read the notice?

MS. FAUGH: Pursuant to notices issued May 12, 1997, and May 27, 1997, this time and place have been set for hearing in Docket 970171-EU, determination of appropriate cost allocation and regulatory treatment of total revenues associated with wholesale sales to Florida Municipal Power Agency and City of Lakeland by Tampa Electric Company.

CHAIRMAN JOHNSON: Take appearances.

MR. WILLIS: Lee L. Willis, James D. Beasley and Kenneth R. Hart of the firm of Ausley and McMullen, Post Office Box 391, Tallahassee, Florida, appearing together with Harry W. Long, Jr., TECO Energy, Inc., P. O. Box 111, Tampa, Florida, appearing on behalf of Tampa Electric Company.

MS. KAUFMAN: John McWhirter and Vicki Gordon Kaufman, of the law firm of McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, 117 South Gadsden Street, Tallahassee 32301, on behalf of the Florida Industrial Power Users group.

MR. HOWE: Commissioners, I'm Roger Howe

1 with the Office of Public Counsel. The address is as
2 shown in the Prehearing Order.

3 **MS. PAUGH:** Leslie Paugh with Robert Elias
4 on behalf of Staff of the Florida Public Service
5 Commission.

6 **CHAIRMAN JOHNSON:** Are there any preliminary
7 matters?

8 **MR. WILLIS:** Commissioners, with notice to
9 other parties and without objection, we are going to
10 call John Ramil first, and then call Dr. Bohi, and
11 we'll take both Dr. Bohi's direct and rebuttal
12 testimony when he comes to the stand the first time.
13 And then the order of witnesses would be as it is
14 stated on Page 6 of the Prehearing Order.

15 **CHAIRMAN JOHNSON:** That will be fine. Any
16 other preliminary matters?

17 **MS. KAUFMAN:** Chairman Johnson, FIPUG has
18 two preliminary matters.

19 First of all, we have filed a request for
20 official recognition of a number of orders and
21 documents. And I have some extra copies if the
22 Commissioners do not have this.

23 **CHAIRMAN JOHNSON:** I don't have it.

24 **MR. McWHIRTER:** I'd like to take up one
25 preliminary matter, please, Madam Chairman.

1 In the Prehearing Order that is on your desk
2 this morning you'll see that there is a preliminary
3 ruling on the discovery of evidence that denied
4 FIPUG's expert witness and its lead attorney the
5 opportunity to inspect information concerning
6 incremental costs.

7 Incremental costs are the essence of this
8 case. The principle issue is whether the payments
9 credited to the fuel clause will cover the incremental
10 costs charged to the retail ratepayers. The irony of
11 this ruling is that as a participant in this case
12 we're not allowed to know what the incremental costs
13 are so it creates a pretty peculiar situation.

14 Tampa Electric Company's rationale for
15 refusing to deliver this secret information is that
16 because one of the FIPUG members, IMC-Agrico
17 Corporation is presently considering a cogeneration
18 alternative to buying power from a power company. And
19 the conclusion is that if this cogeneration -- if
20 Tampa Electric apparently is also submitting a
21 proposal to the company, and it says that if IMC
22 becomes aware of the incremental costs that are
23 projected for the future, then IMC will be placed in
24 an unfair competitive position with respect to other
25 participants in that bidding process.

1 But that approach ignores the fact that bids
2 are being received and the fact that Tampa Electric is
3 not bidding its incremental cost, which it has no
4 obligation to bid, is totally irrelevant to the result
5 in that bid.

6 The other aspect that is very troublesome
7 about the ruling in this case is that IMC-Agrico
8 Company is a qualifying facility already and it sells
9 power to Tampa Electric and it has paid for that power
10 at incremental costs. So, in fact, every hour of the
11 day Tampa Electric already discloses to IMC-Agrico
12 what its incremental costs are. And, in fact, in the
13 order which approved the QF tariff, which is
14 Order 10943 in Docket 810296-EU, the Commission ruled
15 that QFs would be paid precise incremental cost and
16 not estimated incremental cost, and that for future
17 planning QFs would be entitled to receive two years
18 advance information concerning what Tampa Electric's
19 incremental cost would be. So the denial in this case
20 is adverse to the Commission's ruling as far back as
21 1982 with respect to the disclosure of incremental
22 cost.

23 But probably the most important reason that
24 we disagree with the -- respectfully disagree with the
25 Prehearing Officer's ruling on incremental cost is

1 that in a regulatory setting the Commission's
2 obligation is to ensure that retail customers are
3 adequately protected because this is a monopoly
4 selling to these customers; they have no choice but to
5 buy electricity from Tampa Electric. So as part of
6 their obligation to buy, customers should have the
7 right to know what the actual cost is they are being
8 credited for or charged for.

9 If this ruling stands up ultimately, the
10 impact of it is that we will have a Star Chamber
11 operation in which electric companies can give you
12 secret information as to what costs are, and customers
13 will not have the opportunity, if they potentially can
14 be a competitor, or considered self-generation, can't
15 be entitled to know what that cost is. It's a
16 throwback from the whole philosophy of the state of
17 Florida going to open government, open information.

18 We think we are sorely aggrieved by this
19 ruling in that we have the burden of trying to deal
20 with Tampa Electric Company's allegation that it is
21 giving customers credit for the actual incremental
22 cost of fuel but we can't know what that cost is.

23 I'm not asking you to overrule the
24 Prehearing Officer's ruling at this juncture because
25 now it's too late for us to get the information and

1 deal with it in any meaningful fashion, but I did want
2 to place our very strong exception on the record in
3 this case.

4 MR. WILLIS: I'd like to make a brief
5 response to it.

6 First of all, Tampa Electric has not refused
7 to provide this information to FIPUG. FIPUG has
8 refused to receive the information through
9 representatives that are not involved in the very
10 delicate negotiations with respect to the IMC-Agrico
11 request for proposal. We have offered a nondisclosure
12 agreement to FIPUG. They have declined to sign it.
13 We have provided access to these materials to your
14 Staff, to Public Counsel; we've offered to courier the
15 information to Public Counsel's outside expert. So we
16 have offered access to the materials.

17 Secondly, these materials contain perhaps
18 the most sensitive information that Tampa Electric
19 has. It involves their projected incremental costs;
20 not the actual incremental cost as related to the
21 cogeneration pricing. There's nothing that's more
22 sensitive than that.

23 Now, Tampa Electric has sat across the table
24 from Mr. McWhirter and Mr. Pollock in the
25 negotiations. In fact, those negotiations were going

1 on simultaneously and are still open. I'm going to
2 ask Mr. Laux to provide for you information regarding
3 IMC-Agrico's request for proposal which shows right at
4 the outset that Brubaker & Associates were the primary
5 contact with respect to this RFP, and that there have
6 been numerous responses to that inquiry as shown in
7 reported news articles with respect to the request for
8 proposal.

9 So Commissioners, Commissioner Deason's
10 ruling on this matter, which was thoroughly argued at
11 the prehearing conference, was correct and we've
12 provided reasonable access. No one has been denied
13 due process of law. They have just sought to gain an
14 advantage through these proceedings with respect to
15 another matter that is of vital importance to Tampa
16 Electric Company.

17 **CHAIRMAN JOHNSON:** Thank you. And I
18 understand there is no request for a motion for
19 reconsideration. You were just making those arguments
20 for purposes of the record.

21 **MR. McWHIRTER:** No, ma'am, at this point it
22 would be futile.

23 **CHAIRMAN JOHNSON:** Okay. The other issue
24 that Ms. Kaufman raised was the request for official
25 recognition. I now have before me a list of 12 items

1 that are being requested that the Commission take
2 official recognition of these 12 items.

3 MS. KAUFMAN: Yes, ma'am.

4 CHAIRMAN JOHNSON: Have the other parties
5 had an opportunity to review the list?

6 MR. WILLIS: We have reviewed the list. We
7 received some illegible copies to a couple of the
8 items which we didn't have readily available
9 yesterday. But we have no objection to the official
10 recognition subject to our opportunity to provide the
11 full document with respect to a couple of the items
12 where excerpts were provided. But as of this time we
13 have no objection to those items.

14 MS. KAUFMAN: We have no objection to Tampa
15 Electric providing the entire document if they wish.

16 CHAIRMAN JOHNSON: Public Counsel.

17 MR. HOWE: No objection.

18 CHAIRMAN JOHNSON: Staff.

19 MS. PAUGH: No objection.

20 CHAIRMAN JOHNSON: Okay. I don't know, the
21 easiest way to handle this, there are 12 items -- did
22 you give the court reporter --

23 MS. KAUFMAN: Commissioner Johnson, I gave
24 the court reporter a copy of my request. I have not
25 given her the actual documents but I'd be glad to do

1 so at the conclusion of the hearing.

2 **CHAIRMAN JOHNSON:** Very well, then the
3 Commission will take official recognition of the
4 documents that were provided.

5 If you could, in a abundance of caution --
6 we may need to make this an exhibit so we can keep
7 track of the documents that you've requested official
8 recognition of, as opposed to reading them in the
9 record right now.

10 **MS. KAUFMAN:** That would be fine. If you
11 would like to assign it an exhibit number.

12 **CHAIRMAN JOHNSON:** I'll mark it as Exhibit
13 1, and short title "Florida Industrial Power Users
14 Group's request for official recognition" as
15 Exhibit 1.

16 (Exhibit 1 marked for identification.)

17 **CHAIRMAN JOHNSON:** But we will take official
18 recognition of the documents.

19 **MS. KAUFMAN:** Shall I move the exhibit into
20 the record now?

21 **CHAIRMAN JOHNSON:** That would be fine.

22 **MS. KAUFMAN:** Thank you.

23 **CHAIRMAN JOHNSON:** Show it admitted without
24 objection.

25 (Exhibit 1 received in evidence.)

1 **CHAIRMAN JOHNSON:** Any other preliminary
2 matters?

3 **MS. PAUGH:** Yes, Chairman Johnson. Staff
4 has a Motion to Compel Answers to Interrogatory 5 of
5 Staff that was filed and served on the 9th. Those
6 answers were not served pursuant to an objection filed
7 by Tampa Electric Company. The substance of the
8 material requested is affiliate transactions.

9 **CHAIRMAN JOHNSON:** I'm sorry, I didn't hear.

10 **MS. PAUGH:** Affiliate transactions;
11 specifically the coal supplier and coal transporter of
12 Tampa Electric Company.

13 We bring to the Commission's attention
14 Florida Statute Section 366.093(1) that gives the
15 Commission full authority to continue to have
16 reasonable access to all of those kinds of documents.
17 And the purpose of that is to ensure that a utility's
18 ratepayers do not subsidize nonutility activities.
19 That was a quote from the statute. This request goes
20 to the heart of Tampa Electric's case vis-a-vis
21 incentives. It's Staff's position that it will be
22 necessary to show benefits received by both TECO's
23 customers and its shareholders. In order to show all
24 benefits completely, Staff must be able to assess
25 whether there is any increased profit from TECO's

1 affiliates inuring to TECO shareholders' benefit as a
2 result of the FMPA and Lakeland sales.

3 We would request you grant our Motion to
4 Compel and that that information be filed as a
5 late-filed exhibit to these proceedings.

6 MR. WILLIS: Commissioners, we believe that
7 it's probably inappropriate to even consider this
8 motion at this juncture.

9 Discovery in this matter closed on June 4th.
10 Staff served its First Set of Interrogatories on May
11 12th. We filed an objection -- or we filed answers to
12 all of those interrogatories and we filed a reponse to
13 Interrogatory No. 5 on May 19th.

14 Our responses were not even due under your
15 rules of procedure until tomorrow. However, Tampa
16 Electric, in a effort to cooperate and to try to
17 provide information, did provide its responses, and
18 there's a statement in the Motion to Compel that we
19 have not filed responses timely. We have indeed done
20 so.

21 Secondly, we objected to this matter. It
22 was ruled on after a third discussion of it at the
23 prehearing conference. And Staff has delayed for some
24 ten days after that ruling was entered to file a
25 Motion to Compel and really file this motion on the

1 eve of this hearing.

2 So we think it's inappropriate procedurally
3 to consider it now. But notwithstanding --

4 **CHAIRMAN JOHNSON:** Let me make sure I
5 understand the procedure.

6 Walk back through what you said -- this has
7 already been ruled upon and Staff did what?

8 **MR. WILLIS:** Well, at the prehearing
9 conference -- we lodged an objection to this
10 interrogatory on May the 19th. On May 29th
11 Commissioner Deason considered our objection and
12 provided that he would not require us to answer that
13 interrogatory. And stated that if Staff wished to
14 provide a showing to the Commission why it needed the
15 information that it could do so in writing.

16 Now, discovery closed on June the 4th. But
17 instead of providing it in writing right away, which
18 should have been done, a delay was made for some ten
19 days until just prior to the hearing to request that
20 this information be provided. So I think the
21 integrity of your procedures are at issue here.

22 But notwithstanding that, the information
23 required or requested here is totally irrelevant to
24 this proceeding. We don't have any quarrel with the
25 fact that the Commission can require us to produce

1 this information. We just think that it's totally
2 irrelevant for you to produce that information for
3 this proceeding. What are the monthly fuel
4 incremental costs, separated FOB by mine price,
5 transportation cost and so forth with respect to our
6 affiliates is just irrelevant to what we're doing here
7 today.

8 So we respectfully oppose this Motion to
9 Compel and request that it either be taken up under
10 advisement by the Prehearing Officer, or ruled on here
11 today. Our written response to this is not even due
12 for five days, at least five days from the date it was
13 served on us.

14 **CHAIRMAN JOHNSON:** And it was served on you
15 yesterday, or day before?

16 **MR. WILLIS:** Monday, served Monday evening.

17 **CHAIRMAN JOHNSON:** Staff.

18 **MS. PAUGH:** Thank you, Chairman Johnson. At
19 the prehearing Commissioner Deason instructed Staff to
20 file reasons it needed this discovery. We have done
21 that in the form of this Motion to Compel the
22 discovery that was requested back in mid May.

23 **CHAIRMAN JOHNSON:** Let me make sure I
24 understand. The discovery was requested in mid May;
25 the Company made an objection on May 29th. The

1 Prehearing Officer sustained that objection --

2 MS. PAUGH: The Prehearing Officer
3 effectively reserved ruling by requesting that we file
4 reasons for the request for the discovery. Those
5 reasons are now forthcoming through our Motion to
6 Compel. In other words, in compliance with the
7 Prehearing Officer's order for more information, we
8 have filed our Motion to Compel.

9 CHAIRMAN JOHNSON: Now, has this been filed
10 to the Prehearing Officer?

11 COMMISSIONER CLARK: You have it.

12 CHAIRMAN JOHNSON: Is this the Motion to
13 Compel to Staff's Amended First Set of
14 Interrogatories?

15 MS. PAUGH: Yes, Chairman Johnson.

16 CHAIRMAN JOHNSON: And it is framed to the
17 Prehearing Officer.

18 MS. PAUGH: I'm sorry, it is what?

19 CHAIRMAN JOHNSON: "Hereby move the
20 Prehearing Officer for an order compelling the
21 answer."

22 MS. PAUGH: That's correct. It was filed
23 that way because we were not sure whether it would be
24 taken up by the Prehearing Officer at the beginning of
25 the hearing or whether the full commission would rule

1 on our motion. So in an abundance of caution, because
2 it did grow out of the prehearing, it's phrased that
3 way.

4 **CHAIRMAN JOHNSON:** Okay. And it was a
5 little confusing but I understand -- because I thought
6 it was -- because of the way it was framed here.

