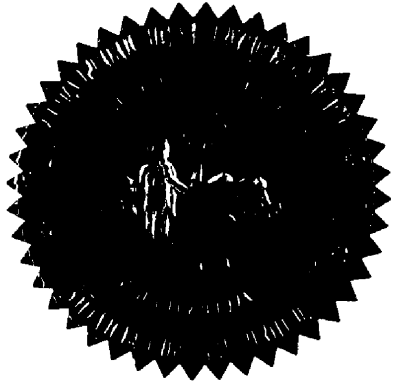


**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

**DOCKET NO. 000061-EI**

**In the Matter of**

**COMPLAINT OF ALLIED UNIVERSAL  
CORPORATION AND CHEMICAL  
FORMULATORS, INC. AGAINST TAMPA  
ELECTRIC COMPANY FOR VIOLATION OF  
SECTIONS 366.03, 366.06(2) AND  
366.07, FLORIDA STATUTES, WITH  
RESPECT TO RATES OFFERED UNDER  
COMMERCIAL/INDUSTRIAL SERVICE RIDER  
TARIFF, PETITION TO EXAMINE AND  
INSPECT CONFIDENTIAL INFORMATION;  
AND REQUEST FOR EXPEDITED RELIEF.**



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AND DO NOT INCLUDE PREFILED TESTIMONY.**

**VOLUME 1  
PAGES 1 THROUGH 68**

**PROCEEDINGS: HEARING**

**BEFORE: CHAIRMAN E. LEON JACOBS, JR.  
COMMISSIONER LILA A. JABER  
COMMISSIONER BRAULIO L. BAEZ**

**DATE: Monday, February 19, 2001**

**TIME: Commenced at 9:30 a.m.  
Concluded at 3:55 p.m.**

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

**REPORTED BY: KORETTA E. STANFORD, RPR  
Official Commission Reporter**

**1 APPEARANCES:**

**2 JOHN R. ELLIS and KENNETH HOFFMAN,**  
**3 Rutledge, Ecenia, Underwood, Purnell and Hoffman,**  
**4 P.O. Box 511, 215 South Monroe Street, Suite 420,**  
**5 Tallahassee, Florida 32302-0551; and DANIEL**  
**6 BANDKLAYDER, Anania, Bandklayder, Blackwell,**  
**7 Baumgarten & Torricella, Bank of America Tower,**  
**8 Suite 4300, 100 Southeast Second Street, Miami,**  
**9 Florida 33131-2144, appearing on behalf of Allied**  
**10 Universal Corporation and Chemical Formulators, Inc.**

**11 JAMES D. BEASLEY, Ausley & McMullen, P.O.**  
**12 Box 391, Tallahassee, Florida 32302 and HARRY W.**  
**13 LONG, JR., P.O. Box 1657, Tampa, Florida 33601,**  
**14 appearing on behalf of Tampa Electric Company.**

**15 WAYNE SCHIEFELBEIN, P.O. Box 15856,**  
**16 Tallahassee, Florida 32317-5856; JOHN WHARTON, Rose,**  
**17 Sundstrom & Bentley, 2548 Blairstone Pines Drive,**  
**18 Tallahassee, Florida 32301; and SCOTT J. FUERST,**  
**19 Ruden, McClosky, 200 East Broward Boulevard, Ft.**  
**20 Lauderdale, Florida 33301, appearing on behalf of**  
**21 Odyssey Manufacturing Company and Sentry Industries,**  
**22 Inc.**

**23****24****25**

1 **APPEARANCES (Continued):**

2 **ROBERT ELIAS and MARLENE STERN, FPSC Division**  
3 **of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee,**  
4 **Florida 32399-0850, appearing on behalf of the Commission**  
5 **Staff.**

6 **HAROLD McLEAN, FPSC Commission Suite,**  
7 **2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,**  
8 **appearing on behalf of the Commissioners.**

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1 with the law firm of Ausley & McMullen in Tallahassee,  
2 Florida, appearing along with Harry W. Long, Jr.,  
3 Assistant General Counsel at Tampa Electric Company.  
4 We're representing Tampa Electric.

5 MR. SCHIEFELBEIN: Excuse me, Commissioners.  
6 I'd also like to enter an appearance on behalf of Scott  
7 Fuerst, F-u-e-r-s-t, with Ruden McClosky, also appearing  
8 on behalf of Odyssey and Sentry.

9 MS. STERN: Marlene Stern on behalf of the  
10 Commission Staff.

11 MR. ELIAS: Bob Elias on behalf of the  
12 Commission Staff.

13 MR. McLEAN: I'm Harold McLean, counsel to the  
14 Commissioners.

15 CHAIRMAN JACOBS: Very well. Staff, do we have  
16 any preliminary matters?

17 MS. STERN: We have several preliminary matters.  
18 A motion for settlement was filed on Friday, a motion to  
19 dismiss; those were the two main motions. We have a  
20 motion to strike, and that was filed on Friday. And those  
21 are the preliminary matters.

22 CHAIRMAN JACOBS: Very well.

23 MR. SCHIEFELBEIN: Excuse me, Commissioners.  
24 There's also two pending requests for official recognition  
25 that were filed on Odyssey's and Sentry's behalf about

1 three weeks ago and, I think, there's been additional  
2 filings by Staff. There's a request for official  
3 recognition that was filed the latter part of last week.  
4 And then, today about 9:15, we were handed, among other  
5 things, requests for official recognition by complainants  
6 in this case.

