

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: 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.

DOCKET NO. 970171-EU

ORIGINAL

COPY

BEFORE:

CHAIRMAN JULIA A. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN P. CLARK
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

8

DATE:

September 23, 1997

PLACE:

4075 Esplanade Way, Room 148
Tallahassee, Florida

BUREAU OF REPORTING

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Appearances:

Lee L. Willis, Esquire, and Gordon L. Gillette
representing TECO
Jack Shreve, Esquire and Roger Howe, Esquire
representing OPC.
John McWhirter, Esquire, representing FIPUG

* * * * *

(Please see Agenda for Commission Conference for staff
recommendations. Recommendation were not typed due to time
constraints.)

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CHAIRMAN JOHNSON: Item 8.

COMMISSION STAFF: Commissioners, Item 8 is the TECO wholesale docket. It was deferred from the August 5th agenda conference at the Commissioners' request to hear oral argument on the subject of the stipulation entered into by the parties in Docket 960409.

I have discussed the presentations with the parties and would recommend that they be limited to 10 to 15 minutes. However, it's up to the Commissioners how long they wish to hear oral argument.

COMMISSIONER GARCIA: I'm sorry, limited to what?

COMMISSION STAFF: Ten to 15 minutes.

COMMISSIONER GARCIA: Okay.

COMMISSION STAFF: And I would also remind the parties that the oral argument is limited to solely the issues surrounding the stipulation. This is not an opportunity to reopen the docket and the facts that were before this Commission in June.

The Commissioners have voted on Issue 9. Issue 8 does not require a vote, and after oral argument we would then be addressing Issues 1 through 7.

So with that, I will turn it over to the Chairman or the parties.

1 CHAIRMAN JOHNSON: Okay. Commissioners, there
2 has been a recommendation that we limit the oral
3 argument. Is there a motion to that effect?

4 COMMISSIONER DEASON: Yes. I think that what we
5 are requesting oral argument on is a fairly narrow
6 subject matter. And I think that ten minutes is
7 perhaps more than enough time, and ask the parties to
8 keep it shorter if they could.

9 CHAIRMAN JOHNSON: Okay.

10 MR. WILLIS: Commissioners, I'm Lee Willis --

11 COMMISSIONER CLARK: Is it per party or per side?

12 COMMISSION STAFF: If I may suggest, I envisioned
13 it being per party, not per individual within the
14 party. In other words, if there are multiple
15 attorneys, I would not suggest that the issue would
16 require 20 minutes or 30 minutes, ten minutes for two
17 or three attorneys.

18 COMMISSIONER DEASON: The question I think is ten
19 minutes for Public Counsel and then another ten
20 minutes for FIPUG?

21 COMMISSION STAFF: Yes.

22 COMMISSIONER CLARK: That is the question. And
23 how many for TECO?

24 COMMISSIONER KIESLING: Ten.

25 COMMISSION STAFF: Ten.

1 COMMISSIONER CLARK: Okay.

2 CHAIRMAN JOHNSON: Mr. Willis.

3 MR. WILLIS: Commissioners, I'm Lee Willis.

4 Together with me is Gordon L. Gillette, who is the
5 Vice President of Regulatory of TECO Energy who will
6 present our argument.

7 CHAIRMAN JOHNSON: Okay.

8 MR. GILLETTE: Good afternoon, Commissioners. It
9 is regrettable that we are before the Commission to
10 determine the proper interpretation of certain
11 language in our stipulation. Language on which the
12 parties in good faith disagree. Tampa Electric and
13 the other parties worked very hard to achieve the
14 stipulation, and we are all justifiably proud of the
15 agreement.

16 Tampa Electric and I personally have the utmost
17 respect for Mr. Shreve, the Office of Public Counsel,
18 as well as for the Florida Industrial Power Users
19 Group and its representatives. Tampa Electric would
20 certainly never advocate nor condone any attempt to
21 violate or undercut this important agreement.

22 We have worked hard to open lines of
23 communication and to understand the points of view
24 expressed by these representatives of Tampa Electric's
25 customers in the matter at issue.

1 While Tampa Electric remains dedicated to finding
2 some amicable way of reconciling our views and those
3 of OPC and FIPUG with regard to the regulatory
4 treatment of our wholesale sales to the City of
5 Lakeland and the Florida Municipal Power Agency, it is
6 our strong and earnest belief that your approval of
7 the regulatory treatment which we proposed in this
8 proceeding would in no way violate either the letter
9 or the spirit of the stipulation.

10 I respectfully suggest that we should be clear in
11 specifying what is not at issue. The stipulation
12 provision at issue covers only capital and O&M, or
13 so-called non-fuel revenues. The word fuel was
14 specifically included in early drafts of Paragraph
15 5(f), but was intentionally excluded at the urging of
16 the other parties.

17 The issue was resolved in this Commission's March
18 11th, 1997 fuel adjustment order by establishing the
19 following principle. And I quote, "A utility shall
20 credit average system fuel revenues through the fuel
21 adjustment clause unless it demonstrates on a
22 case-by-case basis that each new sale does, in fact,
23 provide overall benefits to the retail ratepayers."

24 Commissioners, Tampa Electric has shown without
25 contradiction in this proceeding that these sales will

1 provide economic benefits in excess of incremental
2 costs. Regardless of how you may interpret the
3 stipulation with respect to the non-fuel revenues, the
4 Commission's March 11th, 1997 order governs the
5 appropriate treatment of the fuel revenues from these
6 sales.

7 OPC and FIPUG contend that the stipulation
8 requires all long-term firm wholesale sales to be
9 separated at system average cost. They conclude,
10 therefore, that the language in Paragraph 5(f) of the
11 stipulation is an absolute bar to this Commission's
12 acceptance of a regulatory treatment which we have
13 proposed in the proceeding of these sales, for these
14 sales.

15 OPC and FIPUG are certainly entitled to their
16 respective opinions on the matter. The language at
17 issue, we believe that the language at issue does not
18 mandate that all long-term sales be separated at
19 average cost. Paragraph 5(f) of the stipulation
20 reads, and I quote, "The separation procedure to be
21 used to separate capital and O&M was approved in the
22 company's last rate case. Docket Number 920324 shall
23 continue to be used to separate any current and future
24 wholesale sales from the retail jurisdiction."

25 All that Provision 5(f) of the stipulation

1 requires is the following: If -- and I emphasize only
2 if the decision is made to separate a future wholesale
3 sale, then the capital and O&M costs for the sales are
4 to separated using the methodology adopted in Tampa
5 Electric's 1992 rate case.

6 We know for certain that this clause was never
7 interpreted as applying to all future wholesale sales,
8 since wholesale sales under the broker system, short
9 term sales, Schedule J sales, as well as some Schedule
10 D sales have never been separated, but have been
11 flowed through the fuel clause.

12 In fact, the only sales other than full
13 requirement sales that have ever been separated under
14 the methodology established in the last rate case were
15 the long-term sales out of the Big Bend units.

16 It is not a matter of accident that the language
17 in question falls far short of the requirement to
18 separate the FMPA and Lakeland sales at system average
19 cost as OPC and FIPUG suggest. It was Tampa Electric
20 who proposed the language, and our intention was to
21 address a specific concern. That concern was the
22 regulatory treatment of the Big Bend sales.

23 Let me explain. As the level of Big Bend sales
24 changed subsequent to our 1992 rate case, we began to
25 adjust the separation factors originally calculated in

1 proportion to the current level of such sales. In
2 this way the revenue requirement responsibility would
3 not be imputed to nonexistent sales as the level of
4 sales changed through time.

5 In the June 1994 fuel adjustment hearing,
6 questions were raised by the parties and staff with
7 regard to the appropriateness of proportionately
8 adjusting the separation factors. A related issue
9 with the Big Bend sales was raised in the 1996 fuel
10 adjustment hearing with OPC's contention that the
11 amount of fuel costs that should be credited to the
12 retail fuel clause for the Big Bend sales should
13 reflect the system average fuel cost instead of the
14 fuel revenues actually received under the contracts.

15 During the discussions which led to the Polk
16 stipulation, Tampa Electric was focused, among other
17 things, on maintaining the existing regulatory
18 treatment for the Big Bend sales. Our concern was
19 fueled by the unrelenting challenge of the parties to
20 the regulatory treatment of these sales.

21 To that end, Tampa Electric included the language
22 at issue today in the initial drafts that were
23 exchanged with OPC and FIPUG with the intention of
24 accomplishing two things. First, we intended to
25 settle the fuel adjustment issued raised by OPC on the

1 fuel treatment associated with the Big Bend sales.
2 Second, we intended to ensure the proportional
3 adjustment of separation factors depending on the
4 level, on the megawatt level of sales being made from
5 the Big Bend station.

6 As I noted earlier, Tampa Electric agreed during
7 negotiations to modify Paragraph 5(f) and delete the
8 reference to fuel. Tampa Electric never attributed
9 the meaning to the language in question that has only
10 recently been suggested by OPC and FIPUG. If we
11 believed that the stipulation required the FMPA and
12 Lakeland sales to be separated at system average cost,
13 we would never have made these sales.

14 Another important point I would like to make is
15 that OPC, FIPUG, and staff through their actions
16 subsequent to the execution of the stipulation
17 evidenced an understanding and intent similar to Tampa
18 Electric with regard to the language at issue.

19 Tampa Electric met seven times with the various
20 parties to discuss the company's proposals and try to
21 reach agreement on the treatment of the FMPA and
22 Lakeland sales before the matter was docketed.

23 In these meetings, Tampa Electric discussed a
24 number of regulatory treatments, none of which
25 involved separation at average cost. Neither OPC,

1 FIPUG, nor staff asserted or even suggested in any of
2 these meetings their current contention that the
3 stipulation requires the FMPA and Lakeland sales be
4 separated.

5 The question of the proper regulatory
6 treatment --

7 MR. SHREVE: I just want to make clear, is it the
8 settlement negotiations he's talking about?

9 MR. GILLETTE: These were our discussions --

10 MR. SHREVE: Are these settlement negotiations
11 you're talking about?

12 MR. GILLETTE: No, sir. These were our
13 discussions that were held in October through
14 February.

15 MR. SHREVE: In an effort to settle the issues.

16 MR. GILLETTE: Well, we were talking about how to
17 treat the FMPA and Lakeland sales.

18 MR. SHREVE: Then I would assume all settlement
19 negotiations in this docket and other issues are open
20 for comment.

21 CHAIRMAN JOHNSON: You can continue.

22 MR. GILLETTE: The question of the proper
23 regulatory treatment of the FMPA and Lakeland
24 wholesale sales was raised formally in the fuel
25 adjustment docket in February of 1997. The issue was

1 deferred to this docket.

2 Several meetings were held after February 1997
3 for the express purpose of defining the issues to be
4 addressed in the proceeding. Not once during any of
5 these meetings or in subsequent testimony did staff,
6 OPC, or FIPUG even mention the stipulation as a factor
7 in determining the appropriate regulatory treatment of
8 these sales.

9 We believe that in all fairness the parties'
10 behavior strongly suggests that they did not regard
11 the stipulation as requiring the FMPA and Lakeland
12 sales to be separated.

13 If a party or staff viewed separation as the only
14 result under the stipulation, that point should have
15 been raised by introducing a separate issue relating
16 to the stipulation in this proceeding.

17 As we have stated on the record, a requirement
18 that we separate the FMPA and Lakeland sales would
19 result in a guaranteed loss to our shareholders with
20 no corresponding benefit. The market dictated that
21 the maximum overall benefits of these transactions was
22 an estimated \$10 million on a net present value basis.
23 The actual retail customer benefit from these sales
24 must reflect economic reality. Separation of these
25 sales at system average cost would result in a

1 theoretical reduction in resale revenues requirements
2 of \$71.1 million, which is much greater than the \$10
3 million benefit.

