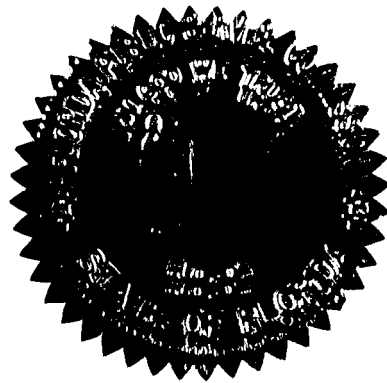


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 990935-GU
:
Petition for approval of :
experimental rider FTA-2 :
(firm transportation :
aggregation service 2) and :
modifications to imbalance :
cashout provision of rider :
FTA program, by Tampa :
Electric Company e/b/a :
Peoples Gas System :

DOCKET NO. 990935-GU



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER SUSAN F. CLARK
Prehearing Officer

DATE: Monday, January 10, 2000

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

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

REPORTED BY: KIMBERLY K. BERENS, CSR, RPR
FPSC Commission Reporter

DOCUMENT NUMBER-DATE

40602 JAN 13 2000

40602 JAN 13 2000

1 **APPEARANCES:**

2 **ANSLEY WATSON, JR.**, Macfarlane, Ferguson Law
3 Firm, P. O. Box 1531, Tampa, Florida 33601 appearing
4 on behalf of **Peoples Gas System.**

5 **WILLIAM COCHRAN KEATING and BOB ELIAS,**
6 Florida Public Service Commission, Division of Legal
7 Services, 2540 Shumard Oak Boulevard, Tallahassee,
8 Florida 32399-0870, appearing on behalf of the
9 **Commission Staff.**

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P R O C E E D I N G S

(Hearing convened at 1:30 p.m.)

COMMISSIONER CLARK: Call the prehearing to order. Read the Notice, please.

MR. KEATING: This time and place have been set for a prehearing in Docket No. 990935-GU, Petition For Approval of Experimental Rider FTA-2 and modifications to imbalance cashout provisions of Rider FTA Program by Tampa Electric Company, d/b/a Peoples Gas System by Notice issued December 14, 1999.

COMMISSIONER CLARK: We'll take appearances.

MR. WATSON: I'm Ansley Watson, Jr. of Macfarlane Ferguson and McMullen, P.O. Box 1531, Tampa, Florida 33601, appearing for Peoples Gas System.

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

COMMISSIONER CLARK: Okay. Mr. Cochran, do we have anything to take up as a preliminary matter?

MR. KEATING: Staff has pending a motion for continuance of the hearing of this docket. We can take that up as a preliminary matter or after we go through the prehearing order.

COMMISSIONER CLARK: Why don't we go ahead and take that up. I have read both the petition and

1 the response and I noted, Mr. Watson, I think you
2 asked for oral argument.

3 **MR. WATSON:** Yes, ma'am.

4 **COMMISSIONER CLARK:** So, since it's Staff's
5 motion, I'll hear from you and then I'll hear from
6 you, Mr. Watson.

7 **MR. KEATING:** In setting this matter for
8 hearing the Commission expressed concern over
9 allegations that Peoples Gas' marketing affiliate,
10 TECO Gas Services, had marketed to potential FTA-2
11 customers prior to the filing of FTA-2 for approval,
12 and it had signed up customers for FTA-2 prior to its
13 approval or effective date.

14 In early December Staff in the Commission's
15 Bureau of Regulatory Review contacted customers in
16 Southwest Florida in the area of Peoples Gas recent
17 pipeline extension. The customers were asked a short
18 list of questions concerning their electric or propane
19 service, their awareness of the new pipeline, and any
20 marketing efforts directed at them to switch to
21 natural gas.

22 From this survey it appears that some
23 customers may have been contacted prior to the filing
24 of FTA-2 and may have contracted with TECO Gas
25 Services prior to the effective date of FTA-2.

1 Further, it appears that some large
2 potential customers were not included in the list
3 provided by Peoples Gas to the gas marketers at a
4 November 3rd program kick-off meeting.

5 Staff has requested a short continuance of
6 the hearing in this docket currently scheduled for
7 this Friday, January 14th, so that it may follow up on
8 this information to verify its accuracy, and if
9 appropriate, to develop documentary or testimonial
10 evidence to provide a complete record at hearing.

11 Staff does not believe that this short
12 continuance will prejudice the interests of Peoples
13 Gas given that the tariff has all ready been allowed
14 to go into effect by operation of law. Accordingly,
15 Staff requests that the hearing be continued for a
16 period no more than 60 days.

17 **COMMISSIONER CLARK:** Mr. Watson.

18 **MR. WATSON:** Commissioner Clark, our hearing
19 is scheduled for this Friday. Staff has -- says it
20 seeks a short continuance. In the motion it said 45
21 to 60 days on the ground they didn't have adequate
22 time to develop this additional information through
23 the normal discovery process.

24 We still believe, even though I've heard
25 some things that were not in the motion, that Staff's

1 motion fails to show good cause for a continuance.
2 And in addition, I believe any continuance would be
3 detrimental to Peoples and its customers. There are a
4 number of reasons for this position.

