

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition by Tampa Electric Company for  
approval of plan to bring generating units  
into compliance with the Clean Air Act.

DOCKET NO.: 992014-EI

BEFORE: CHAIRMAN JOE GARCIA  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER SUSAN F. CLARK  
COMMISSIONER E. LEON JACOBS, JR.

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 7A\*\*

DATE: Tuesday, January 18, 2000

PLACE: 4075 Esplanade Way, Room 148  
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL  
Registered Professional Reporter

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## STAFF RECOMMENDATION

Issue 1: Should TECO be required to issue a Request for Proposal (RFP) for the shutdown/repowering of the Gannon Station?

Recommendation: Yes. To ensure that TECO selects the lowest cost option between purchased power and refurbishing Gannon, TECO should be required to issue an RFP in lieu of the repowering at the Gannon Station. The RFP should solicit proposals that minimize total costs, including the construction of transmission capacity, and ensure that the emission requirements of the CFJ are achieved or exceeded. The RFP results should be filed by May 1, 2000, in order to avoid any further delay in emission reductions that would otherwise result from TECO's Compliance Plan.

Issue 2: Should this docket be closed?

Recommendation: No. This matter is currently set for hearing May 30 through June 2, 2000. This docket must remain open until the conclusion of all post-hearing proceedings.

1 CHAIRMAN GARCIA: All right. We'll get  
2 started again.

3 Let me just announce that after this item,  
4 there are some customers from Shangri-La  
5 Utilities here, so we are going to try to take  
6 them up before lunch. So we'll take up Item 29  
7 after 7A. Okay? So we'll begin.

8 Staff?

9 MR. BALLINGER: Commissioners, as you know,  
10 Item 7A was filed as an emergency to put on this  
11 agenda, and as such, in Staff's rush, there were  
12 a couple of minor errors that we found in the  
13 recommendation. I would like to go through  
14 those real quick.

15 First with you, on the background, on page  
16 2, in that first paragraph, where it says, "The  
17 CFJ specifically requires," I would strike the  
18 word "the" and insert the word "to" between  
19 "TECO" and "engage."

20 On page 3, in the recommendation  
21 paragraph, the third line says "be required to  
22 issue an RFP for," strike the word "for" and  
23 insert "in lieu of the repowering." It's a  
24 little clearer that way. We didn't want to make  
25 it appear the recommendation was actual vendor

1 RFPs for the equipment. This is an "in lieu of  
2 the project" kind of a thing.

3 Page 4, the -- right near the end of the  
4 page, "its plan to estimated," it should be "its  
5 plan is estimated."

6 And then on page 7, there's two  
7 corrections, and again, it's replacing that  
8 "for" with "in lieu of." On the last sentence  
9 of the first paragraph near the top of the page,  
10 "issue an RFP," strike the word "for" and insert  
11 "in lieu of." And down in the conclusions  
12 section, again strike the word "for" and insert  
13 "in lieu of."

14 Those changes don't change the tone of the  
15 recommendation. They are minor clarifications  
16 and oversights that we found later on.

17 To introduce this item, we are filing this  
18 recommendation now to avoid some controversy,  
19 hopefully, at the end of the hearing. Staff  
20 feels that the most compelling way to test a  
21 market for any major construction is to issue an  
22 RFP. This is the first time that a utility has  
23 asked for recovery of a major repowering  
24 project, and that's why we're bringing this to  
25 you now. As you know, Florida Power & Light is

1 doing a repowering at Fort Myers and planning  
2 one for Sanford. They have not yet asked for  
3 any cost recovery, so this is the first time  
4 that it has actually been requested of the  
5 Commission, and we felt it appropriate to bring  
6 it to you at this time.

7 If we were to wait until the end of the  
8 hearing and recommend issuing an RFP, it may  
9 really mess up the works and not allow for the  
10 agreement between TECO and DEP to go forward  
11 because of timing constraints. That's why we  
12 feel we should bring it to you now.

13 We understand that TECO is not required to  
14 issue an RFP for this type of project. Our  
15 bidding rule only applies to new generation or  
16 generation that would go under the Power Plant  
17 Site Act. As I understand, the proposed  
18 repowering of Gannon does not trigger the Power  
19 Plant Site Act, and therefore would not formally  
20 trigger our bidding rule.

21 Again, we're bringing it to you now to  
22 hopefully get an answer, should they issue an  
23 RFP or not, and avoid some confusion at the end  
24 of the hearing.

25 That's basically the summary of this, and

1 we're open for any questions you have.

2 CHAIRMAN GARCIA: Okay.

3 MR. WILLIS: Commissioners, I'm Lee Willis,  
4 representing Tampa Electric. With me today is  
5 John Ramil, the President of Tampa Electric, and  
6 Tom Hernandez, who is the Vice President of  
7 Regulatory.

8 I will present our argument that Staff's  
9 proposal to require Tampa Electric to issue an  
10 RFP in lieu of the Gannon project is illegal.  
11 John Ramil and Tom Hernandez will explain to you  
12 why such an RFP process is both impractical and  
13 unnecessary.

14 First of all, let's look at what the Staff  
15 concedes in its recommendation and points that  
16 we agree with in the recommendation.

17 This recommendation concedes that there is  
18 no specific statute and there is no rule  
19 mandating an RFP in this circumstance. That's  
20 on page 3 of the recommendation.

21 It says further that the Gannon repowering  
22 project will not require a Power Plant Site Act  
23 need determination because there will be no net  
24 change in steam capacity at the Gannon Station.  
25 That's on page 5, and we agree with that.

1           The Commission's bid rule does not apply  
2 because Tampa Electric's petition is not a need  
3 petition. That's on page 6 of the  
4 recommendation, and we agree with that.

5           The recommendation also says that the bid  
6 rule only requires investor-owned utilities to  
7 issue an RFP for power plants subject to the  
8 Power Plant Site Certification Act. That's on  
9 page 6, and we agree with that.

10          Staff also says that Tampa Electric is not  
11 required by any current rules to issue an RFP  
12 for the repowering of Gannon. And that's on  
13 page 7, and we agree with that.

14          What we strongly disagree with, however, is  
15 whether this Commission has the authority to  
16 require bidding in lieu of the Gannon repowering  
17 project. It is our firm position that Staff's  
18 proposed action is illegal, as it would violate  
19 Section 120.569, decisions which affect  
20 substantial interests; Section 120.57,  
21 procedures for particular cases; and Section  
22 120.54 with respect to rulemaking. We believe  
23 that in addition to procedural due process, that  
24 it would also be precluded by substantive due  
25 process, as I'll explain.

1 Tampa Electric cannot be required to bid  
2 this project as the only means of showing that  
3 the project is the most cost-effective without  
4 any rule on that subject, which you do not have,  
5 as Staff admits, or without an order entered  
6 after notice, opportunity for hearing, and the  
7 entry of a final order under the procedures  
8 required under the Administrative Procedures Act  
9 under the sections I've quoted to you.

10 You certainly have the authority after  
11 hearing to determine in this case whether Tampa  
12 Electric has shown what is the most reasonable  
13 and prudent alternative to replace the base load  
14 capacity provided by Tampa Electric's coal-fired  
15 Gannon Station, which also achieves the  
16 environmental benefits of the Consent Final  
17 Judgment which has been imposed upon Tampa  
18 Electric in the litigation process.

19 what is before you is a fundamental issue  
20 that was identified in the issue identification  
21 proceeding, that is, what is the most reasonable  
22 and prudent alternative. without an applicable  
23 rule, you can't dictate that bidding is the only  
24 means of making such a showing. And after  
25 hearing, you could determine whether Tampa



1 Electric has met its burden, but you cannot  
2 decide that now without a duly adopted rule that  
3 bidding is the only means to show that.

4 It's inappropriate for you now to strip out  
5 one of the issues to be decided in this case at  
6 this preliminary stage to be summarily decided.  
7 Such an action obviously denies due process of  
8 law and is in direct violation of the statutes  
9 that I've quoted to you. There's no doubt that  
10 staff's recommendation would deny due process of  
11 law under the Administrative Procedures Act.

12 Section 120.54 has an elaborate procedure  
13 which you're familiar with. You have rule  
14 development, you have discussions, hearings,  
15 opportunity for participation. That has not  
16 been done here.

17 As a general matter, moreover, as your  
18 staff has stated to you, we are well aware of  
19 other repowering projects by other utilities  
20 that have not been required to bid. So this  
21 recommendation really is contrary to this  
22 Commission's practice of not requiring other  
23 projects to bid.

24 Section 120.57, on the other hand, dealing  
25 with cases involving substantial interests, says

1 that all parties shall have an opportunity to  
2 respond, to present evidence and argument on all  
3 issues involved, to conduct cross-examination,  
4 submit rebuttal evidence, and submit proposed  
5 findings. You know that procedure. It has not  
6 been followed here.

7 staff's recommendation, if adopted, would  
8 summarily deny Tampa Electric's rights under  
9 Section 120.57 to meaningfully address such an  
10 issue in a duly noticed hearing. This summary  
11 jump to a conclusion is all the more  
12 inappropriate considering the fact that Tampa  
13 Electric's testimony in this case is not due for  
14 another ten days.

15 staff states as its authority for mandating  
16 an RFP the general provisions of Section 366.01  
17 and 366.061. But these statutes don't authorize  
18 this Commission to suspend the Administrative  
19 Procedures Act or the due process provisions of  
20 the State and Federal Constitutions. At best,  
21 these statutes provide some argument that a rule  
22 could be adopted at a future date.

23 But even in the bidding rule that you have  
24 on your books now, it was applied to future  
25 proceedings. It was not applied to the

1 proceedings that were ongoing at the time. It  
2 was applied prospectively.

3 But at worst, these statutes cited by Staff  
4 do not provide a basis for a new rule of law  
5 covering repowering of existing generation. We  
6 don't believe these statutes give you that  
7 authority to mandate bidding for repowering  
8 projects.

9 The Supreme Court of Florida has recognized  
10 that there can't be any compromise in due  
11 process on the footing of convenience or  
12 expediency or because of the natural desire to  
13 avoid delay when the minimal requirement of a  
14 fair hearing has been neglected. That was  
15 specifically addressed by the Court in Florida  
16 Gas Company vs. Hawkins, 372 So.2d 118, in  
17 1979. In that case, the Commission concluded at  
18 the outset that it would dismiss the case  
19 because it didn't believe that going to hearing  
20 was going to grant a rate increase to Florida  
21 Gas Company.

22 In quoting a prior decision, the Court  
23 quashed this denial of due process, reversed the  
24 Commission, and quoted as follows: "we have  
25 held that where a rate, rule, or regulation is

1 made without statutory authority or without  
2 giving the carrier affected by it reasonable  
3 opportunity to be heard, or without obtaining or  
4 considering any substantial evidence where an  
5 investigation, inquiry, and evidence are  
6 necessary as a basis for the action taken, the  
7 proceeding is not had in due course of law, and  
8 this Court will not enforce it."

9 In the instant proceeding, the Staff  
10 erroneously is asking the Commission to decide  
11 the issue even before having an opportunity to  
12 see Tampa Electric's case. This is even more  
13 egregious than the situation before the Florida  
14 Gas-Hawkins court, in that testimony is not due  
15 for another ten days.

16 Commissioners, this situation is also very  
17 different than a situation involving capacity  
18 that hasn't been built. It's very different,  
19 because it involves existing assets of the  
20 company. We believe that Staff's recommendation  
21 would also violate substantive due process of  
22 law by causing a taking of Tampa Electric's  
23 property without due process of law. You don't  
24 have authority to take such an action which is,  
25 in effect, a forced divestiture. Such action

1 would violate both the State and Federal  
2 Constitutions.

3 The Staff recommendation seeks to require  
4 Tampa Electric to either shut down the plant and  
5 purchase the power from another party -- bear  
6 with me with this, because it does encroach on  
7 Tampa Electric's property values -- or to  
8 require bidding and sale or use by third parties  
9 of the Gannon assets. Now, either one of those  
10 propositions we believe would violate due  
11 process.

12 You have a lot of power. You have a lot of  
13 power to supervise and control Tampa Electric.  
14 But there's just so far that you can go, and you  
15 can't go as far as a taking of its property  
16 without due process of law. And this can occur,  
17 Commissioners --

18 CHAIRMAN GARCIA: walk me through that,  
19 because you lost me there. How is asking you to  
20 go to bid a taking?

21 MR. WILLIS: what staff is suggesting that  
22 we do is that Tampa Electric not repower, or  
23 consider proposals that we not repower this  
24 project, and thereby place it back in service in  
25 a useful way and to continue using that property

1 and not have it stranded, and purchase it  
2 elsewhere.

3 Now, Mr. Ramil and Mr. Hernandez will  
4 address to you some specific reasons why bidding  
5 is not practical here, why it won't work and why  
6 buying --

7 CHAIRMAN GARCIA: Right.

8 MR. WILLIS: But it would affect the  
9 property in such a way that it would require it  
10 to be shut down.

11 What we have done is, we have gone through  
12 environmental litigation, which is very complex  
13 and involved, and we are under a Consent Final  
14 Judgment to meet very strict environmental  
15 requirements. In order to do that, Gannon has  
16 to be repowered. In order to do that, when it's  
17 repowered, those assets will continue to be  
18 useful assets of the company.

19 So it is the natural effect of it. What it  
20 does is, if you deprive the owner of all  
21 economic, beneficial, productive use of the  
22 property, that is tantamount to a taking. If  
23 you --

24 CHAIRMAN GARCIA: That would almost beg  
25 that as we go forward on this case, we have to

1 allow you a -- we have to approve the case, and  
2 we have to approve what you say, because if not,  
3 it's a taking.

4 MR. WILLIS: Well, what I've said is that I  
5 believe that you procedurally go through the  
6 process of holding the hearing that you have  
7 scheduled in this docket for us to present to  
8 you the evidence of why we have done what we  
9 have done. But it is inappropriate for you to  
10 dictate to us now how that is to be done without  
11 any rule or order requiring that done, based on  
12 specific statutory authority. We believe that  
13 you can't just use implied authority for this.

14 where you begin to tread on fundamental  
15 rights, which we believe it is here, you must  
16 have strict interpretation of the statutes and  
17 the grant of power to you. And that's obviously  
18 not present here. We believe that the  
19 legislative silence in this regard is evidence  
20 that it has not been granted to you. Now --

21 COMMISSIONER DEASON: Mr. Willis, let me  
22 ask you this question. Under your scenario, if  
23 we go to hearing and we take your evidence and  
24 we conclude that your alternative overstates the  
25 actual costs that could have been utilized to

1 reach the same conclusion, perhaps, but there's  
2 a different remedy, perhaps there's a purchase  
3 option or something else could be done, what  
4 happens at that point? Do we have the authority  
5 then to say, "You spent 500 million, but it  
6 could have been done for 490 million; therefore,  
7 we're only going to allow you recovery of 490  
8 million"? Is that the remedy we have?

9 MR. WILLIS: Well, Commissioner, we have  
10 not even asked in this particular proceeding for  
11 any rate recovery or for you to conclude  
12 anything with respect to the cost of this  
13 project.

14 COMMISSIONER DEASON: Well, I guess I'm  
15 assuming that we go through your process, and at  
16 some point in the future there is some type of a  
17 proceeding, be it a rate case, a preliminary  
18 proceeding, whatever, that there are costs being  
19 requested to be recovered by some fashion. What  
20 is our remedy at that point?

21 MR. WILLIS: Well, I think at that time you  
22 have the authority to determine the amount that  
23 was honestly and prudently spent for the  
24 construction of these projects, or for whatever  
25 is before you. That's what the statute provides



1 for you, as opposed to ordering a particular  
2 type of proof in advance to prove that to you.

3 COMMISSIONER CLARK: But I think the answer  
4 to his question is yes. If you spent \$500  
5 million and we concluded that you could have  
6 done it for 490 and should have done it for 490,  
7 one of the remedies might be to say what moves  
8 into the rate base is only 490.

9 MR. WILLIS: Yes, ma'am.

10 CHAIRMAN GARCIA: Okay.

11 MR. WILLIS: We believe that what Staff is  
12 recommending to you is way beyond your  
13 authority. It's not only beyond the authority  
14 here; it's beyond what has been done anywhere  
15 else in the country.