4 If these sales were separated, our duty to our
5 shareholders would leave us with no choice but to
6 mitigate the loss resulting from such separation by
7 selling or otherwise withdrawing from these
8 discretionary transactions. A requirement that we
9 separate future wholesale sales would also be an
10 absolute disincentive for Tampa Electric to engage in
11 wholesale sales other than economy sales.

12 Tampa Electric would be out of the long-term
13 wholesale market and the resulting loss in benefits to
14 retail ratepayers would be substantial. Clearly, the
15 result would serve no interest other than that of
16 unregulated power marketers. These marketers would in
17 turn capture 100 percent of the benefits which they
18 would export out-of-state.

19 CHAIRMAN JOHNSON: You have about a minute left.

20 MR. GILLETTE: Okay. Just a few more comments.

21 The Commission is confronted today with a
22 stipulation provision which the parties interpret
23 differently. Tampa Electric feels that its
24 interpretation of this stipulation is consistent with
25 the intent and actions of the parties and should be

1 adopted by the Commission. However, we understand the
2 depth of concern shared by FIPUG and OPC on this
3 issue.

4 We also understand that it is not in the best
5 interest of Tampa Electric or its customers to
6 unnecessarily undercut the confidence of our partners,
7 FIPUG and OPC. Therefore, we respectfully suggest
8 that the Commission do the following: Flow through
9 the revenues from the sales to cover the costs in the
10 appropriate clauses, offsetting variable O&M through
11 base rates and flow through 100 percent of the
12 benefits from these sales through the fuel clause as
13 they occur in a manner which does not create
14 below-the-line exposure for Tampa Electric.

15 Clearly, this is not anyone's first choice, but
16 we believe it is a fair outcome for all concerned. As
17 OPC noted in its brief on Page 7, Footnote Number 1,
18 and I paraphrase, "Full separation can be achieved by
19 flowing back 100 percent of non-fuel revenues."

20 Flow through treatment will provide retail
21 customers with the full economic benefit of these
22 sales on a realtime basis.

23 Thank you, Commissioners, for your patience and
24 attention.

25 CHAIRMAN JOHNSON: Okay. FIPUG.

1 MR. McWHIRTER: Madam Chairman, this is a --

2 COMMISSIONER CLARK: Is that the first time you
3 have heard that offer? John, I'm over here.

4 MR. McWHIRTER: I heard the offer, yes.

5 COMMISSIONER CLARK: Is that the first time?

6 MR. McWHIRTER: Yes.

7 COMMISSIONER CLARK: Okay.

8 MR. McWHIRTER: It has improved from the last
9 offer.

10 COMMISSIONER DEASON: Well, I want to make sure I
11 caught all that was offered at the last of Mr.
12 Gillette's statement.

13 Could you go over that again, please.

14 MR. GILLETTE: Certainly. What we would do,
15 Commissioner, is credit the fuel clause with the
16 incremental costs of making -- fuel costs of making
17 the sales, credit the environmental cost recovery
18 clause with the incremental SO2 costs associated with
19 making the sales, cover our variable O&M costs through
20 above-the-line operating revenues, and then the
21 remaining revenues from the sales, which we term the
22 benefits, would be all flowed through the fuel clause.

23 MR. McWHIRTER: As I understand that, the O&M
24 costs are around 4 million of the 9 million, so I
25 presume approximately 5 million would flow through as

1 opposed to the 2 million that was offered earlier?

2 MR. GILLETTE: Well, the benefits of the sales
3 are about 10.2 million. And variable O&M is about 4
4 million based on the numbers that are in the record of
5 this proceeding.

6 MR. McWHIRTER: So it's 6.2 as opposed to --

7 MR. GILLETTE: No, sir. If you look at fuel, SO2
8 allowances, those costs, and then look at the revenues
9 above that, we are looking at \$14.8 million.

10 There is about \$4 million in variable O&M, and
11 there is \$10.2 million in remaining benefits.

12 MR. McWHIRTER: And 10 million would flow through
13 the fuel clause?

14 MR. GILLETTE: That's correct.

15 MR. McWHIRTER: Madam Chairman, this is a banner
16 occasion for me. I have been appearing before this
17 Commission for 25 years, and this the first time I
18 have ever had an opportunity to testify. And it's a
19 pleasure.

20 And this is what I thought I would do. I
21 listened very carefully to the tape of your last
22 agenda discussion to the questions you asked. And in
23 order to be precise and short, and I will try to keep
24 it under ten minutes, I thought I would address each
25 question that was raised.

1 The first question raised by Mr. Deason was
2 whether or not the stipulation is dispositive of the
3 entire case. At that same time he said that he does
4 not want to disturb the sanctity of any stipulation,
5 and he wants to let people have the knowledge that
6 when they enter into bonafide agreements that the
7 Commission approves that it will uphold them.

8 The answer to that question, whether the
9 stipulation is dispositive of the case is, yes, it is.
10 The second question is why wasn't it raised as an
11 issue? Commissioner Clark echoed the same question,
12 and she said she didn't know whether it required
13 testimony on the subject or whether it could be
14 handled in briefs. Possibly some testimony would be
15 required. The reason it wasn't raised as an issue was
16 it's not a question, it's an answer to two questions
17 that were, in fact, raised.

18 These are Issues Number 2 and Issue Number 5, and
19 tangentially Issue Number 8. Those questions were how
20 do we treat the -- well, to be precise, let me -- I
21 don't have them right here before me, but, essentially
22 it is how do we treat the non-fuel revenues in this
23 case. And our response is that you treat them the way
24 Tampa Electric Company agreed to treat them in the
25 stipulation that was approved by the Commission.

1 Commissioner Deason said then that he was -- he
2 thought that the stipulation clause 5(f) was ambiguous
3 in that it was -- he didn't say it was ambiguous, he
4 said it was subject to two interpretations. One is
5 the interpretation that was given to it by the staff,
6 which was that the stipulation is, in fact,
7 dispositive of the case.

8 The second interpretation was that this section
9 means that if there is a determination that there is
10 to be a separation, then this would be the procedure
11 that would be used to effectuate the separation would
12 be handled as per the case in 1993.

13 I would respectfully suggest to you that the case
14 in 1993, historically speaking, was an outgrowth of a
15 number of things that happened. In 1984 Tampa
16 Electric came in with Big Bend Number 4, a major unit,
17 and there was some estimate that it had between 28 and
18 40 percent reserve margin. It had too much reserve
19 margin. At that point in time, there was a -- we
20 requested it not be put in rate base.

21 The Commission framed a settlement philosophy in
22 the case, and said we will put it in the rate base.
23 The first two years the excess revenue required is
24 covered by the agreement with Florida Power & Light,
25 but after that we will direct Tampa Electric Company

1 to sell the excess power in the wholesale market and
2 it attributed \$37 million to Tampa Electric for
3 wholesale sales.

4 Nothing happened again until 1992, when Tampa
5 Electric came back before this Commission. And in
6 1992, Tampa Electric said it needed to be incentivized
7 to make off-system sales. It had several different
8 kinds of contracts, but the preeminent contract under
9 consideration in that case was Schedule D contracts
10 with FMPA and New Smyrna Beach and others by which
11 Tampa Electric had committed five years of capacity to
12 these municipalities.

13 The Commission staff argued that those
14 commitments were superior or at least in parity with
15 the firm customers of the utility system and,
16 therefore, based on previous Commission policy, they
17 should be separated. And that is what the Commission
18 did. At that time Tampa Electric suggested that it
19 keep 60 percent of the revenue, or 40 percent of the
20 revenue and flow 60 percent back to the customers
21 through the fuel clause.

22 There was another issue addressed on Page 85 of
23 the '92 order, and that had to do with what to do with
24 all other sales that are not separated. All those
25 other sales fall into categories in which there are

1 as-available sales, emergency sales, or they are sales
2 on the economy broker. The ones on the economy broker
3 are taken care of with the 20 percent commission that
4 Tampa Electric gets.

5 And as to all of the other sales, essentially the
6 Commission ruled in that case that those were
7 nonseparated and, therefore, 100 percent of the
8 revenue should flow back to the customers in the
9 fashion provided in the order. And that's essentially
10 the offer that has been made today by Mr. Gillette.

11 I would suggest to you most respectfully that the
12 negotiating process was -- it was lengthy, there was
13 give and take. And in this negotiating process, the
14 issue was should Tampa Electric give back 100 percent
15 of its overearnings in '95 and '96. We agreed to less
16 than 100 percent of the earnings. We agreed that 40
17 percent of the overearnings could be retained by Tampa
18 Electric.

19 We argued about what to do with Port Manatee,
20 since that site appeared not to any more be valuable
21 to ratepayers for future plant site. And Tampa
22 Electric conceded on that point and left Port Manatee
23 out.

24 But what Tampa Electric really wanted in the case
25 was to have the Polk plant in the rate base, and we

1 agreed to that. And it was told to you early on that
2 the value of that to Tampa Electric, that ruling, was
3 about \$100 million in revenue per annum as a result of
4 the cost impact of that plant in rate base.

5 We asked for a quid pro quo to that. And the
6 quid pro quo was that all of the other wholesale sales
7 be separated as they had been done in the last case
8 where you dealt with it in detail. And that's
9 essentially how the stipulation came down.

10 And we think that the Commission should honor it.
11 We think Tampa Electric addressed the issue in the
12 case. Mr. Ramil testified that this proceeding was in
13 keeping with the stipulation, but then he failed to
14 prove that it was in keeping.

15 In fact, he pointed out, as they have indicated
16 today, that the customers will be relieved of a \$71
17 million obligation to support a plant that is now
18 dedicated exclusively to wholesale sales. And we
19 think that that is an appropriate thing.

20 If the wholesale customers has a first call on
21 it, if interruptible customers will be interrupted
22 before -- native customers who are paying their fair
23 share of the costs are interrupted so that these
24 wholesale sales can be made, if firm customers can be
25 interrupted, there is some dispute in that, Ms.

1 Brannock (phonetic) said they could, Mr. Ramil -- no,
2 I guess Mr. Ramil said they could, Ms. Brannock
3 equivocated on the issue and said they were at parity.

4 But if the regular customers come behind these
5 wholesale sales, who should have the obligation to
6 carry the basic cost? It should be on the people that
7 have first call on that plant.

8 So the final question you made was what was
9 agreed to and what does it mean, and I have just
10 answered that question before stating the question,
11 and I yield to Public Counsel.

12 Well, there was one question. Is there a desire
13 to separate? On the part of FIPUG, there was a desire
14 to separate.

15 MR. HOWE: Commissioners, I'm Roger Howe with the
16 Public Counsel's Office. With me is Mr. Shreve, the
17 Public Counsel.

18 I'm afraid I have to deviate a little bit from
19 what I planned on presenting because of a comment that
20 Mr. Gillette made, and that was a statement that -- I
21 tried to write it down. He said the company showed
22 benefits without contradiction. We contradict and
23 dispute that claim completely.

24 Before this company entered into these sales, the
25 customers were getting \$3-1/2 million over the time

1 period covered by these sales of economy sales, the 80
2 percent share that flowed to customers. That was lost
3 to the customers. So we think you need to look at
4 this case first on the facts and then hopefully I can
5 address that quickly and we will get on to the
6 stipulation itself.

7 Without entering into this transaction at all, or
8 these transactions of FMPA and Lakeland, the customers
9 would have \$3-1/2 million more of a flowback of their
10 80 percent share of economy sales. Those were taken
11 away when they entered into the FMPA sale. In their
12 place, the company offered 2.4 million, of which they
13 were guaranteed 2. It's a bad deal for the customers.

14 The second point on the facts. Under the
15 Commission's March 11th --

16 COMMISSION STAFF: Chairman Johnson, I'm sorry, I
17 just have to remind the parties, and Roger's argument
18 is excellent, but we must limit ourselves to the
19 stipulation. If we don't, we have got some serious
20 due process problems with this. I apologize, and do
21 what you will.