5 The additional time is sought to develop
6 additional allegations along the same lines as those
7 that were the cause for the Commission's concern
8 expressed in the order in which the Commission said it
9 would set this case for hearing. Those allegations
10 were that Peoples' marketing affiliate had already
11 effectively "gained control" of the market for
12 transportation service by soliciting and reaching
13 agreements with new gas customers along the Southwest
14 pipeline extension route prior to the approval of
15 FTA-2.

16 The motion says they have recently received
17 not only additional allegations along these same
18 lines, but also information that appears to support
19 those allegations. What I've summarized constitutes
20 the sole basis for the continuance requested by Staff.
21 And again, I say it fails to establish good cause.

22 As summarized in -- I'd like to summarize
23 our reply to the motion. First, the allegations about
24 which the Commission expressed concern in the order
25 that I have mentioned are unfounded. Since the pipe

1 is just now arriving in the vicinity of Fort Myers and
2 Naples, there are currently few customers and no one
3 could have, even now, gained control of the market.

4 **COMMISSIONER CLARK:** Mr. Watson, I read that
5 and it struck me as I have to rely on your
6 representation that those allegations are unfounded.

7 **MR. WATSON:** Commissioner Clark, although
8 the documents are not sworn I'm relying on TECO Gas
9 Services' response to Staff's data request that was
10 filed prior to the October 5th agenda conference in
11 this docket indicating that there were no contracts
12 signed. That response --

13 **COMMISSIONER CLARK:** Isn't that a factual
14 matter that we sort of have to explore that it can't
15 be -- I can't rely on -- I can't say I agree they are
16 unfounded without having any independent evidence.

17 **MR. WATSON:** I agree. But at the time Staff
18 made those allegations in their recommendation that
19 was written sometime in September, when Bill Cantrell,
20 TECO Gas Services' president, wrote in October,
21 following the agenda conference, again, indicating
22 that no contracts had been entered into and further
23 committing that for a period of 30 days after the rate
24 schedule became effective, which was I believe
25 October 17, TECO Gas marketing would not only not

1 enter into any contracts, but would conduct no
2 solicitation in that area. That's been over three
3 months ago, and to date we have nothing.

4 Staff has filed no testimony. They have no
5 exhibits. We've seen nothing that the Staff has
6 gathered in this case. There aren't any intervenors.
7 And I'm not real sure what we're doing here. We've
8 got a cloud over the name, I guess, of both People's
9 Gas System and TECO Gas Services that needs to be
10 removed and I think we can remove it quickest by going
11 ahead and having the hearing.

12 **COMMISSIONER CLARK:** I guess, my concern
13 there is we go to hearing and Staff says, well,
14 we've -- we have had further information; we just
15 don't have the opportunity to do it. Is that going to
16 be satisfactory to the three Commissioners that are
17 sitting there to conclude that everything is just
18 fine?

19 **MR. WATSON:** Well --

20 **COMMISSIONER CLARK:** I appreciate the fact
21 that it might have been done on a quicker time frame
22 on behalf of Staff, but I'm going to quiz them as to
23 why it wasn't done more quickly. But I'm not sure
24 your conclusion that the fastest way to get to closure
25 on this issue is to go to hearing on Friday, given

1 that sort of cloud would remain.

2 **MR. WATSON:** I honestly don't think so.
3 From the discussions I've had with anyone who knew
4 anything about what was going on in that area, I'm
5 satisfied that there has been no --

6 **COMMISSIONER CLARK:** Yes, but you're asking
7 me to rely on your judgment and your conclusion
8 without exploring it independently.

9 **MR. WATSON:** Well, let's it put it this way.
10 There must have been some independent investigation
11 done of the allegations that first prompted the
12 allegations to appear in the Staff recommendation.

13 **COMMISSIONER CLARK:** Uh-huh.

14 **MR. WATSON:** To date we've seen no factual
15 support for those allegations. This -- the delay, the
16 fact that -- you know, the rate schedule, Rider FTA-2
17 and the modifications to the imbalance cashout
18 provisions in the firm delivery agreement are already
19 in effect. This Commission permitted them to become
20 effective.

21 So, they are already being used to the
22 extent there is demand for them in the state. But
23 there has got to have been a dampening of marketer
24 participation in this program by virtue of the cloud
25 over these rate schedules. Are they going to be

1 approved or are they going to be permitted to remain
2 in effect without approval or are they going to be
3 denied. And to the extent there are benefits to
4 Peoples and its customers from this program, I don't
5 believe those benefits are going to be able to be
6 fully realized until such time as we've had a hearing
7 and the Commission can make a decision based on the
8 evidence.

9 I guess, to conclude, my position is simply
10 that there appears to have been no factual support for
11 the allegations as initially made and I have no reason
12 to believe there will be any factual support that
13 comes forward for whatever Staff may have found in a
14 survey of south Florida.

15 **COMMISSIONER CLARK:** Staff.