16 Now, there have been some instances where  
17 this has been looked at in other jurisdictions  
18 where they are considering the restructuring of  
19 the industry. But we believe that the required  
20 divestiture is something that is always  
21 voluntarily allowed in return for recovery of  
22 stranded assets or some sort of opt-in  
23 provision. We don't even have a legislative  
24 action here upon which to base such a radical  
25 departure.

1           Based on these considerations, I urge that  
2 you deny Staff's recommendation on the grounds  
3 that it calls for an illegal result.

4           John Ramil will now address with you the  
5 reasons Tampa Electric strongly believes that  
6 bidding is impractical and unnecessary for the  
7 Gannon repowering project.

8           MR. RAMIL: Thank you, Lee, and good  
9 morning, Commissioners.

10           Commissioners, the Gannon repowering  
11 project is the centerpiece of a sensitive and  
12 carefully balanced environmental settlement with  
13 the Florida Department of Environmental  
14 Protection. Mr. Willis has explained that the  
15 action proposed by your Staff is not legal. I  
16 will explain to you why in the context of this  
17 environmental settlement, the prospective  
18 bidding to replace a key element is impractical  
19 and would frustrate achieving a solution that  
20 would accomplish the environmental certainty  
21 desired by Tampa Electric in this transaction  
22 and frustrate advancing the new state  
23 environmental policy desired by the DEP.

24           Commissioners, over the past several  
25 months, first in discussions with the EPA and

1           then with the DEP, it has become clear to me  
2           that the environmental agencies have an agenda  
3           to significantly reduce emissions from existing  
4           power plants. It's also clear that the public  
5           is interested in improving environmental  
6           quality.

7           Given these two realities, many weeks ago I  
8           authorized my staff to enter into settlement  
9           negotiations with the EPA. And as you may  
10          recall, once the EPA implemented their highly  
11          publicized national program with lawsuits and  
12          notices of violation, that triggered a 30-day  
13          period, a window for the state DEP under the  
14          state implementation plan to step in and seek a  
15          solution.

16          To the credit of the leadership of the  
17          State and the Florida DEP, they stepped in, and  
18          in a very proactive and solution-oriented  
19          manner, they were very clear in the emission  
20          reductions policies that they would require  
21          going forward, and they made very clear to us  
22          their expectations of Tampa Electric.

23          Accordingly, we made very clear that while  
24          we very much wanted to settle the environmental  
25          issues at hand, we also had to reliably and

1 economically serve our customers, and that we  
2 took environmental compliance very seriously;  
3 thus, we would only commit to achievements that  
4 we could indeed accomplish.

5           Commissioners, in our negotiations with the  
6 DEP and in our continuing sensitive negotiations  
7 with the EPA, it became obvious that a  
8 repowering of Gannon Station with natural gas  
9 was not only essential to meeting their  
10 environmental expectations, but would be more  
11 reliable and less costly to our customers than  
12 additional environmental controls on the  
13 existing coal-fired boilers. As such, the  
14 Gannon repowering became the centerpiece of the  
15 agreement reached with the DEP.

16           Commissioners, as we finalized our  
17 agreement with the DEP and committed Tampa  
18 Electric to certain actions, as well as in  
19 setting the DEP's expectations, we relied  
20 heavily on this Commission's rules and its  
21 precedents. While the Commission's actions and  
22 rules make it abundantly clear that bidding will  
23 be required for new incremental capacity, that  
24 is not the case for existing asset  
25 modifications, repowerings, or fuel switching,

1 nor should it be. The issues to be considered  
2 are very different in those instances. In fact,  
3 for the specific instance of repowering, the  
4 Commission has never required bidding.

5 Given our experience in achieving this  
6 agreement with the DEP, which implements their  
7 new state environmental policy, the Commission  
8 -- our experience has been that the Commission  
9 has been very wise not to have such a policy on  
10 bidding for repowerings.

11 In our agreement with the DEP, it's very  
12 clear what's expected of Tampa Electric and how  
13 the company must perform.

14 COMMISSIONER CLARK: Mr. Ramil, let me  
15 interrupt you. You say that we have a policy.  
16 I'm not sure we even have a policy, because this  
17 is the first time it has come up. Are you aware  
18 of it having come up before?

19 MR. RAMIL: No. My point is that you're  
20 wise not to have a policy.

21 In our agreement with the DEP, it's very  
22 clear what's expected of the company and what we  
23 must do to perform. I do not believe that such  
24 a beneficial agreement could have been achieved  
25 if the vagaries and uncertainties associated

1 with bidding and the introduction of third  
2 parties had to be considered.

3 Further, I urge the Commission not to  
4 jeopardize the agreement we have with the DEP or  
5 our ongoing discussions with the EPA by  
6 introducing the performance responsibility and  
7 timing uncertainties that will definitely arise  
8 if you require bidding in this instance.

9 Commissioners, it's our intent --

10 CHAIRMAN GARCIA: Isn't there some  
11 protection, though, for you?

12 I mean, at least the way I read the Staff  
13 rec -- and I guess you're correcting my  
14 interpretation of what Staff recommended. To  
15 some degree, what they're trying to do is make  
16 sure that they've got an understanding of what  
17 the market is out there, an understanding of  
18 what cost is going to be passed on.

19 And I think that every bid that has been  
20 put out -- and Staff can correct me if I'm  
21 wrong. Every bid that has been put out for new  
22 generation in Florida has been won by the  
23 investor-owned utility of the state. So I guess  
24 that Staff's thinking was to have something to  
25 compare it by.

1           And it's sort of almost a safety valve for  
2 you, because clearly we've decided this way in  
3 the past. And my thinking is going along the  
4 lines of Commissioner Deason, that when we get  
5 to the end of this thing, that if Staff comes to  
6 the conclusion that this should have cost 470  
7 million as opposed to the 500 you're billing us  
8 for, you're 30 million in the hole. However, if  
9 we went to the bidding process, there it is.  
10 We've got it there. You won that process. You  
11 explained to us why your bid is better. We're  
12 better served, Florida is protected, the  
13 ratepayers have something to compare by, and we  
14 have something to compare by. Doesn't it assure  
15 you that safety net?

16           MR. RAMIL: What you just described,  
17 Mr. Chairman, I think is very appropriate and  
18 very accurate if we're dealing with new  
19 incremental capacity. But we're dealing with  
20 effectively replacement capacity and projects  
21 that are being done that have environmental  
22 compliance requirements associated with them.

23           CHAIRMAN GARCIA: All right, Mr. Ramil,  
24 then let's go the other way. Let's say that  
25 you're doing this, and you come in at 550

1 million. I don't know what the figure -- all I  
2 have is what Staff gave me. But you came in at  
3 550 million. And Staff does an analysis across  
4 the country, and we come up with numbers through  
5 power projects that are going on in our state  
6 and others, and we say that the same amount of  
7 megawattage could have been done on a totally  
8 greenfield project for 450 million, so we've got  
9 a 100 million difference.

10 Now, I understand you've got an agreement  
11 there, but we're not privy to that agreement.  
12 We're not part of the people who designed that  
13 agreement. So clearly, you've got an agreement  
14 with the EPA, but my job is to take care of  
15 Florida ratepayers. And now we've got a  
16 variance. We did our study, and we come out 100  
17 million from you are.

18 Aren't your shareholders in trouble then?  
19 I mean, don't we put you in a difficult  
20 situation when you try to slip this to the  
21 ratepayers in some form, and we are sort of the  
22 gatekeeper for that? Doesn't it put us in a  
23 more difficult position and put you in a more  
24 difficult position if we've got some discrepancy  
25 on what we think should be charged off and what



1 you think should be charged off?

2 MR. RAMIL: I think it puts you in the very  
3 position that you as the Public Service  
4 Commission of the State of Florida are in every  
5 day.

6 CHAIRMAN GARCIA: That's true.

7 MR. RAMIL: And it puts our shareholders at  
8 the risk that they're in every day. We have to  
9 take actions. You review the prudence. If your  
10 conclusions are that we have spent too much  
11 money implementing not only this project, but  
12 any project, then you have the right and the  
13 responsibility to disallow those dollars.

14 CHAIRMAN GARCIA: Why take that risk? Why  
15 deny the possibility of a cheaper alternative  
16 that I believe is almost impossible for someone  
17 to meet? I mean, clearly, you have existing  
18 assets. You have the advantage of being sited  
19 and permitted. You're in the ground already.  
20 You've got a whole series of things that work in  
21 your advantage in the case before us.

22 Why take that unnecessary risk? Why put  
23 your stockholders at that risk when putting it  
24 out to bid would probably find -- we would find  
25 ourselves -- you would probably be the low

1 bidder.

2 MR. RAMIL: well, given that description,  
3 it might be a waste of time to put it out to  
4 bid. But assuming that it's not, we have  
5 confidence that we're going to do this very  
6 cost-effective and very efficient. And as you  
7 look over our shoulder, as you do in running all  
8 of our business, you're going to reach that same  
9 conclusion.

10 Commissioners, it's our intent to implement  
11 this agreement, which our Governor has  
12 appropriately described as historic, in a  
13 responsible and cost-effective manner. As I  
14 have publicly stated following the press  
15 conferences with this announcement, we would  
16 expect this plant to only have a very small  
17 impact on our electricity prices. We had  
18 forecast that to be in the 2 to 3% range.

19 However, Commissioners, as with all of our  
20 projects, and as we have been successful in the  
21 past, we will challenge each and every one of  
22 our employees to complete this project and bring  
23 it on line with no impacts to our customers.

24 Commissioners, we've achieved this  
25 beneficial and historic environmental agreement

1 with the DEP because we've committed Tampa  
2 Electric to a certain course of action that we  
3 believe is good for our customers and good for  
4 Florida's environment. I urge you not to  
5 jeopardize this settlement by introducing the  
6 many uncertainties that would be created by  
7 voting to require bidding in this particular  
8 instance.

9           Commissioners, thank you for your time and  
10 attention, and now I would like to introduce Tom  
11 Hernandez.

12           COMMISSIONER CLARK: Mr. Ramil, before  
13 Mr. Hernandez makes his presentation, do you --  
14 what is being repowered?

15           MR. RAMIL: Gannon Station, specifically  
16 Units 3, 4, and 5.

17           COMMISSIONER CLARK: Three, 4 and 5 are  
18 going to be repowered, and then what happens to  
19 1, 2, and 6?

20           MR. RAMIL: One, 2, and 6 will be shut  
21 down.

22           COMMISSIONER CLARK: Okay. One, 2, and 6  
23 will be shut down.

24           Do you know at this point how much  
25 investment in the plants that are going to be

1 repowered exists today?

2 MR. RAMIL: Somewhere around \$100 million,  
3 I believe.

4 COMMISSIONER CLARK: Okay. Thanks.

5 COMMISSIONER DEASON: Mr. Hernandez?

6 MR. HERNANDEZ: Good morning. I want to  
7 address very briefly three points.

8 The first point is a key point that we will  
9 be providing in our testimony, the simple fact  
10 that Gannon Station is an essential facility  
11 with regards not only to the power supply in the  
12 state, but principally the transmission grid  
13 within the state.

14 My second point is to address real briefly  
15 staff's bidding time line and the fact that it's  
16 not feasible given the circumstances and the  
17 timing issues involved.

18 And the last point is to briefly address  
19 the standard offer issue that was discussed  
20 earlier in another issue this morning, but it's  
21 an issue that Tampa Electric is ready to address  
22 today.

23 First off, the Gannon Station is critical  
24 to a reliable electric system for both Tampa  
25 Electric and the state. The transmission

1 effects of a shutdown of our strategically  
2 located Gannon Station are enormous. It could  
3 cost as much as \$400 to \$500 million to overcome  
4 the extraordinary overloads and voltage  
5 stability problems that would be imposed on  
6 Tampa Electric and the state, depending upon the  
7 location of any purchased power resources as an  
8 alternative. These costs are made up of  
9 transmission line construction, reactive power  
10 supply requirements, increased system losses.

11 In simple terms, Gannon Station is  
12 centrally located in the middle of our load  
13 center and provides about 30% of the total Tampa  
14 Electric energy and demand. For over 30 years,  
15 Tampa Electric and the statewide grid has been  
16 planned and built with Gannon resources located  
17 in our service territory. Shutting down the  
18 Gannon Station and replacing that capacity with  
19 purchased capacity would collapse both the  
20 Tampa Electric and statewide systems unless  
21 significant transmission assets are added.

22 Adding transmission capacity would likely  
23 be controversial and take an extensive amount of  
24 time, if it can be accomplished at all. These  
25 transmission additions would require

1 construction by other utilities. Remember the  
2 controversy surrounding the FPC proposed Tampa  
3 Springs to Kathleen line, which after 11 years  
4 and an escalation of the cost of construction to  
5 almost three times its original estimate, the  
6 project was ultimately abandoned.

7 Finally, the bidding process time line  
8 described by Staff in its recommendation is  
9 unrealistic, given the complexities of  
10 environmental compliance, Tampa Electric's  
11 system and statewide reliability concerns, and  
12 the significant costs associated with all other  
13 alternatives compared to our Gannon repowering  
14 project.

15 We are absolutely confident that our  
16 decision not to bid this project is the best  
17 decision for our customers, for all the reasons  
18 we will present in testimony and exhibits which  
19 are scheduled to be filed within ten days and  
20 will be fully tested in discovery and in the  
21 hearing process. We fully recognize that we  
22 must show that the Gannon repowering project is  
23 the most cost-effective alternative for Tampa  
24 Electric and its customers.

25 Mr. Willis and Mr. Ramil discussed the

1 legal and procedural and policy issues that  
2 support Tampa Electric's position related to  
3 soliciting alternatives to repowering Gannon  
4 Station. While we do not have a legal  
5 requirement to bid the project, we do have a  
6 requirement to have a standard offer available,  
7 so I'll address that point briefly.

8 Tampa Electric had worked with Staff in  
9 offering a standard offer based on the 2001  
10 combustion turbine. We issued that standard  
11 offer and did not get any viable offers on that  
12 bid, and ultimately it was closed.

13 The next offer we put out was a 2003  
14 combustion turbine to be sited at the Polk Power  
15 Station. Recently that proposal has now become  
16 void, since we did not again have any viable  
17 offers presented to us.

18 Our intent, and our intent has been all  
19 along that the incremental capacity associated  
20 with the Gannon repowering project will be  
21 eligible as the basis for a cogeneration  
22 standard offer. And given the time lines that  
23 we've established with the Commission Staff, our  
24 intent is to file that standard offer based on a  
25 portion of the incremental capacity as a result

1 of the Gannon repowering project. And the  
2 timing of that would suggest that we would be  
3 making that final between now and May of this  
4 year. So there is a piece of this project that  
5 will be based on a bid following the  
6 Commission's rules related to the standard  
7 offer.

8 And that concludes our initial summary of  
9 our presentation. Thank you.

10 COMMISSIONER JACOBS: Mr. Hernandez, I have  
11 a brief question. Are there going to be  
12 transmission issues raised as a result of  
13 shutting down the three units?

14 MR. HERNANDEZ: Will there be transmission  
15 issues as a result of reduced -- or of shutting  
16 down the three units?

17 COMMISSIONER JACOBS: Yes.

18 MR. HERNANDEZ: No, sir. Effectively,  
19 we're displacing approximately 1,200 megawatts  
20 of existing capacity. With the -- and that's  
21 Gannon units 1 through 6 that are on line right  
22 now. With the repowering of Units 3, 4, and 5  
23 in the configuration that we have proposed,  
24 effectively, we will have an incremental  
25 capacity of around 275 megawatts.



1           So by the timing and the transition of that  
2           repowering, we will minimize any impact on the  
3           transmission issue, since we're going to phase  
4           and stage the repowering of those assets.