22 MR. HOWE: I'm sorry, I have to say the staff
23 attorney should have interjected that when Mr.
24 Gillette said that without contradiction the company
25 showed benefits. I can't let that ride. That is

1 before you now.

2 The second point I was going to make on the facts
3 was under the Commission's March 11th, 1997 order, if
4 the company didn't offer any proposal at all, you
5 would use weighted average inventory cost for all
6 wholesale sales, all new wholesale sales, which would
7 reduce the customers' fuel adjustment charges.

8 The company has substituted an incremental fuel
9 cost which increases the fuel charges, I believe, by
10 more than the \$2 million they are offering. Before we
11 ever get to the stipulation, the company's proposal is
12 less than the increased charges the proposal would
13 impose on the customers.

14 Now, let's get to the procedure. Commissioners,
15 we received an order establishing procedure in this
16 docket that required that the issues be identified
17 before the company filed its testimony. I think that
18 gave rise to much of the confusion.

19 Now, the important part, the stipulation. The
20 important thing for the Commission to consider here is
21 what does the Commission think it approved in the
22 order approving the stipulation? Commissioners, at
23 Page 4 of Order Number PSC-96-1300, the Commission
24 says the stipulation continues to use the separation
25 procedure adopted in the company's last rate case to

1 separate any current and future wholesale sales from
2 the retail jurisdiction. That was your understanding.

3 Commissioners, I should tell you that on
4 September 25th when we signed that stipulation
5 everybody understood that it applied to all current
6 and future wholesale sales. Your staff, however,
7 recognized that to be true and recognized the problem
8 with it.

9 Your staff recognized that if that were applied
10 consistently to all future sales, in a situation in
11 which the company was to enter into new wholesale
12 sales out of the Polk unit, priced at the incremental
13 cost of fuel out of Polk, which would be low, they
14 would be allowed to use the system average cost to
15 separate the rate base component.

16 But Polk is significantly more expensive than the
17 system average. So at staff's behest we entered into
18 an amended stipulation that provided that if there
19 were a wholesale sale made at the incremental cost of
20 Polk, the Commission would be allowed to determine the
21 separation methodology to apply. All other sales,
22 current and future, would be separated in the same
23 manner used in the company's last rate case.

24 Commissioners, I want you to face this, if you
25 would, please, from the case the company put forward.

1 At the hearing, Mr. Ramil testified on the issue. And
2 the only argument that the company made about how this
3 stipulation could be viewed, and here is the question,
4 in the September 25th, 1996 stipulation between Tampa
5 Electric, Office of Public Counsel, and FIPUG,
6 reference is made to the regulatory treatment of
7 existing and future wholesale sales.

8 What is the impact of this reference on the
9 treatment of the FMPA and Lakeland agreements? And,
10 Commissioners, I'm reading from transcript Pages 44 to
11 45. And Mr. Ramil answered, "Upon filing of the
12 September 25th, 1997 --" an incorrect reference --
13 "stipulation, the Commission staff pointed out that it
14 believed that a sale from the Polk Power Station might
15 warrant different treatment than the treatment
16 afforded other sales in the stipulation.
17 Consequently, an amendment to the stipulation was
18 negotiated and approved by the Commission which
19 provided that the Commission would review the
20 treatment of any wholesale sale from the Polk Power
21 Station. Like a potential sale from the Polk Power
22 Station, the FMPA and Lakeland sales are different
23 sales and, therefore, require review for appropriate
24 regulatory treatment."

25 The company's position was to try to bootstrap to

1 the exception we stipulated to for the Polk Power
2 Station. It clearly does not apply. This case, this
3 hearing, this docket has nothing to do with sales made
4 at the incremental cost out of the Polk unit.

5 The stipulation is clear, the Commission's order
6 approving the stipulation is clear. Any and all
7 wholesale sales other than those priced at the
8 incremental cost of Polk must be separated in the same
9 manner used in the last rate case.

10 I will yield whatever time I have remaining for
11 Mr. Shreve.

12 MR. SHREVE: I will be very brief. We have
13 negotiated a lot of settlements, and we haven't had
14 this problem before. All we want is the plain
15 language of the settlement that was agreed to. That
16 language is reinforced by the fact that we put in a
17 staff-requested exception for the Polk unit, not for
18 others. That makes the case more than anything else.

19 I hope to continue working on settlements. Mr.
20 Gillette drafted the language he is talking about
21 according to their President. He neglected to tell
22 you what the impact -- and this came out in settlement
23 negotiations, so even at this point even though I
24 think he has gone further than normally we would when
25 we have agreements on discussing settlement

1 negotiations, I'm not going to reveal the amount to
2 you, I'm sure you would be interested in it.

3 In this settlement one of the prime negotiating
4 factors in this was that down the line there are going
5 to be refunds to the customers based on their retail
6 earnings. He neglected to tell you what this change
7 that they are asking for and how that would impact
8 that refund because of the impact on their retail
9 revenues. All we want is the settlement, the plain
10 language of the settlement, and what was agreed to by
11 both parties and drafted by TECO. Thank you.

12 CHAIRMAN JOHNSON: Commissioners.

13 COMMISSIONER DEASON: Yes, I have a question. I
14 will ask Mr. Howe. I think early on in TECO's
15 argument they made the point that the stipulation only
16 addresses what I refer to as rate base type costs;
17 capital costs, O&M, non-fuel. Do you agree with that
18 characterization?

19 In other words, there is an issue in this
20 proceeding concerning the treatment in the fuel clause
21 of -- in fact, I think it's what triggered the entire
22 investigation, was whether we use average embedded or
23 we use incremental.

24 And I think as I understand what Mr. Gillette was
25 saying is that under any interpretation of the

1 stipulation that does not affect -- that is still an
2 open issue. Do you agree with that?

3 MR. HOWE: I do not agree that it is an open
4 issue. And the reason I do not agree is the
5 Commission's order states that in the absence of a
6 utility's ability to demonstrate overall benefits,
7 average fuel costs must be used.

8 So, the order says use average fuel costs unless
9 benefits can be shown. I would suggest that that has
10 to mean that you can use something other than average
11 fuel costs only by showing benefits in another area,
12 which limits you to the rate base area which Tampa
13 Electric negotiated away. So, the fuel issue --

14 COMMISSIONER DEASON: You are indicating to me
15 during your argument that there are benefits by
16 separating. Primarily there are going to be perhaps
17 additional refunds under the stipulation by
18 separating. Obviously you think that separation is
19 more advantageous to customers than the requested
20 treatment by TECO.

21 MR. HOWE: Intuitively, I feel that. Actually, I
22 don't know. And the reason is the company hasn't
23 offered any information, and I want to kind of throw
24 this back to you, Commissioner, and Commissioners,
25 what do you know?

1 You know that Tampa Electric in the hearing
2 offered a \$2 million guarantee. Now, on the record of
3 that proceeding you know that the customers are
4 foregoing 3-1/2 million of economy sales. You know
5 the customers are going to forego some benefit that
6 the company has not quantified in the fuel docket by
7 using system incremental costs instead of average
8 costs.

9 And you know that there is some difference
10 unquantified by the company between the separation
11 called for in the stipulation and the \$2 million the
12 company is proposing. But we don't know what those
13 numbers are.

14 COMMISSIONER DEASON: You would agree, would you
15 not, though, that the reason this is an issue is
16 because these sales were made. And these sales were
17 made, and this is in the record and has been testified
18 to by TECO because the sales are above incremental
19 costs so that there are benefits to help cover the
20 fixed costs.

21 And that if those sales had not been made, we
22 wouldn't even be arguing this. Those amounts that you
23 are now saying should be separated would be in rate
24 base and there wouldn't even be an argument about it.

25 MR. HOWE: That's correct. And that would --

1 COMMISSIONER DEASON: And that would be the
2 burden on retail customers.

3 MR. HOWE: Yes, sir, except retail customers
4 would have two things if they had not entered into
5 these sales at all. They would have \$3-1/2 million of
6 their 80 percent share of economy sales, first; and,
7 secondly, they would have the reliability of all the
8 assets they were paying for.

9 In other words, the customers would pay less and
10 they would be getting their money's worth for all the
11 assets they were supporting in rate base. Tampa
12 Electric's proposal took both elements away and
13 offered --

14 COMMISSIONER DEASON: When you say both elements,
15 you are talking about the 80 percent share of economy
16 and what else?

17 MR. HOWE: And the reliability associated with
18 having those assets available.

19 COMMISSION STAFF: Commissioner, could I comment?

20 MR. HOWE: I don't want to speak here for FIPUG,
21 Mr. McWhirter is quite capable of that, but that
22 increases the likelihood of interruption and
23 buy-throughs for industrial customers and increases
24 their costs.

25 Commissioners -- and my point is you don't have

1 information provided by a company with the burden of
2 proof showing you that their proposal results in net
3 benefits. The simple fact that revenues exceeded
4 incremental expenses doesn't mean benefits. Benefits
5 to the customers means they would be better off with
6 the sale, with the proposal of the company and with
7 these sales than they would be without them. And I
8 would suggest you have no showing at all in that
9 regard.

10 COMMISSIONER DEASON: Well, how were you able to
11 determine then that customers are better off by
12 separating them?

13 MR. HOWE: All right. Taking it by steps. First
14 of all, no proposal at all. No sales at all to FMPA
15 and Lakeland. Customers get \$3-1/2 million of their
16 80 percent share of economy. That's my starting
17 point. The company enters into the contracts and
18 immediately those \$3-1/2 million disappear. In their
19 place, the company proposes to guarantee \$2 million.
20 I do not see benefit.

21 Secondly, pursuant to the fuel order which
22 conferred benefits on the customers, the company
23 without making this proposal would have to use average
24 fuel costs for the FMPA and Lakeland sales. In their
25 fuel adjustment docket schedules, the use of average

1 costs for those wholesale sales reduces the retail
2 fuel cost responsibility. The reason is you take
3 total company cost, you subtract the higher number,
4 which currently is true with average versus
5 incremental, and you have less responsibility for the
6 retail jurisdiction. I do not know exactly what that
7 dollar is.

8 COMMISSIONER DEASON: But if the sales had not
9 taken place, there wouldn't be an issue about average
10 or incremental fuel costs. The fuel costs would be
11 what fuel costs are.

12 MR. HOWE: Fuel costs would be what fuel costs
13 are and those fuel costs would reflect \$3-1/2 million
14 of economy flow-through.

15 COMMISSION STAFF: Commissioner, can I comment?
16 The \$3.5 million that Mr. Howe has referenced is
17 included in the calculation of the benefits that Tampa
18 Electric did. The 10.2 million in benefits that I
19 referenced earlier includes the cost associated with
20 the loss of the economy sales.

21 With regard to the average fuel and the
22 interpretation of the March 11th order of the
23 Commission, our interpretation, as we said, is that
24 the total benefits, if the utility can show total
25 benefits of the sale, then some other treatment, and

1 namely incremental fuel revenues being credited to the
2 fuel clause, can be allowed by the Commission.

3 And we have shown taking the revenues of these
4 sales and comparing them to the incremental costs of
5 making the sales, including fuel, O&M, SO2 allowances,
6 and we think we have captured all the costs, that
7 there are benefits. And so we would contend that we
8 have met the test of the March 11th order with regard
9 to fuel.

10 I would also say that in the hearing there was a
11 lot of discussion about incremental costs and average
12 costs and the impact of sales on costs. And I think
13 the record is clear that crediting incremental costs
14 of making sales to the fuel clause will keep the
15 customers, the retail customers neutral with regard to
16 cases with and without the sales.

17 COMMISSIONER DEASON: This was under your latest
18 proposal you are speaking?

19 COMMISSION STAFF: Well, it's under both of our
20 proposals. Because under our hearing proposal --

21 COMMISSIONER DEASON: Your latest proposal is 100
22 percent.

23 COMMISSION STAFF: That's correct. That's
24 correct.

25 MR. McWHIRTER: Mr. Deason, may I respond to your

1 question? As you know, all through this case I have
2 been having to fight it with half of my brain tied
3 behind my back, because we don't know what the
4 incremental costs are. That information was denied to
5 FIPUG. But there is a delta between incremental costs
6 and average costs.