7 **MS. PAUGH:** I apologize. I'll strive for
8 more clarity in the future.

9 **MS. KAUFMAN:** Chairman Johnson, may I be
10 heard on the motion at the appropriate time?

11 **CHAIRMAN JOHNSON:** Certainly.

12 Okay. So it's Staff's position that the
13 Prehearing Officer had requested additional
14 information before he would make a ruling on this
15 particular issue.

16 **MS. PAUGH:** That's correct,
17 Chairman Johnson.

18 **CHAIRMAN JOHNSON:** And that request was made
19 by him on May 29th.

20 **MS. PAUGH:** At the prehearing, yes.

21 **MR. WILLIS:** I think it would be proper to
22 state that Staff was given an opportunity to provide
23 additional written information justifying why this
24 information was relevant in this proceeding, not just
25 some writing saying that they wanted it. That's all

1 this writing does that's before you.

2 **CHAIRMAN JOHNSON:** And this document
3 provides rationale for the relevancy.

4 **MS. FAUGH:** Yes, Chairman Johnson. As I
5 stated it specifically requests information relative
6 to affiliate transactions of Tampa Electric Company's
7 affiliated coal supplier and affiliated coal
8 transporter.

9 This information goes to the heart of Tampa
10 Electric's case regarding the treatment of these sales
11 in terms of the sharing mechanism. Tampa Electric
12 will show you or tell you or allege that they require
13 incentives from this Commission.

14 Staff's position is that in order to fully
15 evaluate the extent to which Tampa Electric benefits
16 from any proposed sharing mechanism, they need to
17 understand the benefits to shareholders from affiliate
18 transactions and clearly, under our statutes, we have
19 a right to that information.

20 **MR. WILLIS:** The profits to affiliates are
21 totally irrelevant to this proceeding.

22 **CHAIRMAN JOHNSON:** Let me ask you --

23 **COMMISSIONER DEASON:** Let me say something
24 real quick like, let me kind of clarify things.

25 At the prehearing conference I had, in my

1 opinion, inadequate information or justification to
2 compel the answer to this interrogatory, given that it
3 appeared the interrogatory went to cost information on
4 coal, affiliate operations, and this Commission had
5 adopted a standard to market prices for coal. Given
6 that, I did not see the relevancy; but I did give
7 Staff the opportunity, if they felt necessary, to have
8 this information to show why it was necessary for this
9 proceeding, and gave them an opportunity to provide
10 that in writing. That was filed Monday evening,
11 Monday afternoon.

12 MS. PAUGH: That is correct, Commissioner.

13 COMMISSIONER DEASON: That's where it stands
14 at this point.

15 CHAIRMAN JOHNSON: Mr. Willis, let me ask
16 you a question then. Are you prepared today -- and I
17 understand that your time period to respond has not
18 ended just yet -- are you prepared to address this
19 today, or would you like more time to address what
20 Staff has filed?

21 I'm not going to rule on it right now
22 because I need to read what Staff filed and when I
23 read this I was thinking that perhaps the prehearing
24 officer was to rule on this, or had already issued
25 something on this, but understanding the --

1 **MR. WILLIS:** Commissioner, we think that
2 this ought to be decided right now. I think that you
3 can review that pleading and determine whether they've
4 made any showing in that.

5 We've told you some of the factual
6 allegations in it are incorrect. And there's been --

7 **CHAIRMAN JOHNSON:** You don't need to make
8 any more presentation then. Because I'm going to read
9 this during lunch. I didn't know if you wanted to say
10 anything additional to what you've already stated.

11 **MR. WILLIS:** Commissioner, the only other
12 point we'd like to make is that the profits to
13 affiliates --

14 **CHAIRMAN JOHNSON:** Speak a little louder,
15 please.

16 **MR. WILLIS:** What we would like to say in
17 closing is that the information with respect to the
18 company's, or TECO Energy's affiliates -- these are
19 not subsidiaries of Tampa Electric Company -- are
20 totally irrelevant to the issue we're trying here
21 today. And that is whether or not there are net
22 benefits to ratepayers from the contracts to Lakeland,
23 that we've made with Lakeland and FMPA. And that
24 Staff approaches it -- is really trying to indirectly
25 regulate the earnings of nonregulated affiliates where

1 that's just totally inappropriate here.

2 So we would like for you to go ahead and
3 make a ruling.

4 COMMISSIONER CLARK: Can I ask a question?
5 I understand that your response is that it's a market
6 price and that's what is allowed for purposes of
7 recovery, not what your actual costs are. But it
8 occurred to me that when you look at what your actual
9 costs are and what market price is, that there may be
10 an added incentive to you because of a profit to an
11 affiliate to pursue the kind of sales you pursued in
12 this case.

13 MR. WILLIS: Commissioner Clark, that is not
14 a subsidiary of Tampa Electric Company.

15 COMMISSIONER CLARK: It is a sister company,
16 though, isn't it?

17 MR. WILLIS: It is a sister company.

18 COMMISSIONER CLARK: So the parent company
19 would be interested in increasing profits from all of
20 the affiliates.

21 MR. WILLIS: Well, it may become a factual
22 issue of whether any effect is made at all. But, of
23 course, the parent company is interested in the
24 results of all of its companies, but we believe that's
25 not relevant to this particular proceeding, where the

1 prices have been set with respect to those affiliates.
2 There's no question that this Commission doesn't
3 regulate the profits of those unregulated affiliates
4 and we just don't think it's relevant to this
5 proceeding.

6 **CHAIRMAN JOHNSON:** Staff, do you have any
7 closing comments?

8 **MS. FAUGH:** Thank you, Chairman Johnson.
9 I'd like to respond to the comment that this
10 Commission does not regulate affiliate profits. This
11 is not our attempt. And Commissioner Clark has hit
12 the nail on the head; we're just trying to find out,
13 with respect to incentives, which is, again, the heart
14 of their case for the proposed sharing, what
15 additional incentives they already have. To date they
16 have effectively barred us from that information.

17 We feel we cannot properly and completely
18 advise this Commission as to the effect of their
19 proposal unless we get this information. Thank you.

20 **MR. LONG:** Chairman Johnson, may I be heard
21 very briefly?

22 **CHAIRMAN JOHNSON:** Sure.

23 **MR. LONG:** I think that the difficulty that
24 we have with Staff's request is that they apparently
25 are not concerned as to whether we're paying our

1 affiliates too much for the transactions involved. In
2 fact, I believe this Commission's oversight assures
3 that the prices that we pay are market prices and
4 appropriate.

5 To the extent that that's the case, it
6 shouldn't matter whether we are buying services or
7 coal from our affiliates or anyone else for purposes
8 of this case. And to impute benefits to Tampa
9 Electric because its affiliates may or may not be
10 making profits, to us seems to be basically unfair as
11 long as there is no assertion that what we're paying
12 our affiliates is inappropriate or above market.

13 **COMMISSIONER CLARK:** Let me ask you a
14 question on that point. To the extent you have to
15 generate more power to make this sale, you use more
16 fuel. Correct?

17 **MR. LONG:** Well, to the extent we make an
18 incremental sale, there certainly is additional fuel
19 cost.

20 **COMMISSIONER CLARK:** And if you are going to
21 get average fuel as you've requested here on the
22 retail ratepayers, that the utility will remain whole
23 and your affiliate is disadvantaged.

24 **MR. LONG:** Well, Commissioner, let me say
25 that our proposal is that for these transactions we

1 will credit the fuel clause with system incremental
2 fuel. The importance of that is that the average cost
3 of fuel faced by the balance of our ratepayers will
4 remain completely unchanged, unaffected, as a result
5 of these sales. So I think one of the hallmarks of
6 our case our witnesses will testify, is that there is
7 no fuel impact under our proposal to other ratepayers
8 as a result of these sales.

9 **CHAIRMAN JOHNSON:** Staff, did you have any
10 follow up?

11 **MS. FAUGH:** Thank you, no, Chairman Johnson.
12 But I believe FIPUG wanted to join the fray.

13 **MS. KAUFMAN:** Thank you, Chairman Johnson.
14 We support Staff's motion to compel. I think as
15 Ms. Paugh stated, what we're looking at in this case
16 is Tampa Electric's claim it needs some sort of
17 incentive to enter into these wholesale transactions.

18 You're going to hear testimony, I believe,
19 that's going to demonstrate that they already have
20 this incentive because they have affiliate coal and
21 transport companies that are making a profit as they
22 increase their sales. I agree with Staff, that it's
23 important for us to have that information so we can
24 see how their increase in wholesale sales is going to
25 affect their incentives, vis-a-vis these affiliate

1 companies, in the way that Commissioner Clark was
2 describing.

3 CHAIRMAN JOHNSON: Thank you. Public
4 Counsel, did you have anything you wanted to add?

5 MR. HOWE: No, ma'am.

6 CHAIRMAN JOHNSON: Thank you.

7 COMMISSIONER CLARK: Do you have a position
8 on the need for that information?

9 MR. HOWE: No.

10 CHAIRMAN JOHNSON: At the next break I'll
11 try to absorb this in my notes, and then I'll make a
12 ruling at that time.

13 Any other preliminary matters?

14 MR. WILLIS: No, ma'am, we'd like to call --

15 MS. PAUGH: Chairman Johnson, I hadn't taken
16 my breath yet. At the prehearing ruling was reserved
17 on Tampa Electric Company's motion for temporary
18 prospective order. Has that order been finalized? Or
19 do we not care to take it up at this time? That was
20 the only other preliminary matter I had on my list.

21 MR. WILLIS: My understanding is that
22 there's not going to be any confidential materials
23 that's going to be used in the hearing, and that we
24 have filed all of the requisite materials to protect
25 that information. After the hearing, since it hasn't

1 been used in the proceeding, really the material that
2 we have submitted to the Commission could be returned.
3 So I think that we have adequate protection at this
4 moment.

5 **COMMISSIONER DEASON:** It was my
6 understanding that the reason you filed that was as an
7 accommodation to Staff to make information available
8 to them here at the Commission, and that if that
9 accommodation needed to be pursued, that then we could
10 pursue the interim protective order, but that was kind
11 of up in the air at the time of the prehearing
12 conference.

13 **MR. WILLIS:** What we did is we handled the
14 review of that material in our offices and that worked
15 out well. And Staff asked us to file with the
16 Commission a very small number, 39 pages or so, of
17 materials, which we have done. We've asked that those
18 be treated confidentially, and that's pending with
19 you.

20 **COMMISSIONER DEASON:** So all information
21 that you have filed at the Commission which you think
22 is confidential you now have a request for
23 confidentiality pending.

24 **MR. WILLIS:** Yes, we do.

25 **CHAIRMAN JOHNSON:** So there's no need for

1 the protective order?

2 **MR. WILLIS:** Well, eventually the protective
3 order will need to be addressed, but there's no need
4 for you to rule on it at this time.

5 **CHAIRMAN JOHNSON:** Okay. Very well.

6 **MS. FAUGH:** I would defer to FIPUG for a
7 response.

8 **MS. KAUFMAN:** Chairman Johnson, I just want
9 the record to be clear as to these documents we
10 discussed at the prehearing conference that were made
11 available at Tampa Electric Company counsel's office
12 that FIPUG was denied access to those documents as
13 well as to the documents that were dealt with in the
14 protective order. And so Mr. McWhirter's comments in
15 regard to the ruling on the protective order are
16 equally applicable to the documents Mr. Willis was
17 referring to.

18 **MR. WILLIS:** And our comments are equally
19 applicable.

20 **MS. KAUFMAN:** The other matter, just for
21 your information, is that FIPUG has objected to this
22 series of request for confidentiality that Tampa
23 Electric has filed. Tampa Electric has not yet filed
24 their line-by-line justification. At the time they
25 do, FIPUG will respond and then the matter will be

1 ripe for the Commission to deal with.

2 **CHAIRMAN JOHNSON:** Okay. Then we'll handle
3 it as the case presents itself.

4 **MS. KAUFMAN:** Yes, ma'am.

5 **MS. FAUGH:** Thank you, Chairman Johnson.

6 **CHAIRMAN JOHNSON:** Any other preliminary
7 matters?

8 **MS. FAUGH:** No.

9 **MR. WILLIS:** We call John Ramil.

10 **CHAIRMAN JOHNSON:** Let me go ahead then at
11 this time and swear in all of our witnesses that are
12 here.

13 **MR. McWHIRTER:** Madam Chairman, are you
14 going to take a break?

15 **CHAIRMAN JOHNSON:** No. I was going to swear
16 in the witnesses.

17 **MR. McWHIRTER:** Okay.

18 (Witnesses collectively sworn.)

19 **CHAIRMAN JOHNSON:** Mr. McWhirter.

20 **MR. McWHIRTER:** If the Chairman will bear
21 with me, I'd like to make a brief opening statement
22 with respect to the intervenors, FIPUG, in this case.

23 **CHAIRMAN JOHNSON:** Was that anticipated by
24 the Prehearing Order? If it wasn't --

25 **MR. WILLIS:** No, it was not.

1 **CHAIRMAN JOHNSON:** Are there objections to
2 it?

3 **MR. WILLIS:** We object to that. We want to
4 proceed on. We've messed around for 45 minutes. It's
5 time to move on.

6 **CHAIRMAN JOHNSON:** Staff.

7 **MS. PAUGH:** Staff has no objection.

8 **CHAIRMAN JOHNSON:** Public Counsel?

9 **MR. HOWE:** No objection.

10 **CHAIRMAN JOHNSON:** Commissioners, what's
11 your pleasure. How long will it take?

12 **MR. McWHIRTER:** Three and a half minutes.

13 **CHAIRMAN JOHNSON:** Commissioners, I'm
14 flexible. What is your pleasure?

15 **COMMISSIONER DEASON:** I'm flexible, too, but
16 it seems to me if opening statements were to be
17 contemplated, it should have been requested at the
18 prehearing conference and all parties put on notice
19 and all parties be adequately prepared and that was
20 not done at the prehearing conference.

21 **MR. WILLIS:** That's exactly right. We have
22 one day to try this matter and we should get on with
23 it.

24 **CHAIRMAN JOHNSON:** There's an objection.
25 And certainly it wasn't contemplated in the Prehearing

1 Order, so we're going to forgo with the opening
2 statements.

3

- - - - -

4

JOHN B. RAMIL

5 was called as a witness on behalf of Tampa Electric
6 Company and, having been duly sworn, testified as
7 follows:

8

DIRECT EXAMINATION

9

BY MR. WILLIS:

10 Q Would you please state your name and
11 address?

12 A My name is John B. Ramil. My business
13 address is 702 North Franklin Street, Tampa, Florida
14 33602.

15 Q Mr. Ramil, did you prepare and cause to be
16 prefiled in this docket prepared direct testimony of
17 John B. Ramil?

18 A Yes, I did.

19 Q Do you have any additions or corrections to
20 your testimony?

21 A No, I do not.

22 Q If I were to ask you the questions contained
23 in your prepared direct testimony would your answers
24 be the same today?

25 A Yes, they would be.

1 **MR. WILLIS:** We ask that Mr. Ramil's direct
2 testimony be inserted into the record as though read.

3 **MR. McWHIRTER:** No objection.

4 **CHAIRMAN JOHNSON:** It will be so inserted.
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1 being promoted to Manager, Environmental Planning in 1982.

2
3 From June 1984 until April 1994 when I was promoted to my
4 present position, I held the positions of: Manager,
5 Generation Planning; Manager, Fuel Planning and Operations;
6 Assistant Director, Power Resource Planning; and Director,
7 Resource Planning. Currently I am Vice President - Energy
8 Services, responsible for the company's customer service,
9 energy services, bulk power and planning functions.