16 **MR. KEATING:** Commissioner Clark, I point
17 out just to start to make sure that we're clear that
18 the allegations that arose or that were presented in
19 Staff's recommendation originally were not allegations
20 from Staff. It's not something that we had
21 investigated prior to the time we filed our
22 recommendation and had allegations in our
23 recommendation on. We received the allegations from
24 gas marketers. I just wanted to clear that up. It
25 wasn't clear to me from Mr. Watson's comments that --

1 **COMMISSIONER CLARK:** I can't remember.

2 Mr. Keating, was it incorporated into your
3 recommendation that you had had that contact with
4 marketers and did you recommend suspending the --

5 **MR. KEATING:** The recommendation was to
6 suspend so that we could look into this.

7 **COMMISSIONER CLARK:** Okay. All right.

8 **MR. KEATING:** And the vote was to take no
9 action at the time to allow the tariff to go into
10 effect by operation of law and to set the matter for
11 hearing.

12 **COMMISSIONER CLARK:** Okay. What happened
13 since then?

14 **MR. KEATING:** Well, since that time, Staff
15 has conducted the survey that I mentioned in my
16 previous comments in early December. We have
17 conducted depositions; two depositions in December and
18 we have one deposition scheduled for this afternoon.
19 We have prepared to go to hearing on just about every
20 matter except for the matter of any marketing efforts
21 by TECO Gas Services for FTA-2 for which we received
22 information of only in mid December. Our motion for
23 continuance was filed within two days of the date that
24 information was available.

25 **MR. WATSON:** Commissioner Clark, I'd like to

1 make one, I guess, final point on this.

2 **COMMISSIONER CLARK:** Mr. Watson, I haven't
3 finished asking some questions of Mr. Keating, and
4 I'll give you an opportunity. When did you send the
5 survey out?

6 **MR. KEATING:** It's my understanding that the
7 survey was conducted in person on December 8th. And
8 perhaps it was for two days, but --

9 **COMMISSIONER CLARK:** And Staff went down
10 there to talk to various customers?

11 **MR. KEATING:** Correct.

12 **COMMISSIONER CLARK:** Okay. And the other
13 concern that's been -- has arisen since then is some
14 large users were not -- the names of large users were
15 not given out to competing marketers?

16 **MR. KEATING:** Yes. That was information
17 according to the Staff that conducted the survey.
18 They selected potential large new customers for the
19 survey and in their selection process they believe
20 that there were some large potential customers out
21 there that were not included in the list.

22 **COMMISSIONER CLARK:** And this was a list
23 that Peoples Gas had given to the Staff?

24 **MR. KEATING:** My understanding is that after
25 this or around the time or shortly after the tariff

1 went into effect by operation of law, Peoples Gas
2 conducted a meeting to which all of the gas marketers
3 were invited to attend; sort of an FTA-2 kick-off
4 to -- I guess to let them know information about, here
5 are some customers out there to look for. There was a
6 list provided to the customers -- provided to the gas
7 marketers of customers in the area of the pipeline
8 extension in Southwest Florida.

9 **COMMISSIONER CLARK:** And Staff believed that
10 not at all the potential customers were given to the
11 gas marketers.

12 **MR. KEATING:** That is some of the
13 information that we'd like to develop to verify,
14 either to prove or disprove.

15 **COMMISSIONER CLARK:** And, Mr. Keating,
16 explain to me why this could not have been done in the
17 time frame we had set for the hearing.

18 **MR. KEATING:** I suppose the survey could
19 have been conducted earlier. The results of the
20 survey, at the time it was conducted, were not made
21 available to us or were not available in time for us
22 to go through the normal discovery process to follow
23 up on those results.

24 **MS. BULECZA-BANKS:** If I could also
25 interject. We were trying to use independent staff

1 from the research area so that it would not involve
2 any of us to make an appearance of any bias, and we
3 were having a difficult time getting their schedules
4 set to be able to get down there because they were
5 having an exceedingly heavy load.

6 **COMMISSIONER CLARK:** Okay. Anything else,
7 Mr. Keating?

8 **MR. KEATING:** Nothing that I can think of.

9 **COMMISSIONER CLARK:** Mr. Watson, you wanted
10 to respond.

11 **MR. WATSON:** Commissioner Clark, I know this
12 is an evidentiary matter, but I've got three points;
13 at least the first one is evidentiary.

14 The same list was given to all the gas
15 marketers. But the bottom line is that all of this
16 should be neither here nor there. The alleged
17 activities of TECO Gas Services mentioned in the Staff
18 recommendation of which Staff says it has found more,
19 are just not subject to regulation by the Commission.

20 **COMMISSIONER CLARK:** I read that Mr. Watson
21 and I appreciate that. But it causes great concern to
22 the Commission. It strikes me that maybe what we
23 should be doing is enforcing a code of conduct on you
24 all. I suppose you're free to file a motion to
25 dismiss that this is not -- or some appropriate motion

1 to say this is not appropriate for you to look at in
2 the context of this filing. But I don't think it's --
3 given the fact that the hearing was set because of
4 those concerns, I'm not sure that it is an area we are
5 not going to turn to a blind eye to and not look into.