7 It's entirely conceivable that that delta won't
8 even be made up by this additional \$10 million. The
9 average fuel cost may not fully be covered if the \$10
10 million were flowed through the fuel clause as Tampa
11 Electric --

12 COMMISSIONER DEASON: But there is a \$2 million
13 guarantee.

14 MR. McWHIRTER: There is a \$2 million guarantee,
15 but that may be far less than the actual increase in
16 fuel costs. You think, your mind --

17 COMMISSIONER DEASON: But the guarantee is
18 regardless of what fuel costs are. Fuel costs can go
19 through the ceiling, and as understand it, TECO is
20 still guaranteeing 2 million of benefits to be flowed
21 through the cause.

22 MR. McWHIRTER: The point I'm trying to make,
23 Your Honor, is that if incremental fuel cost is \$63
24 million over the term of the contract, and average
25 fuel cost is \$80 million over the time of the

1 contract, \$2 million won't cover the delta, the
2 difference between 63 and 80.

3 COMMISSIONER DEASON: Well, now to have 63
4 incremental and 80 average means that you are getting
5 it a whole lot cheaper incrementally, which means
6 those benefits derive only because those sales were
7 entered into to begin with.

8 MR. MCWHIRTER: No. And that is the second point
9 I wanted to make. You would think that because these
10 sales have been made the price goes down. The price
11 does not go down because these sales are made. And
12 point in fact, because these sales are made Tampa
13 Electric goes off system and purchases power at a much
14 higher price in order to meet the demands of its
15 average customer.

16 These incremental prices that are used are monies
17 that comes from Tampa Electric's native customers
18 selling as-available power as part of it, and we sell
19 it at \$13 a megawatt, buy it back at \$40 a megawatt
20 hour.

21 So, I would suggest to you that these sales
22 didn't bring the overall price down, they just took
23 away the opportunity of the native load customers to
24 participate in the load cost incremental sales that
25 were already there, and brought in higher priced

1 energy from outside the system.

2 COMMISSIONER DEASON: Well, I guess I need to
3 apologize, I think that we have kind of strayed in our
4 debate here, and we are basically on the merits. And
5 what we are here for is the language in the
6 stipulation and whether it is dispositive or not of
7 the issues.

8 MR. MCWHIRTER: Yes. I was responding to your
9 question.

10 COMMISSIONER CLARK: I would like to ask a
11 question of staff. Will you give me -- tell me when
12 the stipulation was entered into, and when it was
13 approved? And I assume the approval had the
14 supplemental stipulation as part of it. And if that
15 is not correct, please let me know.

16 COMMISSION STAFF: The order approving the
17 stipulation is dated October 24th, 1996, and the
18 stipulation itself --

19 COMMISSION STAFF: Commissioner Clark, the first
20 stipulation was signed on September 25th, the amended
21 stipulation on September 27th, 1996.

22 COMMISSIONER DEASON: The amendment was at
23 staff's request?

24 COMMISSION STAFF: Yes, sir.

25 COMMISSIONER DEASON: And that had to do with

1 making an exception for Polk Power, leaving that open
2 as far as how or if that would be separated?

3 MR. HOWE: Yes, sir. Commissioner Deason, it's a
4 short paragraph, I can read it to you. And it reads,
5 "Paragraph 5(f) of the second stipulation --" the
6 first stipulation was from a previous docket --
7 "Paragraph 5(f) of the second stipulation is hereby
8 amended to add the following sentence: The parties
9 agree that if Tampa Electric makes an off system-sale
10 priced based on the unit incremental fuel costs of the
11 Polk IGCC unit, the Commission shall not be precluded
12 from determining the appropriate separation treatment
13 of the Polk IGCC unit for that specific sale."

14 And the second paragraph, it's just one sentence,
15 "The second stipulation is hereby ratified except as
16 specifically modified herein." And that is the whole
17 amendment.

18 COMMISSIONER DEASON: Now, the language in
19 Paragraph (f), which is being quoted and is in staff's
20 recommendation, that was in the original and it was
21 also in the final stipulation, it's just that it was
22 modified to some extent by this amendment?

23 MR. HOWE: It was in the September 25th
24 stipulation, yes, and it was amended by this paragraph
25 I just read to you. Does that answer your question?

1 COMMISSIONER DEASON: Well, I guess I'm trying to
2 understand, it's your position that the sales in
3 question would have had to have been separated
4 regardless of whether the amendment would have been
5 put in at staff's request?

6 MR. HOWE: Yes, sir, because -- and I think
7 properly so, staff recognized that the stipulation as
8 originally entered into covered all future wholesale
9 sales, and staff was concerned that an anomaly could
10 exist if the company was able to structure a new
11 wholesale sale priced at the incremental fuel cost of
12 Polk, which was low, but not priced at the embedded
13 cost of Polk. It would then be at the system average
14 pursuant to the language in the stipulation.

15 So this modification was made so that sales
16 priced at the fuel cost of Polk would be subject to
17 this Commission's determination of appropriate
18 separation.

19 COMMISSIONER DEASON: And it's your position that
20 the language in question, Paragraph (f), that that was
21 negotiated, it was included, and it's your position
22 that it requires the sales in question to be
23 separated?

24 MR. HOWE: Yes, sir. And it's by the clear
25 language, and it's also by the dates. Keep in mind

1 that we signed the stipulation on September 25th, and
2 seven days later on October 2nd, Tampa Electric signed
3 the letter of commitment with FMPA. The negotiations
4 for both must have been going on at the same time.

5 COMMISSIONER DEASON: Now, Mr. Gillette, you
6 indicated that if TECO had known that this stipulation
7 required separation as indicated by Mr. Howe and Mr.
8 McWhirter, that you would not have entered into these
9 sales?

10 MR. GILLETTE: That's correct.

11 COMMISSIONER DEASON: So obviously you thought
12 that this provision did not require the sales to be
13 separated.

14 What gave you that indication that this language
15 did not require that?

16 MR. GILLETTE: We were focused on the Big Bend
17 sales. As I mentioned, there had been a lot of
18 consternation over the regulatory treatment of the Big
19 Bend sales, and we knew that the Big Bend sale
20 contracts were going to be winding down over time.
21 And as those contracts wound down over time, we wanted
22 through the stipulation the ability of that rate base
23 that had been separated for the Big Bend sales to come
24 back into rate base. And that was our focus and our
25 intent in proposing --

1 COMMISSIONER DEASON: But you are looking at in
2 one direction, that is getting things back in rate
3 base, you were looking in the direction if you make
4 sales you may be taking things out of rate base.

5 MR. GILLETTE: And to the extent that the level
6 of Big Bend sales increased, as it did in 1995, we
7 would adjust the separation factors proportionately
8 upwards to separate more rate base and expenses for
9 the Big Bend sales as we had since the 1992 rate case.

10 COMMISSIONER DEASON: Well, if it was your
11 understanding that would apply to Big Bend, why is it
12 then it does not apply for FMPA and the other
13 contracts?

14 MR. GILLETTE: These sales are hybrid sales, they
15 are sales that are different. In the last rate case,
16 the Commission chose not to separate Schedule J sales
17 and also some of our Schedule D sales.

18 COMMISSIONER CLARK: Is the basis for your saying
19 they are hybrid is because you can provide
20 supplemental energy?

21 MR. GILLETTE: There is actually more than that,
22 Commissioner.

23 COMMISSIONER CLARK: That's part of it.

24 MR. GILLETTE: Yes, part of is it supplemental
25 energy. Another very significant part is that the

1 market is changing for wholesale sales, and the
2 margins are significantly lower on these sales than
3 the Big Bend sales.

4 COMMISSIONER DEASON: But your stipulation
5 doesn't say anything about a changing market. See,
6 I'm having difficulty. I'm trying to maintain the
7 sanctity of the stipulation, and all I've got is the
8 plain language on there.

9 MR. GILLETTE: Sure. The pricing of these sales
10 is not at system average cost. And the Big Bend sales
11 at the time they were entered into, the separation of
12 the Big Bend sales was, in fact, at system average
13 cost.

14 And I understand what you are saying,
15 Commissioner, but I respectfully submit that the
16 pricing is a very, very significant difference in
17 these sales.

18 COMMISSIONER DEASON: So we are supposed to
19 interpret, and basically read your mind, that because
20 you priced them at something less than average
21 embedded incremental, that means that this paragraph
22 does not apply to those sales? I'm having a real
23 difficulty, and I'm trying to understand.

24 MR. GILLETTE: Commissioner, I understand that
25 difficulty, and let me see if I can help.

1 Commissioner Clark mentioned another thing that
2 was different about the sales. Let's talk about all
3 the differences of sales. The pricing is different on
4 these sales. The supplemental energy provisions are
5 different on these sales. And the units which these
6 sales are coming from, the Lakeland sale, for
7 instance, is a system power sale. And the FMPA sales
8 comes from Gannon station units, and Big Bend units
9 are completely different.

10 And given those differences in total, our focus
11 at the time that we entered into the FMPA sale was
12 that, yes, a regulatory treatment had to be determined
13 for these sales, and that's why we began meeting with
14 the various parties. Actually, Mr. Byrd called us
15 when he was on the staff to say we need to meet and
16 talk about these sales. And we began talking with the
17 parties about different treatments for these sales.

18 And we understood that separation might be one
19 treatment, but never during any of those discussions
20 did any of the parties suggest that the stipulation
21 was a bar, and that we shouldn't be meeting the seven
22 times that we met before, and then three times after
23 this matter was docketed.

24 And so we believe that the playing field was open
25 as to the treatment for these sales, and we believe

1 that it should have been because of the significant
2 differences that these sales have compared to the Big
3 Bend sales which we were focused on at the time of the
4 stipulation.

5 COMMISSIONER DEASON: When does the stipulation
6 expire?

7 MR. GILLETTE: December 31st, 1999.

8 COMMISSIONER DEASON: And these contracts extend
9 beyond that, is that correct?

10 MR. GILLETTE: Yes, sir. FMPA goes to 2001 and
11 Lakeland goes to 2006.

12 COMMISSIONER DEASON: Mr. Howe, is it your
13 position that once the stipulation expires, then the
14 treatment of these sales is an open issue again, or
15 the fact that this stipulation addresses it for the
16 life of the contract?

17 MR. HOWE: The stipulation is in place for its
18 own terms, through 1999. If I might, though --

19 COMMISSIONER CLARK: You have answered his
20 question, so can I ask some questions? I still want
21 to understand the chronology. September 25th and 27th
22 were the stipulation and the amendments, then it was
23 approved October 24th. When were these contracts
24 entered into?

25 COMMISSION STAFF: I don't know exactly the date

1 that they were --

2 COMMISSIONER CLARK: All right. Let me ask the
3 parties. Mr. Gillette, when were these contracts
4 entered into?

5 MR. GILLETTE: One moment.

6 COMMISSIONER CLARK: And while he is looking for
7 that, when was the issue of the appropriate treatment
8 of the fuel costs first identified, and what fuel
9 adjustment was it identified in?

10 MR. HOWE: Commissioner Clark, I can answer that.
11 I raised the issue. We raised the issue first in
12 February of 1996, the fuel issue, and it was deferred
13 from consideration until the August 1996 fuel
14 adjustment hearing.

15 It was heard at the August hearing, but then
16 briefs and so forth were allowed to be filed. We
17 filed our briefs probably in November of '96. One of
18 the curious things about this and these dates is the
19 Commission was originally scheduled to vote on
20 February 4th of 1997 on the fuel issue, and there was
21 some confusion about the panel assignment. And so it
22 was deferred to the February 18th, 1997 agenda.