10
11 Q. Have you testified previously before the Florida Public
12 Service Commission ("FPSC" or "the Commission")?

13
14 A. Yes. I have testified on behalf of Tampa Electric in a
15 number of proceedings before this Commission. I testified
16 in Docket No. 870001-EI, having to do with Tampa Electric's
17 off-system sales, Big Bend unit 4 power sales contract
18 modifications, and the appropriate fuel prices for dispatch
19 and interchange pricing. I submitted direct and rebuttal
20 testimony in Docket No. 870408-EI in support of Tampa
21 Electric's request for approval of its proposed non-firm
22 load methodology and annual targets. I also testified in
23 support of determinations of need for the Hardee Power
24 Station, Docket No. 880309-EI and Tampa Electric's Polk
25 Unit One, Docket No. 910883-EI. In addition, I testified

1 on the subject of as-available energy payments to
2 cogenerators and small power producers, Docket No. 880001-
3 EI and in the Commissions annual planning hearing, Docket
4 No. 880004-EU. I testified on issues related to system
5 planning, fuel inventory planning, wholesale sales,
6 acquisitions and system construction in the company's last
7 rate case, Docket No. 920324-EI. I testified in Docket No.
8 930676-EI, regarding the proposed construction of 69kV
9 transmission facilities to serve the Cities of Fort Meade
10 and Wauchula. Most recently, I testified in Docket No.
11 960001-EI, on the wholesale fuel issue in the August Fuel
12 Adjustment hearing.

13
14 Q. What is the purpose of your testimony?

15
16 A. The purpose of my testimony is to outline the Company's
17 proposed retail regulatory treatment for the wholesale
18 sales and to demonstrate that this proposal is consistent
19 with well established economic theory, past commission
20 precedents and sound public policy.

21
22 Q. Why is making wholesale sales important to Tampa Electric
23 Company?

24
25 A. Making cost effective wholesale sales which provide

1 revenues greater than the incremental cost of making such
2 sales is good for the Company's retail customers as well as
3 its shareholders. Since its 1985 rate case, when this
4 Commission gave the Company an incentive to keep retail
5 prices down by increasing wholesale revenue, the Company
6 worked hard to optimize those sales. The current and
7 anticipated levels of such wholesale revenue has been one
8 of several significant variables that this Company has
9 managed resulting in reduced prices to customers in spite
10 of the pressure of increasing costs. Retail customers
11 benefit through low prices and stockholders benefit in the
12 increase in probability of the Company earning its allowed
13 rate of return.

14
15 Q. Mr. Ramil, please give a brief description of the Tampa
16 Electric wholesale sale to the Florida Municipal Power
17 Agency.

18
19 A. Tampa Electric will provide firm base load capacity to the
20 Florida Municipal Power Agency (FMPA) from December 16,
21 1996 through March 15, 2001. The capacity to be supplied
22 will begin with 35 megawatts through 1997, increasing to
23 150 megawatts in 2000. Ms. Branick will describe this
24 wholesale sale to FMPA in detail.

25

- 1 Q. Mr. Ramil, please give a brief description of the wholesale
2 sale between Tampa Electric and the City of Lakeland.
3
- 4 A. Tampa Electric will provide 10 megawatts of peaking
5 capacity to the City of Lakeland (Lakeland) from November
6 4, 1996 through September 30, 2006. Ms. Branick will
7 describe this wholesale sale to Lakeland in detail.
8
- 9 Q. How do the characteristics of these sales differ from the
10 characteristics of other wholesale sales made from Tampa
11 Electric's system?
12
- 13 A. The most significant difference between the FMPA and
14 Lakeland sales with the previous sales reviewed by this
15 Commission is the dynamic market environment in which these
16 sales were made. For example, in the 1980's and early
17 1990's, when the firm base load Big Bend Station sales were
18 made, the market price for base load capacity was
19 approximately equal to Tampa Electric's average system
20 embedded cost. Thus, the non-fuel revenues received from
21 these contracts were approximately equal to the cost
22 allocated to the wholesale jurisdiction. Since that time,
23 several things have occurred. The Florida wholesale market
24 currently has some capacity and ample energy available at
25 low prices, and out-of-state power marketers have become

1 active players in the wholesale market. The combination of
2 these factors has created a "buyers market" for capacity and
3 energy. Buyers are faced with more wholesale power options
4 than ever before and are in a position to secure
5 competitive prices that are lower than previous years.
6 Tampa Electric was able to compete successfully in the
7 market to meet the needs of FMPA and Lakeland reliably and
8 at a competitive price. The prices, while above the
9 incremental costs, are below the Company's average embedded
10 costs.

11
12 The FMPA and Lakeland agreements also differ from the bulk
13 of Tampa Electric's previous wholesale sales because they
14 contain a provision for supplemental service and are made
15 from a different mix of resources. The vast majority of our
16 existing wholesale sales come from our units at Big Bend
17 Station. The FMPA sale is the only wholesale transaction
18 by Tampa Electric that is served by individual units from
19 both Tampa Electric's Big Bend Station and its Gannon
20 Station. The Lakeland sale is a wholesale transaction
21 supplied from all of Tampa Electric's generating resources.

22
23 Q. What makes Tampa Electric's wholesale sales such as those
24 to FMPA and Lakeland competitive with other sales in the
25 wholesale market?

- 1 **A.** Tampa Electric's system has low incremental fuel costs for
2 most hours of the day. Over ninety percent of Tampa
3 Electric's generation comes from low-cost, coal-fired
4 generation. Thus, coal is on the margin a significant
5 portion of the time enabling a sale priced from these types
6 of units to dispatch well in the buying utility's system.
7 Ms. Branick's testimony will discuss Tampa Electric's
8 incremental costs in more detail.
9
- 10 **Q.** How should the revenues and costs associated with Tampa
11 Electric's wholesale sale to FMPA and Lakeland be treated
12 for retail regulatory purposes?
13
- 14 **A.** Tampa Electric Company proposes the following regulatory
15 treatment for these sales:
16
- 17 1. These sales should not be separated either in the
18 traditional system average cost manner or in a manner
19 which recognizes market pricing as it has been done
20 before.
21
- 22 **Fuel Treatment:**
- 23 2. The Fuel and Purchase Power Cost Recovery Clause (Fuel
24 Clauses) should be credited with an amount equal to
25 system incremental fuel costs.

1 Specified Non-Fuel Revenues:

- 2 3. The Environmental Cost Recovery Clause (ECRC) should
3 be credited with an amount equal to incremental costs
4 for SO₂ allowances.
- 5 4. Revenues associated with variable operating and
6 maintenance costs should be credited above the line to
7 the company's operating revenues.
- 8 5. Transmission revenues should be credited to the
9 company's operating revenues above the line.

10
11 Remaining Non-Fuel Revenues:

- 12 6. The remaining sale proceeds should be divided 50/50
13 between retail rate payers through the Fuel Clause and
14 the company as an addition to operating revenues.

15
16 Q. Why do you propose the system incremental fuel and SO₂
17 allowance cost be credited to the clauses?

18
19 A. As Ms. Branick will discuss in more detail, by assessing a
20 cost equal to the incremental fuel and SO₂ allowance costs
21 and crediting these costs to the Fuel and Purchased Power
22 Cost Recovery Clause and the Environmental Cost Recovery
23 Clause, any impact on making these sales on the retail
24 customer has been eliminated. This would not be the case
25 if system average fuel cost, which includes fixed fuel

1 costs, were credited to the fuel clause, provided system
2 average fuel cost and system incremental fuel cost were not
3 equal for the time period over which the calculations were
4 made. This would also not be the case if the fuel revenues
5 from the sale were credited through the fuel clause. As
6 explained by Ms. Branick, crediting to the retail fuel
7 clause the system incremental fuel costs incurred to serve
8 the wholesale sales ensures that retail fuel charges are no
9 higher than they would been had the sale not been made.

10
11 **Q.** Please explain your proposal for the crediting of sale
12 revenues to cover transmission and incremental variable
13 operating and maintenance costs?

14
15 **A.** The Federal Energy Regulatory Commission (FERC) Orders 888
16 and 889 require a utility to charge itself for the use of
17 its transmission system identically to the way it would
18 charge any other user of its transmission system and to
19 account for this revenue stream separately. Transmission
20 revenues associated with wholesale sales were either
21 separated (for separated sales), or revenue credited (for
22 wheeling revenues from cogenerator use of the transmission
23 system) in Tampa Electric's last rate case, Docket No.
24 920324-EI. Therefore, to operate in keeping with the
25 direction of FERC Order 888 and 889, Tampa Electric should

1 credit the transmission revenues, above the line for
2 regulatory purposes just like it would do for transmission
3 revenues from a cogenerator or other third-party.
4

5 Tampa Electric proposes to record, above the line, variable
6 operating and maintenance expense revenues to cover the
7 variable operating and maintenance costs associated with
8 the sale. Since these costs are not currently being borne,
9 through the cost recovery clauses, by the retail ratepayer,
10 it would be inappropriate to return these revenues to the
11 ratepayer through a clause mechanism.
12

13 Q. What are the ratepayer benefits associated with Tampa
14 Electric's proposal?
15

16 A. Ratepayer benefits are as follows: Customers will recognize
17 immediate benefits from their 50% share of the proceeds by
18 the proposed credit through the clauses, and will also
19 realize the benefits of the 50% credited to operating
20 revenues in two ways. First, these revenues will indeed
21 enhance the potential for refunds during the term of Tampa
22 Electric's current rate Stipulation. Secondly, these sales
23 will contribute to lowering the revenue requirement in
24 Tampa Electric's next rate proceeding, or in postponing
25 altogether a need for a rate case. In addition, the

1 proposal on the treatment of our fuel costs ensures there
2 will be no fuel impact to ratepayers as discussed above.
3

4 Q. What would the effect be of treating these sales in the
5 same manner as Tampa Electric's Big Bend sales which are
6 separated at system average embedded costs?
7

8 A. The FMPA and Lakeland sales are incremental or opportunity
9 sales. Tampa Electric has no obligation to wholesale
10 customers to make these kinds of sales and would only do so
11 in those cases where net benefits accrue to the general
12 body of ratepayers and the Company's shareholders are not
13 harmed. As Dr. Bohi has explained, separating FMPA and
14 Lakeland sales on an average cost basis, would create a
15 tremendous disincentive to Tampa Electric to make these
16 types of sales in the future and would not be consistent
17 with sound economic theory. The resulting loss of benefits
18 to our general body of ratepayers under that treatment
19 would be in no one's best interest.
20

21 The impact of separating the rate base portion of these
22 sales at system average embedded cost over the term of the
23 sales, would lower retail non-fuel revenue requirements by
24 \$71.1 million, present value. The total non-fuel revenues
25 from the sales are projected to be \$14.8 million, present

1 value. Thus, a \$56.3 million present value of revenue
2 requirements deficit would be left for the company.
3 Imposing this revenue requirement deficit on the
4 shareholders would be unfair under any circumstances, but
5 would be especially unreasonable given the provisions of
6 the comprehensive stipulation under which Tampa Electric is
7 currently operating puts extremely tight constraints on the
8 company's earnings. The ratepayer would enjoy the
9 artificially high benefits from these transactions through
10 separation at higher than the actual revenues from the
11 sales while the shareholders would be left with no way to
12 meet the revenue requirement deficit associated with
13 meeting the market price.

14

15 Q. In the September 25, 1996 stipulation between Tampa
16 Electric, Office of Public Counsel and FIPUG, reference is
17 made to the regulatory treatment of existing and future
18 wholesale sales. What is the impact of this reference on
19 the treatment of the FMPA and Lakeland agreements?

20

21 A. Upon the filing of the September 25, 1997 stipulation the
22 Commission staff pointed out that it believed that a sale
23 from the Polk Power Station might warrant different
24 treatment than the treatment afforded other sales in the
25 stipulation. Consequently, an amendment to the stipulation

1 was negotiated and approved by the Commission which
2 provided that the Commission would review the treatment of
3 any wholesale sale from the Polk Power Station. Like a
4 potential sale from the Polk Power Station, the FMPA and
5 Lakeland sales are different sales and therefore require
6 review for appropriate regulatory treatment. The
7 Commission recognized the potential for a difference in
8 regulatory treatment in sales of this type in Order No.
9 PSC-97-0262-FOF-EI issued March 11, 1997. As per that
10 order, if a utility can demonstrate that there are net
11 economic benefits to retail ratepayers associated with
12 sales like FMPA and Lakeland, then costs other than system
13 average embedded costs could be credited to the retail
14 clauses.

15
16 Q. Has the Commission acted in line with the premise set forth
17 in Dr. Bohi's testimony and your proposal in determining
18 regulatory treatment of Tampa Electric's sales in the past?

19
20 A. Yes. In the company's 1985 rate order, the Commission
21 reduced the retail revenue requirement by \$37 million based
22 on Tampa Electric's existing sale of capacity and energy to
23 Florida Power & Light Company. In this proceeding, the
24 Commission challenged the company to make up the deficit in
25 revenue requirements by making up to \$37 million in

1 wholesale sales. The Commission treated the wholesale sales
2 by allowing the company to credit 100% of the non-fuel
3 revenue from such sales above the line in the retail
4 jurisdiction. Apparently as a recognition of the wholesale
5 market, in 1987, the Commission approved a proposal by the
6 company to credit fuel revenues based on the incremental
7 fuel cost from off system sales to the retail customer fuel
8 adjustment clause. In the company's 1992 rate case, the
9 Commission separated certain of the company's wholesale
10 sales at system average cost, certain others at unit
11 embedded cost, while still other sales were not separated
12 from the retail jurisdiction. For those sales that were not
13 separated from the retail jurisdiction, in some cases,
14 revenues were shared 80/20 and in other cases revenues were
15 flowed 100% to retail customers. There are good, sound
16 policy reasons for this. Tampa Electric is not similarly
17 situated compared with other utilities in the state. Its
18 generation system, its retail customer mix, its service
19 territory geographics, its cost structure, its regulatory
20 situation, the types of sales it is capable of making
21 within FERC guidelines are now and have been in the past,
22 very different than other utilities.

23
24 Tampa Electric urges the Commission to continue its policy
25 of reviewing regulatory treatment of wholesale sales on a

1 case-by-case basis. Different sales have different costs
2 and benefits. We all should take the time and effort in
3 this proceeding to look at these unique and extremely
4 beneficial sales in detail and make every effort to do the
5 right thing both for the retail customers and the company.
6

7 Q. Based on Commission precedent, how should the Commission
8 regard your proposal for the FMPA and Lakeland Agreements?
9

10 A. To the extent the Commission has assessed wholesale sales
11 on a case-by-case basis with a view towards encouraging
12 those sales which are consistent with both ratepayer
13 benefits and market realities, I would submit that our
14 proposal for the FMPA and Lakeland sales is entirely
15 consistent with past Commission precedent and should be
16 adopted in these proceedings.
17

18 Q. Will the Commission's treatment of the Lakeland and FMPA
19 and wholesale sales have an impact on Tampa Electric's
20 refund obligation approved by the Commission in Docket No.
21 960409-EI?
22

23 A. No, the obligation is not affected in any way, however,
24 under certain circumstances, the amount of any potential
25 1999 refund could be increased by the existence of the

1 sales and Tampa Electric's proposal on the treatment for
2 the sales. Tampa Electric has guaranteed a total of \$50
3 million in refunds under the most recent stipulation
4 approved by the Commission in Docket No. 960409-EI. Only
5 if the 60/40 sharing provision above 11.75% return on
6 equity of the stipulation yields more than \$25 million in
7 1998, will there be an additional refund in 1999. In the
8 unlikely event that a 1999 refund occurs, the existence of
9 sales combined with the Tampa Electric's proposal to credit
10 certain revenues from the FMPA and Lakeland sales above the
11 line for regulatory purposes would serve to increase the
12 1999 refund.