6 **MR. WATSON:** I assume what happens here in
7 this docket may have some bearing on that.

8 The real point is that it appears to me that
9 it's just irrelevant to whether this tariff filing by
10 the utility should be approved or disapproved. And
11 interestingly, three days after Staff filed its motion
12 for continuance of this hearing to look into
13 additional information on these so-called affiliate
14 concerns, it filed its prehearing order; a single
15 issue. Should the Commission approve the petition,
16 basically.

17 And Staff's position is, no, the provisions
18 of the Rider that require marketers/suppliers to bring
19 on new incremental load prior to being permitted to
20 convert existing sales service customers to
21 transportation service are unduly discriminatory.
22 Experimental Rider FTA-2 is not in the public
23 interest -- I don't know why -- and should not be
24 approved.

25 Where is the affiliate information in that

1 position on the part of Staff? It's just not there.
2 So why would we postpone a hearing to develop
3 additional information that is not even relevant to
4 the position stated by Staff in its prehearing order?
5 It escapes me.

6 **COMMISSIONER CLARK:** Mr. Keating, do you
7 want to respond to that?

8 **MR. KEATING:** Yes, I would. I think that
9 points out, though, that Staff has not come to any
10 conclusions regarding the -- regarding any affiliate
11 behavior in this matter. We don't have the
12 information at the time to support a position on that
13 right now.

14 The positions in the prehearing statement
15 are subject to change up to the prehearing, from my
16 understanding. We simply don't have the information
17 regarding those allegations to state a position and I
18 think that's a fair explanation of why there is
19 nothing in our prehearing statement regarding that
20 particular matter.

21 We think that the question of whether this
22 is in the public interest is something that we need to
23 address and going back and looking at the information
24 a little further that we found is important to meet
25 that end and we think that a continuance is necessary

1 to allow us to provide the Commission the most
2 complete record.

3 **MR. WATSON:** Commissioner Clark, this is an
4 experimental rate schedule that by its own terms would
5 expire September 1st of this year. If a 60 day
6 continuance of this hearing is granted, even assuming
7 another hearing date is available 60 days from this
8 Friday, and the final order scheduled to be issued
9 three months after the hearing, as is the case in the
10 current CASR, that order is going come out in about
11 mid June. Since this is an experimental program and
12 it's scheduled to expire about two and a half months
13 later, Peoples would probably be filing at or about
14 that time a petition to either extend it or do away
15 with it or modify it at that point in time anyway.

16 It would also mean that the final order in
17 this docket, a matter as simple as a tariff filing
18 that seeks to provide access to transportation service
19 to more of Peoples' commercial customers is going to
20 come out about a year from the time the petition was
21 initially filed in mid July of last year.

22 **COMMISSIONER CLARK:** Well, I guess I would
23 respond that your concern that there is a cloud over
24 TECO's -- Peoples' customers, doesn't that cloud arise
25 from the fact that it is -- doesn't it also arise from

1 the fact that it is an experimental tariff?

2 **MR. WATSON:** Possibly, but Rider FTA has
3 been in effect since early 1987.

4 **COMMISSIONER CLARK:** Was that experimental?

5 **MR. WATSON:** It was and still is, yes,
6 ma'am.

7 **COMMISSIONER CLARK:** Mr. Keating, do you
8 have anything to add?

9 **MR. KEATING:** Just one other thing. We have
10 asked for the continuance. I think our motion says 45
11 to 60 days. It's my understanding that there is a
12 hearing date available in late February.

13 **COMMISSIONER CLARK:** Is that the 22nd?

14 **MR. KEATING:** That's the 22nd.

15 **COMMISSIONER CLARK:** Is -- what are the post
16 hearing events that can be speeded up?

17 **MR. KEATING:** We can -- I guess the things
18 you have room to move are speeding up filing of briefs
19 and speeding up a filing of Staff recommendation to
20 get it at the earliest possible agenda. Are you
21 looking at the current CASR?

22 **COMMISSIONER CLARK:** I don't have one. Have
23 you done a new CASR using a February 22nd date?

24 **MR. KEATING:** No, we haven't, but looking at
25 the current CASR it appears that we could still get

1 this to the same agenda, that is the March 28th
2 agenda, or perhaps the very next agenda. It's
3 currently scheduled to go to agenda on March 28th.

4 **COMMISSIONER CLARK:** So --

5 **MR. KEATING:** We don't want to cut the time
6 for filing briefs and preparing a recommendation too
7 short, but it appears that we can get to agenda with
8 the recommendation either the current date or at the
9 next agenda.

10 **COMMISSIONER CLARK:** Mr. Watson, I'm
11 inclined to grant the continuance because I would like
12 to move forward and I don't think that holding the
13 hearing on Friday advances us much. I think if we can
14 hold the hearing on the 22nd and let the date for the
15 agenda slip maybe only one agenda. We're not -- we
16 don't jeopardize ourselves more than two weeks. But
17 that's with the understanding there'll be no more
18 continuances and we need to get this cleared up. We
19 need to get to the bottom of whatever the allegations
20 have been; whether they're substantiated or not and
21 get it behind us.