7 MS. STERN: We were planning on taking up the  
8 Official Recognition List later after the motions.

9 CHAIRMAN JACOBS: Okay. And at that time if  
10 your item that you've requested is not on the list, we can  
11 deal with it at that time.

12 MR. SCHIEFELBEIN: Thank you, sir.

13 MR. LONG: Chairman?

14 CHAIRMAN JACOBS: Yes.

15 MR. LONG: I would also like to raise an issue  
16 with regard to discovery in this proceeding.

17 CHAIRMAN JACOBS: What would be the nature of  
18 that?

19 MR. LONG: Well, essentially, Allied/CFI's  
20 failure to abide by this Commission's orders in terms of  
21 materials that it was directed to provide to Tampa  
22 Electric. We still have not received all of the materials  
23 that you ordered them to give us, and I'd like to go into  
24 that at an appropriate time.

25 CHAIRMAN JACOBS: Staff, where are we with

1 regard to completion of those -- I assume -- did you not  
2 receive copies of --

3 MS. STERN: We just received some additional  
4 discovery information this morning, I believe. No, it was  
5 late-filed exhibits to a deposition.

6 CHAIRMAN JACOBS: Is that the same issue?

7 MR. LONG: No, no, Commissioner, although that's  
8 part of what I want to discuss with you.

9 CHAIRMAN JACOBS: Okay.

10 MS. STERN: I'm not sure what the outstanding  
11 discovery is, then.

12 CHAIRMAN JACOBS: Here's what we'll do. If  
13 there are issues with regard to discovery, completion of  
14 discovery, I'm not prepared to hold up the hearing today  
15 to do that. We had ample time to do discovery in this  
16 docket, and let me conclude, unless you would be hampered  
17 in a critical element of your case and you can demonstrate  
18 -- now, I'll say this up front, you can demonstrate that  
19 the party that failed to provide discovery had opportunity  
20 and failed to do so, then, we can entertain those issues.  
21 But if the failures to provide discovery is not a critical  
22 matter to the presentation of your case, I'm not prepared  
23 to deal with it today. Now, in that vain, if you want to  
24 pursue this, then, we can hear your argument.

25 MR. LONG: Commissioner, I am prepared to

1 demonstrate that Allied's case has absolutely no merit  
2 this morning. Having said that, I think, it's important  
3 for the Commission to understand that Allied has not  
4 complied with your orders and in so doing has deprived  
5 Tampa Electric of information that it is entitled to in  
6 terms of exploring their case and demonstrating to the  
7 Commission that their assertions lack merit. They have  
8 not complied with your orders. Having said that, we're  
9 prepared to demonstrate this morning that their case has  
10 no merit, and it is our hope and intention that this case  
11 will not be delayed.

12 **CHAIRMAN JACOBS:** Very well. Very well.  
13 **Mr. Wharton.**

14 **MR. WHARTON:** I was only going to point out,  
15 **Mr. Chairman,** that there is a critical distinction between  
16 a discovery matter being brought up at the beginning of  
17 trial, an allegation that the discovery process was going  
18 through and it was a violation of the order. But we agree  
19 with TECO, that we would oppose any continuance of this  
20 matter and we want to press forward, despite the  
21 prejudice.

22 **CHAIRMAN JACOBS:** Thank you.

23 **COMMISSIONER JABER:** Mr. Wharton, I'm sorry, I  
24 didn't catch who you represent.

25 **MR. WHARTON:** Pardon me?



1           **COMMISSIONER JABER: Who do you represent?**

2           **MR. WHARTON: Odyssey Manufacturing Company and**  
3 **Sentry.**

4           **COMMISSIONER JABER: Thank you.**

5           **MR. WHARTON: One other thing, Mr. Chairman,**  
6 **just as a procedural matter that was already mentioned. I**  
7 **believe, our motion to strike should probably be taken up**  
8 **as that witness comes to the stand.**

9           **CHAIRMAN JACOBS: That was going to be my next**  
10 **point. I agree with that.**

11           **MR. ELLIS: On behalf of Allied, Chairman**  
12 **Jacobs, we have one preliminary matter with respect to**  
13 **corrected exhibits to the rebuttal testimony of Mr.**  
14 **Namoff, and I could address that at your convenience.**

15           **CHAIRMAN JACOBS: We can do that as he takes the**  
16 **stand. That would be fine.**

17           **MR. ELLIS: Thank you.**

18           **CHAIRMAN JACOBS: Now, I thought I had all the**  
19 **motions in front of me, but let me get my thoughts**  
20 **together, because I don't see all the motions. I'll tell**  
21 **you what, now, let's deal with the motion for approval of**  
22 **offered settlement first. Have the parties had an**  
23 **opportunity to discuss the terms of the offer?**

24           **MR. LONG: Commissioner, I've had no discussion**  
25 **with the parties.**

1           **CHAIRMAN JACOBS:** Is it worthwhile to adjourn  
2 the hearing to give you that opportunity?