13
14 Q. Does this conclude your testimony?

15
16 A. Yes, it does.
17
18
19
20
21
22

1 Q (By Mr. Willis) Would you please summarize
2 your testimony, Mr. Ramil?

3 A Yes, sir. Good morning, Commissioners.
4 Commissioners, making discretionary
5 cost-effective wholesale sales which provide revenues
6 greater than the incremental cost of making such sales
7 is good for the Company's retail customers as well as
8 its shareholders. Such sales provide a contribution
9 to fixed costs that are currently borne by the general
10 body of ratepayers.

11 Specifically, the sales to FMPA and Lakeland
12 under review in this docket in total produce over
13 \$10 million of net economic benefit to the Tampa
14 Electric system. Any actions producing such
15 significant system benefits should not be met with a
16 disincentive.

17 The regulatory treatment we're seeking in
18 this proceeding is one that provides benefits to
19 customers and avoids disincentives to the Company's
20 shareholders, resulting from a separation at average
21 cost which is inappropriate given the market price
22 dictated by today's fiercely competitive wholesale
23 power market.

24 Commissioners, while Florida retail
25 ratepayers have long enjoyed a competitive wholesale

1 market, in the last several months many new players
2 have entered the competition.

3 In addition to the traditional IOUs as
4 wholesale suppliers, we also have municipal utilities,
5 independent power producers and power marketers now
6 dominating the scene.

7 The concept of average embedded cost pricing
8 in this wholesale market is irrelevant to these newer
9 entrants to the market. Thus, we find ourselves in a
10 position where market forces, not prices, set
11 transaction -- not cost set transaction prices.

12 As such, Tampa Electric is a pricetaker in
13 this market, not a price setter. The market price
14 today is well below Tampa Electric's average embedded
15 cost, but in many cases above the Company's
16 incremental costs. Therefore, Tampa Electric can make
17 these sales when selected at a price that defrays part
18 of the fixed costs currently being borne by retail
19 ratepayers. However, under current market conditions,
20 if the Commission were to separate the FMPA and
21 Lakeland sales at system average cost, or through some
22 other means impute system average cost to these sales,
23 the resulting disincentive for Tampa Electric to make
24 these or other new sales would be absolute. The
25 Company would not engage in such transactions where a

1 shareholder loss is guaranteed.

2 Tampa Electric believes that the removal of
3 disincentives to sales, such as FMPA and Lakeland
4 sales, is appropriate and necessary. The Commission
5 has seen the wisdom of creating a below-the-line
6 incentive to encourage jurisdictional utilities to
7 make economy sales through the Florida Broker.

8 Contracted wholesale sales in general, and
9 the FMPA and Lakeland sales in particular, assure
10 revenues and produce larger contributions to defraying
11 fixed cost being borne by retail customers than do
12 economy energy sales made through the Florida Broker.
13 The FMPA and Lakeland sales differ from economy energy
14 sales; in no respect relevant to the matter at issue
15 in this hearing.

16 Therefore, Commissioners, if an incentive is
17 appropriate for sales made through the Florida Broker,
18 then clearly any treatment that results in a
19 disincentive is not appropriate for sales such as the
20 FMPA and Lakeland transactions.

21 The Company has fashioned a proposal that
22 considers its existing stipulation on earnings,
23 provides immediate, as well as longer term benefits to
24 customers and improves, improves the company's
25 potential to earn its allowed return. I stress the

1 word "improves." In no instance under the proposal
2 can the Company earn even an one basis point higher
3 return on equity or even \$1 more earnings than is
4 allowed by the existing stipulation approved by this
5 Commission.

6 The proposal provides for certain of the
7 benefits of the sales to be credited immediately to
8 customers, through the fuel clause, and certain of the
9 benefits to be credited to above-the-line operating
10 revenues. Both of these credits will benefit the
11 customers through time, especially given the
12 provisions of the current stipulation.

13 I must again stress that at no time can the
14 Company earn above the level set forth in the
15 stipulation. Thus, the above-the-line credit will
16 provide an appropriate opportunity for the Company
17 that will inure to the benefit of ratepayers in the
18 long term.

19 It is important to realize our proposal
20 calls for an above-the-line credit as compared to the
21 much more direct incentive provided by this Commission
22 for wholesale economy broker transactions whereby the
23 company keeps 20% of a sales margin below the line for
24 its shareholders.

25 Commissioners, as I conclude, let me

1 describe our proposal as noted on Pages 7 and 8 of my
2 prepared direct testimony. I've got a chart which may
3 help us more easily walk through that.

4 This bar chart illustrates how we propose to
5 allocate the total revenue received from the FMPA and
6 Lakeland sales.

7 First, the revenue from the sales will be
8 applied to cover the incremental fuel and incremental
9 sulfur dioxide compliance cost of the sales. As such,
10 this treatment and this proposal guarantees no effect,
11 no effect on retail fuel costs resulting from these
12 sales. There is no subsidy, as some may claim.

13 Next, variable O&M revenue from the sale
14 will cover any variable O&M expenses specific to these
15 sales. The balance of the revenue showed above the
16 blue-shaded portion of the chart is the net benefit of
17 the sales, or the \$10 million I referred to earlier.
18 An amount of revenue associated with, and equal to,
19 the transmission charges of the Company will be
20 credited above the line as has been the regulatory
21 treatment for transmission wheeling revenues.

22 The remaining revenue from the sale is
23 proposed to be allocated in two different ways: 50%
24 of the remaining benefits will be immediately flowed
25 back to customers through the fuel clause. This is

1 illustrated with the green box labeled "Clause credit."
2 The remaining 50% will continue to be credited above
3 the line.

4 This revenue, along with the transmission
5 revenue I noted just a moment ago, will enhance the
6 potential for refunds during the term of the
7 stipulation, and will contribute to lowering the
8 revenue requirements in future rate proceedings, or
9 indeed in postponing a need for a rate case.

10 Commissioners, we have been prudent in
11 analyzing and securing these sales. We have no
12 incentive but to make positive sales. The analytical
13 tools and techniques employed to determine the
14 economics and benefits of these sales are the same
15 ones used in all of our day-to-day decision making, as
16 well as in fuel adjustment filings, conservation
17 program analyses and need for power determinations.

18 Nonetheless, it has been brought to my
19 attention, and I recognize that the parties have spent
20 a great deal of energy in this docket questioning the
21 cost/benefit calculations and overall benefits
22 associated with these sales.

23 Commissioners, we're confident in our
24 analysis, and if you think it's appropriate and
25 necessary, we have no problem in guaranteeing that

1 this green box, the immediate benefits flowing to
2 customers, to be a minimum of \$2 million guarantee.

3 Our proposal to allocate 50% of the net
4 benefit above the transmission box, right in here,
5 still stands. But what I'm saying is we're standing
6 ready to guarantee that that number will be no less
7 than \$2 million.

8 In addition --

9 COMMISSIONER CLARK: For what period?

10 WITNESS RAMIL: I was just about to say
11 that. What we would do in terms of this sale is we're
12 prepared to credit these benefits up front and would
13 propose to do it over the next two fuel adjustment
14 periods.

15 COMMISSIONER CLARK: So it's \$2 million per
16 six months.

17 WITNESS RAMIL: No, a total of \$2 million
18 over the next two 6-month periods, \$2 million in
19 total.

20 COMMISSIONER CLARK: It's an annual amount
21 of \$2 million.

22 WITNESS RAMIL: No. No. That is the total
23 present worth value of the benefits of the two
24 contracts which go out a few years.

25 COMMISSIONER CLARK: I don't understand.

1 **WITNESS RAMIL:** Okay. The \$10 million of
2 benefit of the sale after covering the incremental
3 costs of this sale, that is what we have calculated in
4 analyzing is the net benefits of making the sale. The
5 cost of the sale, subtracted from the revenue of the
6 sale, there's \$10 million left over.

7 **COMMISSIONER CLARK:** And that's over the
8 period of the contract?

9 **WITNESS RAMIL:** Yes, ma'am.

10 **COMMISSIONER CLARK:** Which is until when?

11 **WITNESS RAMIL:** It's different from the two.
12 For FMPA it's through -- it expires in the first part
13 of 2001, and for Lakeland it goes beyond that.

14 **COMMISSIONER CLARK:** It's \$2 million for
15 that period of time.

16 **WITNESS RAMIL:** Correct. But we propose to
17 flow those benefits up front.

18 Commissioners, in summary, our proposal
19 guarantees no impact to retail customer fuel and
20 environmental clause cost resulting from these sales.
21 If you see this option appropriately, it guarantees a
22 \$2 million direct clause credit benefit to retail
23 customers, and credits all the remaining revenues to
24 operating revenue above the line, accruing to the
25 long-term benefits of retail ratepayers, as I

1 mentioned earlier.

2 We believe this proposal to be beneficial to
3 ratepayers and fair to all parties. No other proposal
4 put forth in this docket matches that standard. I
5 urge that you give our proposal your full
6 consideration and approve it.

7 Commissioners, this concludes my summary. I
8 heard the discussion on affiliates earlier, and I'd be
9 glad to answer any questions that you might have on
10 that issue that I might be able to answer. I think
11 there's a lot of information that's out there already,
12 aside from what the Staff has requested, that might
13 lead you to the conclusions that you might need to
14 make with respect to this case. Thank you.

15 **CHAIRMAN JOHNSON:** Thank you.

16 **COMMISSIONER CLARK:** Well, Mr. Ramil, let me
17 ask you that question then. Can you tell me the
18 structure of -- the companies that make up TECO
19 Energy. I guess I can't remember from proceeding to
20 proceeding how you are structured corporately.

21 **WITNESS RAMIL:** Okay. Let me see if I can
22 remember without an annual report.

23 We have, of course -- the largest company is
24 Tampa Electric Company, the electric utility. We have
25 TECO Transport and Trade, which is a group of

1 operations which transport coal, grain, bulk cargo up
2 and down the Mississippi River and its tributaries,
3 transloading facility at the mouth of the Mississippi
4 River, and a blue water fleet of barges which
5 transports --

6 **COMMISSIONER CLARK:** That's the company that
7 brings you your coal.

8 **WITNESS RAMIL:** Correct. We also are
9 involved in coal mining, TECO Coal, in the Kentucky
10 and Tennessee area.

11 **COMMISSIONER CLARK:** That is a separate
12 company from transport and trade?

13 **WITNESS RAMIL:** Correct. That company sells
14 about 6 million tons of coal; about 1 million of what
15 it sells is to Tampa Electric Company.

16 We also have a TECO Coalbed Methane which
17 extracts methane gas from old coal fields in the Black
18 Warrior Basin in Alabama. We have TECO --

19 **COMMISSIONER CLARK:** Mr. Ramil, you're
20 giving me detail I really don't need.

21 **WITNESS RAMIL:** I'm sorry.

22 **COMMISSIONER CLARK:** And who owns all of
23 those companies?

24 **WITNESS RAMIL:** TECO Energy.

25 **COMMISSIONER CLARK:** Which one is publically

1 traded?

2 WITNESS RAMIL: TECO Energy.

3 COMMISSIONER CLARK: Who are the corporate
4 officers of TECO Energy?

5 WITNESS RAMIL: The Chairman and CEO is
6 Timothy Guzzle; the president and chief operating
7 officer is Girard Anderson.

8 COMMISSIONER CLARK: Okay. Who is head of
9 Tampa Electric Company?

10 WITNESS RAMIL: Keith Surgenor is president
11 of the Tampa Electric.

12 COMMISSIONER CLARK: Who does he report to?

13 WITNESS RAMIL: He reports to Girard
14 Anderson.

15 COMMISSIONER CLARK: Do you disagree to the
16 extent that -- profits for the Company are reported
17 for the stock exchange purposes at TECO Energy level,
18 right?

19 WITNESS RAMIL: Correct.

20 COMMISSIONER CLARK: Do you disagree that to
21 the extent Tampa Electric Company buys more coal from
22 its affiliate, the profits of that coal affiliate will
23 likely go up?

24 WITNESS RAMIL: If they are making a profit
25 on that product, yes.

1 **COMMISSIONER CLARK:** Okay. You don't think
2 Mr. Surgenor has an incentive to help increase the
3 profits from sister companies to make Mr. Anderson
4 happy?

5 **WITNESS RAMIL:** We are -- people that are
6 stockholders of TECO Energy want TECO Energy to do
7 well, of course. The people running the individual
8 companies want that company to do well, of course.
9 And the issue, I think, we have before us is do these
10 sales that we're proposing have any effect on that?
11 And that question has not been asked in the whole
12 debate or in the discovery, and that's the question
13 I'd like to answer.

14 **COMMISSIONER CLARK:** Back up and tell me the
15 question you want me to ask you.

16 **WITNESS RAMIL:** Geez, I'd have prepared a
17 list if I knew I was going to have that option.

18 Without the data -- the data request is on
19 the cost of production from the affiliate companies.
20 And aside from the arguments that Mr. Willis and
21 Mr. Long made about this is about incentives for the
22 electric utility companies, or disincentives more
23 appropriately, there are things, data that is known
24 and is out there if you look at what's going on.

25 Number one, with respect to the

1 transportation company and the coal company, yes
2 indeed, the transportation company transports the bulk
3 of the coal consumed by Tampa Electric Company and
4 this year the coal company provides a million tons out
5 of probably about seven million tons of burn of the
6 electric company. Yes, that indeed does happen.

7 The issue that we have in this sale really
8 is, is Tampa Electric is going to sell all of the coal
9 energy from its system that's marketable. And what
10 we're really doing in this transaction is taking
11 broker sales we would have sold the coal and moving it
12 to longer term contracts was just two things: It
13 secures that revenue in a more increasingly
14 competitive market, and we believe gets us higher
15 margins than we would in the broker. So the issue of
16 the volume of the coal that we burn, and, therefore,
17 that we buy from anyone, or that we transport, we have
18 anyone transport, it's the same whether we do the
19 sales or not; we're going to make the sales on the
20 broker and -- through time, or we're going to make
21 them under these contracts. So the volume we're going
22 to buy is going to be the same volume of coal.

23 Putting that aside, the contract --

24 **COMMISSIONER CLARK:** Wait a minute. I'm not
25 sure I can agree with that.

1 **WITNESS RAMIL:** Okay.

2 **COMMISSIONER CLARK:** You're saying the
3 amount of energy you're going to sell under the --
4 amount of energy I guess you're going to generate is
5 going to be the same because you would either have
6 sold them under these contracts or you would have sold
7 them on the broker system as as-available energy.

8 **WITNESS RAMIL:** Correct.

9 **COMMISSIONER CLARK:** Now, if it is sold as
10 as-available energy, has it been our policy in the
11 past that we, in effect, allocate all that to the
12 retail side?

13 **WITNESS RAMIL:** The benefit on the sale?

14 **COMMISSIONER CLARK:** Right.

15 **WITNESS RAMIL:** No. 80% has gone to the
16 retail customers as a credit to fuel costs. 20% goes
17 directly to the company's shareholders below the line.

18 **COMMISSIONER CLARK:** So they would be better
19 off under this proposal than they would be as if they
20 sold it as-available energy?