22 Therefore, I will grant the continuance with
23 the understanding it is the February 22nd date and
24 agenda will be -- we'll slip it only one agenda from
25 the 28th of March.

1 **MR. KEATING:** Actually, looking at the
2 agenda dates, I think the following agenda is one
3 week. I think that's one week from March 28th and
4 there is another agenda two weeks from that date.

5 **COMMISSIONER CLARK:** All right. We'll do
6 the two weeks afterwards.

7 **MR. KEATING:** That would be a total of three
8 weeks out from the agenda date that's on our current
9 schedule.

10 **COMMISSIONER CLARK:** Well, so there's one --
11 that will fine.

12 **MR. KEATING:** One is in three weeks.

13 **COMMISSIONER CLARK:** Three weeks.

14 **MR. WATSON:** So we're talking about an
15 agenda conference on what date?

16 **MR. KEATING:** It would be April 18th.

17 **COMMISSIONER CLARK:** Let's not -- there's
18 always a possibility of a bench decision, isn't there?

19 **MR. KEATING:** That's correct.

20 **COMMISSIONER CLARK:** Okay. Let's not rule
21 out that possibility, too, if, as a result of your
22 investigation and further discovery, you reach some
23 conclusions that can form the basis of making a
24 recommendation at that hearing and be sure to discuss
25 it with Peoples Gas in terms of whether or not we

1 think that's possible, or possibility of reaching
2 settlement.

3 **MR. KEATING:** Okay.

4 **COMMISSIONER CLARK:** Now, do you think
5 there's any benefit to going ahead through the
6 prehearing order and avoid maybe coming up for another
7 prehearing and doing it over the telephone if there's
8 only -- if issues are added or if issues are not
9 added?

10 **MR. WATSON:** It makes some sense to me.

11 **COMMISSIONER CLARK:** I guess I'd like to
12 avoid the possibility of -- I guess, it seems to me
13 this could be a very short prehearing and one that is
14 doable by phone.

15 **MR. KEATING:** I think so. I think we can
16 get the basis of what we need to get done today.

17 **COMMISSIONER CLARK:** Then we'll go ahead and
18 move to the prehearing order. And I guess my question
19 is, do we have any changes through Page 3 of the
20 prehearing order?

21 **MR. KEATING:** Mr. Watson had responded to --
22 when I sent draft prehearing order with some changes
23 and I think they're appropriate. The first one is
24 just a clerical matter, eliminating part of the
25 address and the appearance for Mr. Watson. Just

1 eliminating the 111 Madison Street, No. 2300.

2 At the bottom of Page 1, on the case
3 background, we would change the language where it
4 reads, "and modifications to the imbalance cashout
5 provisions of its original Rider FTA-2." It will now
6 read "of its firm delivery and operational balancing
7 agreement (firm delivery agreement) which are
8 applicable under its original Rider FTA and the new
9 experimental Rider FTA-2."

10 **COMMISSIONER CLARK:** Mr. Watson, did he
11 repeat that correctly?

12 **MR. WATSON:** I think so. You'd almost have
13 to read the entire sentence to know.

14 **COMMISSIONER CLARK:** All right. Make sure
15 you agree on that language.

16 **MR. KEATING:** We will.

17 **COMMISSIONER CLARK:** Okay.

18 **MR. KEATING:** I don't have anything else
19 through Page 3.

20 **COMMISSIONER CLARK:** Mr. Watson, do you have
21 anything else through Page 3?

22 **MR. WATSON:** No.

23 **COMMISSIONER CLARK:** All right. Any changes
24 on Page 4?

25 **MR. KEATING:** I believe, considering our

1 agreement on the issues now under the -- let me make
2 sure I'm on Page 4 on the original. The witness list,
3 Mr. Caldwell, I believe, will be addressing only
4 Issue 1 now as it's stated in the draft prehearing
5 order, and Peoples has a modified position on that
6 issue.

7 **COMMISSIONER CLARK:** All right. Let me ask
8 a question. You have highlighted, "and Staff". I
9 suppose that stays or goes depending on if Staff files
10 testimony.

11 **MR. KEATING:** That was my intention in
12 leaving the "and Staff" shaded.

13 **COMMISSIONER CLARK:** Okay. All right.
14 Page 5. There's a change you wanted to make to
15 Issue 1 or 2?

16 **MR. KEATING:** Yes. I believe, if I'm not
17 mistaken, Peoples had one word to add to their basic
18 position in the first sentence to change the sentence
19 to "Peoples' Rider FTA-2 and the modifications to
20 the", add the word "imbalance cashout provisions."

21 **COMMISSIONER CLARK:** I'm sorry. Where are
22 you --

23 **MR. KEATING:** Let me make sure I'm on the
24 draft prehearing order that we all have. At the top
25 of Page 5.

1 **COMMISSIONER CLARK:** Okay.