23 Coincidentally, the fuel adjustment hearings were
24 February 19th and 20th, so you had all of these dates.

25 COMMISSIONER CLARK: Okay, thanks. Mr. Gillette.

1 MR. GILLETTE: Yes, Commissioner. The Lakeland
2 letter of commitment was signed on August 19th, 1996,
3 and the FMPA letter of commitment was signed on
4 October 2nd, 1996.

5 COMMISSIONER CLARK: And just so I'm clear, Mr.
6 Gillette, the reason you think these should be treated
7 differently, or to put it in your words, the reason
8 you were not focusing on this type of agreement was
9 the pricing was different. And by that I take it you
10 mean you were not pricing it the way you had normally
11 done it, but you were doing it on an incremental cost
12 in recognition of a competitive market.

13 MR. GILLETTE: Yes.

14 COMMISSIONER CLARK: Okay. And these were
15 different units, it wasn't Big Bend and it wasn't
16 Polk.

17 MR. GILLETTE: That's right.

18 COMMISSIONER CLARK: And it had supplemental in
19 it?

20 MR. GILLETTE: Yes, that's correct.

21 (Simultaneous conversation.)

22 COMMISSIONER CLARK: That's your position as to
23 the reason why these weren't covered by the
24 stipulation?

25 MR. GILLETTE: Yes. And given the differences in

1 these sales and given what Mr. McWhirter spoke about
2 early in his presentation with regard to the
3 Commission's past practice with respect to the
4 treatment of the sales, the different treatment that
5 was afforded Tampa Electric in the 1985 rate case, we
6 were frankly relying on the Commission to look at
7 these sales, given the very different environment in
8 which these sales were made in, and make a decision
9 that was fair to both the company and the customers.

10 COMMISSIONER CLARK: I guess what is confusing to
11 me is the chronology of this. Because if the
12 amendments were made in September 1996, and if it is
13 correct that you signed the letter in August previous
14 to that, and October -- I guess, it seems like when
15 the staff said, "Wait a minute, what about the Polk,"
16 and that was addressed, it should have rung a bell
17 that we need to address this.

18 I appreciate that you have a different view, and
19 I can see where you may have that view, but what we
20 are faced with is giving appropriate consideration to
21 the stipulations and the terms and conditions under
22 which we approved the stipulation. And it sure seems
23 like if it was intended to include -- allow a
24 different treatment, it sure should have been
25 addressed. I mean, that's what it appears to me.

1 MR. GILLETTE: Commissioner, I understand what
2 you are saying. I would respectfully submit that,
3 again, we were focused on the Big Bend sales. The
4 Lakeland sale, as a for instance, that you referenced,
5 the August 19th date in which we entered the Lakeland
6 sale, at the time that we entered the Lakeland
7 agreement it was a non-firm transaction to be served
8 after all of Tampa Electric's load, including
9 interruptible customers.

10 We talk about differences associated with these
11 sales and you are articulated very well and
12 paraphrased very well what I said earlier about the
13 differences of the sales. Lakeland was yet again
14 different at the time we entered into it because of
15 its non-firm nature. And, again, we believe that
16 these sales were different.

17 We were not focused on the stipulation language.
18 We believe that the other parties were not focused on
19 the stipulation language when we began to meet with
20 them. And we think that given that Schedule J sales
21 are put through the fuel adjustment clause, and broker
22 sales are not treated as separated sales, either, that
23 these different sales deserve a different treatment.
24 And that was our focus at the time.

25 CHAIRMAN JOHNSON: Any other questions? Staff,

1 were you going to provide some comments?

2 COMMISSION STAFF: Not at this time.

3 COMMISSIONER DEASON: Let me say, Mr. Gillette,
4 the difficulty I'm having is that, you know, we sat
5 through the hearing and I listened to all the evidence
6 and your witnesses, and Public Counsel's, and FIPUG,
7 and tried to really dig into the merits of the
8 arguments about if there are benefits, what are the
9 benefits, and how are they derived, and how are they
10 going to be accounted for, and what safeguards do we
11 need to put in place.

12 And then we get the recommendation. And it says,
13 you know, this is dispositive of it, and now I hear
14 the oral argument on it, and I appreciate you all
15 coming forward with oral argument. And I am very
16 hesitant or reluctant to do anything which I think is
17 going to violate at least two of the parties'
18 interpretation of the stipulation.

19 I think it does extreme harm to the process to
20 perhaps be making interpretations of a stipulation
21 contrary to what two parties say it was in their
22 understanding and their -- it was something that was
23 in their minds and they knew -- what they thought it
24 was going to mean.

25 And I know you have a different point of view.

1 The difficulty I'm having is that I have listened to
2 all the testimony, and I think you make a very
3 compelling case that there are benefits, that we are
4 in a different environment now, that we do have to
5 consider competitive aspects, and that if you can
6 demonstrate that there are benefits, there are
7 revenues, incremental revenues in excess of
8 incremental costs, even considering the lost revenue
9 from the \$3-1/2 million, you make a very compelling
10 case.

11 But at the same time, I'm faced with this
12 stipulation. And I am very hesitant -- in fact, I can
13 tell you right now I cannot vote to what I would
14 consider to be perhaps a violation, and I know I've
15 got two signatories to the stipulation who are sitting
16 here today telling me that if you vote that way it is
17 a violation.

18 And I think it's going to do harm to the process,
19 not only for your company, but for other entities that
20 we regulate and we try to encourage stipulations.

21 CHAIRMAN JOHNSON: Any other comments? Is there
22 a motion then?

23 COMMISSIONER DEASON: Well --

24 COMMISSIONER CLARK: I would just indicate I'm
25 inclined to agree with Commissioner Deason. I think

1 not only do you have the stipulation and the same
2 language in the stipulation, you also have the effect
3 -- the concern raised with respect to specific units
4 by the staff. And at that point I guess in my mind it
5 should have triggered that there may have been a
6 misunderstanding in the way it was drafted and it
7 should have been taken care of.

8 And certainly the language cited in the order
9 seems to suggest that the stipulation was approved on
10 the basis that it was only -- that the exception was
11 only being made for the Polk power unit. And I would
12 assume what we decide does not preclude a different
13 treatment after the stipulation has expired.

14 COMMISSIONER DEASON: I would agree that once the
15 stipulation expires that these contracts would
16 continue and the Commission would be free to look at
17 the merits of the issues and determine whether it
18 should or should not be separated and what treatment
19 should be given.

20 Also, I think it's an open issue as to how we
21 treat fuel, that the stipulation does not dictate to
22 the Commission how we are going to treat the fuel
23 aspect, the fuel adjustment aspect of the fuel cost.

24 Now I know that at least it's one position, I
25 guess it's in staff's primary that the only way you

1 can show net benefits is if these sales -- the
2 revenues are accounted for on a nonseparated basis,
3 and if it is separated you cannot demonstrate the
4 benefits. So I'm having a little bit of difficulty
5 with that.

6 Our alternative recommendation says that
7 regardless of the stipulation there are benefits. So
8 I'm having a little bit of difficulty. Maybe staff
9 can help me out a little bit.

10 MS. KUMMER: Commissioners, the primary
11 recommendation on fuel was based on the logic that
12 TECO proved or used as a basis for showing of net
13 benefits the fact that they were crediting back
14 revenue as opposed to separating it. And their
15 construction of net benefits disappeared if you
16 separated, and that was the basis for staff's
17 recommendation in the primary on fuel, based on the
18 way TECO defined net benefits in their presentation.

19 COMMISSIONER DEASON: But they did demonstrate --
20 and I think at least to the satisfaction of
21 alternative staff, that incremental revenues under
22 these sales are higher than incremental cost, even
23 considering the lost economy sales benefit to
24 customers, is that correct?

25 COMMISSION STAFF: Yes, sir. And that is

1 assuming that we were to adopt their proposal. I
2 think that we are on a track now where we are saying
3 that if we separate these sales are there still net
4 benefits associated with them. And alternative staff
5 would agree that there are. Then you have the
6 opportunity to treat fuel differently than prescribed
7 in the March 11th fuel order.

8 COMMISSIONER DEASON: So you are saying that even
9 if these sales are separated, there are still
10 benefits?

11 COMMISSION STAFF: Yes, sir.

12 COMMISSIONER DEASON: And that would justify
13 treatment of fuel costs on an incremental basis as
14 opposed to averaging them out?

15 COMMISSION STAFF: Yes, sir.

16 MR. GILLETTE: Commissioner, if I could make a
17 quick comment.

18 COMMISSIONER DEASON: Just a second. I'm
19 hesitant to ask Mr. Howe, but I'm going to ask him
20 what is your opinion on that? And then, Mr. Gillette,
21 I will ask you.

22 MR. HOWE: A couple of points. One is,
23 Commissioner Deason, I think if you look at the
24 alternative staff's recommendation they do not factor
25 in the lost \$3-1/2 million of economy sales. Mr.

1 Gillette told you that it was included in their
2 analysis of net benefits, and I do not disagree with
3 that it is in that \$10 million associated with the
4 FMPA. However, only \$2 million was to be flowed
5 through to customers.

6 I am reasonably confident if you were to ask
7 Tampa Electric, for example, do they agree that the
8 customers lost \$3-1/2 million of economy, and all they
9 are going to see guaranteed under your proposal is 2
10 million, they would agree with that. So --

11 COMMISSIONER CLARK: I thought they said that the
12 2 million figured in that 3 million.

13 MR. HOWE: No, he said the 2 million was included
14 in their calculation of net benefits, but the net
15 benefits they calculated was \$10 million. They only
16 guarantee \$2 million going to customers, the other
17 they were going to book as operating revenues which
18 would only show up on a surveillance report.

19 COMMISSIONER DEASON: But would it perhaps
20 increase the refund, if any, for overearning?

21 MR. HOWE: Well, then you've got to get into the
22 stipulation and with that increase the refunds even
23 more. So my point is to answer your question, I don't
24 think the alternative staff when they said they saw
25 net benefits, I don't think in their recommendation

1 you will see where they have accounted for the \$3-1/2
2 million of lost economy.

3 COMMISSIONER DEASON: Well, let's get back to the
4 fuel. Assuming that we interpret the stipulation such
5 that we are bound, those sales have been made, and
6 they have got to be separated. We are taking out a
7 tremendous amount of rate base out from the retail
8 jurisdiction and the requirement for our retail
9 customers to pay that support.

10 That is a benefit to the customers. But the
11 sales are being made. Is it unfair then to only -- to
12 use incremental fuel costs in the fuel adjustment
13 section of this, of this issue, because you've got
14 incremental costs, incremental revenue. Should there
15 be a wash there I guess is what I'm saying?

16 MR. HOWE: I guess the answer, the way you
17 phrased it first, would it be unfair, the answer would
18 be yes. And the reason it's unfair is because the
19 company separating wholesale sales pursuant to a
20 stipulation with our office is not conferring any
21 benefits. It's just the parties living up to the deal
22 that they struck. So the company is not offering
23 anything at all by entering into these wholesale sales
24 that we did not negotiate.

25 COMMISSIONER DEASON: For something that is not

1 giving any benefits, you are sure fighting mighty hard
2 for it. And I don't mean that facetiously. I mean,
3 you are doing your job in that you think that the
4 customers are going to be benefited by separating it.

5 MR. HOWE: That's not a benefit. In other words,
6 the customers under the stipulation are entitled to
7 refunds on a 60/40 sharing above 11.75 and they get
8 100 percent above 12.75. That just falls out from the
9 way the Commission reports, you know, conducts its
10 surveillance reporting function. So, we are just
11 getting earnings above a certain level that we
12 stipulated to. I don't see it as a benefit coming
13 from the company.