21 **WITNESS RAMIL:** Our shareholders --

22 **COMMISSIONER CLARK:** I mean the ratepayers.

23 **WITNESS RAMIL:** The ratepayers. We believe
24 they are better off under this proposal because the
25 margins are greater under this proposal, the benefits

1 are secured up front with a contract, and in this
2 proposal 100% of the benefits is all treated above the
3 line rather than on the broker; 80% above the line and
4 20% below the line to shareholders.

5 **COMMISSIONER CLARK:** But I thought you just
6 indicated that it's your view that this energy is
7 going to be sold as-available if it's not sold under
8 this contract.

9 **WITNESS RAMIL:** Yes. The coal-produced
10 piece of the energy is likely to be sold in either
11 scenario.

12 The reason that we have made these contracts
13 is twofold: One is we have secured the sales and
14 secured the revenue stream, and that's --

15 **COMMISSIONER CLARK:** Why is that necessary
16 if you thought you were going to sell it anyway?

17 **WITNESS RAMIL:** We've secured the margins
18 that are going to be made on the sale. And because
19 the buyer is not out there -- whether the buyer is
20 going to buy it or someone else is going to buy it,
21 he's willing to pay a premium for it. And we've
22 gotten a higher margin on it.

23 **COMMISSIONER CLARK:** Then the key is locking
24 in the margin, because you're not sure what you can
25 sell it for.

1 **WITNESS RAMIL:** Correct.

2 **COMMISSIONER CLARK:** But if there's not that
3 much capacity available later on your margin is going
4 to be higher, isn't it? I mean you have said it's a
5 buyer's market.

6 **WITNESS RAMIL:** It depends on the fuel price
7 of the energy coming from that capacity.

8 **COMMISSIONER CLARK:** Well, but it also
9 depends on the capacity available for people to buy.

10 **WITNESS RAMIL:** Correct.

11 **COMMISSIONER CLARK:** What the market is.

12 **WITNESS RAMIL:** Correct.

13 **COMMISSIONER CLARK:** If I understand your
14 testimony, you're saying that any increased use of
15 coal -- there will be no increased use of coal as a
16 result of these contracts?

17 **WITNESS RAMIL:** We don't believe so.

18 **COMMISSIONER CLARK:** And, therefore, there
19 is no incentive to burn more coal. I mean there is
20 no -- there is not the incentive of burning more coal
21 resulting from this contract.

22 **WITNESS RAMIL:** Correct. Correct. There
23 are two other factors to consider, and one of them is
24 that Tampa Electric's contract for fuel transportation
25 with TECO Transport expires at the end of next year

1 and we've already committed to this Commission that we
2 will go out and seek competitive proposals for that
3 service.

4 The other fact is that steadily, since 1993,
5 our coal purchases from our affiliate coal company
6 have been declining. So if you're looking at a case
7 that we're going to try to increase burn to buy more
8 coal for an affiliate, that's just not happening and
9 that data is readily available.

10 **COMMISSIONER CLARK:** Why are your purchases
11 declining?

12 **WITNESS RAMIL:** The purchases are declining
13 because we have been able to work with our boiler
14 operations to find a much broader array of fuels that
15 we can burn, and that allows us to buy cheaper and
16 cheaper fuels. And to make the electric company more
17 competitive, we've enhanced and made broader the range
18 of fuels that we can now burn.

19 **COMMISSIONER CLARK:** Okay. Thank you.

20 **CHAIRMAN JOHNSON:** Is the witness tendered
21 for cross?

22 **MR. WILLIS:** Yes, he is.

23 **MR. HOWE:** Mr. McWhirter has been nice
24 enough to let me go first at his request.

25 **CROSS EXAMINATION**

1 BY MR. HOWE:

2 Q Hello, Mr. Ramil.

3 A Good morning.

4 Q Mr. Ramil, speaking of the FMPA contract
5 first, is that a contract that you would characterize
6 as a long term firm contract?

7 COMMISSIONER GARCIA: Could you repeat the
8 question and speak into the mike because I didn't
9 here.

10 MR. HOWE: Yes, sir.

11 Q (By Mr. Howe) Mr. Ramil, would you
12 characterize the FMPA contract as long term firm
13 contract.

14 A It's a contract that goes through the early
15 part of 2001 and it is firm. It has at least one
16 provision in it for certain things to happen, and if
17 those things do not happen the right way it can
18 terminate earlier than that.

19 Q Is the answer yes?

20 A The answer is what I gave you.

21 Q Is there a particular schedule --

22 COMMISSIONER CLARK: Mr. Ramil, I don't
23 understand it. I think the answer is yes, it's firm,
24 and it's long term until the end of the contract but
25 there is an out under certain circumstances.

1 WITNESS RAMIL: Yes. I believe that's what
2 I said.

3 COMMISSIONER CLARK: Okay.

4 Q (By Mr. Howe) Mr. Ramil, has Tampa
5 Electric's contract with FMPA, is that a finalized
6 signed done deal?

7 A Yes, it is.

8 Q Has it been submitted to the Federal Energy
9 Regulatory Commission for approval?

10 A Yes, it has been.

11 Q Has it been approved by FERC?

12 A Yes.

13 Q Was the approval by FERC in any way
14 contingent upon the regulatory treatment the Florida
15 PSC would give to that contract for retail purposes?

16 A No.

17 Q Regardless of what this Commission does
18 here, with respect to the Florida municipal power
19 agency contract, Tampa Electric Company is bound by
20 it; isn't that true?

21 A We're bound by the terms and conditions of
22 the contract, yes.

23 Q Tampa Electric has various schedules of
24 wholesale sales. Does this contract with FMPA fall
25 within one of those categories, such as Schedule D?

1 A We have an array of schedules and I believe
2 we have termed this one a Schedule D.

3 Q Has Tampa Electric entered into any
4 Schedule D contracts since its last rate case with
5 entities other than FMPA or Lakeland?

6 A Yes, I believe we have with Reedy Creek.

7 Q How did Tampa Electric propose to treat that
8 Schedule D sale for retail purposes?

9 A I believe that that schedule -- or that sale
10 was a continuation of a previous one that had been
11 dealt with in our rate case.

12 Q And how did Tampa Electric propose to have
13 this Commission treat that sale, Mr. Ramil?

14 A It was the same way as the sale had been
15 treated in our previous rate case. It was separated
16 at average cost. The revenues from the sale
17 approximated average costs.

18 Q With reference to your testimony, Page 5,
19 beginning on Line 13, you refer to the most
20 significant difference between the FMPA and Lakeland
21 sales compared with previous sales reviewed by the
22 Commission. Would this apply to the Reedy Creek
23 Schedule D that was entered into after the Company's
24 last rate case?

25 A No, because that was essentially continuing

1 the same contract that was dealt with in the rate
2 case.

3 Q Mr. Ramil, that was a new contract, was it
4 not, that you entered into with Reedy Creek after your
5 last rate case?

6 A Yes, the new contract to continue the terms
7 and conditions of the old one.

8 Q It was a new contract, it was a Schedule D
9 and it was the Company's proposal that it be separated
10 consistent with the last rate case; is that correct?

11 A I'm not sure we made a propoeal. I think
12 that's just the way it was handled moving forward.

13 Q That's the way it has been handled in the
14 Company's monthly fuel filings, hasn't it?

15 A Yes.

16 Q And for surveillance purposes it's treated
17 the sale as separated, has it not?

18 A Yes.

19 Q Mr. Ramil, referring back to Page 5 of your
20 prefiled direct testimony, are you trying there,
21 beginning at Line 13, to make the point that the
22 wholesale market is different now than it was a few
23 years ago?

24 A It's different now than it was even just a
25 few months ago.

1 Q Is it your belief that the Commission should
2 take into consideration changes in the wholesale
3 market to decide whether it should treat Schedule D
4 sales as separated or not?

5 A The Commission needs to look at whether
6 these sales are in the best interest of ratepayers,
7 and in doing so they need to conclude how they should
8 be separated; whether they are Schedule D or not is
9 not relevant.

10 We have Schedule D sales that aren't
11 separated and were dealt with as such in our last rate
12 case.

13 Q Mr. Ramil, I believe my question was do you
14 believe the Commission should take into consideration
15 changes in the wholesale market in determining
16 whether -- or in what manner they should treat
17 separated Schedule D sales?

18 A Yes, the answer to that is yes.

19 Q Mr. Ramil, if this Commission were having a
20 base rate case for Tampa Electric right now, would you
21 recommend that this sale to FMPA be separated?

22 A No.

23 Q If this sale were separated, would the
24 revenues from FMPA be adequate to cover the capital
25 costs of the generating assets committed to the FMPA

1 sale?

2 A No. I mean that's the point of our
3 testimony.

4 Q Which asset --

5 A The sale covers the incremental costs of
6 making the sale and then a margin on top of that which
7 produces benefits to the system.

8 Q Where does coverage for the capital cost
9 associated with the assets committed to the FMPA sale
10 come from?

11 A As we mentioned in our testimony, I
12 mentioned in my summary, the fixed costs associated
13 with the assets are presently being borne by retail
14 ratepayers and our proposal is to flow back benefits
15 to relieve that.

16 Q Can you tell me approximately what the
17 dollar amount of the rate base effect of the assets
18 committed to the FMPA sale are in the retail
19 jurisdiction?

20 A The dollar amount?

21 Q Yeah. Approximately. Let me address it
22 this way, Mr. Ramil: Which generating assets are
23 committed to the FMPA sale?

24 A The sale to FMPA is priced out of two units
25 of Big Bend and two units at Gannon. The energy

1 delivered to make the sale is going to be delivered
2 from the Tampa Electric system.

3 Q Does FMPA have a claim to generation if none
4 of the units identified in the contract are available?

5 A No, they do not.

6 Q So FMPA does, in fact, have a claim to the
7 generation out of specific assets, does it not?

8 A Yes, it does. But that question is
9 different than the earlier one you asked me.

10 COMMISSIONER GARCIA: Repeat the last
11 question. I missed it.

12 MR. HOWE: I'd have the ask the reporter to
13 read it back.

14 (Thereupon, the question appearing on Lines
15 7 and 8 were read back by the reporter.)

16 COMMISSIONER GARCIA: And the answer.

17 WITNESS RAMIL: Yes.

18 Q (By Mr. Howe) Which assets are those, Mr.
19 Ramil?

20 A The sale to FMPA is priced upon, and is
21 available, based upon the availability of two units at
22 Big Bend and two units at Gannon.

23 Q Which two -- I'm sorry, go ahead.

24 A I don't recall which two right now.

25 Q I believe it's in Ms. Branick's testimony.

1 The availability of the power sale is
2 dictated by that. The prices that the customer pays
3 is dictated by incremental costs associated with those
4 two units.

5 When the Tampa Electric Company system is
6 dispatched, it is dispatched so that all of the load
7 served is generated most efficiently, so the energy
8 comes from throughout the system. And that's why in
9 our proposal we are crediting back the system
10 incremental fuel costs to make the sale, which is the
11 true cost of the sale, to keep retail ratepayer fuel
12 costs neutral, making the sale versus not making the
13 sale.

14 Q Mr. Ramil, if the Commission concludes that
15 the FMPA sale is similar to separated Schedule D's,
16 and orders that Tampa Electric separate the FMPA sale,
17 how could Tampa Electric possibly be harmed?

18 A Tampa Electric would be harmed because the
19 customers would not only receive the positive benefits
20 of the sale, but they would be further helped out by
21 imputing system average costs to the Company's
22 shareholders.

23 Q Isn't that what happens with separations?
24 That I mean the Company's been filing surveillance
25 reports since its last rate case and it's been

1 reporting all of its separated Schedule D sales as
2 separated, has it not?

3 A All of its separated Schedule D; not all of
4 its Schedule D sales, yes.

5 Q Oh, I understnad that. And there's one
6 small category -- in proportion it's relatively small
7 generation the Commission in the last rate case
8 treated as nonseparated Schedule D; is that right?

9 A Yes. They treated the sale as a
10 nonseparated Schedule D.

11 Q Would you agree that the Commission effects
12 a separation for those nonseparated Schedule Ds by
13 requiring Tampa Electric Company to flow through 100%
14 of the nonfuel revenues?

15 A Yes. I would further comment on that that
16 the revenues received from those Schedule D sales, and
17 the costs separated from those Schedule D sales, were
18 equal to each other, so there was no harm to the
19 ratepayers, and the Commission aetermined that those
20 sales were prudent to make.

21 The distinction that we're making here is as
22 much as we'd like to get our full average embedded
23 costs for these sales we can't. We can't do it. And
24 the dilemma we have is if we can't do it, then do we
25 not make the sale and forgo the \$10 million benefits,

1 or do we make the sale and capture those benefits and
2 ask the Commission for fair treatment given the
3 current wholesale market.

4 Q Mr. Ramil, if the Commission were to order a
5 separation of the FMPA sale, that would not affect
6 Tampa Electric's retail base rates, would it?

7 A It would not affect our retail base rates,
8 no.

9 Q And if the Commission ordered that the --
10 for fuel cost recovery purposes, that it be imputed or
11 assumed that the FMPA sale was made at system average
12 fuel cost, or I should say at weighted average
13 inventory cost given the way the fuel docket works,
14 that would be consistent with the Commission's prior
15 policy, would it not?

16 A No, it wouldn't be.

17 Q Why wouldn't it?

18 A Because the Commission's policy is to
19 separate fuel at average or another treatment if
20 benefits to customers can be demonstrated, which we
21 have done.

22 Q Is it the fact that you perceive a benefit
23 by comparing the revenues received against incremental
24 costs, and in that you find an excess of revenues over
25 incremental costs; is that correct?

1 A That's correct.

2 Q While ignoring the capital costs associated
3 with the assets committed to the FMPA sale; is that
4 correct?

5 A Those are sunk costs and shouldn't be
6 considered when given the opportunity to make a
7 discretionary sale.

8 Q Sunk costs to whom, sir?

9 A Those are costs, as we mention in our
10 testimony and as I stated in my summary -- those are
11 costs that are being borne by the retail ratepayer.

12 Q And you have taken the sunk costs of the
13 assets corresponding to those sunk costs previously
14 committed to the retail jurisdiction and sold them and
15 committed them on a priority generation basis in the
16 wholesale jurisdiction, have you not?

17 A Yes, we have. But let me say it a different
18 way than you just said.

19 We could have done nothing and rates to
20 customers would have been exactly the same and we
21 wouldn't be here having this debate today. Or we
22 could have done what we did and captured the
23 \$10 million of benefits and flow them back the way
24 we're proposing. That's our business decision.

25 Q Mr. Ramil, did I understand you in answer to

1 some questions from Commissioner Clark to say that you
2 would have sold this energy anyway?

3 A I believe we would have.

4 Q Am I correct that under the broker system
5 there are no specific assets, no specific generating
6 assets committed to broker sales?

7 A When you commit to the sale you obviously
8 commit the generating assets to produce the
9 energy.

10 Q That's on a hour-by-hour basis, is it not?

11 A That's correct.

12 Q There is no long-term commitment of specific
13 assets to any specific economy interchange sales on
14 the broker, is there?

15 A No, there is no more commitment than for the
16 period of a hour, or if you go, you can go beyond that
17 maybe as much as several hours or a week. That's the
18 period of commitment. And the broker approach looks
19 just at what we looked at here. You look at the
20 incremental cost of making the sale, and you look at
21 the incremental revenue, and you make the sale and
22 share the margin; 80% to the customers, 20% to the
23 shareholders below the line. The main difference
24 between a broker transaction and the one that we have
25 with FMPA in Lakeland is because since the broker is

1 on an hourly basis, and you're really looking at your
2 last increment of generation, there is no impact to
3 the retail customer fuel cost -- charge from
4 generating the energy.