5           COMMISSIONER JACOBS: Okay. I guess the  
6           other question I have would be for Mr. Ramil.  
7           You characterized the Staff's recommendation as  
8           having the effect of interrupting or disrupting  
9           the agreement. Could you -- well, let me ask it  
10          this way. Isn't it also possible that that  
11          recommendation could have the effect of  
12          enhancing the agreement, because essentially  
13          what it does is, it removes some possible  
14          ambiguity, and as termed by Commissioner Garcia,  
15          risk that will be there. When we look at your  
16          transaction and scrutinize it for purposes of  
17          prudence, doesn't it have the equal impact of  
18          enhancing your agreement?

19          MR. RAMIL: The agreement with the DEP  
20          addresses what the company must do for  
21          environmental compliance, and I see no way that  
22          bidding, with the issues that are brought in,  
23          the potential third parties that would come in,  
24          would make it any clearer or improve it in any  
25          way versus where it is now. It's very clear

1           what the responsibilities of the company are.  
2           If third parties are introduced, it's not clear  
3           what those responsibilities would become. And  
4           it's not clear what responsibilities might end  
5           up staying with Tampa Electric and which might  
6           go to others, or if all the responsibilities  
7           ultimately fall on Tampa Electric.

8           COMMISSIONER JACOBS: So you would also  
9           advocate that those parties not be able to  
10          participate in the hearing?

11          MR. RAMIL: No. That --

12          COMMISSIONER JACOBS: Potential bidders  
13          could participate in the hearing?

14          MR. RAMIL: I don't think there's anything  
15          in that agreement that would prohibit that.

16          COMMISSIONER JACOBS: Okay.

17          COMMISSIONER CLARK: I have one question,  
18          Mr. Hernandez. You indicated that there would  
19          be 400 to 500 thousand -- a \$400 to \$500 million  
20          impact on transmission?

21          MR. HERNANDEZ: Yes, Commissioner.

22          COMMISSIONER CLARK: If it were not at the  
23          Gannon facility. You're assuming that there  
24          would be no plants there?

25          MR. HERNANDEZ: The range -- the reason why

1 I gave a range is that the full displacement of  
2 the 1,200 megawatts that are located would get  
3 you in the higher end. A partial displacement  
4 was proffered by Staff in the recommendation in  
5 terms of repowering some of the units and  
6 bidding out or having a purchase to supplement.  
7 The supply side needs of Tampa Electric would --  
8 should be or could be considered. And so you  
9 still have transmission issues.

10 There's a minimum amount of capacity that's  
11 required right at that site. And it's not  
12 linear. The way I understand it is that there's  
13 plateaus that are reached, depending upon the  
14 capacity and the load and the wheeling of power  
15 through our system, given the fact that we're  
16 located centrally in south-central Florida. So  
17 it's not clear-cut, and that's why I gave a  
18 range.

19 COMMISSIONER CLARK: Well, what do you  
20 assume -- where do you assume the generation  
21 would be coming from to derive that figure?

22 MR. HERNANDEZ: The estimate that was  
23 developed internally basically took a sampling  
24 of capacity throughout the state. So, if you  
25 will, it's kind of a weighted average versus --

1           COMMISSIONER CLARK: You assumed that the  
2 capacity that isn't being met at the Gannon  
3 Station is met incrementally at other  
4 facilities.

5           MR. HERNANDEZ: That's correct.

6           COMMISSIONER CLARK: Okay.

7           MR. HERNANDEZ: Because the actual  
8 transmission cost will depend specifically on  
9 the site of the source. If you have multiple  
10 sources, you could have compounding effects or  
11 offsetting effects. So what we did for that  
12 estimate was just basically develop capacity  
13 that was located -- dispersed throughout the  
14 state, and then accounted for losses, the  
15 transmission and wheeling costs, that type of  
16 thing.

17           MR. WILLIS: Commissioner, it's also clear  
18 that the impacts are not just on Tampa Electric.  
19 There are impacts on other systems which would  
20 require solutions by them, which could take an  
21 extremely long period of time under the best of  
22 circumstances with someone who was aggressively  
23 filing and making filings to correct the  
24 transmission effects. But transmission issues  
25 are extremely controversial, and it's a risk

1 that should not be injected here.

2 CHAIRMAN GARCIA: Thank you, Mr. Hernandez.  
3 Mr. Wright?

4 MR. WRIGHT: Thank you, Mr. Chairman.  
5 Robert Scheffel Wright, with the law firm of  
6 Landers & Parsons, appearing today on behalf of  
7 Calpine Eastern Corporation. I have some brief  
8 legal argument to present, after which Mr. Bob  
9 Carroll, a business representative of Calpine,  
10 also has some brief comments to make regarding  
11 the suggestion by the staff or recommendation by  
12 the staff that there be an RFP.

13 First, while it's true that there's no  
14 specific statute and no specific rule requiring  
15 an RFP in this circumstance, the staff is right:  
16 Your statutes charge you to broadly construe  
17 those statutes in the public interest, and the  
18 specific environmental cost recovery statutes at  
19 issue here charge you to evaluate proposals such  
20 as Tampa Electric Company has brought forward to  
21 you. The staff's recommendation is that you  
22 require TECO to conduct an RFP as a test to  
23 provide additional evidence in evaluating, in  
24 carrying out your charge under the applicable  
25 statutes here.

1           CHAIRMAN GARCIA: Let me -- Staff, you  
2 state that precisely. Excuse me, Mr. Wright.  
3 You state specifically that this is just an  
4 additional test. You're still going to do what  
5 you always do when you're looking to see what  
6 something should cost?

7           MS. JAYE: Certainly, Mr. Chairman. I  
8 would like to point out -- and I believe this is  
9 in Staff's recommendation -- that this is a  
10 procedural recommendation. It is not a  
11 recommendation that we are saying will be a  
12 final order or there will be interlocutory  
13 appeals to be taken from it. Any number of  
14 things could come of it.

15           I would also like to point out in passing  
16 that Staff is not proposing a rule, nor does  
17 Staff believe that the effect of this  
18 recommendation would act as a rule.

19           CHAIRMAN GARCIA: Okay. I don't know if  
20 that answered my question.

21           Mr. Ballinger, all I'm saying is that when  
22 I read the rec, I got a feeling that this is  
23 just in addition to what you normally do. This  
24 is sort of a safeguard step that you're taking.

25           MR. BALLINGER: Yes, sir. In fact, it's

1 actually a way to, as you pointed out earlier,  
2 help lessen TECO's burden come time of the  
3 hearing. If we had an RFP in front of us with  
4 the results, we would feel more comforted that  
5 the market was thoroughly tested.

6 CHAIRMAN GARCIA: Let me -- Mr. Wright,  
7 excuse me for a second. And I'll probably ask  
8 this to TECO at some point. But what do we do  
9 if -- as we go in the hearing, let's say  
10 Mr. Wright's client joins this hearing, and then  
11 as part of its testimony, it files that it can  
12 do this for 20 cents on the dollar of what TECO  
13 is going to do, and it just puts together what  
14 seems to be a credible presentation of how it  
15 would be done. Doesn't that put us and TECO in  
16 a more difficult position?

17 MR. BALLINGER: Most certainly, yes.

18 COMMISSIONER CLARK: I have another  
19 question, since you've interrupted him. Has  
20 staff looked at this from the standpoint that,  
21 assuming that an RFP is required or would be --  
22 let's just assume an RFP is required. Is this a  
23 candidate for a waiver of that rule? Have you  
24 done that analysis? You've had other cases  
25 where they've come in to do an RFP, and you've

1           said we agree it should be waived.

2           MR. BALLINGER: I don't know that we've  
3           waived the RFP rule yet. We had a request for  
4           it at one time by Gulf Power, and it was to  
5           waive a portion, some of the disclosure  
6           information.

7           COMMISSIONER CLARK: Okay.

8           MR. BALLINGER: And we required them to go  
9           ahead and do it per the rule.

10          You're really asking a difficult question.  
11          You're asking me first to hypothesize that we  
12          have a rule in place, which we don't, and then  
13          to hypothesize --

14          COMMISSIONER CLARK: But what you're  
15          recommending here is the same result. I guess  
16          what I'm trying to understand is how productive  
17          this would be.

18          MR. BALLINGER: I think it would be very  
19          productive, and in Staff's mind, very much along  
20          the lines -- the same by rule. We're willing to  
21          let the utilities structure the RFP, request  
22          what they need, and evaluate the RFP. And if  
23          they conclude that they are the cheapest  
24          alternative, they have to show that burden at  
25          the hearing, and that's fine. But we feel



1           comforted then that at least the market was  
2           tested.

3           COMMISSIONER CLARK: Well, let me ask you  
4           this. How would you take into -- would you  
5           agree that assuming no plants continue at Gannon  
6           or some lesser plant continues at Gannon, that  
7           would affect the transmission system?

8           MR. BALLINGER: Yes. And on that, it's a  
9           little troubling today. In the attachment to  
10          their petition, when they did a market analysis  
11          and stated in there that transmission would be  
12          impacted, and that's one reason purchased power  
13          would not be available, the number quoted was  
14          \$71 million of transmission impact, and today I  
15          hear 400 to 500 million.

16          COMMISSIONER CLARK: Right.

17          MR. BALLINGER: I don't know which is the  
18          correct number.

19          COMMISSIONER CLARK: Yes. Depending on  
20          which one you believe, it might have a material  
21          effect on whether you think it's going to be  
22          futile or not.

23          MR. BALLINGER: And I think both of those  
24          numbers also assumed an all-or-nothing approach  
25          of totally shutting down Gannon. Staff

1 understands that they may need some generation  
2 there for voltage support. What other middle  
3 grounds are there? We don't know.

4 COMMISSIONER CLARK: Okay.

5 MR. WILLIS: Commissioner, this absolutely  
6 would be a grounds for waiver, for two reasons.  
7 One, the transmission impacts, which are  
8 tremendous, and the difference in those numbers  
9 can be explained. And secondly, because of the  
10 complex, overriding issue with respect to the  
11 Consent Final Judgment and Tampa Electric's  
12 complex environmental litigation that it's  
13 trying to settle.

14 This isn't just simply a case of  
15 determining to add power. It is complicated by  
16 those other factors. We are dealing with two  
17 powerful, very important agencies that regulate  
18 Tampa Electric with respect to environmental  
19 emissions and have crafted a settlement or  
20 negotiated a settlement and are in delicate  
21 negotiations trying to complete that.

22 This process, I promise you, complicates  
23 that. It makes it very difficult, and the  
24 benefits of that settlement are in jeopardy with  
25 this action.

1 CHAIRMAN GARCIA: Thank you, Mr. Willis.  
2 Did you want to add something, Tom, because  
3 you started --

4 MR. HERNANDEZ: Yes, sir, Commissioner.  
5 Just to address Mr. Ballinger's concern about  
6 the two numbers, the 71 million that was shown  
7 on that chart, that was a chart of capital  
8 costs. The 71 million dealt with just the  
9 capital costs related to Tampa Electric.

10 In addition to that, there's another 50  
11 million or so -- and I'll just use straight up  
12 numbers instead of a range, but approximately 50  
13 million capital required for reactive power  
14 supply, and an additional \$160 million estimate  
15 related to system losses, some of them internal  
16 to Tampa Electric, but about two-thirds of it  
17 related to the state. And those losses, in our  
18 best estimate -- and this is on the total side  
19 now -- is roughly 160 megawatts. Then an  
20 additional wheeling cost of approximately 100  
21 million. So if you take those costs and put  
22 them on a cumulative present worth revenue  
23 requirement basis, that's the range that I gave  
24 you.

25 COMMISSIONER CLARK: You're saying the

1           70 million is unique to Tampa Electric. The  
2           rest of it affects the whole system, and it  
3           would be borne by other utilities or other users  
4           of the --

5           MR. HERNANDEZ: Not entirely. There are  
6           some additional costs associated with losses on  
7           Tampa Electric's system. There's additional  
8           costs -- there's some additional capital that we  
9           didn't recognize in that initial estimate.

10          COMMISSIONER CLARK: So you would share in  
11          that burden.

12          MR. HERNANDEZ: Yes. About -- looking at  
13          the numbers, approximately one-half of those  
14          costs are ours, and the balance is -- about 55%  
15          is the balance of the state, other systems.

16          CHAIRMAN GARCIA: Mr. Wright -- thank you.  
17          Mr. Wright, I'm sorry for interrupting you.

18          MR. WRIGHT: Thanks. Before I return to  
19          the comments that I was previously in the  
20          process of making, I do want to make a couple of  
21          points in response to the intervening  
22          discussion, particularly the issues relating to  
23          the alleged transmission costs and the  
24          environmental amelioration issues.

25          These are factual issues that are

1           susceptible to being tried as issues of fact in  
2           the hearing. You don't know where the proposals  
3           for capacity to be supplied will come from.  
4           They may come from plants that are located  
5           transmission wise in exactly the same place  
6           electrically as the Gannon Station. Let the  
7           market work, and you'll see how resourceful  
8           competitors in a competitive wholesale market  
9           can be. But these are factual issues.

10           what I was saying is -- and this directly  
11           relates to questions posed to Ms. Jaye and  
12           answered by Ms. Jaye -- is this. You have an  
13           articulated policy in favor of bidding for new  
14           capacity.

15           This is a new circumstance, as the Staff  
16           correctly point out. This type of project, this  
17           massive repowering project was not foreseen at  
18           the time you adopted your bidding rule back in  
19           1993. At most, this is not a rule, as Ms. Jaye  
20           correctly states. This is the incipient  
21           application of a previously articulated bidding  
22           policy to a new and heretofore unforeseen  
23           circumstance.

24           I think Mr. Willis mischaracterized the  
25           Staff's recommendation when he referred to the

1 RFP as the only means of meeting the  
2 requirement. I think the staff's proposal is to  
3 require an RFP as an additional test on the  
4 prudence of TECO's proposal.

5 Remember, the issue before you today is not  
6 this ultimate ratemaking effect or anything  
7 else. It may become an issue what the best  
8 alternative in the public interest to meet these  
9 power supply requirements are in this hearing.  
10 But right now the issue before you all is  
11 whether to approve TECO's petition.

12 I don't agree with Mr. Willis's assertions  
13 that this creates a taking problem. I hadn't  
14 really thought that through, but at a minimum, I  
15 think that's speculative. I think there's a  
16 fairly serious proposition that you all's  
17 ability to regulate in the public interest would  
18 outweigh that so long as you've allowed them to  
19 recover any costs --

20 COMMISSIONER CLARK: Mr. Wright, let me ask  
21 you about that.

22 MR. WRIGHT: Yes, ma'am.

23 COMMISSIONER CLARK: Suppose we require  
24 them to do bidding. Will the analysis, or  
25 should the RFP properly include -- would it

1 include additional costs -- in addition to just  
2 replacing the power, but would it include  
3 additional costs that result from, say,  
4 necessary transmission? And what about the  
5 investment currently in plant?

6 MR. WRIGHT: Two things. I think the Staff  
7 -- I will tell you, I interpret the Staff's  
8 intent -- in their recommendation where they say  
9 the Commission could then make a decision using  
10 the most compelling evidence to select the  
11 lowest cost alternative, I interpret the Staff's  
12 recommendation, which we support, to be to  
13 consider all costs and make the selection of the  
14 lowest cost alternative. And I will tell you, I  
15 think you have authority under 366.04(5) to  
16 require the installation of facilities pursuant  
17 to proceedings as provided by law and the  
18 allocation of costs accordingly.

19 But now I want to answer your other  
20 question about the --

21 COMMISSIONER CLARK: Well, suppose --

22 MR. WRIGHT: I think --

23 COMMISSIONER CLARK: Go ahead.

24 MR. WRIGHT: Let me just answer that. I'm  
25 not sure what the megawatts involved are, but I

1 would -- all I can say is, I know a fair amount  
2 about this. I haven't conducted a specific  
3 study of the book value versus the market value  
4 of TECO's Gannon Station, but I think it's  
5 highly likely that the market value of TECO's  
6 Gannon Station is greater than the \$100 million  
7 book value that Mr. Ramil articulated.

8 You had another question, and I have some  
9 more comments.

10 COMMISSIONER CLARK: I guess that may be  
11 true, assuming they can run it under EPA  
12 requirements.

13 MR. WRIGHT: Or assuming that if they  
14 divested it, if they sell it for 200 million,  
15 here's a \$100 million benefit there. Somebody  
16 else buys it and repowers it off rate base  
17 without TECO's ratepayers being on the hook for  
18 it.