2 **MR. KEATING:** In the first sentence in
3 Peoples' basic position. I believe we'll be adding
4 the word "imbalance" before the phrase "cashout
5 provisions" in that first line.

6 **COMMISSIONER CLARK:** Okay.

7 **MR. KEATING:** And we'd also change the
8 language of Issue 1 to read, "should the Commission
9 approve the petition of Peoples Gas System for
10 approval of experimental Rider FTA-2 (Firm
11 Transportation Aggregation Service 2) and
12 modifications to the imbalance cashout provisions of
13 the firm delivery agreement."

14 **COMMISSIONER CLARK:** Okay. And strike the
15 rest of the Rider FTA program?

16 **MR. KEATING:** Correct. Strike "Rider FTA
17 program."

18 **COMMISSIONER CLARK:** Okay.

19 **MR. KEATING:** And Peoples has provided Staff
20 with a position on Issue 1 that we can include in the
21 prehearing order.

22 **COMMISSIONER CLARK:** Okay. You don't need
23 to read it right now.

24 **MR. KEATING:** Okay. We can strike Issues 2
25 and 3 and renumber Issue 4 as Issue 2.

1 **COMMISSIONER CLARK:** Okay.

2 **MR. KEATING:** And I believe those are all
3 the changes that I have.

4 **MR. WATSON:** Commissioner Clark, I have one
5 other possible change. It's the very end of Roman
6 Numeral IX, the Exhibit List. There is a sentence at
7 the end of the listing of the three exhibits that
8 says, "parties and Staff reserve the right to identify
9 additional exhibits for the purpose of
10 cross-examination."

11 I'd actually like to have that taken out,
12 but I realize it's standard in Commission prehearing
13 orders. I would simply like to get a ruling from the
14 prehearing officer that Staff should provide Peoples
15 with any exhibits that are not identified in the
16 prehearing order which they will use in
17 cross-examination. I don't really care what questions
18 they're going to ask, but I think, you know, they've
19 had our petition since mid July. They've had the
20 testimony and exhibits since November. And if they've
21 got something they want to ask the witness about I
22 think it would be appropriate for the witness to be
23 able to see it prior to the time he testifies.

24 **COMMISSIONER CLARK:** Mr. Keating.

25 **MR. KEATING:** It's my understanding that

1 this is something that we haven't done before and
2 Staff would certainly like to reserve the right to
3 identify additional exhibits for cross-examination. I
4 believe there may be exhibits that we wish to use to
5 test the credibility of a witness that we would rather
6 not make available and have them see for the first
7 time at hearing. We would not be willing to give up
8 the ability to identify additional exhibits as the
9 case moves along.

10 **COMMISSIONER CLARK:** Mr. Watson.

11 **MR. WATSON:** I raise that only to -- I don't
12 have a problem if that language stays in there, but I
13 do think it would be appropriate that Staff --

14 **COMMISSIONER CLARK:** Yes. I guess I'm
15 somewhat in agreement with the notion of, to the
16 extent you have identified exhibits that you want to
17 ask a witness about and the process is facilitated by
18 giving it to them in advance and letting them look at
19 it so that they can answer the question on the stand
20 and move the hearing along a little bit better, I
21 think that's appropriate.

22 On the other hand, I do understand the
23 notion of -- for impeaching the credibility of the
24 witness you may not want to divulge those pieces of
25 evidence. I would venture to say that's an unlikely

1 sort of process for us to follow here usually, but
2 it's not outside the realm of possibility.

3 I think what I would ask is that we go ahead
4 and leave that in there, but to the extent you know
5 you have documents that it will take the witness some
6 time to digest and respond to and that it will
7 facilitate the process, I think you should give it to
8 Mr. Watson so that he may give it to the witness and
9 the witness will be thus better prepared at the
10 hearing to respond, and I think it should be done
11 with -- within a reasonable time after you decide you
12 will be using it.

13 **MR. KEATING:** Okay.

14 **COMMISSIONER CLARK:** I'm going to rely on
15 you to use your judgment. If it's something that you
16 think that giving ahead of time is not -- for strategy
17 purposes you think is inappropriate, I understand
18 that. But it also strikes me that we're not generally
19 in that kind of sort of -- the only word that comes to
20 my mind is ambush and that's not what I want to say.
21 But I know that there are, you know, legal proceedings
22 where you don't want to divulge the information you
23 have. It's part of your trial strategy. But I would
24 venture to say that's probably not normally the case
25 here and we benefit more from having the witnesses at

1 least see it ahead of time. And I know in the past
2 Staff has shown more complicated exhibits to the
3 witnesses to let them know we're going to ask you
4 about this so be prepared. And I guess that's the
5 courtesy that I ask that you extend to Mr. Watson.

6 **MR. KEATING:** We will do that.

7 **MR. WATSON:** Commissioner Clark, I'd like to
8 ask one other -- for one other ruling from the
9 prehearing officer, and that is for a shortened period
10 for discovery or for Staff to respond to some
11 discovery initiated by Peoples.

12 We have conducted no discovery because we
13 were not apprised of any issues other than those that
14 were identified in the Staff recommendation and the
15 Commission's order indicating this case would be set
16 for hearing.