5 We realized that with a longer term
6 commitment there could be an impact to the retail
7 customer fuel charge. But with our proposal to credit
8 back incremental fuel costs, we take away that issue
9 with respect to fuel costs and make these sales
10 exactly like the broker.

11 Q Let's speak to that for a moment. The fuel
12 costs and the incremental nature of those fuel costs.

13 To isolate this, if we could, let's refer to
14 the two Gannon units that are identified in the FMPA
15 contract. Does Tampa Electric have long-term coal
16 supply agreements for its Gannon units?

17 A Yes, we do.

18 Q And what percentage of Tampa Electric's coal
19 supply to the Gannon units does it have under
20 long-term contract?

21 A I believe it's 30% to 40%.

22 Q And who has first claim to the generation
23 out of the Gannon units identified in the FMPA
24 contract?

25 A FMPA does.

1 Q What is the fuel price that they are charged
2 under the FMPA contract?

3 A They are charged the Gannon unit or Big Bend
4 unit incremental fuel price which is spot fuel.

5 Q Would you agree then that the FMPA has first
6 claim to the generation but yet is treated as an
7 incremental customer for fuel purposes?

8 A They have their share of claim to the first
9 generation from those units.

10 Q Who else has a priority claim to the
11 generation from those units?

12 A Our retail customers, of course.

13 Q What is the generating capacity of the four
14 units committed to FMPA under the contract?

15 A Roughly 11- or 1200 megawatts of capacity
16 for the 35 megawatt sale.

17 Q You said for the 35 megawatt sale. It's 35
18 megawatt originally but it ramps up to 150, does it
19 not?

20 A Yes, it could go that high.

21 Q How did you calculate that at 11- or 1200
22 megawatts?

23 A Roughly the units at Big Bend or about 400
24 megawatts in size, and Gannon units are on average
25 couple hundred megawatts.

1 MR. HOWE: I have no further questions.
2 Thank you, Mr. Ramil.

3 **CROSS EXAMINATION**

4 **BY MR. MOWHARTER:**

5 Q Mr. Ramil, have you seen the Prehearing
6 Order in this case?

7 A Yes, I have.

8 Q Do you have a copy of it there?

9 A Excuse me, I may have one. (Witness
10 searches file.) Yes, I do.

11 Q Mr. Ramil, Pages 6 through 10 in that
12 Prehearing Order is TECO's basic position. I sort of
13 presume that that was like a lawyer's opening
14 statement, but I presume that you are the company
15 policy witness that is responsible for most of the
16 issues that are set out and most of the positions that
17 are set out in that opening position?

18 A Yes, I am the company policy witness.

19 Q I'd like to go to Page 8, if you will. And
20 at the first paragraph, beginning on that page, it
21 says "Because non-requirement wholesale sales are
22 discretionary and impossible to forecast with
23 precision, there is no reasonable basis for allocating
24 costs to these sales before the fact."

25 Now, are the FMPA and Lakeland sales

1 nonrequirement wholesale sales?

2 A We are not serving their full requirements
3 so they can be termed nonrequirement.

4 Q It seems to me that in this case, however,
5 you have carefully determined what the forecast is for
6 benefits to the customers, so you have been able to
7 forecast with precision in this case what the result
8 will be from this five- and ten-year contract; is that
9 correct?

10 A We're confident in our estimates of the
11 amount of sales and the margin that we'll make on
12 those sales.

13 Q Now, the FMPA contract begins at 35
14 megawatts and ramps up to 150 megawatts. Is that
15 correct?

16 A Correct.

17 Q And based upon the projection I saw in the
18 discovery, it appears that that sale will be at 100%
19 load factor. In other words, the megawatt-hours
20 prescribed from that sale will be 150 in the year that
21 it's 150 times the number of hours in the year, 8760
22 hours; is that correct.

23 A That's our expectation.

24 Q In your generating incentive premium case
25 you indicate that these units don't actually work 100%

1 of the year, they only work 60% or 70% of the year; is
2 that not correct?

3 A I'm sorry, I don't understand the question.

4 Q Well, you get a reward each year for your
5 generating incentive performance, and in that you set
6 out the number of hours that the plant is anticipated
7 to operate. Do you have any plant that is anticipated
8 to operate 100% of the time?

9 A No, sir. We sure like for them to but it
10 doesn't always happen.

11 Q In fact, your best estimate, the one upon
12 which you get rewarded if it does that, is somewhere
13 around 86% of the time; isn't that correct?

14 A That's probably about right, given
15 preventative maintenance.

16 Q Yes, sir. If that's the case, then would it
17 not be logical to say that since 100% of the output of
18 150 megawatts is involved in this sale, actually more
19 than 150% of megawatts is committed to the sales.

20 A The sale will be met when the generating
21 units, they are defined in the contract, are
22 available.

23 But as I mentioned in reponse to questions
24 from Mr. Howe, the sale is going to come from all of
25 our systems, the next lowest cost place where we can

1 produce the energy from.

2 Q Now, you committed Gannon 5 and 6, and you
3 committed Big Bend 2 and 3 to these sales, and FMPA --
4 well, FMPA, not Lakeland -- will have first call on
5 these assets; is that correct?

6 A They'll have first call in their capacity as
7 long as those units have at least that much capacity
8 available.

9 Q And these assets, when you add up the
10 installed capacity, add up to 1500 megawatts --

11 A Which were the units you said, Big Bend 2
12 and 3?

13 Q Yes, sir.

14 A And Gannon 5 and 6. That's -- because those
15 are the bigger units at Gannon, yes.

16 Q So for these sales you maintain
17 approximately 900% reserve margin?

18 A No. No. That's misuse of the numbers.

19 Q I see. Tell me how it should be used if
20 they have first claim on those assets?

21 A The sale dictates by stating those units
22 when the power will be available and it dictates the
23 units. But when the system is dispatched we don't
24 say, "Okay. Here's the piece of these units going to
25 FMPA and Lakeland and here's the piece going to the

1 retail customers." You have all of the units
2 available and you meet all of the load requirements in
3 the most efficient manner you can by properly loading
4 all of the units on the system.

5 Q I see. But you have a contract with the
6 Florida Municipal Power Authority. And under that
7 contract they can -- they plan to purchase from you,
8 and can demand from you, 150 megawatt-hours of energy
9 every hour of the day, every day of the year; is that
10 correct?

11 A Yes, they can do that.

12 Q And long as one of those four plants, which
13 constitute 1500 megawatts is operating, you're
14 obligated to deliver that; is that correct?

15 A As long as there's at least 150 megawatts
16 operating from those units, yes.

17 Q So if all of those plants are down, you
18 don't from any obligation, do you?

19 A No, we don't have any. No, we don't have an
20 obligation.

21 Q Now, you say that these sales are
22 discretionary, but, in fact, you entered into a
23 contract, a commitment to a contract, in September of
24 '96 for the FMPA sale, did you not?

25 A Yes, we did.

1 Q And that contract was submitted to and
2 approved by the Federal Energy Regulatory Commission
3 after that date?

4 A Yes, I believe that's correct.

5 Q And does that contract have a regulatory out
6 in it in the event that this Commission deals in a way
7 that you deem unfavorable to you with respect to how
8 the revenues are treated with respect to the retail
9 jurisdiction?

10 A No. That is not one of the outs in the
11 contract.

12 Q Okay. So you're bound irrespective of what
13 the Commission does in this case to sell that power to
14 FMPA; is that correct?

15 A No, I don't believe that's true.

16 Q All right. What are your outs?

17 A Well, just thinking back, we'd have to look
18 at all of the options but there's force majeure
19 clauses; there's also an assignment clause. And we
20 would look at all of our options. One of them might
21 be to assign the contract to a power marketer.

22 Q You can assign it to a power marketer?

23 A Yes.

24 Q In other words, you could assign your
25 responsibility to someone that would take that oath if

1 you could find somebody to do it at that price?

2 A Correct.

3 Q And that would let you out?

4 A That would let us out.

5 Q And would FMPA have to agree to that?

6 A Probably.

7 Q Even if the power marketer were not as
8 reliable as Tampa Electric and didn't have 1500
9 megawatts of backup power?

10 A Well, the power marketer would have to be as
11 reliable as the contract requires.

12 Q I see.

13 COMMISSIONER CLARK: Let me ask you this:
14 So if your units are running and you've sold it to a
15 power marketer they are obligated to sell -- I guess
16 I'm trying to understand if you have conditioned this
17 on certain plants running, how are you going to sell
18 it?

19 WITNESS RAMIL: If someone else was to
20 assume the contract, they would have to price it the
21 same way that the contract dictates and it would have
22 to be at the same availability. We would not
23 necessarily be providing the power, but we probably
24 would let the power marketer know when those units
25 were available so they could meet or not meet the

1 terms of the contract.

2 COMMISSIONER CLARK: So the power marketer's
3 obligation will still be contingent on whether or not
4 you are running those four plants.

5 WITNESS RAMIL: That's what the contract
6 dictates but we wouldn't be supplying the power then,
7 the power marketer would.

8 COMMISSIONER CLARK: The answer is yes.

9 WITNESS RAMIL: I apologize.

10 COMMISSIONER CLARK: Let me ask it again.

11 WITNESS RAMIL: I didn't see it as a yes or
12 no answer. I'm sorry.

13 COMMISSIONER CLARK: Let me ask it again.
14 The power marketer would be obligated to supply the
15 power if Tampa Electric Company was running those four
16 units?

17 WITNESS RAMIL: Correct. But the
18 distinction I was trying to make is that's just
19 determining whether the power marketer's on the hook
20 or not. We wouldn't be supplying them the power from
21 those units.

22 COMMISSIONER CLARK: I understand that. But
23 then whether or not they are on the hook is contingent
24 on what you do, not what they do?

25 WITNESS RAMIL: Correct.

1 Q (By Mr. McWhirter) It's also contingent on
2 FMPA agreeing to the assignment, isn't it?

3 A Yes.

4 Q Accepting the new purveyor.

5 In that same paragraph you say "It would
6 make no sense to impute average embedded cost to these
7 sales which by definition create only incremental
8 costs." Is that your statement or your lawyer's
9 opening statement?

10 A That's our statement.

11 Q You stand by that. Okay.

12 Now, when you have a rate case -- when you
13 had a rate case in 1992, you were able to fully
14 recover your embedded cost in that rate case from the
15 customers that were then on the system, were you not?

16 A Correct.

17 Q And for every additional kilowatt-hour
18 consumed by those customers, and for every additional
19 retail customer, that's an incremental sale and the
20 cost presumably would be an incremental cost to the
21 utility; is that correct?

22 A I'm not sure I understand the question. I
23 think the answer is yes. Would you restate it,
24 please.

25 Q I don't know that I can. But any sale that

1 took place after the billing determinants in your
2 1993-94 rate case that occurs is an incremental sale,
3 and any cost attributable to that sale would be an
4 incremental cost even if it were in the retail sector;
5 is that not correct?

6 A Yes.

7 Q All right. Now, why does it make sense to
8 charge the retail customers embedded cost but it
9 doesn't make sense to charge the wholesale customers
10 embedded cost?

11 A As I mentioned in my summary, it is the
12 basis for our case. The wholesale market is a
13 competitive market. And with all of the players in
14 the market, people can buy below utility embedded cost
15 in that market.

16 Q I see. Those customers are not obligated to
17 buy it from you but your retail customers are
18 obligated to buy from you; is that the difference?

19 A They are not obligated to buy from us, and
20 we are not obligated to serve them unless we choose to
21 get into a contractual relationship.

22 COMMISSIONER GARCIA: You seem to be saying
23 that the only ones that can benefit from this market
24 are other wholesalers?

25 WITNESS RAMIL: The wholesale power

1 marketers.

2 **COMMISSIONER GARCIA:** No, the ones who are
3 purchasing on the wholesale market. In other words,
4 you're saying that the retailers -- because the retail
5 customers, because they are subject to monopoly, in
6 other words, they have to buy from you and they don't
7 get any benefit from what you say is a competitive
8 market, that you wouldn't be able to sell to them.

9 **WITNESS RAMIL:** The people that are buying
10 wholesale are turning around and serving retail
11 customers. I mean that's not an in market in and of
12 itself.

13 **COMMISSIONER GARCIA:** I understand.

14 **Q** **(By Mr. McWhirter)** In the next paragraph
15 you say "It is axiomatic as a matter of basic economic
16 theory that such incremental sales produce net
17 benefits to the general body of ratepayers if
18 incremental revenues received are sufficient to cover
19 incremental costs." Is that axiomatic for wholesale
20 sales as well as retails sales or only axiomatic for
21 wholesale sales?

22 **A** Let me read it.

23 **Q** Okay. (Pause)

24 **A** I believe that's true for retail sales, if
25 you have an additional retail sale that would be true.

1 And, in fact, the way we have proposed this treatment
2 is very similar to how the revenue from an additional
3 retail sale would be treated, and that's all above the
4 line except that our proposal flows back, benefits to
5 customers more quickly.

6 Q Thank you. At the bottom of that paragraph
7 you say "The sales will generate" -- these the FMPA
8 and Lakeland sales -- "will generate sufficient
9 revenue to cover variable cost associated with the
10 sales and reduce the fixed cost burden being borne by
11 the general body of ratepayers by 9.9 million."

12 Now, you say that you're guaranteed that the
13 ratepayers will get \$2 million back. Would you
14 explain the difference between that \$2 million and the
15 \$9.9 million?

16 A The difference between the \$2 million and
17 the \$9.9 million is the remainder of the benefit being
18 credited above the line to operating revenues; that's
19 the crosshatched area. The 9.9 million -- I referred
20 to 10 million earlier, same number -- is from the
21 crosshatched area, all of the area above what it
22 shaded in blue, all of that totals \$9.9 million. The
23 2 million that I mentioned, we're prepared to
24 guarantee is the piece that would be in that green
25 box.

1 Q I see. So there's a 2 million over a ten
2 year immediate benefit through the fuel clause; the
3 other 7.9 million will come at some future time if you
4 don't have a rate case or if there is a refund under
5 your refund stipulation. Is that correct?

6 A Correct.

7 Q And under that refund stipulation if you are
8 earning more than 11.75% you get to keep 40% of that,
9 up to -- get to keep 40% of it in '97 and '98, don't
10 you?

11 A If we're earning within our allowed return,
12 that's correct.

13 Q Now, what if the variable fuel costs exceed
14 the total revenue that you project or that you
15 contracted to receive under these guaranteed sales
16 agreements to these cities?

17 A Well, that's a very unlikely scenario. But
18 what would happen in that scenario is the fuel costs
19 would be credited from operating revenues.

20 Q All right. I notice that when you take 20%
21 of the brokage sale you keep that below the line, but
22 the \$2 million that you're referring to in this
23 guaranteed refund, that doesn't come from
24 below-the-line dollars, it comes from above-the-line
25 dollars?

1 A Our proposal is to treat everything above
2 the line.

3 Q I see. So in essence, the guaranteed
4 2 million you came up with today is nothing really
5 different that you anticipate happening anyway; is
6 that correct?

7 A Well, as I introduced the \$2 million,
8 everybody has been very concerned about those
9 benefits, and are they really there; how much are
10 they? You know, that's an effort to show that we
11 feel good about this and we're serious about this.