3           **MR. LONG:** Well, Commissioner, as I said, I  
4 really don't want to delay this proceeding at all. I  
5 think, our offer was fairly clear, and we have a  
6 response --

7           **CHAIRMAN JACOBS:** Right, I see the response on  
8 the record.

9           **MR. LONG:** -- from Allied. And, I think, it  
10 just bears mentioning that for 13 months or more  
11 Allied/CFI's been telling you that all they want are the  
12 same rates, terms and conditions. Commissioners, you have  
13 before you an offer of settlement that provides them with  
14 precisely that, and you've seen their answer.

15           **CHAIRMAN JACOBS:** Very well.

16           **MR. LONG:** It is clear from their answer that  
17 that is not all they want.

18           **CHAIRMAN JACOBS:** Very well. Mr. Ellis, is  
19 there any need to give you the opportunity to discuss the  
20 offer that's on the table today or to proceed with further  
21 negotiations?

22           **MR. ELLIS:** It doesn't appear that there is,  
23 judging from the tenor of counsel from Tampa Electric.

24           **CHAIRMAN JACOBS:** We're beyond tenor of counsel  
25 now. What I'm asking the parties is to make a decision

1 whether or not you have any opportunity to resume  
2 negotiations before we begin the trial, because I assume  
3 once we begin, the offer's off the table.

4 **MR. LONG:** That's correct, Commissioner.

5 **MR. ELLIS:** No, I don't believe there's any need  
6 for that at this time.

7 **CHAIRMAN JACOBS:** Very well.

8 **COMMISSIONER JABER:** Let me just tell you as one  
9 Commissioner, I would not be offended if during the course  
10 of this hearing you all reconsidered and wanted to talk  
11 seriously about a settlement. I'm sorry, Mr. Chairman, I  
12 didn't want to interrupt you. I just don't want to send  
13 you the signal that I would be offended if you wanted to  
14 take a break and talk settlement.

15 **CHAIRMAN JACOBS:** Staff, you have a  
16 recommendation on the motion?

17 **MS. STERN:** We have some concerns about TECO's  
18 actions in this docket, but in the spirit of compromise,  
19 we would recommend accepting the motion for settlement.  
20 We have two – we have one modification to it and two  
21 conditions. The modification is upon the conclusions of  
22 the law that they be rewarded a little bit to make it  
23 clear that the only law we're making any conclusions about  
24 is the law within the jurisdiction of this agency, not all  
25 Florida law.

1                   **And the conditions are, assuming if this --**  
2 **well, if this were to settle, we would want to open**  
3 **another docket to propose revisions to TECO's CISR tariff.**  
4 **If it does not settle, we'd like to reserve the right to**  
5 **reevaluate these conclusions of law in light of the**  
6 **evidence submitted at the trial and the briefs submitted**  
7 **afterwards.**

8                   **MR. LONG: Mr. Chairman, Tampa Electric has no**  
9 **objection to the proposal made by Staff.**

10                  **MS. STERN: Can I add one thing, please?**

11                  **CHAIRMAN JACOBS: Go ahead.**

12                  **MS. STERN: If the settlement is accepted, it**  
13 **would have to be issued as proposed agency action, unless**  
14 **Allied agrees to it. And then, if it is issued as**  
15 **proposed agency action, there would be an opportunity for**  
16 **Allied to protest.**

17                  **CHAIRMAN JACOBS: Now, it's my understanding**  
18 **that one of the provisions here has to do with -- and I**  
19 **thought I read it, but I guess I didn't, has to do with**  
20 **cause of actions outside of our jurisdiction.**

21                  **MR. ELLIS: Yes, that's Tampa Electric's**  
22 **additional term besides offering the same rates, terms and**  
23 **conditions which we would accept.**

24                  **CHAIRMAN JACOBS: Is that in this offer?**

25                  **MR. ELLIS: Yes. Tampa Electric wants to not**

1 only offer the same rates, terms and conditions, which are  
2 acceptable to us, but also to gain some additional  
3 advantage in some other proceeding, which we object to.

4 **MR. LONG:** Chairman, I would --

5 **CHAIRMAN JACOBS:** Why don't we do this. In view  
6 of Staff's recommendation, what I'd like to give you -- I  
7 think, it would be prudent, if it's okay with you,  
8 Commissioners, to give the parties an opportunity to  
9 respond to the recommendation. Is that --

10 **COMMISSIONER JABER:** Staff, I'm confused by your  
11 recommendation. This is an offer of settlement to Allied  
12 in a complaint docket, but you're recommending that we  
13 accept the offer of settlement anyway? Explain to me --

14 **MS. STERN:** Well, the offer of settlement would  
15 require the Commission to make certain findings of fact  
16 and conclusions of law. And, I guess, what we're saying  
17 is we can accept those findings of fact and conclusions of  
18 law. It's also been filed as a motion.

19 **COMMISSIONER JABER:** Mr. McLean, can you help me  
20 out here?

21 **MR. McLEAN:** Well, I'll do the best I can.  
22 There's a motion before you to accept the unilateral offer  
23 of settlement. It isn't a settlement until both sides  
24 agree to it. From what I understand from Commission  
25 precedent is that occasionally a party will bring a

1 unilateral offer of settlement before you, you simply say  
2 it looks like a good idea, adopt it as a proposed agency  
3 action order.