19 COMMISSIONER CLARK: But you would agree  
20 with the notion that either the lack of value or  
21 the value of that plant should be included in  
22 their calculation of the least cost alternative?

23 MR. WRIGHT: I think the stranded cost  
24 exposure should be included.

25 COMMISSIONER CLARK: Okay.



1           COMMISSIONER DEASON: Mr. Wright, I hate to  
2 interrupt, but since you're already  
3 interrupted, you made a comment that the RFP  
4 should be required as an additional test of the  
5 reasonableness of TECO's proposal.

6           MR. WRIGHT: Yes, sir.

7           COMMISSIONER DEASON: And I thought that  
8 you also indicated that the Commission has  
9 authority -- and if this is incorrect, correct  
10 me. But I thought you said that the Commission  
11 has authority, broad authority to require that  
12 the lowest cost alternative be installed, or  
13 something along those lines.

14          MR. WRIGHT: Yes, sir.

15          COMMISSIONER DEASON: That's what I want to  
16 explore with you. Do we as a Commission have  
17 the authority to order TECO to -- in order to  
18 comply with the DEP requirements, that you shall  
19 enter into a contract with XYZ cogenerator to  
20 solve this problem, or do we say, "We expect you  
21 to look at the least cost alternative, and  
22 that's the standard we're going to hold you to.  
23 Now, you go out and you -- as managers, you go  
24 out and you make that decision." And then after  
25 the fact, we review that and make a decision

1           what is appropriate for cost recovery, but we do  
2           not on the front end dictate how they're to meet  
3           that requirement. That's what I want to -- what  
4           is our authority?

5           MR. WRIGHT: In the first instance, the  
6           issue before you is TECO's petition for approval  
7           of its plan to satisfy environmental  
8           compliance. You are charged to evaluate that,  
9           and you have the specific authority to approve  
10          or deny it.

11          If you determine that their plan is not the  
12          most cost-effective alternative for ratepayers,  
13          then I would submit to you that your general  
14          obligation to regulate in the specific interest  
15          and the specific charge of the statute to  
16          consider the prudence of this would require you  
17          to deny their petition. It's not prudent, I  
18          would submit to you, if it's not the most  
19          cost-effective alternative.

20          Secondarily, if the question becomes how is  
21          Tampa Electric Company going to deal with the  
22          requirements of meeting its power supply  
23          requirements and complying with the DEP's  
24          requirements or what may ultimately become the  
25          EPA's requirements, I believe that you have the

1 authority, after proceedings as provided by  
2 law. You would have to go through the process  
3 of establishing notice and letting everybody  
4 know that this is what was going to be decided  
5 in thus and such proceeding. But I believe that  
6 you have the authority, and I think it's  
7 366.04(5), to require the installation of  
8 facilities and to require the allocation of  
9 costs to the utilities affected in proportion to  
10 the benefits received.

11 COMMISSIONER DEASON: Is that the grid bill  
12 authority?

13 MR. WRIGHT: Yes, sir.

14 COMMISSIONER DEASON: And that's basically  
15 for reliability purposes, is it not?

16 MR. WRIGHT: Well, I think reliability is  
17 plainly at issue here. And I think it's a  
18 sequential analysis, Commission Deason, because  
19 you've got before you a petition for authority  
20 to go forward with a plan and asking you all,  
21 the Public Service Commission, for a  
22 determination that this plan is prudent and in  
23 the public interest.

24 Your Staff has suggested that some  
25 additional evidence be adduced in this

1 proceeding that will inform your decision as to  
2 whether it's prudent and in the public  
3 interest. If, given the opportunity to review  
4 all evidence, you determine that TECO's plan is  
5 not prudent and not in the public interest, then  
6 I think you're -- personally, I think you're  
7 obligated to deny it.

8 what happens next becomes a different  
9 question. What is TECO going to do faced with  
10 the DEP, or the EPA, or both of them, leaning on  
11 them to meet environmental compliance  
12 requirements? That poses a new question that  
13 may require the addition of some transmission  
14 facilities. It may require the addition of some  
15 power supply facilities in various locations.

16 But I submit to you, in that latter  
17 context, I think you probably have the authority  
18 to deal with that as well. That's what I'm  
19 saying.

20 COMMISSIONER DEASON: But that would be in  
21 a subsequent proceeding? I guess for purposes  
22 of this proceeding --

23 MR. WRIGHT: Could it be in this  
24 proceeding? Is that your question?

25 COMMISSIONER DEASON: No. I guess what I'm

1           trying to --

2           MR. WRIGHT:  If it is a sequential  
3 analysis, could both of them be done in this  
4 proceeding?  Probably.

5           COMMISSIONER DEASON:  So you're saying we  
6 have the statutory authority in this proceeding  
7 as it's currently structured to require that  
8 there be an RFP, and then to order TECO to sign  
9 a contract as a result of that RFP and say this  
10 is what you shall do to meet your requirements  
11 under the consent decree or generally -- or any  
12 other requirement?

13           MR. WRIGHT:  I think the answer to your  
14 question as you asked it, Commissioner Deason,  
15 is no.  I think that under this proceeding as it  
16 is currently structured, the answer is no.  I  
17 think that you could modify the proceeding and  
18 the scope of this proceeding to determine, as  
19 Staff has suggested that you do, what is the  
20 best alternative, all things considered, to  
21 protect Tampa Electric's ratepayers, to achieve  
22 lowest cost and reliable electric service, and  
23 to protect the environment of Florida.  I think  
24 you could roll those issues into this  
25 proceeding, but they're not there today.

1           COMMISSIONER DEASON: And where would we  
2 get the authority to roll those in? Under the  
3 grid bill authority?

4           MR. WRIGHT: Yes, sir.

5           COMMISSIONER DEASON: Because for there to  
6 be action that reduces the capability at the  
7 current Gannon Station would impose a  
8 reliability threat on the system?

9           MR. WRIGHT: Potentially the environmental  
10 requirements being applied to the Gannon Station  
11 could require shutdown or reduction in capacity,  
12 which creates reliability issues.

13           COMMISSIONER DEASON: Wouldn't that assume  
14 then that DEP would require that, realizing  
15 there would be reliability threats, and perhaps  
16 a blackout in the entire state conceivably, that  
17 they would have to make that finding that the  
18 environmental impacts are more important than  
19 there being reliability threats to the  
20 transmission system in the state?

21           MR. WRIGHT: You all have an interesting  
22 shared responsibility with the DEP. I don't  
23 know that their decision would go that far, but  
24 they have said --

25           COMMISSIONER DEASON: How do we impose the

1 grid bill authority then? The only way we can  
2 impose the grid bill authority is if you're  
3 assuming that the final requirements from DEP  
4 would impose reliability threats on the  
5 transmission system in the state.

6 MR. WRIGHT: well, and if this plan is  
7 denied and TECO is required in some way to  
8 comply with these requirements, there are going  
9 to be further issues. Now, whether the DEP  
10 will go all the way to saying you have to shut  
11 these plants down, or you have to do something  
12 different, or what, or whether if EPA will get  
13 involved, you know, I don't know.

14 COMMISSIONER JACOBS: what do we lose --  
15 let's say we don't roll the issue into this  
16 proceeding, i.e., the issue of doing an RFP, but  
17 we simply go and do a prudency test on the  
18 company's proposal and make a determination on  
19 that? what do we lose by not having done an RFP  
20 up front, if anything?

21 MR. WRIGHT: we lose a whole lot of  
22 evidence as to how much the power could be  
23 supplied for and what the transmission  
24 requirements really might be, depending on what  
25 proposals wholesale competitive suppliers would

1 bring forward. And basically what you lose is  
2 knowledge and certainty that you made the right  
3 decision, Commissioner Jacobs.

4 COMMISSIONER JACOBS: Could we get that  
5 evidence into the hearing, prudency hearing?

6 MR. WRIGHT: How are you going to get it  
7 without an RFP?

8 COMMISSIONER CLARK: I would assume you and  
9 your clients would intervene. I mean, I think  
10 that's one of the things the staff in fact  
11 covers, is the notion that it could be done by  
12 intervention. People in the past have  
13 intervened in these types of proceedings and  
14 alleged that they could provide it cheaper.

15 MR. WRIGHT: Right.

16 COMMISSIONER CLARK: What's the  
17 difference?

18 CHAIRMAN GARCIA: But haven't they  
19 intervened at the back end? And that's the only  
20 thing that worries me about --

21 COMMISSIONER CLARK: Remember, this is a  
22 petition. This isn't moving it into rate base.  
23 As Mr. Wright pointed out, this is a petition.  
24 And why isn't the procedure -- what is -- is  
25 that procedure vehicle available for you to put



1 on the evidence that it's a more prudent action  
2 for the power to be supplied by others, in fact,  
3 a specific other, and on that basis we would  
4 deny the petition?

5 MR. WRIGHT: Commissioner Clark, I think  
6 that the opportunity you suggest is available,  
7 but I think that the reason to do it via an RFP  
8 on the front end is the same reason that you  
9 require there to be an RFP on the front end of a  
10 project that is going to go in rate base and  
11 that is going to be permitted through a need  
12 determination in the Power Plant Siting Act.

13 And while we're on that point, I don't  
14 think there's any legitimacy to the argument  
15 that there's a difference that exists here  
16 because we're talking about a repowering that  
17 costs \$673 million versus a new greenfield plant  
18 that costs \$673 million. The ratepayers are  
19 going to see \$673 million, plus or minus, no  
20 matter how you cut it. And I don't think the  
21 argument that the existing facilities are there  
22 makes a whit of difference to the ratepayers,  
23 and accordingly, I don't think it should make  
24 any difference to you all.

25 So I think the rationale of having the

1 bidding rule for Power Plant Siting Act  
2 jurisdictional projects is exactly applicable  
3 to the situation at hand.

4 COMMISSIONER CLARK: Well, let me --

5 MR. WRIGHT: You do it on the front end  
6 because you get more and better evidence on the  
7 front end.

8 COMMISSIONER CLARK: Your view is that you  
9 would get more and better evidence, but that  
10 intervention is also available.

11 MR. WRIGHT: I agree.

12 COMMISSIONER CLARK: Now, let me ask one  
13 further question. In your answer to  
14 Commissioner Deason, you had indicated that you  
15 don't think we can compel the signing of power  
16 from another entity in this instance, that we  
17 cannot compel them to take the power from  
18 another entity.

19 MR. WRIGHT: I think what I said was as  
20 this proceeding is currently structured.

21 COMMISSIONER CLARK: I'm sorry. I didn't  
22 hear that.

23 CHAIRMAN GARCIA: I'm curious, because I  
24 think Commissioner Clark brings a good point.  
25 You could bring this up later, but it almost

1           begs the question. That would mean that if you  
2           wish to participate in the possibility of  
3           building this generation, then you must  
4           intervene in this docket. So we have a  
5           possibility of 20 different merchant providers  
6           across the nation, and perhaps in the world  
7           there's 30 or 40, and they would all be required  
8           to come into this proceeding, to file record  
9           evidence that they could build this cheaper than  
10          FPL so that -- not so they get a contract, not  
11          so that they have an opportunity to participate  
12          in some way, but just simply so they could prove  
13          that TECO's project isn't the right one.

14                 MR. WRIGHT: Yes. And if I can digress on  
15                 that for 20 seconds, that's exactly what  
16                 happened to my client and Mr. McGlothlin's  
17                 client in the Cypress Energy case seven -- going  
18                 on eight years ago. We were allowed in to prove  
19                 that FPL's proposal was not the best deal. We  
20                 weren't allowed in to prove that ours is. That  
21                 was the decision that was made. We lost three  
22                 to two on motions to dismiss filed by FPL. You  
23                 know, I didn't think it was right at the time,  
24                 and I don't think it's right now. I think if  
25                 you're going to be interested in the ratepayers'

1 best interests, you need to get everything on  
2 the table and go for it.

3 If I could finish --

4 CHAIRMAN GARCIA: Go ahead. I'm sorry.

5 COMMISSIONER DEASON: But, Mr. Wright, what  
6 is our statutory authority to do what you're  
7 saying?

8 MR. WRIGHT: I think it's the grid bill,  
9 Commissioner Deason.

10 COMMISSIONER DEASON: That's it, the grid  
11 bill.

12 MR. WRIGHT: Yes, sir, unless there's going  
13 to be a disputed issue of fact as to whether  
14 additional capacity is needed here.

15 COMMISSIONER DEASON: And what's our  
16 authority --

17 MR. WRIGHT: And if that's not true, then  
18 maybe your grid bill authority is not triggered.  
19 But the way your statute reads is, upon a  
20 determination by the Commission after  
21 proceedings as provided by law that a need  
22 exists for additional capacity, et cetera, you  
23 all can do something about it.

24 COMMISSIONER DEASON: In our current  
25 bidding rule, what is the authority for that

1 rule? Is it is the Power Plant Siting Act?

2 I'll just ask staff to take a look at that.

3 MR. WRIGHT: I'm sorry. I don't know.

4 COMMISSIONER DEASON: That's fine. That's  
5 probably an unfair question.

6 MR. WRIGHT: No, it's a fair question, and  
7 I wish I knew, but I don't know it off the top  
8 of my head.

9 COMMISSIONER DEASON: At some later time,  
10 if staff can just address that.

11 MR. BALLINGER: I believe it's under  
12 403.519.

13 CHAIRMAN GARCIA: And I think also 366. --

14 MR. WRIGHT: We can look it up in the rules  
15 right now.

16 CHAIRMAN GARCIA: Mr. Wright, we've really  
17 interrupted you several times. Maybe we can go  
18 forward and see if we can --

19 MR. WRIGHT: I'll finish as quickly --

20 CHAIRMAN GARCIA: Mr. McGlathlin is  
21 obviously waiting too.

22 MR. WRIGHT: I'll finish as quickly as I  
23 can. Thank you.

24 I want to make some historical observations  
25 regarding Mr. Hernandez's assertion that the

1 bidding time line is not feasible. You all,  
2 this Public Service Commission has directly  
3 applicable experience that would demonstrate to  
4 you that the time line proposed by the staff,  
5 which is about three and a half months from  
6 today, until May 1st, which is when they say the  
7 RFP results ought to be in, is entirely  
8 feasible. It has been done.

9 In December of 1990, after Florida Power  
10 Corporation revised its generation system  
11 planning processes to account for the problems  
12 experienced at Christmas of 1989, they  
13 discovered they needed lots of additional  
14 capacity. And in December of 1990, they  
15 determined that their best course of action was  
16 to issue an RFP, a request for proposals for  
17 power suppliers. They issued the RFP on January  
18 11th. They had their bidders conference on  
19 January 18th. They received bids on February  
20 7th. They hired National Economic Research  
21 Associates to evaluate the proposals and made  
22 the decisions as to whom they were going to  
23 award contracts to by March 1st, and they had  
24 signed contracts by March 15th.

25 That's less than three months. We're

1 talking about three and a half months here.  
2 This can be done.

3 Finally, trying to translate this into an  
4 issue where you would come back and look at this  
5 down the road after TECO spends money is, I  
6 would submit to you, the wrong inquiry. The  
7 issue before you and the inquiry that should be  
8 -- I think is before you is whether to approve  
9 TECO's petition. Your staff have properly  
10 recommended that you get additional evidence  
11 relative to that petition. And in the simplest  
12 terms, what TECO is trying to do is shut out  
13 that additional relevant evidence that's  
14 directly pertinent to your charge pursuant to  
15 the statute at issue here to evaluate their  
16 proposal, determine whether it's prudent and  
17 cost-effective, and act in the ratepayers' best  
18 interests.

19 That's all my comments. Mr. Carroll just  
20 has some brief remarks from a business  
21 perspective.

22 MR. CARROLL: Mr. Chairman and members of  
23 the Commission, my name, as Mr. Wright  
24 indicated, is Bob Carroll, and I'm with Calpine  
25 Eastern Corporation. I'll be very brief.