14 COMMISSIONER CLARK: What you are saying is it
15 was part of the deal.

16 MR. HOWE: It was part of the deal. It's nothing
17 new, it's nothing extra.

18 COMMISSIONER CLARK: And it's nothing new, and,
19 therefore, it shouldn't be counted as a benefit.

20 MR. HOWE: Now, if the company wanted to come up
21 and say we will give you even more than the
22 stipulation in return for which we get to use
23 incremental fuel costs, then I think you've got an
24 argument for net benefits. And I think the language
25 in the order might use the term overall benefits. So,

1 no, I don't see that --

2 COMMISSIONER DEASON: No, I'm not trying to
3 insinuate you're doing anything improper. You are
4 advocating very strongly for your clients and you are
5 doing an excellent job.

6 I guess the point I'm trying to make is that you
7 are saying the stipulation requires there to be a
8 separation. I guess what I'm saying is if it had not
9 been for the sales, there wouldn't even be an issue to
10 separate a tremendous amount of rate base out of the
11 retail jurisdiction. And I think you do have to admit
12 that by making that separation the likelihood of the
13 company achieving earnings in excess of the threshold
14 amount are enhanced.

15 MR. HOWE: Yes, which is exactly what we
16 bargained for.

17 MR. MCWHIRTER: Mr. Deason, in fairness to Tampa
18 Electric, it's going to get the money from these sales
19 and it's entitled to keep that money as it pertains to
20 the separated rate base. So, if it keeps that money,
21 then none of the non-fuel revenue flows back to the
22 customers, so there is no benefit in that respect to
23 the customers. And it would be -- I would not
24 advocate that we keep any portion of the money that
25 Tampa Electric gets from those wholesale sales.

1 MR. GILLETTE: Commissioner, if I could comment
2 on the fuel issue that you raised. The difference, I
3 think, that we have here is a frame of reference with
4 regard to the March 11th order that the Commission
5 issued. I think what OPC, respectfully, and the other
6 parties are contending here is a heads we lose, tails
7 we lose approach with regard to the fuel, because they
8 are suggesting that unless we show benefits over and
9 above crediting average costs to the fuel adjustment,
10 then we should credit average.

11 And I think what the Commission intended was a
12 symmetrical treatment, which said if there were
13 benefits, total revenues exceeded total costs from the
14 sales, that you could credit incremental fuel revenues
15 to the fuel adjustment.

16 What would happen in the case that OPC is
17 proposing is that we credit average system fuel costs
18 up until the point that incremental system fuel costs
19 exceeded average, and then we would start crediting
20 incremental fuel costs. And I think that's an
21 asymmetrical treatment.

22 And I would just at this point renew the proposal
23 that we made to flow all of the benefits from the
24 sales back to the customers through the fuel clause.
25 In so doing, the customers would receive 100 percent

1 of the benefits. And, again, I would point out that
2 with regard to this whole question that is before you
3 today with regard to separation, that as I said in my
4 opening comments, OPC noted in their own briefs that
5 full -- and I paraphrase -- full separation can be
6 achieved by flowing back 100 percent of the revenues,
7 and that is our proposal today.

8 And for the Commission to act in another manner
9 than that and separate the capital and the O&M costs
10 at system average costs, when those costs are so
11 drastically different, it would have an extremely
12 punitive effect on the company.

13 And what we have here is we have got sales that
14 have some benefits, and we are saying we'll give all
15 of those benefits back, but don't be punitive to us.
16 And don't be punitive ultimately to ratepayers,
17 because ratepayers will ultimately lose in this
18 because we will have no choice but to exit these
19 discretionary sales.

20 MR. HOWE: Commissioners, I'm sorry, I have had
21 my brief cited twice or three times, I must correct
22 it.

23 MR. SHREVE: Well, I want to correct -- did you
24 hear what Mr. Gillette just said? He just put a
25 threat on the table saying they are going to exit

1 these sales if you give them the deal that we made.

2 I have been going into stipulations for years and
3 years and I have never had a situation where anybody
4 comes in and says we want out of the deal, not because
5 of the way the stipulation is worded, but because we
6 are going to do something else if you don't -- if you
7 try and live up or if you approve the deal.

8 When we deal with a company we are at their mercy
9 as far as their projections and their revenues and we
10 protect the customers with that, and in this situation
11 we protected the customers because we set it up and
12 said, okay, if your earnings that you are telling us
13 about, you're not going to be able to make the -- you
14 are not even going to be able to make the bottom of
15 your range, that's what we are hearing.

16 If you are wrong, then we want protection above
17 the midpoint and the top of that range, and we set it
18 up in that way. At the end of this, we're going to
19 have rollover and rollover and then there is going to
20 be a refund.

21 Now, Mr. Gillette doesn't talk to you about what
22 is going to happen to that refund if you take -- if
23 you take the proposal they have, you are going to move
24 millions of dollars over out of retail revenues, and
25 that's their problem. As he has said, they weren't

1 focused evidently on what this was going to do, but
2 they were in total control. They entered the
3 agreements, they entered this, and they drafted the
4 language.

5 We protected the customers. That's all we want.
6 They are trying to move millions of dollars out of
7 retail revenues, and I will not enter into any
8 agreements if I'm going to have to worry about a
9 company coming in at a later time saying, okay, you
10 have got the deal. If we are made to live up to the
11 deal, we are going to pull out and we are going to do
12 something else like this. We either get the deal or
13 we don't, and I have never had this happen before and
14 it will never happen again.

15 MR. WILLIS: Jack, let me just respond very
16 briefly. We are not in any way making a threat. What
17 he is really citing is what we put in the record in
18 this proceeding by Mr. Ramil, it's cited in our brief
19 with respect to separation. It has nothing to do with
20 why it was done. It is if that is the result, these
21 are discretionary sales and we have stated this on the
22 record during the hearing. This is not something new
23 that we have brought forward today, it's just reciting
24 what we have had --

25 MR. SHREVE: Mr. Gillette just made the statement

1 in order to influence this Commission, otherwise he
2 wouldn't have said it.

3 COMMISSIONER DEASON: Well, let me say this, I
4 appreciate the discussion, but I think we have a
5 stipulation here and I'm going to vote to uphold the
6 stipulation. I appreciate TECO coming forward with
7 another proposal on the table. I congratulate them
8 for that. I think it shows some effort on their part
9 trying to reach a compromise.

10 But the fact of the matter is is that I think
11 there is a binding stipulation and I'm going to vote
12 to uphold that stipulation. I think we need to
13 maintain the sanctity of that process.

14 And I guess what I was going to respond to Mr.
15 Gillette is that I appreciate his offer, but the only
16 way the Commission could entertain that is for the
17 parties that signed on the stipulation to agree to
18 that. Because as I understand the proposal, it
19 violates the requirement in the stipulation for there
20 to be a separation of the sales.

21 CHAIRMAN JOHNSON: Any other comments? Is there
22 a motion?

23 COMMISSIONER DEASON: I need to take just a
24 moment and look at the issue again.

25 COMMISSIONER CLARK: I think on Issue 1, move

1 primary staff.

2 COMMISSIONER KIESLING: Second.

3 CHAIRMAN JOHNSON: Is that your motion?

4 COMMISSIONER CLARK: Yes.

5 COMMISSIONER KIESLING: Second.

6 CHAIRMAN JOHNSON: And there is a second on

7 Issue 1.

8 COMMISSIONER DEASON: Well, I may be debating a
9 distinction without a difference here, but --

10 COMMISSIONER CLARK: No, I don't think you are.

11 COMMISSIONER DEASON: I think there are benefits
12 from this sale being made.

13 COMMISSIONER CLARK: But I don't think we have to
14 reach that. I think what we should simply say is
15 that --

16 COMMISSIONER DEASON: Well, see, the primary
17 recommendation starts off, "And there are no
18 benefits."

19 COMMISSIONER CLARK: Yes. I would amend my
20 motion, and my motion would be that these sales are
21 covered by the stipulation which requires them to be
22 separated.

23 COMMISSIONER KIESLING: And that's what I
24 intended when I seconded, because the statement had
25 been made that we were going to preserve the sanctity

1 of the stipulation. So that's what I had intended
2 when I seconded.

3 COMMISSIONER DEASON: Okay.

4 CHAIRMAN JOHNSON: There is a motion and a
5 second. Any further discussion on Issue 1? Seeing
6 none, all those in favor signify by saying aye.

7 (Unanimous affirmative vote.)

8 CHAIRMAN JOHNSON: Show it approved unanimously.
9 Issue 2.

10 COMMISSIONER CLARK: Now, staff, I need some help
11 on how we negotiate the rest of the issues.

12 COMMISSION STAFF: I believe Issue 2 and Issue 5
13 would become moot at that point because they deal with
14 capital and O&M costs or non-fuel costs, and you have
15 just upheld the stipulation.

16 MS. KUMMER: It's actually 2, 5, and 7, I
17 believe. They deal with non-fuel costs and the
18 transmission revenues, which are the total of your
19 non-fuel costs. Your fuel issues are 3 and 6.

20 COMMISSIONER DEASON: Well, 2, 5, and 7 are
21 non-fuel.

22 MS. KUMMER: Right. And that's what I believe
23 your comments were going to.

24 COMMISSIONER DEASON: Right. But my question, I
25 guess, at this point is that we have come through the

1 hearing, we have gotten all the benefit of all the
2 testimony and the cross examination and the briefs.
3 We know that these contracts are scheduled to continue
4 beyond the length of the stipulation.

5 Now, I don't know what effect this may or may not
6 have on TECO's contractual obligations to these
7 entities. I guess my question is if these contracts
8 do extend beyond, are we going to relitigate all of
9 this again, or should we address these -- is it too
10 speculative now to address these issues because we
11 don't know what the situation is going to be in the
12 year 2000 when the stipulation expires?

13 MS. KUMMER: It would be my opinion that if we
14 say at this point the stipulation rules, at the time
15 the stipulation expires it would be fair game to look
16 at it again. My attorney may have a different opinion
17 of that, but for technical staff that's the way -- if
18 you are basing your decision on the fact that the
19 stipulation controls when it no longer is in
20 existence --

21 COMMISSION STAFF: I agree with that assessment.

22 COMMISSIONER CLARK: I think the question is a
23 little bit different. I think what Commissioner
24 Deason is suggesting is we have heard all the
25 testimony on the issue. Does it make any -- what is

1 the benefit to relitigating this at a later date if we
2 have heard all the evidence and argument? Is the
3 evidence and argument going to change in the future
4 such that it would be appropriate to relitigate it at
5 that time?

6 MS. KUMMER: I would agree that you will be
7 hearing probably the same information again, but my
8 only point is that if you use the stipulation as the
9 basis for ordering the separation, if that is no
10 longer in effect is your decision still valid? You
11 can certainly make the decision that even after the
12 stipulation expires --

13 COMMISSIONER CLARK: That's the question.

14 MS. KUMMER: Yes, I think you can do that.

15 COMMISSIONER CLARK: Should we make the decision?
16 My question is do we make that decision now or do we
17 make it when the stipulation expires, or closer to the
18 time the stipulation expires? What is the advantage
19 or disadvantage to doing either?

20 COMMISSION STAFF: If I could jump in on that, I
21 think you would want to look at changes in fuel price
22 projections to see if there are truly net benefits
23 still to be obtained.

24 COMMISSIONER CLARK: You mean there may be
25 changes in conditions that effect an analysis of net

1 benefits to the ratepayers?

2 COMMISSION STAFF: Yes. And, also, then you
3 would know the refund amount, if any, at that time.

4 COMMISSIONER DEASON: Well, I agree there is a
5 lot of merit to that, but the other side of that is
6 that we would be putting -- we would be holding TECO
7 to an extremely high standard in the sense that
8 normally what we apply is at the time that you entered
9 into the contract was it a prudent decision then based
10 upon the information that you knew at the time the
11 contracts were entered into.

12 It seems to me that it's an extra burden then to
13 show that half way through the contracts then we are
14 going to take another look at what the economics are
15 at the time. That's kind of like Monday morning
16 quarterbacking at the point to see whether the
17 contracts were prudent and provided net benefit.

18 COMMISSION STAFF: I almost think you have to
19 because of the controlling stipulation now, that they
20 basically shouldn't have entered into the contracts to
21 begin with, if you will, or they should have been
22 separated ad infinitum.