4           There's a bit of discussion here about leaving  
5 the merits of this complaint somewhat and going to hold  
6 harmless sort of agreement. If you decide that this  
7 settlement offer is a good one, I'd hardly recommend that  
8 you omit from the ordered PAA any discussion and hold  
9 harmless of how parties have behaved or anything like  
10 that. But the point that I'd like to emphasize is that it  
11 is not a settlement, and it is inartful to call it a  
12 settlement. It is an offer of settlement from one party,  
13 and that's all it is. It's not a settlement until both  
14 sides agree to it.

15           However, in this stage of the proceedings, you  
16 are free to adopt that as a proposed agency action which  
17 affords all parties a chance to come back in and suggest  
18 that it's not a good idea to settle it or to issue the  
19 PAA.

20           **COMMISSIONER JABER:** So, then, does the new  
21 hearing -- let's say it gets protested, so then is the  
22 hearing on Commission's action to accept an offer of  
23 settlement or does the hearing --

24           **MR. McLEAN:** Perhaps, but I believe counsel for  
25 Allied spoke to the issue of -- if I can be permitted to

1 call it the merits of this complaint to say, essentially,  
2 if we get the same rate, that's agreeable.

3 So, the only part left with the PAA, presumably,  
4 would be an issue of the hold harmless, if I can be  
5 permitted to use those terms, that would be the only thing  
6 likely to come up in the PAA.

7 The parties can today agree to settle the merits  
8 part of it and leave the rest for the PAA, I think. But  
9 it is a misnomer, as I say, to call this a settlement. It  
10 is a unilateral offer by one of the parties, and the  
11 motion is for you to approve that. And I say that your  
12 approving that offer would accomplish nothing. You can  
13 encompass it in a PAA, if you care to.

14 CHAIRMAN JACOBS: We don't have jurisdiction to  
15 approve a hold harmless in matters outside of --

16 MR. WHARTON: May we speak to that, Chairman?

17 CHAIRMAN JACOBS: I'm going to allow parties to  
18 speak to this, but I want to hear from Mr. McLean, first.

19 MR. McLEAN: I'm sorry, Mr. Chairman, I did not  
20 hear your question.

21 CHAIRMAN JACOBS: Do we have jurisdiction to  
22 approve a hold harmless that goes to matters outside of  
23 our jurisdiction?

24 MR. McLEAN: Well, I would have to back away  
25 from the hold harmless language, because no, I don't think

1 you do. I think that you probably have jurisdiction to  
2 issue an order which tells the world how TECO behaved, but  
3 I don't think that it's necessary to the resolution of the  
4 issues which are before you. It doesn't matter how TECO  
5 behaved.

6 In my opinion, if they filed a -- given the  
7 nature of their complaint, if the substance of what they  
8 are complaining about is no longer at issue, then, why  
9 does the Commission want to engage in any appraisal of how  
10 TECO has behaved? And, I think, the answer is that you  
11 should not.

12 CHAIRMAN JACOBS: Now, what I'd like to --

13 COMMISSIONER BAEZ: Well, Mr. McLean, I'm trying  
14 to understand. Then, the only thing we're doing is we're  
15 paring down the offer of settlement to saying,  
16 essentially, yeah, giving Allied the same rate sounds like  
17 a good idea.

18 MR. McLEAN: That's, essentially, what you'd be  
19 doing. It doesn't make any sense for you to approve a  
20 settlement offer.

21 COMMISSIONER BAEZ: No, I understood your  
22 initial comment. I mean, essentially, what we're saying  
23 is if you all settled it this way, it would be all right  
24 with us --

25 MR. McLEAN: That's correct.



1                   **COMMISSIONER BAEZ: -- is essentially what we'd**  
2 **be saying.**

3                   **Now, what I'm not understanding is why we**  
4 **wouldn't want to -- and help me understand why we wouldn't**  
5 **want to state that somehow there has been a proper**  
6 **application of the tariff or that the tariff is being**  
7 **applied properly? I mean, where and when and what**  
8 **situation do we make that determination?**

9                   **MR. McLEAN: I don't think you'd want to say**  
10 **that, but based upon --**

11                   **COMMISSIONER BAEZ: Well, I don't know that I do**  
12 **or that I don't. But isn't that a determination that we**  
13 **ultimately have to make?**

14                   **MR. McLEAN: I don't think so. If I understand**  
15 **this case correctly, and I'm certainly subject to**  
16 **correction on the point, but Allied sees a tariff that**  
17 **they would like to have. And they say the application of**  
18 **that tariff is discriminatory, because we can't get it.**  
19 **If they can get it, then, what becomes of the**  
20 **discrimination? I think, it goes away.**

21                   **There is the separate issue of past**  
22 **discrimination, which I don't believe can be decided by**  
23 **this Commission, because you cannot award damages, you**  
24 **can't right past wrongs, in that sense. You can today**  
25 **order TECO to offer that same tariff to the complainant.**

1                   **COMMISSIONER BAEZ:** Well, then, where does a  
2 remaining issue of discrimination, where does it rest,  
3 then?

4                   **MR. McLEAN:** It rests with, I suppose, with the  
5 circuit courts.

6                   **COMMISSIONER BAEZ:** Okay.