12 Q All right. With respect to that same
13 paragraph you say that "The general body of ratepayers
14 will be relieved -- it will reduce the fixed cost
15 burden being borne by the general body of ratepayers
16 by \$9.9 million." That is the benefit that will be
17 derived from the approval of the mechanism that you
18 seek in this case?

19 A Yes. That is again everything above what's
20 shaded in blue on the illustration chart.

21 Q All right. Now, that benefit should be
22 weighed against what would happen otherwise. And if
23 the traditional concept is followed, and the one
24 that's promoted in this case by the Public Counsel and
25 FIPUG, and your retail rate base is separated, under

1 Page 11 of your testimony, am I not correct that the
2 general body of ratepayers would be relieved from
3 71.1 million over the term of the sales?

4 A Correct.

5 Q Okay. So when the Commission is weighing
6 the benefits what it needs to weigh here is are the
7 customers better off to get a \$9.9 million benefit or
8 a \$71.7 million benefit, is that it?

9 A It would be termed that way, but that's the
10 equivalent of the Commission saying, "I can always go
11 get more benefits for customers by dipping into the
12 shareholders allowed rate of return."

13 Q The customer didn't compel you to make this
14 sale --

15 MR. WILLIS: Excuse me, Mr. McWhirter, let
16 him finish his answer, please.

17 MR. McWHIRTER: Beg your pardon?

18 MR. WILLIS: He was not finished with his
19 answer.

20 MR. McWHIRTER: Oh, I'm sorry.

21 WITNESS RAMIL: The two points of reference
22 with respect to the discretionary nature of the sales
23 and the decision point of making this sale is does
24 Tampa Electric Company do nothing, do nothing and go
25 forward and there are none of these benefits to

1 customers. Or does Tampa Electric go ahead and do
2 what is in the best interest of its generating system
3 and commit to these sales and capture that \$10 million
4 worth of benefits? That's the decision we make as a
5 business decision.

6 Now, we also have to think how is the
7 Commission going to treat this sale? And we sat there
8 and we said, "Well, given the decision facing the
9 company, do I make this sale and secure \$10 million or
10 do I not make the sale?" It's a better decision to
11 make the sale and secure the \$10 million.

12 COMMISSIONER CLARK: Mr. Ramil --

13 WITNESS RAMIL: We said this is a sale that
14 we know we're going to have to go get specific
15 regulatory treatment for because it's different than
16 other things that we've done.

17 And our assumption in making the sale is
18 that the Commission was going to give us, and will
19 give us, fair regulatory treatment for doing the right
20 thing to capture benefits to our system.

21 We don't anticipate that the Commission is
22 going to say, "Good job in getting that \$10 million of
23 benefits. Let's lay another \$71 million of benefits
24 by extracting more from your shareholders."

25 Q (By Mr. McWhirter) All right. Are you

1 done?

2 A Yes.

3 MR. McWHIRTER: Did you have a question?

4 COMMISSIONER CLARK: Yes, Mr. Ramil. You
5 indicated it is a business decision for you to make.

6 WITNESS RAMIL: Yes.

7 COMMISSIONER CLARK: And I think you would
8 agree with me that we have the obligation to review
9 your business decisions.

10 WITNESS RAMIL: Absolutely.

11 COMMISSIONER CLARK: Isn't there incentive
12 that if you don't go out and pursue them you'll be
13 treated as acting imprudently.

14 WITNESS RAMIL: Absolutely.

15 COMMISSIONER CLARK: So you have an
16 incentive in the sense of you being obligated to
17 manage your company prudently and where you can make
18 sales of excess capacity.

19 WITNESS RAMIL: Yes. But with the market
20 where it is, and the prices for wholesale power being
21 below our system average embedded cost, we have a
22 disincentive to make any sale other than a broker
23 sale. Because if we less aggressively approach the
24 market and just allow whatever we can sell to go on
25 the broker, there's a 20% incentive below the line to

1 shareholders.

2 COMMISSIONER CLARK: Okay. Go ahead.

3 WITNESS RAMIL: If we make this sale, and as
4 we consider making the sale, knowing the Commission is
5 going to separate the sale cost at average, if we know
6 that for certain, then we know that that's going to
7 cost our shareholders money, so there's a
8 disincentive. There is a true disincentive to make
9 the sale.

10 If we can bring in \$10 million of additional
11 benefit but incur \$50 million of cost to our
12 shareholders because of the separation, that is a
13 disincentive.

14 COMMISSIONER CLARK: Okay.

15 Q (By Mr. McWhirter) What this case is all
16 about is whether the retail customers will benefit
17 from that extra sale or not?

18 A Well, it sounds like it's about a lot of
19 things.

20 Q Yes.

21 A But the number one thing that I think has to
22 be looked at in this case is do the customers benefit
23 from the sale? And our proposal assures that benefit.

24 Now, can you go and separate cost to extract
25 more from the shareholders to benefit the ratepayers

1 more? Sure, you can do that. Our issue is one of
2 fair treatment given the market conditions.

3 Q Well, let's see the last time you got a
4 certificate of need for a major plant addition to your
5 system was when, 1983?

6 A No, I don't believe that's correct.

7 Q Big Bend 4. Have you gotten a certificate
8 of need since that time?

9 A Yes.

10 Q What?

11 A Polk Unit 1.

12 Q Polk. All right. And when you got the
13 certificate of need for Polk Unit 1, did you say that
14 that plant won't be needed by your customers until
15 after the year 2003?

16 A No. I think we received that need in 1992.

17 Q Right.

18 A And if the evidence in the case would have
19 indicated that, the Commission would not have approved
20 the need for that plant.

21 Q It would thought have what?

22 A It would not have approved the need for that
23 plant.

24 Q The evidence indicated that it would not
25 approve the need for that plant?

1 A No, sir. What I said is if the evidence in
2 that case indicated that we had no need for new
3 capacity until 2003, then the Commission would not
4 have approved the need for that plant.

5 Q I see. So obviously the Commission thought,
6 based on the evidence you presented in 1992 after the
7 Tallahassee sale fell through, that you needed that
8 plant for the retail rate base?

9 MR. WILLIS: Excuse me, Mr. McWhirter, I
10 object to the form of the question. You're beginning
11 to testify. You can ask this question -- ask
12 questions of the witness but not add facts that he's
13 not testified to.

14 MR. McWHIRTER: That's a well-taken
15 objection and I submit to it. I'll restate the
16 question.

17 Q (By Mr. McWhirter) Based on the evidence
18 you submitted in 1992, when did you tell the
19 Commission you would need that plant for retail
20 customers?

21 A We need that plant in 1996.

22 Q I see. And today you're telling the
23 Commission that you don't need that plant until 2003?

24 A No. We're telling the Commission that
25 beyond that plant our next need for capacity is in the

1 year 2003.

2 Q But you're also saying that 150 megawatts of
3 the power that you have today can be committed
4 off-system because you don't need that for your retail
5 customers.

6 A Which ends in March of 2001.

7 Q I see.

8 COMMISSIONER CLARK: Mr. Ramil, it sure
9 sounds like you don't need the capacity to serve your
10 retail load if you're selling it on the wholesale
11 market.

12 WITNESS RAMIL: We're trying to optimize the
13 capacity that got placed into service last year. And
14 we're doing that with these two sales. And the sale
15 to FMPA ends well before our stated next need for
16 capacity so our system can fully grow into the Polk
17 unit. It's not unlike the situation in 1985 when we
18 brought a new block of generating capacity on and
19 filled the strong reserve margin well above our
20 criteria we had at the time with sales to Florida
21 Power and Light.

22 Q And at that time the Commission did not
23 require the retail customers to pay for the excess
24 capacity. In fact, that's what got you into the
25 wholesale business; isn't that correct?

1 **A** Yes. At that time the Commission said take
2 all of the benefits from wholesale sales and treat
3 them above the line to reduce the requirements on
4 retail customers, and that's exactly what we're
5 proposing to do here.

6 **Q** I've laid before you a little while ago, and
7 I thought it might be helpful to you in the question
8 that Ms. Clark asked you, a corporate structure of
9 TECO Energy, Inc.

10 **MR. McWHIRTER:** And Madam Chairman, I ask
11 you to mark that as FIPUG Exhibit 2.

12 **CHAIRMAN JOHNSON:** It will be marked as
13 Exhibit 2.

14 **MR. McWHIRTER:** For identification.

15 (Exhibit 2 marked for identification.)

16 **Q** (By Mr. McWhirter) Is this an accurate
17 representation of the corporate structure of TECO
18 Energy, Inc.?

19 **A** It appears to be.

20 **Q** And Tampa Electric is on the far left of
21 that first line?

22 **A** Yes.

23 **Q** Mr. Ramil, in the next two paragraphs down,
24 and in your earlier testimony today you have referred
25 to the Company's shareholders. Does Tampa Electric

1 Company have any shareholder other than TECO Energy,
2 Inc.?

3 A No.

4 Q So when you speak of shareholders you're
5 talking about the people who own an interest in this
6 unregulated company that has a variety of enterprises,
7 foreign and domestic; is that correct?

8 A That's correct.

9 Q And a proper allusion would be Tampa
10 Electric Company's "shareholder" rather than the
11 plural, wouldn't that be correct? When you're talking
12 about benefits to shareholders, it's really benefit to
13 shareholder?

14 A You're making reference to TECO Energy
15 owning all of the shares of Tampa Electric.

16 Q Yeah.

17 A Sure.

18 Q That may be lawyer nitpicking but --

19 Now, with respect to TECO Power Services
20 Corporation, does it have any business transactions
21 with Tampa Electric Company?

22 A Yes. The Hardee Power Station, which is
23 owned and operated by TECO Power Services is shared by
24 Tampa Electric; the output is shared by Tampa Electric
25 and Seminole Electric.

1 Q All right. And as you've indicated earlier,
2 TECO Coal Corporation has dealings with Tampa Electric
3 Company, and TECO Transport and Trade Corporation have
4 dealings with Tampa Electric Company. Does TECO
5 Properties have any relationship with Tampa Electric
6 Company?

7 A I don't know.

8 Q Do you know who owns the building in which
9 your office is located?

10 A I don't know.

11 Q Okay. And it's your company's position, as
12 I understand it, that any of the transactions between
13 Tampa Electric Company and other entities in this
14 corporate structure are irrelevant to these
15 proceedings?

16 A The merits of an incentive, or as I have
17 talked about it, a disincentive with respect to the
18 wholesale should be made upon benefits captured within
19 the electric utility, yes.

20 Q Would you say that another way? I'm not
21 sure I absorbed it accurately.

22 A The benefits and the fair treatment within
23 the electric company should be based upon the business
24 of the electric company. Now, that's not to say that
25 the Commission can't and shouldn't look into the

1 activities of the related activities with affiliates,
2 but all of the facts need to be considered. And to
3 make the assumption that Tampa Electric Company's
4 motive to enter into these wholesale sales is to make
5 more profits for its affiliates is wrong. And there
6 are plenty of pieces of information which can lead you
7 to that decision that exists that are known to
8 everybody.

9 Besides the thing I talked about earlier
10 with respect to selling the coal energy through the
11 contracts or on the broker as I mentioned earlier, the
12 contract with the transportation company expires the
13 end of next year, then it's open to anyone. We've got
14 a contract through 2001 with FMPA; beyond that for
15 Lakeland. We haven't secured any benefits for TECO
16 Transport and Trade.

17 The trend, and the continuing trend, is to
18 buy less and less coal as that contract fades out from
19 the affiliated coal company. We're on a decline to
20 buy less. Why would increase in sales make us buy
21 more? That's not happening.

22 Q I see. So when -- what you're saying then
23 is that the coal supplied to Tampa Electric Company
24 that is used to turn generators that sell electricity
25 to Florida Municipal Power Corp, the coal company

1 doesn't make a profit or does make a profit on that?

2 A No. I think you misunderstood what I said.
3 Hopefully the coal company makes a profit on that.
4 What I'm saying is we're buying less tonnage from the
5 coal company.

6 If you look back from 1993, we're purchasing
7 a level of 2.2 million tons -- I'm sorry, 2.1 million
8 tons from the coal company. In 1996 we purchased
9 1.2 million tons from the coal company. This year I
10 believe it will be less than 1 million tons from the
11 coal company.

12 So the data does not match us trying to
13 increase sales to more purchases from the coal
14 company.

15 Q All right. But you say that the coal
16 company does make a profit on of the sale of coal to
17 Tampa Electric and the transportation company does
18 make a profit on the sale -- or the sale of its
19 transportation services to Tampa Electric; is that
20 correct?

21 A That's correct.

22 Q And you don't think that the shareholder
23 would have any incentive to make that profit or to
24 take that profit into consideration in determining
25 whether the wholesale sales should be made?

1 A Well, the shareholder doesn't make that
2 decision.

3 Q Who makes the decision?

4 A The people running Tampa Electric make that
5 decision.

6 Q I see. So TECO Energy, Inc. has no
7 management authority over Tampa Electric Company?

8 A No. We went through that report and
9 relationship earlier.

10 I am the principle officer at Tampa Electric
11 in charge with respect to wholesale matters. And in
12 looking at these wholesale sales we look at the costs
13 and the benefits to the electric company.

14 Q Are any of those people from TECO Energy,
15 Inc. on the Board of Tampa Electric Company?

16 A The two officers I mentioned, Jerry Anderson
17 and Tim Guzzle are on the board.

18 Q Do you all ever listen to what they say when
19 management decisions are made?

20 A We listen to what they say; they also listen
21 to what we say.

22 **COMMISSIONER CLARK:** Mr. Ramil, let me ask
23 you a question. To the extent that ratepayers of
24 Tampa Electric Company are held harmless by any
25 additional generating of electricity, to the extent it

1 results in more profit to the coal company because
2 you're purchasing more coal, would you disagree that
3 Mr. Surgenor has the incentive to increase the output
4 to effect that result?

5 WITNESS RAMIL: Retail customers are held
6 whole.

7 COMMISSIONER CLARK: Right. There's no
8 impact to them to generate more. Assume that.

9 WITNESS RAMIL: Okay.

10 COMMISSIONER CLARK: And if by generating
11 more he can increase the profit to the transporting
12 company and the coal company, does he have the
13 incentive to do that?

14 WITNESS RAMIL: Yeah, I think he would. I
15 think he would. Given that scenario.

16 COMMISSIONER CLARK: But you're saying that
17 doesn't exist here because you're purchasing less and
18 less from your affiliate.

19 WITNESS RAMIL: That's correct. I think --
20 well, my point is that if you look at associated with
21 these sales, there are no more purchases from the
22 affiliate companies after the sale versus about of the
23 sale.

24 COMMISSIONER CLARK: And part of that
25 rationale is based on the fact that you think that

1 these sales would be made anyway because they would be
2 made on the broker system?

3 **WITNESS RAMIL:** Most -- let me just clarify.
4 The answer to your question is yes. Most of the
5 energy -- not all of the energy -- most of the energy
6 from these sales is coming from coal. And the only
7 distinction that I make is the energy that's coming
8 from coal, we would expect to sell that on the broker
9 anyway at lower margins; the energy at lower margins,
10 not the coal.

11 **COMMISSIONER CLARK:** But that lower margin
12 presumes it continues to be a buyer's market?

13 **WITNESS RAMIL:** Yes.

14 **Q** **(By Mr. McWhirter)** On Page 10 of your
15 opening statement in the Prehearing Order, about
16 midway in that sentence, about the fourth line down,
17 very end, it says "The Commission has satisfied itself
18 that the prices paid by Tampa Electric to its
19 affiliates for fuel and transportation services are
20 just and reasonable." Is there an order that the
21 Commission has entered that says that? Can you refer
22 me to a docket?