1 Calpine Eastern Corporation supports the  
2 Staff recommendation in this matter. As you are  
3 probably aware, Calpine very recently announced  
4 the development of two projects in the State of  
5 Florida. One of those projects is a proposed  
6 540 megawatt project with a direct interconnect  
7 into TECO's system. Calpine anticipates that  
8 this project will be on line at least one year  
9 prior to the time indicated in this matter in  
10 the TECO plant.

11 Calpine supports the Staff recommendation  
12 and looks forward to participating in an RFP on  
13 this matter. Calpine, like TECO, is confident  
14 of their ability to compete and looks forward to  
15 the opportunity to do so.

16 Thank you.

17 MR. HOWE: Commissioners, I'm Roger Howe  
18 with the Public Counsel's Office.

19 CHAIRMAN GARCIA: Mr. Howe, why don't we  
20 let the private companies go, and --

21 MR. HOWE: That would be fine.

22 CHAIRMAN GARCIA: Let's save you for last.

23 Mr. Green?

24 MR. GREEN: Good morning, Commissioners.  
25 Yes, it's still good morning.



1 I'm Mike Green, vice president of Duke  
2 Energy North America, in charge of Florida  
3 operations. I appreciate the opportunity to  
4 make some brief comments here.

5 As probably you're not surprised, Duke  
6 Energy supports the Staff proposal for  
7 soliciting alternative proposals to the Gannon  
8 repowering or in lieu of the Gannon repowering.

9 As you know, DENA, Duke Energy North  
10 America, is in the business of building  
11 cost-effective, reliable, and environmentally  
12 sensitive power facilities. We are only  
13 successful when we can offer the wholesale  
14 capacity energy from those facilities at prices  
15 cheaper than traditional power plants. That's  
16 the only way we succeed.

17 You've heard from one other developer, and  
18 you'll probably hear from a couple others. All  
19 these developers are in the business of  
20 providing innovative solutions to energy  
21 problems.

22 A lot has been talked about the  
23 transmission system. Clearly, the transmission  
24 system issues has to be a part of the overall  
25 consideration of what is needed to resolve the

1 Gannon repowering issue.

2 Duke Energy North America is ready and  
3 willing to submit an alternative proposal. I  
4 agree with Mr. Wright that clearly the time  
5 frame proposed by Staff, by May 1st, is a doable  
6 time frame. Innovative solutions and  
7 alternatives can be designed, developed, and  
8 proposed in that time period.

9 I've heard several large numbers of money  
10 discussed today, some published, some  
11 unpublished, ranging from 500 and 400 and \$673  
12 million. The bottom line is, it's a lot of  
13 money. It's not clear what all that covers just  
14 yet. But I respectfully submit that it only  
15 makes good sense that when you're talking about  
16 hundreds of millions of dollars that are going  
17 to be put on the risk investment profile of  
18 ratepayers of the state, that alternative  
19 solutions should be considered.

20 Again, Duke Energy supports the Staff  
21 recommendation and encourages the Commission to  
22 proceed as quickly as possible and solicit  
23 proposals such that the environmental benefits  
24 can be realized as quickly as possible.

25 Thank you for your time.

1 MR. MCGLOTHLIN: Commissioners, I'm Joe  
2 McGlothlin. I'm representing Reliant Energy  
3 Power Generation, Inc. today. Reliant Energy  
4 this morning filed a petition to intervene in  
5 this case. I'm here to support the Staff's  
6 recommendation that you require TECO to issue an  
7 RFP at this point. I've made a few notes --

8 CHAIRMAN GARCIA: Mr. McGlothlin, let me  
9 ask you right before you get started so I won't  
10 interrupt you in the middle.

11 You're intervening. Commissioner Clark  
12 says that that would be the proper way to do  
13 this. Why isn't that the right way to do it?

14 MR. MCGLOTHLIN: One big reason is a matter  
15 of timing. TECO represents that this case is  
16 time sensitive. I think one thing that would  
17 complicate the timing of this is a scenario in  
18 which you go to hearing, you adduce the  
19 evidence, you conclude based upon evidence at  
20 that time that TECO has not presented the most  
21 cost-effective alternative, and at that point  
22 you have to take the next step.

23 If you instead go to an RFP now, you will  
24 have at an early point much more and better  
25 information regarding what the competitive

1 market can provide as alternatives to what TECO  
2 has proposed. So I think you gain time, as well  
3 as you gain a situation in which the information  
4 is better because of the bidding format. I  
5 think if you have a situation where competitors  
6 are going head to head, including TECO, under a  
7 properly conducted bid, you will get the best  
8 evidence of what the market can afford, as  
9 opposed to, for instance, prefiled testimony  
10 where one competitor might want to hedge because  
11 he doesn't know what the other competitor is  
12 going to do in an open scenario like that. So I  
13 think you get better information sooner by going  
14 to an RFP.

15 It was suggested by TECO that by going to  
16 an RFP that the Commission would be jumping to  
17 conclusions. I think to the contrary, you're  
18 not forming any conclusions. You're telling the  
19 company that you expect the best available  
20 evidence on a critically important issue.

21 It was suggested that going to an RFP would  
22 be impractical. But for the reasons I just gave  
23 in answering the Chairman's question, it would  
24 be more impractical not to go to an RFP, because  
25 you would have the sequential problem.

1           And as did Mr. Wright, I want to refer you  
2 back to that FPL/Cypress case. In that case,  
3 Nassau Power and Arc Energy intervened and  
4 offered far more cost-effective gas-powered  
5 alternatives, and you turned down FPL and  
6 Cypress for two reasons, first because of the  
7 demonstration of cheaper alternatives, and  
8 secondly, you said you were dissatisfied by the  
9 fact that FPL had not scoured the universe of  
10 available alternatives before entering into a  
11 proposed contract with that IPP.

12           And that was the genesis of the bidding  
13 rule. And the purpose of the rule is to get  
14 that information up front. And by analogy, that  
15 can be done here, and I think you have authority  
16 to do it.

17           COMMISSIONER DEASON: What is that  
18 authority, Mr. McGlothlin?

19           MR. MCGLOTHLIN: I think the staff has  
20 identified it. In addition to the general  
21 obligation of utilities to act prudently, in the  
22 context of the Environmental Cost Recovery  
23 clause and in the context of approving those  
24 plans, you have to determine whether the plan is  
25 prudent and in the public interest. And it's

1           only a logical extension of that to require the  
2           best proof of alternatives before making that  
3           decision and to do it in the timing sequence  
4           that makes the most sense, and that is to do it  
5           now and not later.

6           Mr. Willis suggested that to go to an RFP  
7           would constitute a taking of property, and I  
8           think that is a particularly revealing  
9           argument. On the one hand, as Staff mentioned  
10          in its recommendation, attached to the petition  
11          is what purports to be some kind of market  
12          analysis. But if TECO is saying that to go to  
13          an RFP and to do anything other than approve its  
14          plans is a taking, that shows you -- I think  
15          it's a pretty good gauge of how seriously  
16          they've considered any alternative other than  
17          TECO providing the capacity, for the argument  
18          suggests that they are the only available  
19          contender for that opportunity. Alternatively,  
20          it suggests that they don't think they would win  
21          the RFP. Neither argument should persuade you  
22          to turn down the opportunity to tell the company  
23          to go to bidding at this point.

24          It was also suggested that this case is  
25          different because what we have here is existing

1 capacity, whereas the bidding is supposed to be  
2 earmarked for new capacity. As Mr. Wright says,  
3 half a billion dollars is half a billion  
4 dollars. But beyond that, TECO acknowledges  
5 that its proposal will end up in an incremental  
6 300 megawatts or more of incremental new  
7 capacity.

8 TECO says that the Commission has authority  
9 to tell TECO that it's going to only allow a  
10 portion of the cost of this project if it goes  
11 forward, and at a different point, TECO says it  
12 has committed the company to a certain course of  
13 action in its consent. But I look at page 8 of  
14 that consent document, caption O, which says,  
15 "Tampa Electric Company's obligation to  
16 implement the emissions reductions and other  
17 requirements set forth herein will be  
18 conditioned on the receipt of necessary federal,  
19 state, and local environmental permits and  
20 acceptable regulatory treatment, including cost  
21 recovery by the Florida Public Service  
22 Commission."

23 So it appears to me that this delicate  
24 balance between two powerful agencies is being  
25 structured so that they don't have to do

1 anything without getting full cost recovery from  
2 you. So that suggests to me that if you deny  
3 their plan, they are very sensitive to the  
4 possibility of going forward in the face of that  
5 denial and would be given a powerful incentive  
6 to do what is prudent.

7 One more comment on that point. I do  
8 recommend that you go to an RFP. I think,  
9 however, that the RFP must contemplate the  
10 possibility that an alternative other than  
11 TECO's may be the lowest cost. I don't think  
12 you can realistically expect a good response to  
13 an RFP that is set up to be some sort of test on  
14 the reasonableness of the cost of TECO's  
15 proposal and how much you're going to disallow,  
16 if any.

17 There was a question about whether the  
18 existing costs belong in any evaluation. By  
19 their own plan, TECO proposes to retire three  
20 of those units. And I think when you look at  
21 the bid scenarios, you do take into account all  
22 costs. They would include any costs of  
23 identified and approved transmission constraints  
24 or transmission issues, and they would include  
25 recovery of prudently incurred costs. But I



1 think beyond those parameters at this point, I  
2 don't think you should prejudge at all the  
3 extent to which those -- there would be any  
4 stranded costs or not.

5 COMMISSIONER CLARK: Let me ask a question  
6 about that, because it seems to me if there are  
7 stranded costs, then what happens? Is it  
8 appropriate to be recovered from ratepayers, and  
9 if it is not, have you effectuated a taking?

10 MR. MCGLOTHLIN: I think if it's  
11 demonstrated that they were prudently incurred  
12 at the time, then TECO is entitled to recover  
13 it.

14 COMMISSIONER CLARK: So then wouldn't you  
15 have to include that in any cost of any  
16 alternative?

17 MR. MCGLOTHLIN: If the judgment is made  
18 that they were prudently incurred, yes. I think  
19 they --

20 COMMISSIONER CLARK: And you better do that  
21 at the same time so you know ultimately what the  
22 whole thing is going to cost.

23 MR. MCGLOTHLIN: I believe in evaluating  
24 the alternatives, you look at all the costs  
25 properly attributable to each one. I don't

1 think I'm disagreeing. I'm asking you not to  
2 prejudge what would be in one category or the  
3 other at the time.

4 CHAIRMAN GARCIA: what did you -- you lost  
5 me. what do you mean by that?

6 COMMISSIONER CLARK: But whether it's in  
7 one or the other, it is a cost that needs to be  
8 considered.

9 CHAIRMAN GARCIA: Right. All costs.

10 MR. MCGLOTHLIN: Yes.

11 COMMISSIONER CLARK: Okay.

12 MR. MCGLOTHLIN: Now, bear in mind, with  
13 respect to the taking, we're talking today about  
14 \$673 million that hasn't been spent and a lot of  
15 plant that isn't on the ground, and there's no  
16 way to take that.

17 COMMISSIONER CLARK: Well, I'm just -- from  
18 the standpoint that you have investment in the  
19 plant that you might shut down if you do another  
20 alternative, in doing that alternative, you  
21 would consider the cost of shutting down that  
22 plant.

23 MR. MCGLOTHLIN: I think that's right. I'm  
24 trying to think through it.

25 COMMISSIONER CLARK: And in fact, we do

1 that. We've done that in oil backout and things  
2 like that. When you determine the  
3 cost-effectiveness, you look at those costs as  
4 well.

5 MR. MCGLOTHLIN: I think I agree with you,  
6 Commissioner.

7 CHAIRMAN GARCIA: Susan, just so I  
8 understand, what you're saying is that when we  
9 would do that -- you might have lost me. But  
10 when you do that, you have to include all costs,  
11 is what you're saying.

12 COMMISSIONER CLARK: Yes.

13 CHAIRMAN GARCIA: Okay. Thank you. It  
14 helps to have that.

15 All right. Are you finished?

16 MR. MCGLOTHLIN: Yes, sir.

17 CHAIRMAN GARCIA: Okay.

18 MR. WILLIS: I would just like to point out  
19 that he has just introduced the issue of  
20 stranded cost. Now, you would have to have a  
21 specific statute to determine how you would deal  
22 with stranded cost. And this is exactly what I  
23 was talking about with respect to substantive  
24 due process.

25 COMMISSIONER CLARK: Mr. Willis, let me ask

1           you about that. We have had other cases where  
2           we have, in effect, substituted some power for  
3           existing power. And I guess the thing that  
4           comes to mind for me is oil backout, where you  
5           have, in effect, I guess repowered, and when you  
6           determine the cost-effectiveness of the new  
7           power, you determined the costs you will incur  
8           as a result of, in effect, retiring that or  
9           retiring part of the plant. Why isn't -- I  
10          mean, it's not really a stranded cost. It's  
11          part of the cost that you would look at in  
12          determining what is the least cost alternative.  
13          If it is the least cost alternative to shut down  
14          those plants and put a plant elsewhere, isn't  
15          that what we should be doing?

16                 MR. WILLIS: Well, with respect to oil  
17                 backout, oil backouts were utility proposals  
18                 with respect to its property. They were not --  
19                 those were not ordered by the Commission. The  
20                 Commission approved the proposal of a company  
21                 pursuant to a petition.

22                 And to state that you have the authority to  
23                 then go forward and order us to deal with a  
24                 particular party while shutting down our station  
25                 and providing some sort of a stranded cost

1 recovery, I'm suggesting to you that that only  
2 could be done by statute. That is a huge leap  
3 in policy determination that could only be done  
4 by a statute which would give you the authority  
5 to take the property. You can't just take --

6 COMMISSIONER CLARK: Are you saying that --  
7 suppose we had a rate case, and we discovered it  
8 was costing you ten cents a kilowatt-hour to  
9 generate from one plant, and you could buy it  
10 cheaper. We couldn't say to you, "You need to  
11 shut down that plant and buy elsewhere or get  
12 power some other way, and we will allow the  
13 recovery of what is left in that plant"?

14 MR. WILLIS: I think you can make judgments  
15 with respect to the company's costs, but I don't  
16 believe that you can order us to shut the plant  
17 down and to buy the power from a particular  
18 source. You can make a judgment based on the  
19 investments and the decisions that the company  
20 has. And I would think that you would want to  
21 avoid stepping into the shoes of management and  
22 making decisions for management in this regard.

23 MR. RAMIL: Mr. Chairman, we've kind of  
24 been all over the map here, and I just feel the  
25 need to remind everybody that our environmental

1 agreement specifically states that we shut down  
2 units at the Gannon site and replace that  
3 capacity with repowering units at the Gannon  
4 site, and then defines the very strict air  
5 emission from that site. It does not say to  
6 shut down the Gannon site and go replace that  
7 capacity at a new site with all the total  
8 environmental impacts associated with a new  
9 site.

10 COMMISSIONER CLARK: Mr. Ramil, are you  
11 saying our only choice then is to allow you to  
12 go forward, and if there was an alternative that  
13 costs less, to simply allow you to go forward  
14 with the project and adjust the cost recovery?

15 MR. RAMIL: No. I'm saying that the  
16 environmental deal we've struck, which includes  
17 not only Gannon and Big Bend, is defined in that  
18 manner with the environmental agencies. To do  
19 something different would not be in compliance  
20 with that. You know, I don't know where we  
21 would find ourselves as a company at that point.

22 COMMISSIONER CLARK: Then you're saying we  
23 have no choice.

24 MR. RAMIL: Well, this agreement, it's  
25 totally tied to repowering the existing plant at

1 Gannon.

2 COMMISSIONER CLARK: And that's the only  
3 alternative available to us, and really, all we  
4 get to determine is price.

5 MR. RAMIL: That's the only alternative  
6 that has the environmental approvals. And, you  
7 know, how we go about doing it is the issue at  
8 hand here.

9 COMMISSIONER DEASON: I think we have the  
10 choice of denying it.

11 MR. RAMIL: Yes.

12 COMMISSIONER DEASON: And then I guess all  
13 bets are off, and you start over again. And who  
14 knows what the outcome of that may be, but that  
15 is an alternative.