7                   **MR. McLEAN:** If there has been an indifference  
8 to Allied, they know it and, I think, all practitioners  
9 know that one of the first things you hear when you go to  
10 circuit court to try to right that sort of wrong is that  
11 the Public Service Commission has jurisdiction of those  
12 sorts of things, but I would say that it does not. You  
13 cannot retrospectively award damages for past  
14 discrimination. And I'm not saying that there is past  
15 discrimination, but that is the claim, that there was past  
16 discrimination.

17                   Now, the TECO offer has in its second paragraph  
18 here, I believe, the conclusions of law. If you signed  
19 off on those, you would present a very difficult obstacle  
20 to overcome were there any action for any damages from  
21 past discrimination or anything like that. I don't  
22 believe that's the business of the Commission.

23                   **COMMISSIONER BAEZ:** Now, aside from the award of  
24 damages, would the Commission have any jurisdiction to  
25 address, theoretically speaking now or hypothetically

1 speaking, TECO's discriminatory actions? I mean, if at  
2 some point and time there was a discriminatory application  
3 of a tariff, we would have no way of addressing that?

4 **MR. McLEAN:** I think, your remedy is largely  
5 prospective. When you discover that discrimination  
6 exists, I believe, you can cure it. With respect to past  
7 discrimination, it's a difficult question. You have  
8 certainly remedied the misapplication of tariffs with  
9 respect, particularly with the residential customers, and  
10 you have some rules which address all that.

11 **But this case presents you some very interesting**  
12 **issues in the sense of looking back, because the plant**  
13 **wasn't built, the consequences are very atypical for the**  
14 **Commission to think about. If you're dealing with a**  
15 **residential customer who is building correctly for the**  
16 **past eight months, you can remedy that even under your own**  
17 **rules. But if some discrimination has inured to the**  
18 **detriment of Allied, it is outside of my imagination how**  
19 **you can fashion a remedy for that now, other than order**  
20 **TECO to provide the same tariff.**

21 **And I'm not judging the issue of past**  
22 **discrimination or consequences. I have no comment about**  
23 **that, other than to think of it in a hypothetical sense.**  
24 **So, the bottom line is I think that you have authority to**  
25 **look at TECO's offer and say we like part of it, we're**

1 going to issue it as a PAA; we don't like the rest of it,  
2 and you won't find it in the PAA.

3 **MR. ELIAS:** Mr. Chairman, may I speak to a  
4 couple points? First of all, I want to read what's been  
5 described as the hold harmless language, because I think  
6 it's susceptible of more than one interpretation.

7 **Conclusions of Law 1, little i, in every respect**  
8 **and at all times, Tampa Electric has acted prudently and**  
9 **in accordance with its CISR tariff and applicable Florida**  
10 **law, specifically, the law subject to this Commission's**  
11 **jurisdiction in its CISR negotiations with Odyssey.**

12 **The second conclusion of law is directed towards**  
13 **the CISR negotiations with Allied/CFI and it's the same**  
14 **language, essentially. That is – I think, those are two**  
15 **things that after hearing this Commission could, based on**  
16 **evidence that we'll hear, make determinations on. So, I**  
17 **don't think that we're being asked to do something that's**  
18 **outside our jurisdiction.**

19 **The second thing is that this Commission has in**  
20 **the past approved settlement agreements that found that**  
21 **one participant acted prudently. We've reached that issue**  
22 **where it's been an issue for the parties and they felt**  
23 **like it was an appropriate finding.**

24 **The second thing is, procedurally, if this**  
25 **proposed agency action was protested, I don't think, given**

1 the terms and conditions that are in here that it's  
2 severable. If it's protested, it goes away, we're going  
3 to hearing on Allied's complaint, and we've got the  
4 evidence, we've got the prehearing order, we're all lined  
5 up to go. We're back to square one.

6 **COMMISSIONER JABER:** That's what I don't  
7 understand. How is it severable? If you issue a PAA  
8 order and you afford persons an opportunity to have a  
9 hearing, aren't they afforded an opportunity to have a  
10 hearing on that order? See, that's what -- just the  
11 general notion of issuing a PAA order adopting some  
12 portion of an offer of settlement has always made me  
13 uncomfortable, because the question has -- we always face  
14 the question which hearing do you have on what order do  
15 you have on -- creates confusion.

16 **MR. ELIAS:** And given that this proposal is one  
17 proposal, there's not piece parts that can be accepted or  
18 rejected appropriately; it goes away and then, I think,  
19 what you've got in front of you is Allied's complaint.

20 I think, the Commission could, if it chose to,  
21 go to hearing on both, although I see the issues in the  
22 settlement agreement as subsumed in what's in the  
23 complaint. I mean, I see them as encompassed within the  
24 confines of the issues that have already previously been  
25 identified. So, I don't see that just going forward on

1 the complaint doesn't cover anything that would be in the  
2 settlement agreement.

3 **CHAIRMAN JACOBS:** Okay. Why don't we hear from  
4 the parties, if that's okay with you, Commissioners. I  
5 guess, it's TECO's motion, so we'll start with you.

6 **MR. LONG:** Thank you, Mr. Chairman. Let me say  
7 a couple of things. First of all, the offer of settlement  
8 that we made to the Commission has nothing to do with a  
9 hold harmless clause and has nothing to do, in our view,  
10 with any future litigation that Allied/CFI may wish to  
11 bring.