17 In view of the indication now that there has
18 been some survey conducted, et cetera, I think we
19 ought to have access to the hard information that was
20 developed in that survey.

21 **COMMISSIONER CLARK:** Okay.

22 **MR. WATSON:** I'd like to ask that maybe 10
23 days, if that's not too brief a time for the Staff to
24 comply with.

25 **MR. KEATING:** Okay. We can make that

1 available.

2 **COMMISSIONER CLARK:** Okay. Or sooner. If
3 it's available now and you can send it home with
4 him --

5 **MR. KEATING:** I think we can do that.

6 **COMMISSIONER CLARK:** -- that's a good way to
7 handle it. But -- yes. I will -- I think discovery
8 should be expedited. To the extent you have
9 information that Mr. Watson you know you want today,
10 maybe you can get with the Staff and they can get it
11 to you. If they can't I would request that it be not
12 just mailed, but delivered to Mr. Watson within 10
13 days and any future discovery would be done -- for
14 both parties would be done on an expedited basis and
15 if you need me to rule on the expedited basis I will,
16 but I would ask you to work that out between
17 yourselves.

18 **MR. KEATING:** I would just point out one
19 thing. I guess from my research on the matter of
20 discovery on Staff there's, with one exception, the
21 Commission has not allowed discovery, but in the case
22 of a public record, that's something that we made
23 available to parties. When it gets a little further
24 into perhaps interrogatories where you're sort of
25 picking Staff's brain at what they know, that hasn't

1 been allowed in the past.

2 **COMMISSIONER CLARK:** Well, I would say the
3 same constraints on discovery will apply. It has
4 nothing to do with the timing of it and I guess,
5 Mr. Watson, you know you have the alternative of
6 asking -- making a public record to request that
7 sometimes gets you the information a little quicker.

8 **MR. WATSON:** Absolutely.

9 **COMMISSIONER CLARK:** Okay.

10 **MR. WATSON:** Well, interestingly, TECO Gas
11 Services president requested of Chairman Garcia all of
12 the information in the possession of the Commission or
13 its Staff on which the allegations in the Staff
14 recommendation were based. This is by letter dated
15 October 20th. To date, there's been no response to
16 that letter.

17 **COMMISSIONER CLARK:** I did notice that in
18 your pleading. Wasn't it in your pleading?

19 **MR. WATSON:** Yes.

20 **MR. KEATING:** And to respond, Commissioner
21 Clark, at the time we had allegations and that was
22 about it.

23 **COMMISSIONER CLARK:** Okay.

24 **MR. KEATING:** You know, I apologize on our
25 behalf for not responding sooner.

1 **MR. WATSON:** Point of clarification. When
2 the -- I assume the CASR will be revised for the new
3 hearing date, the new agenda conference, et cetera.
4 Will there also be new revised dates for a time by
5 which Staff must file testimony and exhibits if they
6 intend to do so and a time for Peoples to --

7 **COMMISSIONER CLARK:** Absolutely. Why don't
8 we try and agree on that right now. Do you have a
9 date by which you would file your testimony?

10 Mr. Watson, I want to let you know that I
11 wasn't trying to keep you from eating your lunch and I
12 appreciate the fact that you had to drive up here, but
13 I had and have a conference call and we were concerned
14 about having to bump that conference call and it's a
15 NARUC-wide conference call, so I don't think it would
16 have been feasible for us to bump that.

17 **MR. WATSON:** Absolutely all right.

18 **MR. KEATING:** We're looking at a potential
19 Staff testimony date as February 7th with rebuttal
20 testimony filed February 14th.

21 **COMMISSIONER CLARK:** Is that the normal one
22 week period? Is that what you usually allow for
23 rebuttal?

24 **MR. KEATING:** It's pretty close, yeah. We
25 typically try to do one or two weeks.

1 **COMMISSIONER CLARK:** Mr. Watson.

2 **MR. WATSON:** What day of the week is the
3 14th?

4 **MR. KEATING:** That's a Monday. We can -- if
5 we do file testimony on the 7th we can make sure that
6 it gets faxed out and is available to Peoples on the
7 7th.

8 **COMMISSIONER CLARK:** Okay.

9 **MR. WATSON:** I still wonder whether that
10 provides sufficient time with people's schedules and
11 everything. I mean, our basic case has been up here
12 since the middle of July of last year. I'd like to
13 have some additional time. Maybe until the 17th.

14 **COMMISSIONER CLARK:** When is the 22nd? Is
15 that a Tuesday?

16 **MR. KEATING:** The 22nd is a Tuesday. The
17 17th will work for us. We'd like the opportunity,
18 though, between the time that that testimony is filed
19 and the hearing date to depose that witness. That
20 only gives us Friday and a Monday, but we're okay with
21 the 17th if we have that opportunity.

22 **COMMISSIONER CLARK:** If it's necessary to
23 depose the rebuttal witness, would it be -- would that
24 be able to be done either on the 19th or the 21st? I
25 would suggest the 19th of February if it becomes

1 necessary to depose the rebuttal witness.