23 COMMISSIONER DEASON: Well, I guess you can
24 litigate it. I mean, it could be an issue, I suppose,
25 as to what standard are they held to, what they knew

1 at the time they entered the contracts, or what the
2 prevailing economics are at the time the stipulation
3 expired.

4 COMMISSION STAFF: There may be -- I understand
5 your point to go back and look at what were the
6 circumstances at the time, but I think you would be
7 better off waiting until knowing all of that
8 information to decide what type of treatment.

9 You may want to decide to flow everything
10 through, you may want to allow them to keep some in
11 operating revenues, depending on the magnitude of the
12 changes that have gone through then.

13 COMMISSIONER DEASON: See, my concern is that
14 what type signal are we sending not only to TECO, but
15 other parties out there in this emerging competitive
16 market. And I think that we want to encourage
17 particularly our utilities, our investor-owned
18 utilities that we rate base regulate to try to make
19 decisions, and, of course, they have the burden to
20 demonstrate that it is in the ratepayers' interest,
21 but to try to make decisions which are in the
22 ratepayers' interest, which provide benefits to them,
23 but that they need to be held to the standard of what
24 did you know at the time that you did that and was it
25 in the customers' interest based upon the information

1 you knew at the time.

2 And that if we start making that more and more
3 difficult, the signal we are sending the folks is just
4 keep the status quo and it may not be in the
5 customers' benefit, but you don't subject yourself to
6 any risk because you didn't take that extra step and
7 try to enter into one of these type of contracts.

8 COMMISSION STAFF: It's a difficult question. I
9 think TECO is unique in this one because of the
10 stipulation and the refunds and the impacts this will
11 have and the treatment this will have on the refund
12 amount, if any, pursuant to the stipulation. That's
13 why I think they are different from other companies
14 out there who may be entering into these types of
15 contracts and that kind of general signal.

16 MS. KUMMER: It's not like we are just jumping
17 into the contract halfway through the life
18 arbitrarily, and saying, well, gee whiz, we are going
19 to recess everything, similar to the discussions we
20 had this morning on the Lake Cogen about, you know,
21 what do you use as costs.

22 But, because the stipulation is here, it's a very
23 unique circumstance. I don't think that you are going
24 to see this again. At least I certainly hope that we
25 can prevent this happening again, if staff has

1 anything to do with it.

2 You know, I agree with Tom that because of the
3 stipulation, maybe this merits different treatment
4 than we would do to someone who does not --

5 COMMISSIONER DEASON: But my concern is that if
6 we don't address this case and fashion this case,
7 which can kind of lay out a policy as to how we are
8 going to look, and I know that each company and each
9 contract would be based upon the facts and
10 circumstances of that company and the economics at the
11 time the contract was entered into.

12 But we need, I think, to send a signal to folks
13 as to how we are going to view these things so that
14 they will know whether they want to try to attempt to
15 enter into some of these type -- because I think there
16 are some benefits that can be derived, perhaps not in
17 every situation, but perhaps there are opportunities
18 out there. And are we sending the signal to
19 utilities, well, just bypass those opportunities and
20 stay on safe ground and, you know, don't worry about
21 trying to get benefits because you may get penalized
22 by trying to do good.

23 MS. KUMMER: Commissioners, I know I stood in
24 here at one time and went through so many editions it
25 may have gotten edited out, but I intended to have in

1 this recommendation -- I will try to find it if I can
2 -- that this only applies to Tampa Electric because of
3 the stipulation, and it is not intended to be a policy
4 statement which would apply to anyone else.

5 COMMISSIONER CLARK: Commissioners, I guess I'm
6 inclined not to decide the other issues. While I
7 agree with Commissioner Deason that the market is
8 changing and we need to be concerned about maximizing
9 the benefits to the ratepayers such that their costs
10 are minimized, but I also have concerns about the
11 impact of utilities that -- power generators who have
12 a captive customer base from which to launch their
13 competitive activities.

14 And I think we need to look at that side of it,
15 too. So at this point I am very troubled by what is
16 the appropriate way to look at the developing market
17 in terms of the dichotomy between wholesale
18 competition and the retail market where we at this
19 point don't have the competition, and what is the
20 impact on ratepayers by maintaining that dichotomy.

21 COMMISSIONER DEASON: Well, I tend to agree with
22 that, but I think it goes back, one of the basic
23 questions goes back even further. I mean, here during
24 oral argument we had presentations concerning what
25 happened in 1984 with Big Bend and the fact that the

1 Commission made a decision to try to encourage off
2 system sales to cover the incremental cost of that
3 plant coming into rate base.

4 I mean, that is a basic issue which was back in
5 1984, and in '84 I don't think we were hearing much
6 about retail competition and that sort of thing for
7 electric utilities. I mean, it's just a basic
8 question that has been around for a long time, and
9 that is how do you encourage utilities to -- if they
10 do have capacity which can be marketed, how do you
11 encourage them to do that?

12 The only difference now is that back then there
13 was not as much competition. Now for them to market
14 it they perhaps have to go to different measures, and
15 that's what TECO is saying to us, trying to say to us,
16 is that they have to price things differently to be
17 able to market in today's market.

18 COMMISSIONER CLARK: Yes, but the difference
19 being incremental cost as opposed to average cost with
20 the impact on the capital customers. You know, the
21 market is not just introducing more competition. I
22 understand that there was some competition in the
23 sense that there were other utilities with excess
24 capacity, but it was generally sold on the basis of
25 cost as opposed to price.

1 And, you know, I guess with that in mind, I would
2 rather not make the decision now if I don't have to.
3 You know, I'm just not 100 percent sure that what we
4 would do today would be appropriate beyond the
5 decision that this particular sale is covered by the
6 stipulation.

7 CHAIRMAN JOHNSON: So is there a motion on 2, 5,
8 and 7 that we not entertain those? How did staff
9 refer to those issues?

10 COMMISSION STAFF: Chairman Johnson, if we could
11 back up. On Issue Number 1, was that a modification
12 to the staff recommendation that should be reflected
13 as the order?

14 COMMISSIONER CLARK: Yes.

15 COMMISSION STAFF: And if my understanding is
16 correct, the modification is essentially that the
17 sales are covered by the stipulation, which therefore
18 requires separation.

19 COMMISSIONER CLARK: Yes.

20 COMMISSION STAFF: All right. We will make that
21 change in the order. Issues 2, 5, and 7 are non-fuel
22 issues, 3 and 6 were the fuel issues.

23 COMMISSIONER DEASON: Commissioner Clark, you
24 have indicated that you would prefer not taking a vote
25 on the non-fuel issues, and I guess I can agree to

1 that with some reluctance for the reasons I've stated.

2 I mean, I can see both sides of the coin. And
3 the reason I hesitate is that I feel like that perhaps
4 -- and I hope we are not, but I fear that perhaps we
5 are sending a signal to not only TECO, but other
6 utilities to not pursue opportunities that may exist
7 because of the uncertainties involved in the
8 treatment.

9 And I guess the only thing I can say is that if
10 an opportunity exists and the utility feels it's going
11 to interest their customers, bring it on, and we will
12 have an open mind and we will go through and take
13 testimony and hear all the evidence and make a
14 decision.

15 MR. DUDLEY: Commissioners, what treatment would
16 you be affording to the SO2 allowances, because it is
17 only spoken to in Issue 2, and I guess maybe 5?

18 COMMISSIONER DEASON: You modified your original
19 recommendation to include the language on SO2,
20 correct?

21 MR. DUDLEY: Only to the extent that if there
22 were any revenue shortfalls that staff recommended
23 that those revenue shortfalls be made up out of
24 below-the-line operating revenues. It was recommended
25 in the discussion of Issue 1, but we had inadvertently

1 omitted it from the recommendation paragraph.

2 COMMISSION STAFF: Chairman Johnson, it's my
3 understanding that Issues 2, 5, and 7 are moot, and
4 what Mr. Dudley is discussing is the alternative staff
5 recommendation, also. So I don't know that that is
6 probative to the vote that has been taken vis-a-vis
7 Issue 1.

8 COMMISSIONER CLARK: You know, I'm getting
9 confused.

10 COMMISSIONER DEASON: SO2 pertains to fuel
11 recovery, though, right?

12 MR. DUDLEY: That is environmental cost recovery
13 clause, yes, sir.

14 COMMISSIONER DEASON: When I say fuel, I guess
15 one of the clauses that we do.

16 MS. KUMMER: It's the recovery clause as opposed
17 to base rates.

18 COMMISSIONER CLARK: So it should be in Issue 3
19 or 6.

20 MR. DUDLEY: We could have expanded Issue 3 and 6
21 to include SO2, as well.

22 COMMISSIONER DEASON: Well, let's address it in
23 the context of Issues 3 and 6, then.

24 MR. DUDLEY: That's fine.

25 COMMISSIONER DEASON: Is that acceptable?

1 CHAIRMAN JOHNSON: Sounds good.

2 COMMISSIONER DEASON: So we are saying 2, 5, and
3 7 are moot, is that correct?

4 CHAIRMAN JOHNSON: Is there agreement within the
5 Commission? Okay, 2, 5, and 7, the non-fuel issues
6 will not be considered. Then we are dealing with
7 Issues 3 and 6.

8 COMMISSIONER CLARK: I guess I want -- I guess
9 Commissioner Deason was pursuing this with the notion
10 of incremental fuel and average fuel.

11 COMMISSIONER DEASON: Yes. I had a concern that
12 -- I think what we have voted on on Issue 1 was our
13 interpretation of the stipulation, and we said that
14 was moot as to the regulatory and the accounting
15 treatment of separating or not separating, and the
16 staff was saying that the net benefits are
17 demonstrated by not separating and going through their
18 process and their safeguards.

19 And I was trying to ascertain whether staff still
20 feels there are net benefits from these contracts
21 simply because incremental revenue exceeds incremental
22 cost of these contracts. And I think I got one
23 indication that, yes, that is true, and that is the
24 position of staff, regardless of the stipulation.
25 Now, am I correct or incorrect?

1 COMMISSION STAFF: Yes, sir, that's correct.

2 COMMISSIONER CLARK: Are you saying incremental
3 fuel revenue?

4 COMMISSIONER DEASON: No. All incremental
5 revenue from the contracts.

6 COMMISSION STAFF: Would exceed incremental cost.
7 Now, we had some safeguards in our proposal or
8 recommendation.

9 COMMISSIONER DEASON: And one of those concerned
10 SO2.

11 COMMISSION STAFF: Yes, sir. I think with your
12 vote regarding the stipulation, though, you have to
13 consider that the surrogate to revenues is the average
14 embedded cost, which as stated by Mr. Ramil, I
15 believe, in his testimony would exceed the revenues
16 received by \$50-something-million. I don't think
17 there is any question that net benefits will be
18 derived by separating these sales.

19 COMMISSIONER DEASON: I mean, by definition
20 because -- and that's all the issue, because we are
21 separating on an average basis and we know that the
22 revenues are less than on what would be required on a
23 revenue requirement basis on an average basis.

24 COMMISSION STAFF: That's correct.

25 COMMISSIONER DEASON: I guess what my bottom line

1 concern is that I think the stipulation is binding, we
2 have made that decision, but I don't think the
3 stipulation is binding on the treatment of the fuel
4 adjustment aspect, the non-rate base aspect of this
5 case.

6 COMMISSION STAFF: I agree. I think the
7 stipulation is passed, you don't even need to look --
8 there is a stipulation here. I think that TECO can
9 make an argument that if they made these sales and
10 separated these sales that there were net benefits
11 from them, and they can make the argument that
12 incremental fuel is appropriate even on that.