12 **The matter before this Commission, as we see it**  
13 **is, first of all, whether or not Tampa Electric has**  
14 **violated its tariff. That is clearly a matter for this**  
15 **Commission to decide. That is clearly before the**  
16 **Commission in this case. The other question is whether or**  
17 **not Tampa Electric's actions, in its negotiations under**  
18 **the tariff with Odyssey Manufacturing and Allied/CFI,**  
19 **constitute undue discrimination within the meaning of the**  
20 **portions of the Florida statute that this Commission**  
21 **administers. Again, that question is squarely before the**  
22 **Commission in this case and totally within the**  
23 **Commission's purview to decide.**

24 **The conclusions of fact and the – findings of**  
25 **fact and the conclusions of law contained in our offer of**

1 settlement go only to those points, matters that this  
2 Commission has the power to decide and, in my view, must  
3 decide if we go through hearings.

4 Now, to the extent that the Commission adopts  
5 these findings of fact or conclusions of law or after  
6 hearing makes the same findings of fact or conclusions of  
7 law, that resolution may or may not have some bearing on  
8 litigation that Allied/CFI may wish to make in the future.  
9 But I would submit that that is clearly not something that  
10 is the Commission's concern, certainly not something that  
11 is within the Commission's jurisdiction, and totally  
12 irrelevant to this proceeding.

13 We are not asking for any kind of hold harmless  
14 clause. We're asking for what we think we can demonstrate  
15 to you in hearing; that is, that in every respect we have  
16 complied with our tariff and that at no time have we  
17 unduly discriminated against Allied or CFI.

18 Second of all, with regard to the idea of a PAA  
19 and the notion of somehow severing the offer of settlement  
20 and approving part of it, we would attempt to withdraw  
21 that offer if that was a direction the Commission wanted  
22 to take. Because quite frankly, we think at hearing you  
23 will see that the offer of settlement, as it pertains to  
24 rates, terms and conditions is generous, more generous  
25 than Allied's witness will tell you they're entitled to.

1           **So, we view this as a package. And we presented**  
2 **this as an effort to save the Commission the wasted time**  
3 **and energy based on Allied/CFI's repeated statement to you**  
4 **that all they want are the same terms and conditions.**  
5 **It's clear, Commissioners, that that's not all they want.**  
6 **And if they don't want a reasonable settlement, we're**  
7 **prepared to cut this matter short and call the first**  
8 **witness, because we are prepared to demonstrate this**  
9 **morning that their claims have no merit.**

10           **So, if the Commission is disinclined to accept**  
11 **the offer of settlement as we've proposed it, I would ask**  
12 **you to deem it withdrawn and let's simply proceed to**  
13 **hearings. Let's put the facts on the table. And I'm**  
14 **confident that at the end of that process, you will arrive**  
15 **at precisely the same findings of fact and conclusions of**  
16 **law that we're proposing to you now.**

17           **CHAIRMAN JACOBS: Very well. Mr. Wharton.**

18           **MR. WHARTON: Yes. Mr. Chairman, there seems to**  
19 **be two issues. The first involves this unknown nebulous,**  
20 **possibly to be filed, litigation of the future.**  
21 **Certainly, this is not a hold harmless agreement. A hold**  
22 **harmless agreement, unless I'm about to slander one of**  
23 **you, you're all members of the Florida bar, is a very**  
24 **precise thing. It's executed between the parties. I've**  
25 **seen ones that have language in them about the**



1 potentiality for nuclear war.

2           **This is not a hold harmless agreement. The**  
3 **language is straight up your alley. It's right in your**  
4 **bailiwick. It talks about prudence, it talks about**  
5 **benefits to the general body of ratepayers. And if you**  
6 **issued a PAA with these findings in there, what they would**  
7 **be left with is the rate they've asked for, which we**  
8 **haven't opposed, and do they want to protest the parts**  
9 **that say that Odyssey and TECO have acted within the CISR**  
10 **tariff?**

11           **Well, at that point you would have a company**  
12 **that has said hundreds of times, practically in the**  
13 **depositions, that they are completely identical to us with**  
14 **the identical rates, terms and conditions. Would they**  
15 **really want to come in here and say we're not entitled to**  
16 **the same rate as them? That's the PAA aspect of it. And,**  
17 **I think, this is not a hold harmless agreement. It's**  
18 **something that is uniquely within your jurisdiction and,**  
19 **therefore, can be put in front of you.**

20           **In terms of the litigation, we don't know if**  
21 **litigation will be filed, we don't know what the forum is,**  
22 **we don't know what importance the Court would attach to**  
23 **this particular language, if any, we don't know what the**  
24 **causes of action would be.**

25           **I would respectfully disagree with Mr. McLean**

1 that this is a hold harmless or that you could predict the  
2 import of this particular finding. In terms of the PAA,  
3 particularly since they have said they are a completely  
4 identical company, they propose to construct in the future  
5 an identical company to ours, you'd probably settle this  
6 matter. They would have the identical rates, terms and  
7 conditions, they say they're an identical company, it  
8 would be very difficult for them to come in and say we  
9 don't qualify for the same rate.