2 **MR. WATSON:** If we have a -- I think
3 Mr. Caldwell would agree to be deposed again, if he
4 submits the rebuttal. If it's some other witness, I
5 assume Staff ought to be able to depose him or her.

6 **COMMISSIONER CLARK:** And just to put you on
7 notice that it would likely be the 19th.

8 **MR. KEATING:** The 18th is the Friday
9 following the --

10 **COMMISSIONER CLARK:** The 18th. So that
11 gives you one day to look at the testimony. Well, I
12 guess I would encourage you to be in touch with each
13 other to make these tight time frames work.

14 **MR. WATSON:** Maybe we could Staff to fill
15 their testimony earlier.

16 **COMMISSIONER CLARK:** Just a little earlier.
17 The 7th is a Monday?

18 **MR. KEATING:** The 7th is a Monday. I guess
19 the question I still had, and maybe I missed this, did
20 you set a specific time limit on the expedited
21 discovery as to the number of days?

22 **COMMISSIONER CLARK:** By whom?

23 **MR. KEATING:** On either side. I think you
24 said that the expedited discovery requirements would
25 be on both sides.

1 **COMMISSIONER CLARK:** No, I did not. The
2 only thing I said was 10 days for -- from today for
3 the survey.

4 **MR. KEATING:** Correct.

5 **COMMISSIONER CLARK:** Can we agree to a week
6 turnaround on it for both parties? Well, if you run
7 into a problem and a week won't work, you can show us
8 good cause, and we'll be available to deal with that
9 the day it comes in.

10 **MR. KEATING:** All right. I think that would
11 work.

12 **COMMISSIONER CLARK:** Why don't we move up
13 the Staff testimony to the -- you say Friday is the
14 7th?

15 **MR. KEATING:** The 7th is a Monday. One week
16 up would be Monday, January 31st.

17 **COMMISSIONER CLARK:** How about the middle of
18 the week before? Instead of -- would that be like
19 the --

20 **MR. KEATING:** February 2nd or 3rd.

21 **COMMISSIONER CLARK:** How about the 2nd?

22 **MR. KEATING:** That would be fine.

23 **COMMISSIONER CLARK:** And then what was --
24 make the rebuttal due the 14th now.

25 **MR. WATSON:** The 10th or the 14th.

1 **MR. KEATING:** The 14th. That would be good.

2 **COMMISSIONER CLARK:** Okay. That will give
3 you a little more time to review it and decide if you
4 need to depose.

5 **MR. KEATING:** Yes.

6 **COMMISSIONER CLARK:** Okay. Is there
7 anything else we need to talk about? Nothing else?

8 **MR. KEATING:** I don't believe so.

9 **COMMISSIONER CLARK:** All right. What about
10 a date for an additional prehearing and we'll do it by
11 phone? We'll decide right now to do it by phone.

12 **MR. KEATING:** Would you prefer that I check
13 with the scheduling coordinator or just check with
14 your office afterwards to work out a date?

15 **COMMISSIONER CLARK:** I wonder if I simply --
16 instead of adjourning the prehearing conference, we
17 continue it. Then we don't have to go through the
18 Chairman's office, is that right, to get it
19 rescheduled, and we can just decide. Would that be
20 okay? What is the best way to do this?

21 **MR. ELIAS:** I don't see anything
22 procedurally in firm with continuing the prehearing
23 conference to a time to be determined, if it is
24 ultimately determined to be necessary.

25 **COMMISSIONER CLARK:** Okay. All right.

1 **MR. ELIAS:** It may very well be that --
2 there's just two participants to this proceeding --
3 that we can present to you an order that's agreed upon
4 for your signature without having to reconvene in any
5 formal way.

6 **COMMISSIONER CLARK:** Okay. All right.
7 We'll do this. We'll just continue the prehearing and
8 to the extent we need to meet again, we will do it by
9 phone at a date agreed upon. To the extent you can
10 agree on the language of the prehearing, then draw up
11 the stipulated prehearing and I'll sign it.

12 **MR. KEATING:** Okay.

13 **COMMISSIONER CLARK:** Thank you all very
14 much. This prehearing is continued.

15 (Thereupon, the hearing concluded at
16 2:30 p.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

: CERTIFICATE OF REPORTER

3 I, KIMBERLY K. BERENS, CSR, RPR, Official
4 Commission Reporter,

5 DO HEREBY CERTIFY that the Prehearing
6 Conference in Docket No. 990935-GU was heard by the
7 Prehearing Officer at the time and place herein
8 stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed by me; and that this transcript,
12 consisting of 36 pages, constitutes a true
13 transcription of my notes of said proceedings.

14 DATED this 13th day of January, 2000.

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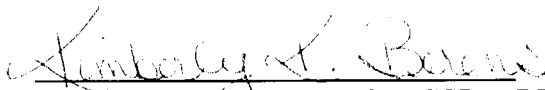
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KIMBERLY K. BERENS, CSR, RPR
Florida Public Service Commission
Official Commission Reporter