23 **A** I don't know. I don't know the answer to
24 that.

25 **Q** I see. Is this probably part of lawyers'

1 talk not yours?

2 A It's not my testimony. It's the prehearing
3 statement.

4 Q To your knowledge is there any witness in
5 this case that will present evidence that this
6 Commission has satisfied itself that the prices paid
7 by Tampa Electric to its affiliates are just and
8 reasonable?

9 A I would hope so. They look at it every six
10 months in the fuel adjustment charges.

11 Q I see. But you have -- in fact, in this
12 case you have sought to keep that evidence out of this
13 case.

14 A The dilemma we have in this is that the
15 issue with respect to data with the affiliates had to
16 do with their cost.

17 Q Yes, sir.

18 A Which I think Commissioner Clark has hit the
19 issue, that's not -- their cost is not relevant. The
20 question that needs to be answered, if any with
21 respect to this, is there incremental -- is there
22 additional sales and benefits to the affiliates as a
23 result of these contracts?

24 Q No, I think the issue is --

25 A And data -- please let me finish.

1 And no data has been asked with respect to
2 that issue.

3 Q But the issue is, is there some incentive to
4 your company -- you say there's no incentive for these
5 sales unless you get this kind of treatment, but, in
6 fact, I think there's an incentive to your company
7 because it's going to make a profit through the other
8 affiliate and apparently the Staff thought that but
9 you don't think that.

10 A I don't mean to be rude, but I'm testifying
11 and you're not.

12 Q Yes, sir.

13 A Okay. And my testimony is based on the
14 questions and the scenario that Commissioner Clark put
15 before me: Is there an incentive to the TECO Energy
16 shareholders for its affiliates to make more profit?
17 And the answer to that is clearly yes, and I think
18 everybody would agree with that.

19 Now, do the affiliates stand to profit from
20 more sales as a result of Tampa Electric's new
21 wholesale qcontracts. The answer to that question is
22 no.

23 Q I'm going to go on to a new set of
24 questions.

25 The next exhibit that I'd like to give you

1 is an excerpt from your Annual Report. And I'd like
2 to have this marked as Exhibit 3 for identification.

3 Actually this exhibit is part of the
4 composite group of things of which the Commission,
5 without objection from the Company, took official
6 notice, and as a consequence I guess it's Exhibit 3
7 not for identification because it's already been
8 admitted into evidence. I think it would be easier
9 for record keeping, however, if even though it's a
10 part of Exhibit 1 that we independently number it, if
11 that's satisfactory to you, Madam Chairman.

12 (Exhibit 3 marked for identification.)

13 **CHAIRMAN JOHNSON:** That will be fine.

14 **Q** **(By Mr. McWhirter)** Now, I've taken some
15 pages out of your Annual Report -- and we've already
16 talked a little bit about the affiliates and I
17 wouldn't deal with those diversified businesses, but I
18 would like to talk about Hardee Power Station.

19 This statement, the Annual Report says that
20 in 1996 Seminole Electric utilized 40% of the energy
21 generation and Tampa Electric used 52% of the
22 generation from Hardee Power Partners. Is that an
23 accurate statement?

24 **A** Yes, I believe so.

25 **Q** On Page 22, which is the next page in that

1 document, you say that -- and I'm looking in the
2 second column of the last two paragraphs, and it
3 appears that from 1994 through '96 your wholesale
4 sales, nonfuel revenues from sales to other utilities,
5 ranged from 33 to 36 million. And in the last
6 paragraph you say "Signing additional longer term
7 wholesale power agreements remains a priority at Tampa
8 Electric where in recent years 11 bulk power sales
9 contracts of varying sizes and duration have been
10 added. Competitive pricing of coal-fired generation
11 has allowed Tampa Electric to market available
12 capacity successfully." Is that a policy statement of
13 your company?

14 A Yes. When taken in the broad context of
15 what the rest of the Annual Report says, and that's
16 that we seek to be profitable.

17 Q That's correct. But you're out there
18 hustling wholesale sales day and night and that's a
19 primary concern of your company; is that correct?

20 A Of course. The 36 million, the 34 million,
21 the 33 million in those years that you mention have
22 helped to lower prices to retail customers. And if
23 you look at those same years, since this time in 1994
24 our prices to retail customers are down 8¢ for
25 residential, and 16¢ for those that you represent, the

1 industrial customers.

2 Q And that's primarily because the cost of
3 fuel has gone down; is that correct?

4 A That's a component of it. Securing other
5 sources of net revenue for treatment above the line
6 like this, like other things that we're doing, have
7 all contributed to that as well as controlling
8 expenses.

9 Q But those things come about only when you
10 have a rate case or your guaranteed fuel recovery cost
11 goes down; is that correct?

12 A Well, no. They come back from a lot of
13 other ways, including the stipulation that we're in.

14 Q With respect to those wholesale sales from
15 various discovery and other things that have been
16 filed in this case, I've gleaned the following, and
17 I'd like like you to follow me through, and if
18 anything I say is incorrect, then you can correct it,
19 or you can correct it later if you need to.

20 But presently on wholesale sales you've
21 committed five megawatts of capacity to Wachula. And
22 those sales are a priority sale over and above your
23 retail customers, or your nonfirm retail customers but
24 on parity with your other retail customers; is that
25 correct?

1 A Are you going to go through all of our
2 wholesale sales, because this may take a while,
3 because that's not correct.

4 Q Okay. What is Wauchula in '97?

5 A Wachula is about 10 or 11 megawatts and
6 initially they are served from resources at Big Bend
7 Station. That contract is shifting over time to an
8 all-requirements contract, which will be at full
9 average embedded cost and served at the same priority
10 as our retail customers.

11 Q Good. Fort Meade?

12 MR. WILLIS: Commissioners, excuse me, I
13 object to the continuing line of questions, going into
14 great detail about other sales and those that are at
15 issue before us today.

16 We're trying the question of whether they
17 are net benefits of the Lakeland and FMPA sales, and
18 if so, what is the appropriate ratemaking treatment
19 for those sales; not all of the whole history of Tampa
20 Electric's wholesale sales in the past.

21 MR. McWHIRTER: Madam Chairman, I'm not
22 going to go through a whole lot of wholesale sales.
23 I'm only going to go through a few of them. And then
24 I will tie it in later with a series of questions
25 which will show how retail customers are, in fact,

1 detrimentally impacted by the wholesale sales and not
2 benefitted. I think it's a legitimate line of
3 inquiry. And I would try to expedite it as much as
4 possible because I know we're trying to get this
5 hearing done in one day.

6 MR. WILLIS: We also object to Mr.
7 McWhirter's -- the form of his question where he's
8 beginning to testify again; and he's entitled to ask
9 questions of this witness, but not to testify himself.

10 MR. McWHIRTER: That was an attempt to
11 expedite by asking for yes or no answers.

12 CHAIRMAN JOHNSON: Mr. McWhirter, I'll allow
13 the question as reframed, and understanding that the
14 relevance of the issue that you're raising will be
15 connected up.

16 MR. McWHIRTER: All right.

17 Q (By Mr. McWhirter) I've just listed a few
18 of our wholesale sales, and I've listed Wachula, Fort
19 Meade, Reedy Creek Improvement District, New Smyrna
20 Beach, Seminole Electric Company, FMPA and Lakeland
21 and my rough and dirty calculation, subject to your --

22 MR. WILLIS: Excuse me, Mr. McWhirter.
23 You're beginning to testify.

24 MR. McWHIRTER: I'm not. I'm asking a
25 question.

1 MR. WILLIS: You're saying what your
2 calculations are; not asking this witness about
3 something he has testified to.

4 MR. McWHIRTER: I'm going to ask him to
5 verify whether that is accurate, counsel.

6 MR. WILLIS: None of this is in his
7 testimony.

8 Q (By Mr. McWhirter) All right. Tell us
9 what your total committed wholesale sales are at this
10 time, Mr. Ramil.

11 A We've got somewhere around 100 to 120
12 megawatts of wholesale sales that are committed and
13 were treated with respect to how they are going to
14 treat it regulatorywise in our last rate case. The
15 Lakeland and FMPA sales are the new ones on top of
16 that.

17 Q Does the 120 include the 145 committed to
18 Seminole Electric?

19 A No, I don't believe it does. The 145 sale
20 to Seminole Electric is limited use of that piece of
21 capacity from Big Bend 4.

22 Q But you've got 145 out of Big Bend plus this
23 120, and plus the sale ranking up to 150 from FMPA and
24 Lakeland that are now committed firm sales to the
25 wholesale market?

1 A That's about right. I don't have the exact
2 numbers in front of me.

3 Q Now, with respect to the fuel cost that's
4 credited to your retail customers with respect to the
5 FMPA and Lakeland sales, the customers are going to
6 get incremental fuel cost; is that correct?

7 A That is correct.

8 Q So they would be held harmless. Do the
9 customers get credited with incremental fuel costs
10 with respect to the other 265 megawatts that are sold
11 in the wholesale market by firm contract or some other
12 price mechanism?

13 A The Commission approved the treatment of
14 those fuel charges in different ways for different
15 contracts.

16 Q Admitted. But the question is do you get
17 incremental costs or something more or less than
18 incremental cost?

19 A For what?

20 Q For that 265 megawatts committed in the
21 wholesale market.

22 A My answer is it varies by contract.

23 Q All right.

24 COMMISSIONER CLARK: Mr. Ramil, will you
25 tell us what the variation is?

1 **WITNESS RAMIL:** I can't remember each
2 specific contract but I can kind of group them for
3 you.

4 The requirements service that we have, which
5 is from Florida Power Corporation, and is what Fort
6 Meade, Wachula, Reedy Creek are all transitioning to.
7 That pays full average embedded cost of fuel and the
8 whole system. That's just like a retail customer,
9 long-term wholesale commitment, they are part of our
10 system.

11 The limited use of the piece of Big Bend 4
12 that Seminole's entitled to, they pay the average cost
13 of Big Bend 4. And then we have some other sales that
14 the fixed cost of the sales are separated average
15 cost, but the incremental costs of the sale is what is
16 credited to fuel. And those have all been considered
17 and treated by this Commission.

18 **Q** Do you have any --

19 **A** We're proposing -- because when the
20 Commission has looked at these sales before there have
21 been issues to do the sales cost impact to retail
22 customers and do we need to take that into account and
23 how much, and there's a lot of deliberation over that.
24 We try to make it easy in our proposal with respect to
25 these two contracts, in that we will look at what the

1 incremental cost to the system is to serve these
2 sales, irrespective of however the fuel might be
3 priced to the customer; we'll look at the incremental
4 cost to the system and we'll credit that to fuel out
5 of revenues from the sale, so that there is no impact
6 to retail customer fuel charges.

7 **COMMISSIONER CLARK:** Mr. Ramil, just so I'm
8 clear, would it be fair to say that where it is a
9 requirements contract, whether it is a full or
10 partial, that the cost for fuel is average fuel cost?

11 **WITNESS RAMIL:** Yes.

12 **COMMISSIONER CLARK:** Okay.

13 **Q** **(By Mr. McWhirter)** Requirements contract
14 means a contract in which you supply all of the needs
15 of that customer.

16 **A** All or a significant piece over the long
17 haul. The customer has essentially bought in to be
18 part of your system. Moving forward just like the
19 retail customers.

20 **Q** It doesn't have anything to do with whether
21 you are required to provide the power. It has to do
22 with that but it's not the same thing as that.

23 **A** You know, it's an interesting question. The
24 term probably evolved from that but again the way the
25 wholesale market has evolved, there probably isn't

1 anymore a requirement to serve in the wholesale
2 market.

3 Q And the FMPA contract is not a requirements
4 contract but you are required to deliver the
5 electricity?

6 A Per the contractual terms, yes.

7 Q Now, do you have --

8 A I might say, the decision to do the FMPA
9 transaction or not do the FMPA transaction was when
10 the opportunity presented itself, and they were out
11 looking at proposals from several different suppliers.
12 That's the decision point as to whether the sale is
13 discretionary or not. You know, the contract then
14 defies the terms and conditions of the sale moving
15 forward. I don't know if I made that clear earlier or
16 not.

17 Q Well, the treatment that you're going to
18 give to this sale is different than the treatment
19 you've given to other sales because each sale is based
20 upon the market at that time, isn't that correct?

21 A That's correct.

22 Q All right. Now, with respect to your future
23 sales, is it the Company policy that in each of these
24 future sales the customers will be credited with
25 incremental fuel cost as opposed to some other

1 mechanism for credit?

2 A We have one overriding applied company
3 policy with respect to wholesale sales, and that's
4 that the incremental revenue needs to be greater than
5 the incremental cost of the sale. That assures net
6 benefits of making the sale. Now, beyond that, it's
7 dictated by the circumstances of the market or how the
8 Commission applies treatment.

9 If we need to make sure -- given that
10 standard, okay -- and I'm trying to fully answer your
11 question -- given that standard, okay, revenues --
12 additional revenues exceed additional costs. If
13 you're in business you want to make those transactions
14 I think. Given that, we know -- we know that there's
15 more than enough revenue to cover the incremental
16 costs to the retail customers of making that sale. If
17 that's what is required for the Commission to be
18 comfortable with the sales, then that will be our
19 policy moving forward.

20 Q One of the problems I have with your
21 testimony and Dr. Bohi's is that he refers to the firm
22 and he says "as long as incremental revenues exceed
23 incremental costs, then the sale should be made" and
24 you agree with that.

25 The problem we have is that -- as I see

1 it -- when those revenues come in, they may not flow
2 to the cost that retail customers are currently
3 required to fund for you.

4 You have cured that in this case, as I
5 understand it, by guaranteeing that your incremental
6 revenue will be credited as much as necessary to meet
7 the incremental fuel cost; is that correct?

8 **A** That's correct.

9 **Q** And the question I asked you and I don't
10 think you answered was that for all prospective
11 wholesale sales, will it be the Company policy to
12 follow that same directive; that you will match -- the
13 Company will cover the incremental fuel cost in the
14 fuel clause?

15 **MR. WILLIS:** That question has been asked
16 and answered, and we're starting to repeat questions
17 over again. And Mr. McWhirter is continuing to
18 testify as he asks his questions.

19 **MR. McWHIRTER:** I didn't understand the
20 answer, Mr. Willis.

21 **MR. WILLIS:** You asked the question and he's
22 provided you an answer, and you need to go on to a
23 different question.

24 **MR. McWHIRTER:** I would like to have him --
25 if he answered before I didn't catch it. If you would

1 be kind enough to ask him to answer it one time yes or
2 no that would satisfy my needs.

3 **CHAIRMAN JOHNSON:** Do you remember the
4 question?

5 **WITNESS RAMIL:** I think so. Let me try
6 again.

7 The business policy is more revenues than
8 costs.

9 **Q** **(By Mr. McWhirter)** Yes.

10 **A** You're not nodding your head and you have
11 been up until then. Okay. That's our business
12 policy.

13 As long as we treat the revenues above the
14 line where the revenues are there to defray the cost
15 of providing retail service, it doesn't matter if we
16 specifically distinguish that okay, these revenues are
17 going to make the fuel clause whole or not. Okay.
18 But if that is a comfort level that the Commission
19 needs to set as a standard for these types of sales
20 moving forward, the first thing you do is take the
21 revenue and make fuel neutral, then that's a policy
22 that we'd say, okay, that's fine. We agree with that.
23 And we'd do that moving forward.

24 **Q** So your answer is you will do it but only if
25 the Commission orders it? Yes or no.