10 MR. HOFFMAN: Mr. Chairman, before Mr. Ellis  
11 addresses the substance of the offer, I'd just like to  
12 give you my take on sort of where we're at procedurally.  
13 I, basically, agree with Mr. McLean. The Commission  
14 cannot eliminate Allied's due process rights and their  
15 Chapter 120 rights to a formal administrative hearing on  
16 Allied's complaint.

17 Now, Tampa Electric has come in here and has,  
18 again, complained to you about how Allied is wasting the  
19 Commission's time and resources. It's Tampa Electric  
20 throughout this case that has prolonged this case, moves  
21 for reconsideration of discovery orders and then  
22 reconsideration for reconsideration.

23 This motion that you're hearing now is another  
24 example of this. Tampa Electric knows or Tampa Electric  
25 should know that the Commission cannot force a party to

1 settle a case. It cannot take away its rights to an  
2 evidentiary hearing.

3 The only way this case can settle, Commissioner  
4 Jaber, and we, too, have worked toward that happening, it  
5 hasn't happened yet, but the only way this case can settle  
6 is if there's an agreement between Odyssey and Sentry,  
7 Allied/CFI, and TECO, and we don't have that. We don't  
8 have that right now.

9 CHAIRMAN JACOBS: Mr. Hoffman, if we were to  
10 proceed with this hearing, how would we come up with a  
11 remedy that would be superior to what's on the table?

12 MR. HOFFMAN: Well, Mr. Ellis knows more about  
13 the specific facts and circumstances of the case,  
14 Chairman. In terms of the remedy that Allied/CFI is  
15 seeking in this case, if you go back to Allied's  
16 complaint, Allied's complaint goes beyond the offer of  
17 settlement. The offer of settlement talks about granting  
18 Allied the same rates as were granted to Odyssey. In the  
19 complaint itself Allied asked that the rates that were  
20 granted by TECO to Odyssey, basically, be pulled, be  
21 eliminated.

22 So, the statement that was made in the very  
23 beginning by TECO's counsel in connection with this motion  
24 was not an accurate statement, if you go back and look at  
25 the relief that Allied was seeking from the very

1 beginning.

2           **You know, a PAA -- there was some discussion of**  
3 **the PAA. And I would just question at what use a PAA**  
4 **would be at this time. Everybody has worked hard, all**  
5 **parties, to get this case to this point. I mean, to me**  
6 **there are two questions. If the Commission were to do a**  
7 **PAA and that PAA did not address all of the issues and**  
8 **allegations that were in Allied's complaint, would the**  
9 **Commission then be undermining Allied's right to an**  
10 **evidentiary hearing on the matters not addressed in the**  
11 **PAA? That's a legal issue. Might be an interesting**  
12 **issue.**

13           **But secondly, more practically, if you don't**  
14 **have a settlement between Odyssey, Allied and TECO, any**  
15 **PAA is going to be protested, and we're going to be right**  
16 **back here. And I would like to ask, with the Chairman's**  
17 **indulgence, if Mr. Ellis could just comment on the**  
18 **substance of the proposal.**

19           **MR. ELLIS: Thank you.**

20           **Certainly, we agree with Mr. Hoffman's remarks,**  
21 **we agree with Mr. McLean's remarks. There is, in fact,**  
22 **agreement between the three groups of parties on the issue**  
23 **of what rates, terms and conditions should be offered to**  
24 **Allied/CFI. That much is agreed. If that is your order**  
25 **and nothing more, the case is finished. It's clear,**

1     **though, that it's Tampa Electric who wants something more**  
2     **out of that. And that, I believe, is the area of**  
3     **disagreement between the parties.**

4             **CHAIRMAN JACOBS: If we were to go to hearing,**  
5     **Mr. Ellis, and hear your claims and you prevail, what more**  
6     **could we – what could we give you that would be better**  
7     **than what's being offered? If we were -- again, for**  
8     **hypothetical purposes, if you were to demonstrate beyond**  
9     **any reason or doubt that somehow, some way the numbers**  
10    **were miscalculated in the development of your CISR rate,**  
11    **okay? Well, no, let's go to the severest end of the**  
12    **spectrum. Let's say that TECO purposely, okay,**  
13    **miscalculated the numbers, for hypothetical purposes.**  
14    **What remedy would you have us give you beyond what's on**  
15    **the table?**

16            **MR. ELLIS: Mr. Hoffman is correct in saying**  
17    **this settlement requires Allied to give up some of the**  
18    **relief it sought. We also sought to have –**

19            **CHAIRMAN JACOBS: But that's relief –**

20            **MR. ELLIS: – Odyssey's rates suspended, and we**  
21    **believe we have evidence to prove it and standing to**  
22    **assert it. We waive that claim in exchange for the**  
23    **settlement.**

24            **CHAIRMAN JACOBS: Is that relief that we can**  
25    **give you, that additional relief?**

1           **MR. ELLIS:** Yes, certainly. It would be within  
2 your jurisdiction to determine that the rates, terms and  
3 conditions offered for service to a customer are  
4 inappropriate and should be modified.

5           **MR. SCHIEFELBEIN:** And just -- excuse me.

6           **CHAIRMAN JACOBS:** Let me let Mr. Ellis finish,  
7 and if you have additional, I'll let me come back to you. I  
8 missed you, I'm sorry. I went right behind you. So,  
9 please, forgive me, but I will come back to you, if you  
10 will hold your point. Go ahead. You were done?