13 COMMISSIONER CLARK: If you credit incremental
14 fuel, it's less than average, is that right?

15 COMMISSION STAFF: In TECO's case.

16 COMMISSIONER CLARK: In TECO's case. So the
17 question I take it that Commissioner Deason's inquiry
18 is going to be since there is a benefit to having made
19 these sales and moving them out pursuant to this
20 stipulation, is it appropriate to recognize the lower
21 fuel revenue going through the fuel rather than the
22 average, is that right?

23 COMMISSIONER DEASON: That's correct. And I have
24 to ask the question that if only incremental costs are
25 being flowed through the clause, how are customers

1 harmed if you only credit incremental revenues? It's
2 a wash.

3 COMMISSION STAFF: They are different. Actually,
4 I think the math would be more appropriate to say if
5 you credit incremental, which is truly the incremental
6 to make that sale, then the customers would be no
7 worse off, no better off than they were previously.

8 If you credit average, in fact, they may be
9 better off. I think that might have gotten lost in
10 the shuffle somehow.

11 COMMISSIONER CLARK: So what I hear you saying is
12 that to be consistent with the stipulation it's
13 appropriate to do incremental.

14 COMMISSION STAFF: I believe if you are trying to
15 match costs with the credit, yes, ma'am.

16 COMMISSION STAFF: I don't agree with the answer.
17 The treatment in fuel doesn't have to be consistent
18 with the stipulation. The stipulation didn't control
19 fuel revenues. That was controlled under the fuel
20 order.

21 COMMISSIONER DEASON: And the fuel order says we
22 are going to require the crediting of average unless
23 there is a showing of benefits.

24 COMMISSION STAFF: Overall benefits, yes, sir.

25 COMMISSIONER DEASON: Overall benefits. And we

1 really didn't take a vote on whether we thought there
2 was overall benefits on TECO's proposal. What we did
3 say was that the stipulation controlled, and that it's
4 still staff's opinion that there are benefits because
5 shifting all of those costs out of the retail
6 jurisdiction is even more beneficial than what even
7 TECO was proposing.

8 COMMISSION STAFF: I agree. It was recognized in
9 the primary staff analysis on Issue 1, it was
10 recognized in OPC's brief that if you separate this
11 stuff, we truly believe that this would result in
12 increased refunds under the stipulation.

13 COMMISSION STAFF: If I may, Commissioners, point
14 out something slightly different. The stipulation
15 requires separation of non-fuel costs and the
16 treatment as to the rate case. To me that means the
17 non-fuel revenues stay with the company. If you
18 separate it out, they keep the non-fuel revenues.

19 The fuel revenues from these sales do not equal
20 incremental cost, so in order to get even to
21 incremental cost you've got to pull from the pot of
22 non-fuel revenues. But the stipulation is telling you
23 that all non-fuel revenues go to the company. So I'm
24 not quite sure how those two mesh together.

25 COMMISSIONER DEASON: You're saying you would

1 even take it one step further and require -- since we
2 are separating out, is require only the crediting of
3 the revenue derived from the contract through the
4 clause even though it may be less than incremental
5 cost?

6 COMMISSION STAFF: That may be the reading of it,
7 yes.

8 COMMISSIONER DEASON: I'm not so sure I want to
9 do that, because that certainly raises a question of
10 whether there is actual harm to the customers as a
11 result of that.

12 COMMISSION STAFF: I agree. And I think I also
13 disagree a little bit with Mr. Goad about the
14 benefits. In my mind the only benefits are there if
15 you get the dollars flowing back now. The benefits he
16 is perceiving of are a reduction in revenue
17 requirements, but that would only come about if we had
18 a rate case today.

19 COMMISSIONER DEASON: But you do agree that we
20 are under a stipulation which has earning thresholds
21 on it, and that the potential of a refund is certainly
22 enhanced by separating?

23 COMMISSION STAFF: Yes.

24 CHAIRMAN JOHNSON: Any other questions?

25 COMMISSIONER CLARK: Issue 3 is how should the

1 fuel -- we are on Issue 3, right?

2 COMMISSIONER DEASON: I think that we should
3 require the crediting of incremental fuel costs.

4 COMMISSIONER CLARK: I agree.

5 COMMISSIONER DEASON: Incremental fuel --
6 incremental revenues such to the extent that
7 incremental costs are negated so that there is a wash
8 in fuel adjustment as a result of these contracts.

9 COMMISSION STAFF: I agree. And I believe that
10 was the intention of the March 11th fuel order that we
11 referred to.

12 COMMISSIONER CLARK: Second. And that would be
13 also for Issue 6, right? That would be a modification
14 to Issue 6? No?

15 COMMISSION STAFF: Yes, ma'am, but are you going
16 to consider SO2 within this issue, also?

17 COMMISSIONER DEASON: Yes. And I guess the same
18 principle would apply to the extent that there are
19 incremental SO2 costs incurred, that there needs to be
20 at least that much revenue flowed through the
21 environmental cost recovery clause so that there is a
22 wash, the customers are not harmed by that treatment.

23 COMMISSION STAFF: And TECO has agreed to such.

24 MS. KUMMER: And that's even if the revenues from
25 the contracts do not cover that.

1 COMMISSIONER DEASON: Right. The contracts are
2 gone, they are separated.

3 MR. DUDLEY: Are you going to deal with the issue
4 if incremental revenues or revenues received under the
5 contract do not cover the level of costs?

6 COMMISSIONER DEASON: Yes. Regardless of what
7 revenues, the company is going to be obligated to
8 credit incremental revenues to the extent of
9 incremental costs.

10 COMMISSION STAFF: And where would those revenues
11 come from, below-the-line or above-the-line, because
12 the company has proposed --

13 COMMISSIONER DEASON: I would say above-the-line.
14 It would come from above-the-line.

15 COMMISSION STAFF: Above-the-line?

16 COMMISSIONER DEASON: Above-the-line.

17 COMMISSIONER CLARK: What do you mean by above
18 and below-the-line? I mean, I assume they will come
19 from the wholesale jurisdiction because we separated
20 it out, and it will be --

21 COMMISSIONER DEASON: No, we are requiring costs
22 to be flowed through to the retail jurisdiction in
23 fuel purposes, so those revenues should come from
24 above-the-line. That's where the benefit is going,
25 that's where the benefit should come from.

1 What that does, Commissioners, you all need to be
2 aware, because you may agree or disagree with that,
3 what that's going to do is that could have an
4 offsetting effect on the potential for refunds,
5 because you would be reducing above-the-line revenue.
6 But personally I think it's the only fair thing to do.

7 COMMISSIONER CLARK: I guess I need further
8 explanation on the notion of using above -- if you go
9 back to the incremental fuel revenue, we are making
10 sure it's a wash, right? So that what they incur in
11 making those sales is what they will have to -- let me
12 think. What they receive in making those sales will
13 go -- and it's incremental, it will go through the
14 fuel adjustment.

15 Now, does the notion of above-the-line, where
16 that revenue comes from above-the-line or
17 below-the-line have an impact on the fuel, incremental
18 fuel.

19 COMMISSION STAFF: It would have an impact, as
20 Mr. Deason recognized, on the potential earnings of
21 the company at that time.

22 COMMISSIONER CLARK: I guess you need to walk me
23 through that, then.

24 COMMISSION STAFF: Say that incremental cost of
25 making a sale was \$5, and the incremental revenue

1 received from the sale was only \$3. In order to make
2 the fuel clause whole, they would have to make up that
3 difference. What the company has proposed is that
4 that difference would be made up out of above-the-line
5 or retail operating revenues.

6 COMMISSIONER CLARK: I guess that's why I'm
7 confused, because it seems to me like it should come
8 from wholesale.

9 COMMISSION STAFF: Yes, ma'am, and that's what
10 the alternate recommendation recommended.

11 MS. KUMMER: Staff would argue that if they
12 didn't get enough through the contract to cover these
13 costs then they ought to foot the bill below-the-line.

14 COMMISSIONER DEASON: And there is merit to their
15 argument. What we had is the company is already
16 saying that they are not getting enough from these
17 contracts to even cover the costs which you are
18 separating out. It's like a double whammy. I mean,
19 this is the type negative incentive you are trying to
20 send to folks who are trying to do what they think is
21 right. And that's the problem I'm having.

22 COMMISSIONER CLARK: Okay. Now I understand what
23 the difference is. I will second your motion.

24 CHAIRMAN JOHNSON: There is a motion and a
25 second. Any further discussion?

1 COMMISSIONER GARCIA: Let me just -- what exactly
2 is the motion, because from when you made to where we
3 just arrived is something --

4 COMMISSIONER DEASON: Let me see if I can try to
5 explain. The question is are we going to credit
6 incremental revenue or average revenue through the
7 fuel clause. And I think we have already decided we
8 are going to do it on an incremental basis.

9 COMMISSIONER CLARK: Well, that's part of your
10 motion.

11 COMMISSIONER DEASON: That's part of the motion.
12 That's kind of consistent with the discussion that we
13 have gone through. The latter part of the discussion
14 was a question as to whether -- if there is a
15 shortfall where is the revenue going to come from,
16 from above-the-line operations or below-the-line
17 operations? A short-fall being if there is a
18 difference between incremental costs and the revenue
19 from the contract. If the revenue is not sufficient
20 to cover the incremental fuel costs and there is a
21 deficit, where is that money going to come from to
22 cover that?

23 Staff is recommending, and there is merit to the
24 argument, they are recommending that that deficit
25 should come from below-the-line operations so it would

1 not have a negative impact on the company's
2 above-the-line earnings. And it would not negatively
3 impact the potential for refunds. And like I say,
4 there is merit for that argument.

5 Given that we have already made the decision to
6 separate, and knowing that there is not even going to
7 be enough revenue to cover the rate base revenue
8 requirements of that separation, to me it would be a
9 double disincentive to also require that fuel be made
10 whole with below-the-line revenue.

11 Like I say, it's not a question of black and
12 white, that this is right, this is wrong, it's kind of
13 a policy, and I think given the situation, the facts
14 that have been developed in this case, that it would
15 be appropriate to allow them if there is a deficiency,
16 a shortfall, to allow them to make it up with
17 above-the-line revenue.

18 COMMISSIONER CLARK: Second.

19 CHAIRMAN JOHNSON: There is a motion and a
20 second. Any further discussion? All those in favor
21 signify by saying aye.

22 (Unanimous affirmative vote.)

23 CHAIRMAN JOHNSON: Show it approved unanimously.
24 Are there any other issues?

25 COMMISSION STAFF: Issue 8 we have represented

1 does not require a vote primarily because of the way
2 it's worded. It says will the Commission's treatment
3 of the wholesale sales have an impact on the refund
4 obligation?

5 Staff's position is that the obligation is the
6 obligation, and if the issue had said the amount of
7 the refund obligation a vote would be required, but it
8 doesn't.

9 COMMISSIONER CLARK: I agree. I don't think we
10 need to vote on 8.

11 COMMISSION STAFF: Right. And the only other
12 issue is the docket closing.

13 COMMISSIONER CLARK: Move staff.

14 CHAIRMAN JOHNSON: Show it approved without
15 objection.

16 CHAIRMAN JOHNSON: We are going to take a
17 10-minute break.

18 (Recess.)

19 CHAIRMAN JOHNSON: We are going to reconvene the
20 agenda conference.

21 Item 8.

22 COMMISSION STAFF: Just to revisit it very
23 briefly. We did not vote on Issue 4. Issue 1 dealt
24 only with the contract between FMPA and Tampa Electric
25 Company.

1 Issue 4 deals with the contract between Tampa
2 Electric Company and the City of Lakeland. Consistent
3 with your vote on Issue 1 would be to modify the
4 primary recommendation on Issue 4 to reflect the
5 rationale expressed in the vote on Issue 1.

6 COMMISSIONER DEASON: So moved.

7 CHAIRMAN JOHNSON: Is there a second?

8 COMMISSIONER KIESLING: Second.

9 CHAIRMAN JOHNSON: Show it approved without
10 objection.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEON)

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceeding was transcribed from cassette tape, and the foregoing pages number 1 through 89 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS ____ day of October, 1997.

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