16 MR. RAMIL: An alternative is to deny it or  
17 to, you know, in regulating us as you normally  
18 do, take issue where it's appropriate for you to  
19 take issue.

20 CHAIRMAN GARCIA: Mr. Moyle.

21 MR. MOYLE: Thank you, Mr. Chairman. Jon  
22 Moyle, Jr., appearing on behalf of PG&E  
23 Generating today. I have some general comments  
24 in support of the direction that Staff is  
25 heading in their recommendation.

1           I think you've heard a lot of detailed  
2 discussion today. I would like to back up a  
3 step and I think try to put this in some  
4 perspective.

5           I always hear talk about the competitive,  
6 robust wholesale market that we have, that we  
7 support a competitive, robust wholesale market  
8 in the state of Florida. I think that these  
9 repowerings, the one that TECO is proposing and  
10 the ones that FP&L are proposing, present this  
11 Commission with an opportunity to test whether  
12 indeed we have a robust, competitive wholesale  
13 market.

14           Now, putting this and these others out to  
15 bid I think is wholly consistent with what  
16 you've done in your bid rule. I think it's  
17 wholly consistent with the statute. And, you  
18 know, sitting around looking, I was thinking,  
19 I'll bet the chairs that you all are sitting in  
20 and that we're sitting in were procured through  
21 an RFP process, through the state purchasing.

22           What we're talking about here is hundreds  
23 of million of dollars that ultimately could be  
24 borne by ratepayers. To me, to have a check on  
25 that cost by having the market look at the



1 request for proposals and submit bids is  
2 something that just makes sense.

3 Commissioner Deason, you asked a number of  
4 questions about do you have the authority to do  
5 this. I would argue that clearly you do, and  
6 you don't have to go any further than staff's  
7 analysis where they say in section 366.01 that  
8 the regulation of public utilities as defined  
9 herein is declared to be in the public interest.  
10 And then they go on and say that this shall be  
11 liberally construed for the accomplishment of  
12 that purpose.

13 So picking up on the public interest and  
14 going over to page 4 of the staff rec, it says  
15 that the Commission can review the plan to  
16 implement the Clean Air Act submitted by the  
17 utilities and determine whether the plans,  
18 including the costs necessarily incurred in  
19 implementing such plans, and the effect of rates  
20 resulting for such implementation, are in the  
21 public interest. That's the same public  
22 interest that 366.01 says should be liberally  
23 construed. So I think clearly you have the  
24 power to order this.

25 A couple of comments in response to some

1 arguments that were made. You know, the due  
2 process argument, we're here having a hearing  
3 today. There have been lots of arguments. I  
4 think due process is met. You know, if there is  
5 a decision adverse to TECO, they have appellate  
6 rights. You know, I'm not overly concerned  
7 about a due process argument.

8 The divestiture and taking argument that  
9 was made, I agree with Mr. McGlothlin's comments  
10 that that seems to almost be an admission that  
11 they're not going to win the RFP, that you're  
12 going to have to be in a divestiture situation,  
13 a taking situation. You know, that would raise  
14 some concern that that judgment may have already  
15 been made that this is not the least cost  
16 alternative. So we would urge that the market  
17 make that determination.

18 There has been a lot raised about the  
19 environmental agreement, the environmental  
20 agreement, that this is something that's  
21 required under the environmental agreement.

22 As you all are familiar, most of the new  
23 stuff that's going in the ground today is  
24 gas-fired, clean technology. I think that the  
25 DEP's concern is clean air for the state of

1 Florida. I don't see how they can have a huge  
2 concern if you are displacing what is going on  
3 at Gannon with something that is cleaner at  
4 another location. I think that is their  
5 overriding concern. And no one from DEP has  
6 appeared here today to say that if you took a  
7 direction that said we want to pursue  
8 alternatives that are cheaper and arguably  
9 cleaner, that that's going to somehow pose a  
10 huge problem to DEP.

11 COMMISSIONER CLARK: Mr. Moyle, let me ask  
12 you about this. would it be your understanding  
13 then -- let's assume we require the RFP, and it  
14 comes back, and it shows that it's more  
15 cost-effective to do something other than what's  
16 proposed in the agreement. Prior to going  
17 forward with that, would Tampa Electric Company  
18 have to go back to DEP and get that approved as  
19 a method of meeting this requirement?

20 MR. MOYLE: I'm not that conversant with  
21 the agreement. I suspect that they probably  
22 would. But I guess the point I was making is  
23 that if you go to DEP and say, "Look, the  
24 Florida Public Service Commission has said,  
25 consistent with their policy, that we need to

1 put this out to bid. If we get a responsive bid  
2 that costs the ratepayers less and is cleaner,  
3 will you go ahead and amend the agreement to say  
4 that that's okay and we can go forward," I  
5 suspect they would say, "Sure."

6 CHAIRMAN GARCIA: But how could --

7 COMMISSIONER CLARK: How can we determine  
8 if it's cleaner? Won't they have to make that  
9 determination? DEP would have to make a  
10 decision that the least cost alternative is also  
11 the alternative that should be followed for  
12 environmental reasons.

13 MR. MOYLE: Well, that's possibly true.  
14 But I think with respect to -- if you're looking  
15 at the RFPs that are coming in, and they're all  
16 gas-fired technology coming in, and TECO is  
17 doing a gas-fired technology --

18 COMMISSIONER CLARK: I appreciate that, but  
19 we would still have to adduce the evidence. We  
20 just couldn't presume it would be better.

21 MR. MOYLE: Probably, yes.

22 COMMISSIONER CLARK: Okay.

23 CHAIRMAN GARCIA: How would Mr. Ramil be  
24 able to, and TECO, how would they be able to  
25 negotiate if this is the position they're put in

1 every time? In other words, they have a need --  
2 they have to reach a settlement. They've got  
3 obligations that they've got to meet which are  
4 separate and apart from the energy needs here.  
5 How is he and his company able to meet those  
6 obligations if you put them in this position?

7 He has negotiated a complex agreement. He  
8 comes before this body, and we're left,  
9 according to him, with a very simple yea or nay.  
10 We say, "It's too expensive. Go back," or "It  
11 should be less," or "This is what we think is  
12 fair." But you put him in a position where now  
13 he has negotiated a structured agreement with  
14 several agencies.

15 I might add that they have no power with  
16 this agency except what they've done in this  
17 agreement. This comes before us, and every time  
18 he comes before us, somebody adds something to  
19 that. You come up with a whole series of new  
20 structures, yet he still has an obligation to  
21 EPA and DEP to meet certain standards. Where  
22 does that put him?

23 MR. MOYLE: Well, it's a very complex  
24 matter. I'm not conversant with all the ins and  
25 outs of it. I think, from my understanding,

1 they've entered into an agreement with one  
2 party, which is DEP. EPA is not a party to that  
3 agreement. I think they still have outstanding  
4 issues there. So they are going to be  
5 confronted with having to deal with that issue  
6 and how that impacts their agreement. I think  
7 this is the same point.

8 I think you are in a position where -- I  
9 guess sort of to turn the question the other  
10 way, to say, you know, how are you going to then  
11 deal with situations like this if parties can go  
12 and negotiate agreements with other agencies  
13 that are outside your purview and then come to  
14 you and say, "You don't have really a whole lot  
15 of say in this thing. We've negotiated this  
16 agreement, and that's it."

17 CHAIRMAN GARCIA: Don't we have what  
18 Mr. Ramil says, the power to say no? I saw  
19 Mr. Willis raise his hand. You would agree that  
20 I have the power to say no to this agreement?

21 MR. RAMIL: Yes.

22 CHAIRMAN GARCIA: Okay. Good.

23 MR. RAMIL: I would further say that you're  
24 right on target with respect to negotiations  
25 with the agencies. And it's even compounded,

1 because we have to bring EPA and the Department  
2 of Justice into the fold. And as you've  
3 probably read in some of the press, that's not  
4 easy, even when you're talking about  
5 environmental cleanup that you think everybody  
6 could agree on.

7 MR. MOYLE: And I'm not suggesting that you  
8 have to say no. I guess what I'm suggesting is  
9 that you have within your ability the mechanism  
10 to issue an RFP, which very well may result in a  
11 decision of saying yes to them and going forward  
12 with their project. But I just think it's a  
13 cleaner way to proceed, because you've let the  
14 market attest whether that is the --

15 CHAIRMAN GARCIA: What if they put this out  
16 for RFP? What if we asked Mr. Ramil's company  
17 to put this out to bid, and Duke Power bids, and  
18 their bid is competitive. They're 3 or \$4  
19 million, a little bit higher. And we decide to  
20 go with Mr. Ramil. We figure, well, he's got a  
21 structured contract. He's got obligations to  
22 meet. He's done all this work. It's in the  
23 ground. It's a facility. We know where it is.  
24 We feel more comfortable.

25 wouldn't then you argue, well, you don't

1 have a right to do that? Or would you argue  
2 his, you're doing a taking?

3 MR. MOYLE: Well, I think on a \$3 million  
4 difference, given the points that they're making  
5 with respect to some of the transmission issues,  
6 there's a lot that needs to be looked at. But  
7 that -- probably if you all are sitting in  
8 judgment of that and affirming that, I don't  
9 know that that's a particularly strong case.

10 It it's a \$300 million difference, based on  
11 what, say, Duke Energy or PG&E Energy would bid  
12 in there, then I would think that would be a  
13 much stronger case that we could bring before  
14 you and argue that they are not pursuing the  
15 least cost alternative.

16 CHAIRMAN GARCIA: Okay. Thank you.

17 MS. KAUFMAN: Thank you, Mr. Chairman.  
18 Vicki Gordon Kaufman of the McWhirter Reeves law  
19 firm. I'm here on behalf of the Florida  
20 Industrial Power Users Group.

21 So far you've heard from Tampa Electric,  
22 and you've heard from a number of developers.  
23 And as you know, FIPUG is a group of large  
24 industrial customers who are going to be footing  
25 a portion of the bill for whatever project Tampa



1 Electric ultimately does in this case.

2 CHAIRMAN GARCIA: Doesn't Mr. McWhirter  
3 always refer to it as a small group of large  
4 industrial customers?

5 MS. KAUFMAN: I stand corrected, a small  
6 group of large industrial customers.

7 MR. WILLIS: Could you tell us which  
8 customers those are, Ms. Kaufman.

9 MS. KAUFMAN: No, I can't name the  
10 customers. IMC-Agrico is one of them. There  
11 are a number of industrial customers in Tampa  
12 Electric's service territory.

13 MR. WILLIS: I know, but we don't know  
14 which ones you represent from time to time.

15 MS. KAUFMAN: Mr. Chairman, I would be  
16 happy to provide Mr. Willis with a list of the  
17 FIPUG members.

18 CHAIRMAN GARCIA: Mr. Willis, you may  
19 cross-examine them if they intervene.

20 MS. KAUFMAN: Thank you, Mr. Chairman.

21 The point I was going to make is that the  
22 FIPUG members in Tampa Electric's service area  
23 are going to be footing a large portion of the  
24 bill. We would suggest to you that you get all  
25 the information in front of you before you make

1 a decision.

2 We support the Staff's recommendation that  
3 you require Tampa Electric to issue an RFP so  
4 you can have those facts at the beginning of the  
5 process, as so many of the folks before me have  
6 already said. That's the time to look at all  
7 the information.

8 And I would think that you would want to  
9 have the whole universe of information in front  
10 of you in order to decide whether or not the  
11 plan that Tampa Electric has presented to you is  
12 the most prudent course and whether it is the  
13 most cost-effective for ratepayers, because at  
14 the end of the day, that's where your  
15 responsibility lies. And I think that the  
16 ratepayers will take some comfort in knowing  
17 that all options have been explored and at the  
18 end of the day they have been evaluated and the  
19 most prudent and cost-effective course has been  
20 followed.

21 So we suggest to you that you follow the  
22 Staff's recommendation. We also suggest to you,  
23 for the reasons that others have articulated so  
24 well, that this is well within your authority,  
25 and again that you would want to have these

1 facts before you when you look at this plan.

2 COMMISSIONER JACOBS: Ms. Kaufman, isn't it  
3 likely that your clients are going to want to  
4 have a say-so in how this is done? In other  
5 words, if we open up the process for a range of  
6 options as opposed to the relatively narrow  
7 options that are in the petition, aren't your  
8 clients concerned that there may be some issues  
9 raised, transmission issues, availability  
10 issues, a whole range of them that might occur  
11 as a result of doing it?

12 MS. KAUFMAN: Yes, I think my clients would  
13 be concerned, and they would want to see those  
14 options explored in the hearing. They have as  
15 much interest as anyone in being sure that they  
16 have a reliable source of capacity.

17 I think those are all issues that can be  
18 explored in the context of the hearing. And if  
19 there is a proposal presented, for example, that  
20 has a detrimental impact on transmission, that  
21 would be something that you would evaluate when  
22 you look at the various options.

23 COMMISSIONER CLARK: I just have one  
24 question of Ms. Kaufman. And if anyone  
25 disagrees, I would like to hear from them.

1           You think we can do this.

2           MS. KAUFMAN: Yes, ma'am.

3           COMMISSIONER CLARK: Require them to do an  
4 RFP, but there's nothing in the law that  
5 requires us to do that. We have authority to do  
6 it; we're not required to do it. And you're  
7 saying as a matter of policy, that we should do  
8 this.

9           MS. KAUFMAN: Yes, ma'am, that's what I'm  
10 saying. I think as others have said, it's  
11 certainly consistent with the policy that you  
12 articulated when you adopted the bidding rule  
13 and with other dockets in which you have  
14 discussed the competitive nature of the  
15 wholesale market.

16          CHAIRMAN GARCIA: Thank you.

17          MS. KAUFMAN: Thank you.

18          CHAIRMAN GARCIA: Mr. Howe, while the  
19 citizens are foremost in our mind, we saved you,  
20 representing the citizens, for last to give us  
21 your wisdom.

22          MR. HOWE: I'll be brief, Chairman Garcia.  
23 Commissioners, I'm Roger Howe with the  
24 Public Counsel's Office.

25          I guess we took a fairly simplistic view of

1 Staff's recommendation, which we support, and  
2 that being that in their petition, Tampa  
3 Electric is asking for the Commission to  
4 specifically determine that the conversion of  
5 the Gannon Station as it proposes is reasonable,  
6 prudent, and in the public interest. That's on  
7 page 15 of their petition.

8 In my view, the staff is just, I believe,  
9 stating that for them to make a recommendation  
10 and for you to make a determination of public  
11 interest, you're going to have to consider the  
12 purchased power alternative. The RFP process  
13 will give you evidence of the highest quality on  
14 that subject, and for that reason alone, we  
15 support the staff recommendation.

16 COMMISSIONER CLARK: Is one of the outcomes  
17 could be that we have them issue the RFP, we  
18 decide it's the most prudent -- it's the least  
19 cost alternative, and we simply deny the  
20 petition?

21 MR. HOWE: That would be a possible  
22 outcome, yes. That would be the most likely  
23 outcome if you were to determine that it was not  
24 the least cost alternative.

25 COMMISSIONER CLARK: But then they would go

1 back and negotiate with DEP based on that  
2 decision.

3 MR. HOWE: They may negotiate. I do not  
4 know what would happen. But the Consent Final  
5 Judgment is contingent upon approval by this  
6 Commission and the allowance of cost recovery,  
7 which I might add, by cost recovery, they do not  
8 make any mention in the Consent Final Judgment  
9 of cost recovery through the Environmental Cost  
10 Recovery Clause. I think traditional rate case  
11 -- a traditional rate case approach would also  
12 allow for cost recovery.

13 COMMISSIONER CLARK: While I've interrupted  
14 you, let me ask you another question. Assuming  
15 that we determine that it's not the least cost  
16 alternative, one of the things that could happen  
17 is that no repowering gets done, and TECO  
18 defends its position --

19 MR. HOWE: Yes, ma'am.

20 COMMISSIONER CLARK: -- against allegations  
21 that it is violating the Clean Air Act.

22 MR. HOWE: That's certainly a possible  
23 outcome. And I don't --

24 CHAIRMAN GARCIA: Can we take those costs  
25 into account?

1 MR. HOWE: Which costs, sir?

2 CHAIRMAN GARCIA: The costs of them not  
3 complying with these things.

4 MR. HOWE: Well, certainly. You can take  
5 all costs into consideration. That's one of the  
6 things that's going to have to come out in this  
7 case. We don't know what their testimony is  
8 going to look like. And I assume they will  
9 address all aspects of costs that they've  
10 considered in their testimony, and we'll meet  
11 that evidence as we see fit.

12 CHAIRMAN GARCIA: Very well. Mr. Willis or  
13 Mr. Ramil, we've allowed -- I think seven of us  
14 have sort of piled on. If you want to make a  
15 quick comment, and then we'll open it up to the  
16 Commissioners if they have questions.

17 MR. WILLIS: Commissioner, what you've  
18 heard here is an attempt to mold this case into  
19 something that it isn't. This is not a Power  
20 Plant Siting Act case that then would require  
21 bidding. It is simply a petition to approve our  
22 comprehensive environmental plan to comply with  
23 the Clean Air Act.

24 You don't have the authority to order us to  
25 contract with a particular entity, with respect

1 to the questions that Commissioner Deason  
2 asked. You should not step into the shoes of  
3 management by ordering us to do a particular  
4 thing.

5 with respect to due process, there are due  
6 process issues all around. One would say that  
7 this hearing operates as due process. A quick  
8 reading of the statutes that I cited to you  
9 cites notice, evidence, hearings, briefs. That  
10 has not been done here. This is stripping out  
11 one issue to be decided on a quick basis or  
12 emergency basis prior to the time that evidence  
13 is presented.

14 You heard the statements that stranded  
15 costs would have to be considered. Well, I  
16 suggest to you that if you take a position which  
17 then puts the company in a position that its  
18 property is rendered stranded, without a  
19 specific statute --

20 CHAIRMAN GARCIA: Lee, you don't think  
21 you're putting the company in a really risky  
22 position, and Florida's ratepayers, if you --

23 MR. WILLIS: Absolutely not. Absolutely  
24 not.

25 CHAIRMAN GARCIA: At the end of this



1 period, at the end of this period, you go  
2 through this entire proceeding, and we decide  
3 no. We say, "Look, this is absurd." You know,  
4 the company files -- the intervenors, or maybe  
5 they all get together in a force of one, and  
6 they file with us, and they say, "we could do  
7 this for half," as an example.

8 MR. WILLIS: Right.

9 CHAIRMAN GARCIA: And then this Commission,  
10 whose only responsibility is cost recovery in  
11 this case, we say no. Where are we then?

12 MR. WILLIS: Well, you're absolutely -- I  
13 do not say that you're placed in an impossible  
14 position at all. The decision that you would  
15 make today could very well, however, place Tampa  
16 Electric in a very difficult, if not impossible,  
17 situation.

18 CHAIRMAN GARCIA: Well, that's what I'm  
19 talking about. Forget -- for a moment, let's  
20 forget the ratepayers, except that those  
21 ratepayers are my concern in this decision, and  
22 I make a decision, and I say, my God, you know,  
23 Mr. Moyle's company or Mr. Moyle's associates  
24 have presented something that seems viable here  
25 to us. It hasn't even been scrutinized by you.

1 I guess it would have to be scrutinized through  
2 testimony and whatever before us.

3 But nonetheless, we've got a substantial  
4 difference. And then I'm placed in the  
5 difficult position that I've put your company in  
6 a precarious position, because I deny this  
7 agreement. Obviously, you've got problems with  
8 EPA, and that puts you in a more difficult  
9 position, because we haven't approved that, so  
10 you're down to zero. We're six months down the  
11 road. Your stockholders are at risk. It may  
12 affect your stock values.

13 And clearly, my role is not specifically  
14 only the ratepayer. I mean, I have to look out  
15 for your interests too. I mean, part of it is  
16 to have a healthy investor-owned utility system  
17 in the state for our ratepayers. And so I'm  
18 left in a difficult position of voting out  
19 something that can be very Draconian in effect  
20 six months from now.

21 MR. WILLIS: Well, Commissioner, we have  
22 looked very carefully at all these alternatives.  
23 We are set to present to you the evidence of  
24 things that we've considered. It's due to be  
25 filed in nine days. You have a hearing

1 scheduled on this. And you can make those  
2 judgments, as we talked about earlier in this  
3 proceeding. I don't think that puts you in an  
4 impossible position at all. It puts you in a  
5 position you're in every day to look at the  
6 evidence and make decisions. And that's what we  
7 urge you to do.

8 CHAIRMAN GARCIA: Okay.

9 COMMISSIONER JACOBS: Mr. Willis, aren't we  
10 now in a posture to basically do the same  
11 thing? We know that one company has intervened  
12 in this docket, and we suspect that others will.  
13 Aren't you going to have to ultimately engage in  
14 that very same discourse that you argue is  
15 ineffective?

16 MR. WILLIS: Well, Commissioner, we will  
17 have to consider whatever evidence is presented  
18 by the other parties in due course, to address  
19 that in our testimony that will be presented to  
20 you, and then that matter will be sorted out on  
21 a vote at an agenda conference after you've  
22 considered all the evidence and the briefs in  
23 the case.

24 COMMISSIONER JACOBS: Very well.

25 CHAIRMAN GARCIA: Okay. Commissioners?

1           COMMISSIONER CLARK: I'm sorry, but I had  
2 one question for Sheff. I was not on the  
3 Cypress case, at least I don't think I was. Was  
4 I on the Cypress case?

5           MR. WRIGHT: You were on the related cases,  
6 Commissioner Clark. You were on the motions to  
7 dismiss the Arc and Nassau petitions.

8           COMMISSIONER CLARK: Right, and they were  
9 dismissed as being not a proper applicant.

10          MR. WRIGHT: Yes, ma'am, that's correct.

11          COMMISSIONER CLARK: Thank you.

12          CHAIRMAN GARCIA: Okay.

13          MR. WRIGHT: Can I say one thing about you  
14 all's authority with respect to stranded cost  
15 recovery?

16          CHAIRMAN GARCIA: You know what? No.

17          MR. WRIGHT: Okay.

18          CHAIRMAN GARCIA: If someone has a  
19 question, they can ask you.

20          Commissioners?

21          COMMISSIONER CLARK: I have -- you know, I  
22 think there were good arguments on both sides.  
23 I guess one of the things that's concerning me  
24 the most is the fact that we have a sister  
25 agency that is involved in this and has

1 negotiated what they think is a good settlement  
2 to address their concerns. And is our  
3 obligation to say, all right, let's look at  
4 that, and we'll see how -- we'll give it an  
5 assessment, and then we either approve it or  
6 don't approve it, and if it's not approved, then  
7 they go back and negotiate with the sister  
8 agency?

9 I have the concern that we have sort of  
10 competing interests here in what we're trying to  
11 accomplish. And if we say in these instances  
12 you have to issue an RFP, what does that do to  
13 an incentive to get -- the incentive or the  
14 leverage an environmental agency may have to get  
15 these companies to respond to environmental  
16 concerns?

17 MR. BALLINGER: Is that a question to  
18 staff?

19 COMMISSIONER CLARK: Sure.

20 MR. BALLINGER: I think I would agree with  
21 Mr. Moyle, what he said earlier, that DEP's  
22 concern is to clean up the air and the water.  
23 If there's another alternative to that that gets  
24 as clean or cleaner, they would probably be  
25 receptive to it.

1 I think it also shows that any stool  
2 requires at least three legs to standing up, us  
3 being the third leg right now. And we are just  
4 now being faced with this question. We weren't  
5 involved in the process of negotiating the EPA  
6 or DEP settlement.

7 But quite frankly, what we're trying to do  
8 is make your job easier at the conclusion of the  
9 hearing so you're not faced with the difficult  
10 task of forcing it back to a sister agency, that  
11 you've done all the information you need to up  
12 front, all the evidence to test the market so  
13 that at the conclusion of the hearing you have  
14 everything you need to make a decision.

15 COMMISSIONER JACOBS: I'm intrigued by the  
16 proposition that Commissioner Garcia raised. It  
17 just strikes me that if we were to go through  
18 this process, the company is sitting in the bird  
19 seat.

20 MR. BALLINGER: Well, they are, and they  
21 also take a substantial risk at the end of the  
22 hearing. But it does box the Commission into a  
23 very untenable position. On the one hand, you  
24 have a sister agency --

25 CHAIRMAN GARCIA: But it's something you

1 can handle, Mr. Ballinger. If we say -- if we  
2 deny you today, it's something that you've  
3 handled and have done in the past. I mean,  
4 clearly, you're going to come up -- and they're  
5 going to argue, I know. But whatever it is,  
6 you're going to come up with some numbers, from  
7 the facts they do, and from your surveys and  
8 studies on the issue, and perhaps even Public  
9 Counsel finds a witness to argue with this, and  
10 I'm certain that one of these competitors. But  
11 you could make that determination without this.

12 MR. BALLINGER: I think so, yes.

13 COMMISSIONER JACOBS: What would we do to  
14 ensure that the bids we get are real bids?  
15 We've already seen a price quoted from an  
16 independent power producer that was -- let me  
17 make sure I choose my words carefully here --  
18 was favorable in terms other than cost. Okay.  
19 How do we make sure that if we're going to  
20 evaluate independent power producers' proposals  
21 here that they are very real numbers?

22 MR. BALLINGER: Quite frankly, it's not  
23 going to be our job to actually evaluate those.  
24 It's the utility's job to evaluate them. And  
25 they have the authority or the discretion to

1 discard all of them and make that their case at  
2 the hearing, that Respondent A, B, and C was not  
3 viable for various reasons, and they have the  
4 burden of showing that reason.

5 That's how our current bidding rule works.  
6 The utility is actually controlling the RFP and  
7 deciding which is the best project. Then they  
8 present that evidence to the Commission and say,  
9 "Look, I went out, and I tested the market  
10 through an RFP. Here's the responses I got.  
11 None of them would satisfy the requirements at  
12 the same cost or less than mine because of A, B,  
13 C, and D." And then you have at least the  
14 evidence out there. You've beaten the bushes  
15 enough to see what is out there. You're not  
16 left with a wondering question, well, what if,  
17 you know, this project was out there. You went  
18 out and solicited proposals, presumably got the  
19 world to respond, but they the utility's  
20 management made the decision of which project is  
21 the best alternative, and they have that burden  
22 to present it to the Commission.

23 COMMISSIONER CLARK: Mr. Ballinger, let me  
24 ask you this. If in fact there are viable  
25 projects out there or entities that can present



1           viable projects -- and we've had Calpine say  
2           they're building down in Auburndale. Then they  
3           can come in in the hearing, present their case,  
4           and if they persuade us, we deny the petition,  
5           and then they have the ability to negotiate with  
6           TECO to provide it.

7           MR. BALLINGER: I agree.

8           COMMISSIONER CLARK: So why is one better  
9           than the other? Because if in fact they have  
10          those projects out there, they'll be in the  
11          case.

12          MR. BALLINGER: Here's my own personal  
13          view. I've been here almost 16 years, and I  
14          would have never thought I would see the day  
15          that TECO would go to repowering with gas at a  
16          unit. They're predominantly coal-based. That's  
17          been their company for years. This is a major  
18          change in philosophy, if you will, of the  
19          company. Staff is not wanting to derail that  
20          philosophy, if you will. And that's why we feel  
21          that the best way to do it, since there is an  
22          agreement in place, go ahead and issue an RFP  
23          now, let everybody take their best shot. The  
24          utility then at least has gathered all the  
25          information. And, yes, it may not prove out at

1 the end of hearing, but they've done all the  
2 groundwork up front, so at least that question  
3 is removed.

4 COMMISSIONER CLARK: Let me ask this. This  
5 is more telling them how to run their business  
6 than regulating them, because if there are  
7 entities out there who in fact believe they can  
8 provide the power and beat the price, including  
9 all implications of it, they'll be in the case.

10 MR. BALLINGER: Correct.

11 COMMISSIONER CLARK: So that they can get  
12 that denied and they can be in a position to  
13 offer that power.

14 MR. BALLINGER: Which is exactly why --

15 COMMISSIONER CLARK: And we have in fact --  
16 what's different between the Cypress case and  
17 now is that we have indicated that they can come  
18 in as a merchant plant and get a certificate of  
19 need.

20 MR. BALLINGER: But what was different in  
21 Cypress and the reason you denied FPL's petition  
22 was that you had alternatives in there that  
23 showed a least cost, and you were also  
24 dissatisfied with the process that FPL went  
25 through. So FPL had to go back and figure out

1 what to do to satisfy a need for power, and they  
2 came up with other alternatives.

3 Because the Commission didn't choose to be  
4 faced with that again, we initiated our bidding  
5 rule that said that when you come in here asking  
6 for basically a prudence approval of a new  
7 plant, you must issue an RFP first. We think  
8 that a similar policy should be applied here.

9 COMMISSIONER CLARK: Let me ask Ms. Jaye  
10 something. Does our rule apply to this plant?

11 MS. JAYE: I don't believe it applies  
12 directly to the plant. I believe that a logical  
13 extension of the reasons the bidding rule was  
14 put into place to begin with would apply it to  
15 this point. But as it was initially proposed  
16 and adopted, it does not.

17 COMMISSIONER CLARK: Then tell me, is there  
18 anything in the APA -- and I guess Mr. Willis  
19 cited those particular provisions -- that would  
20 not allow us to require a bidding because it's  
21 not part of the rule or because it's new  
22 policy? Is there any procedural barrier that  
23 we're going to encounter as a result of Chapter  
24 120?

25 MS. JAYE: I do not believe there is a

1 procedural barrier, Commissioner, because I do  
2 not believe that Staff's recommendation and any  
3 vote that is made pursuant to that  
4 recommendation would affect a substantial  
5 interest of the company. We are not -- in the  
6 recommendation as Staff has proposed it, we are  
7 not proposing that the Commission decide right  
8 now on the petition itself, on its merits. We  
9 are saying let's get some more information,  
10 solicit some bids.

11 COMMISSIONER CLARK: You're saying it's a  
12 piece of evidence we want you to --

13 MS. JAYE: There is a piece of evidence  
14 that we feel is -- it would make our job for all  
15 of us much easier and much cleaner up front, and  
16 we believe you would be presented with a replete  
17 record early on in the proceeding. We would all  
18 be in a better posture by the time it comes to  
19 hearing if we went ahead with the RFP process.

20 CHAIRMAN GARCIA: Let me ask you -- that's  
21 a good point. It brings up an interesting  
22 point that Susan just mentioned. We're putting  
23 out something. We're asking, we're requesting  
24 for a piece of evidence, for someone to file a  
25 piece of evidence.

1           Now, I'm Duke Power Partners, or whatever  
2           the name of the Florida subsidiary is. Why am I  
3           going to be providing evidence on a bid that  
4           even if my evidence is good, I can't win? In  
5           other words, there's nothing at stake. TECO has  
6           no obligation to grant this bid; correct? Staff  
7           wouldn't --

8           MR. BALLINGER: That's correct, but I think  
9           TECO's incentive is that they have an agreement  
10          with DEP and hopefully with EPA to get that  
11          monkey off their back to get some deal. So I  
12          think they do have an incentive to -- if they  
13          see a better alternative, to go ahead and do it.  
14          I could see that incentive out there to keep  
15          this process moving.

16          MS. JAYE: It is also part of our job at  
17          the Commission under 366.825 to take a look at  
18          what is presented by the company and all the  
19          evidence to ensure that it is a reasonable and  
20          prudent --

21          CHAIRMAN GARCIA: You understand my point  
22          is that the incentive to participate in a bid  
23          whose only purpose is to structure a possible  
24          response makes that tenuous almost. I mean,  
25          you're bidding on a project that's not really up

1 for bid, that's possibly up for bid, but this  
2 Commission hasn't ordered -- doesn't have a  
3 right to order them to build them that  
4 particular project.

5 MS. JAYE: Perhaps --

6 CHAIRMAN GARCIA: TECO might have an  
7 interest in that project because it's much  
8 cheaper than what they have, but --

9 MS. JAYE: Certainly, Chairman. But the  
10 process as it would go through, assuming there  
11 were a bidder, assuming that first of all, we  
12 voted to allow this thing to be bid, if there  
13 were bidders who could do it for less, taking  
14 into account, of course, the value of the plant  
15 that is now in place, et cetera, taking into  
16 account all of these issues that are  
17 outstanding, including the transmission upgrade  
18 costs, et cetera, if there were a lower cost  
19 bidder out there who could meet the requirements  
20 for emissions controls, that lower cost bidder,  
21 it would seem to me, might have the security of  
22 knowing that that low cost bidder would be an  
23 option for the company at the end of all the  
24 evidence and after the votes were taken by the  
25 Commission, if the company were indeed denied.

1 CHAIRMAN GARCIA: Got you.

2 Commissioners?

3 COMMISSIONER JACOBS: Well --

4 COMMISSIONER CLARK: I'm prepared to make a  
5 motion and see what the reaction is to it.

6 I guess in this instance, I would deny  
7 staff. I would say we go forward on the  
8 petition, that there is opportunity in there for  
9 intervention, and that if it is not the best  
10 deal, it is in the merchant power community's  
11 interest to intervene to show that there's a  
12 better way to do this and that they can in fact  
13 supply the power. And I think we would be in  
14 the same place, because if we conclude that it  
15 is not a good deal, TECO still has to go back to  
16 our sister agency to negotiate a different deal  
17 if we say, "No, it doesn't work." And they will  
18 have that information. And if we had determined  
19 -- allowed the RFP process to go forward, they  
20 would still have to go back to present this as  
21 an alternative for it.

22 It's not clear to me that one is a superior  
23 way of proceeding. And I think we have an  
24 agency that has negotiated a settlement that  
25 they think is a good deal for the environment,

1 and we should look at it.

2 So I would move to deny Staff. But I would  
3 also ask Staff to look at the idea of requiring  
4 RFPs even for repowering.

5 CHAIRMAN GARCIA: I'll second that, that  
6 part of it at least.

7 COMMISSIONER JACOBS: I'm attracted to that  
8 very idea. I see it here as nothing more than  
9 -- well, I shouldn't say nothing more, but  
10 essentially a procedural device to get evidence  
11 into the record. And for that reason, I don't  
12 see all the harm in the position that the  
13 company brings out. And already, I think the  
14 proceedings are going to lend themselves to the  
15 very exchange that an RFP would have brought  
16 about anyway.

17 I am persuaded by the last point you made  
18 and another point, that whatever happens here,  
19 particularly if you begin to look at  
20 alternatives, there is the implication of the  
21 DEP's jurisdiction, and how do you resolve that  
22 in a meaningful way I think is an important  
23 question we have to address and consider. And  
24 simply doing an RFP and thinking that that does  
25 that I don't think is a reasonable result.



1           Additionally, I think the customers are  
2 going to have a concern about whatever option  
3 comes out the door of an RFP process as to  
4 issues that might be raised there. So even if  
5 we did an RFP and they came up with an  
6 alternative, I think there are going to be  
7 issues that get raised by those customers as to  
8 how well that suits their needs in the long term  
9 regarding TECO. So the bottom --

10           COMMISSIONER CLARK: I agree with you. I  
11 would add to the notion that I'm not sure what  
12 we would accomplish by an RFP, in the sense that  
13 I do think if you don't build there, you have  
14 implications of transmission. And I'm not sure  
15 that in this case that if this were -- I'm not  
16 sure that in this case you would even decide  
17 that you would waive the RFP process, given what  
18 you have to deal with, that it's a settlement,  
19 that if you don't build it here, it raises  
20 transmission issues and those sorts of things.

21           COMMISSIONER JACOBS: However, if -- I can  
22 second the motion, but I want to make sure that  
23 we are anticipating that DEP is either  
24 participating or involved in the proceeding, and  
25 number two --

1 MR. ELIAS: In which proceeding?

2 COMMISSIONER JACOBS: In the hearing that's  
3 going to occur.

4 MR. ELIAS: I suspect not.

5 COMMISSIONER JACOBS: Well, we need to look  
6 further out and make sure that all that gets  
7 taken care of, because otherwise what we're  
8 doing I think will frustrate the whole process.  
9 And if we don't get DEP involved in the process,  
10 then --

11 CHAIRMAN GARCIA: Why aren't they involved?  
12 I don't -- I understand his point, but why  
13 wouldn't they be involved?

14 MR. ELIAS: Well, I mean, the deal has been  
15 presented. It's for us to pass on the  
16 cost-effectiveness of it.

17 COMMISSIONER CLARK: Well, they may come  
18 in. We don't know if they wouldn't come in and  
19 advocate that this is the right way to go. Are  
20 they precluded from being a party in this case?

21 MR. ELIAS: You know, just thinking off  
22 the top of my head, I don't know what  
23 substantial interest the DEP --

24 COMMISSIONER JACOBS: I'm not asking them  
25 to come here to advocate for the stipulation

1 that they've reached. I'm asking them to be  
2 here in the event we choose some alternative.  
3 That's quite frankly what I'm thinking of. In  
4 the event we look at the options that are  
5 available to TECO --

6 MR. ELIAS: And in case --

7 COMMISSIONER JACOBS: Hear me out. In the  
8 event we look at options that are available to  
9 TECO and we say, "We don't think the one you've  
10 arrived at is the most cost-effective," they  
11 ought to be at the table at that point in time  
12 to look at or begin to look at alternatives to  
13 figure out whether or not they meet their  
14 objectives. Absent that, then they run the risk  
15 of us approving something for them that they  
16 don't think is good, and then this company has  
17 to go back to them and renew the process.

18 MR. ELIAS: Other alternatives are not on  
19 the table here. They're not the subject of this  
20 hearing. And short of --

21 COMMISSIONER JACOBS: I understand. And I  
22 don't -- listen to me. I understand we're not  
23 here to determine what options DEP should choose  
24 to address the environmental concerns. What we  
25 are here to determine is what the least cost

1 options are for this company.

2 To the extent that they have asked us to  
3 approve one option and we say that that option,  
4 based on the input we get in our hearing, is not  
5 the most cost-effective, it automatically brings  
6 the question of other alternatives. And if  
7 they're not there at that moment, they run the  
8 risk of losing the opportunity on the front end  
9 to shape a new solution to their issue.

10 Sure, we could come out with our order, and  
11 then they come in and come up with a new option.  
12 And what happens then? We're back at step  
13 number one again. We come, we look at their new  
14 proposed solution, and we make a determination  
15 whether or not it's the most cost-effective. We  
16 eliminate all of that if they're here at the  
17 table. That's my suggestion.

18 MR. ELIAS: And let me understand better.  
19 You're saying they need to be at the table in  
20 the event that we don't approve this plan?

21 COMMISSIONER JACOBS: Yes.

22 MR. ELIAS: Okay. Because we've been  
23 asked to do three things: Find this plan  
24 reasonable, prudent, and in the public interest;  
25 specifically find that portion of the plan that

1 provides for the repowering of the six Gannon  
2 coal units into three natural gas units is  
3 reasonable, prudent, and in the public interest;  
4 and thirdly, find that the types of costs that  
5 -- or the costs that are associated with those  
6 plans are the types of costs that are eligible  
7 for cost recovery through the Environmental Cost  
8 Recovery Clause as provided for in Section  
9 366.8255. It's an up or down proposition, and  
10 this is the whole ball of wax. I mean, short of  
11 a finding in a subsequent proceeding that when  
12 they actually went to spend the money, they  
13 didn't get the best deal on the prices, this is  
14 our chance to -- this is our look at this  
15 proposal.

16 CHAIRMAN GARCIA: I think what Commissioner  
17 Jacobs, though, is driving at -- and I  
18 understand where staff is disagreeing with him  
19 -- is that if we were to be looking at other  
20 alternatives which are not in this case, because  
21 we're not asking them to go out and bid, so  
22 we're not looking at that evidence. We may have  
23 evidence filed by the intervenors, but we don't  
24 have that evidence before us. But we're not --  
25 what staff is trying to get at is, we're not

1 going to craft any conclusion in this particular  
2 proceeding.

3 COMMISSIONER JACOBS: I know, I know.

4 CHAIRMAN GARCIA: And I understand your  
5 point that if we were to say no for some other  
6 alternative, you would like to be able to weigh  
7 that alternative against a witness that said --  
8 and you've asked that witness, "well, did you  
9 see Calpine's filing? Do you think that's good  
10 for the State of Florida?" And I understand  
11 what you're trying to do. I just don't think  
12 that that's an issue that would ever be explored  
13 in this particular format.

14 MR. ELIAS: How we would get that evidence  
15 before the Commission in this proceeding I'm not  
16 really sure. How we would get someone from the  
17 environmental agency to say, "what do you think  
18 of this possibility --

19 CHAIRMAN GARCIA: I'll give you an example  
20 of how it could. Let me go with Commissioner  
21 Jacob's proposal.

22 Let's say we have this hearing and we start  
23 down this road, and Calpine intervenes, and  
24 Calpine files testimony, which I think they  
25 still can; correct?

1 MR. ELIAS: Yes. None of the testimony has  
2 been --

3 CHAIRMAN GARCIA: So Calpine files some  
4 testimony, and in their testimony they say,  
5 "Look, here's a 1,000 megawatt plant, and I can  
6 do this for 200 million less than TECO." Okay?  
7 And it's a plant. A plant is a plant, I guess,  
8 as a plant is a plant, but they're just charging  
9 less for the process. And they're in this  
10 hearing.

11 Well, Commissioner Jacobs' point is, well,  
12 how do I know that we're comparing apples to  
13 apples if I don't -- I've got one agreement  
14 which is structured around a particular set of  
15 environmental issues, and I don't have anyone  
16 that I can ask, because then TECO will argue,  
17 "That has nothing to do with this. This Calpine  
18 proposal is a greenfield project, doesn't affect  
19 cleanliness, doesn't affect the EPA, isn't an  
20 issue before you. You're comparing apples to  
21 oranges, and of course Calpine's is a lot  
22 cheaper, because they don't have the  
23 responsibilities and obligations that we do to  
24 the government."

25 And so Commissioner Jacobs is saying he

1 would like to -- I don't know. In theory, if we  
2 had another contract before us, I would like to  
3 be able to say to the DEP, say, "Well, you  
4 looked at both of them. Tell me why we're  
5 looking at apples and oranges." That's the only  
6 point he's trying to make. And if we were  
7 looking at different proposals, it would beg the  
8 question, because we're being asked for cost  
9 recovery on a particular issue, but it is  
10 contingent on the DEP; right?

11 MR. ELIAS: They've already signed off on  
12 it.

13 CHAIRMAN GARCIA: They've already signed  
14 off on this particular issue. But I'm trying to  
15 put it in the context of a water case, you know,  
16 the classic argument, the gold plating  
17 argument. Okay? And here we are, we're having  
18 a hearing, but typically in water cases people  
19 don't join in to say, "Hey, this plant is gold  
20 plated. We shouldn't pay for this." Okay? And  
21 the only one that can tell me or make that  
22 distinction in terms of quality I would assume  
23 would be someone from DEP, because that's not  
24 our issue.

25 I've missed you. You've not getting me.



1 And it could be that I'm totally--

2 MR. ELIAS: I understand. It's just --  
3 it's a question of, one, are we going to be able  
4 to get somebody to speak for the agency on a  
5 particular point; and two, are we going to be  
6 able to receive all this evidence, do all this  
7 analysis, put all these competing proposals  
8 together, and then have testimony or evidence  
9 that you can consider in this proceeding filed  
10 in time to go to hearing on May 28th without  
11 someone saying, "wait a second. When is all  
12 this going to stop, and when is the record going  
13 to be closed?" That's a big part of my  
14 dilemma.

15 CHAIRMAN GARCIA: Okay. You understand.

16 COMMISSIONER JACOBS: I think we're there  
17 already, but I won't belabor the point today.  
18 It's not really important to the issue today. I  
19 think we ought to have that discussion, though.

20 I'm still prepared to second the motion.

21 CHAIRMAN GARCIA: Commissioner Deason?

22 COMMISSIONER DEASON: Well, I have one  
23 question, pending question to Staff about the  
24 bidding rule authority. You look blank.

25 MR. ELIAS: Oh, I'm sorry. It was 403.519,

1 which is the need determination statute, and  
2 366.051, which is the cogeneration and small  
3 power production statute that provides it's in  
4 the public interest.

5 COMMISSIONER DEASON: Okay. We have a  
6 motion and a second, and let me say I'm going to  
7 support the motion. And I -- for several  
8 reasons. I would just like to mention those.

9 But first of all, I think it's important  
10 for this Commission to encourage our regulated  
11 utilities where it's necessary to go out and  
12 negotiate with the environmental regulators.  
13 They may fruitful, and they may be not. But if  
14 we at this stage I think change the rules of  
15 that, it could be looked upon as being  
16 unconducive, if that's a word, to those type  
17 negotiations. And what I mean by that is, if we  
18 all of a sudden interpret our authority and our  
19 very limited bidding rule to now make it subject  
20 to repowerings, then that's a whole 'nother ball  
21 of wax.

22 And maybe that's good policy, but we need  
23 to -- if we're going to do that, we need to  
24 develop that in a rule proceeding where all of  
25 the impacts of that can be discussed and make

1           sure that we do have the statutory authority to  
2           adopt such a rule, which I'm not sure that we  
3           do. But all that could be fleshed out in a rule  
4           proceeding.

5           Another thing I think we need to remember  
6           is that we're in a proceeding where the company  
7           has the burden of proof, and they're going to  
8           have to meet that burden. And maybe a good way  
9           to meet that burden would have been to have gone  
10          through an RFP process and said, "Look,  
11          Commission, see, we are the lowest. This is  
12          lowest cost option, because nobody else can even  
13          come close." They chose not to do that. And  
14          I'm not comfortable with us being in the  
15          position of dictating to a company how they have  
16          to go about presenting their case to meet their  
17          burden of proof to this Commission.

18          So for those reasons, I'm going to support  
19          the motion.

20                 CHAIRMAN GARCIA: Commissioners?

21                 COMMISSIONER CLARK: I incorporate those  
22                 reasons into my motion. They were very well  
23                 stated.

24                 CHAIRMAN GARCIA: Yes, they were.

25                 Commissioners, I'm not going to support the

1 motion. I think that what staff is trying to do  
2 is safeguard the company here. I understand the  
3 company's position. I accept their rationale.  
4 It probably makes business sense. And we do put  
5 them in a difficult position. I just worry  
6 where we are in the long term by not considering  
7 all the options on the front end, because for  
8 some reason the wick has been lit here. You  
9 know, the fuse is burning on a series of  
10 agreements.

11 And I would rather have our Staff have all  
12 the record evidence, because I have yet to see  
13 in my tenure at this Commission, or evidence  
14 before that, that any of these bids has ever  
15 been won by an outsider. So it would be a good  
16 exercise. I think it would give TECO certain  
17 guarantees and give their ratepayers certain  
18 guarantees.

19 That said, I'm not uncomfortable with the  
20 position that the majority will take on this. I  
21 think it might have been a better option to go  
22 with Staff, and I think what Staff was trying to  
23 do is give us more options and more protection  
24 from the decision we'll make.

25 That said, there is a motion and a second.

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All those in favor signify by saying "aye."

COMMISSIONER CLARK: Aye.

COMMISSIONER DEASON: Aye.

COMMISSIONER JACOBS: Aye.

CHAIRMAN GARCIA: All those opposed, nay.  
Nay.

(Conclusion of consideration of Item 7A.)

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CERTIFICATE OF REPORTER


STATE OF FLORIDA:

COUNTY OF LEON:

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and that the foregoing pages numbered 1 through 125 are a true and correct record of the aforesaid 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 matter.

DATED THIS 19th day of January, 2000.

  
\_\_\_\_\_  
MARY ALLEN NEEL, RPR  
100 Salem Court  
Tallahassee, Florida 32301  
(850) 878-2221

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