11           **MR. ELLIS:** Yes, sir.

12           **CHAIRMAN JACOBS:** Okay, Mr. Schiefelbein.

13           **MR. SCHIEFELBEIN:** Just so you are clear, it is  
14 our position that Allied/CFI, the complainants, do not  
15 have any standing to advocate before this Commission that  
16 our rate be stripped.

17           **CHAIRMAN JACOBS:** Okay. Question, Mr. Ellis,  
18 one of the terms is that you have to start operations in  
19 24 months. Is that a reasonable term?

20           **MR. ELLIS:** We'll accept that term.

21           **CHAIRMAN JACOBS:** Now, when you say that -- what  
22 I understand you to say is that you wouldn't want to be  
23 constrained to the terms that Odyssey has.

24           **MR. ELLIS:** We will accept the same terms that  
25 Odyssey has.

1                   **CHAIRMAN JACOBS:** And the offer doesn't  
2 anticipate that?

3                   **MR. ELLIS:** It does. And that's the agreement  
4 between the parties. We'll take their deal word for word.  
5 Just change the names and the dates and the starting  
6 times.

7                   **CHAIRMAN JACOBS:** Now, Mr. Long, is it your  
8 understanding that the offer that's on the table is the  
9 same exact deal?

10                  **MR. LONG:** That part of it is.

11                  **CHAIRMAN JACOBS:** What part is different?

12                  **MR. LONG:** Well, our offer consists of several  
13 parts. The first part is a paragraph that says that we  
14 will offer them the same rates, terms and conditions that  
15 are in effect as of the date their plant achieves  
16 commercial operation for Odyssey; no smoke, no mirrors, it  
17 says what it sounds like.

18                  **COMMISSIONER BAEZ:** So –

19                  **MR. LONG:** The second part of our offer –

20                  **COMMISSIONER BAEZ:** I'm sorry, is that – as  
21 it's been stated, is that acceptable?

22                  **MR. ELLIS:** No, that is a different term.

23                  **COMMISSIONER BAEZ:** Oh, okay.

24                  **MR. ELLIS:** He's saying we have to take a rate  
25 two years down the line with escalation and adders and we

1 want the same terms to start with what they started with.

2 You're correct, that's a different term.

3 MR. LONG: The point is that when they have a  
4 plant that competes, they will have precisely the same  
5 rates, terms and conditions that Odyssey has. They will  
6 be on a level playing field.

7 My point is that our offer consisted of not just  
8 that part, but it also consisted of a request for findings  
9 of fact and conclusions of law. And quite frankly, if  
10 this is going to take up a lot more of your time, I mean,  
11 we're prepared to simply withdraw that. And let's just  
12 cut to the chase here in terms of what they're really  
13 after. They want to file an antitrust suit, and they  
14 realize --

15 CHAIRMAN JACOBS: Well, let's not go there.

16 MR. LONG: Well, Commissioner, but that's what  
17 we're talking about when we put it on the table.

18 CHAIRMAN JACOBS: I understand, but that can't  
19 be the focus of our discussions right now.

20 MR. LONG: Well, no. I'm not asking you --

21 CHAIRMAN JACOBS: Excuse me, Mr. Long. What I  
22 want our focus to be right now is to what extent the  
23 Commission wishes to consider your motion for offer of  
24 settlement. Anything else outside of that, we don't want  
25 to talk about right now. We can get to that later.



1           **MR. LONG:** Well, this is not outside of that,  
2 **Commissioner.** I'm addressing precisely that point. Their  
3 **objection is that they don't want you to conclude that we**  
4 **have acted consistently with our tariff and that we have**  
5 **not unduly discriminated. Because if you make that**  
6 **finding, which is entirely within your jurisdiction, then,**  
7 **they will not be successful in an antitrust proceeding.**  
8 **That's really what we're talking about. We're not talking**  
9 **about a hold harmless clause or anything like that.**

10           **CHAIRMAN JACOBS:** Very well.

11           **MR. LONG:** We're talking about this Commission  
12 **making a finding on matters that are within its**  
13 **jurisdiction that may stymie whatever plans they have down**  
14 **the road.**

15           **CHAIRMAN JACOBS:** Very well.

16           **MR. LONG:** In our view, Commissioners, what  
17 **we --**

18           **CHAIRMAN JACOBS:** Excuse me, I want to --  
19 **because we've been going for a while. I'm sorry to cut**  
20 **you off, but we do need to reach a decision on the motion.**

21           **MR. WHARTON:** Very briefly, Mr. Chairman.

22           **CHAIRMAN JACOBS:** Excuse me, Mr. Wharton.

23           **COMMISSIONER JABER:** Mr. Chairman, I don't want  
24 **to interrupt Commissioner Baez. I think, he had a**  
25 **question, but I have a -- before we leave that first**

1 clause, I have a question.

2 COMMISSIONER BAEZ: You go ahead, because my  
3 questions are to, I think, they'll dovetail with what the  
4 Chairman wants to do.

5 COMMISSIONER JABER: Mr. Ellis and Mr. Long,  
6 before we leave the first clause in the offer of  
7 settlement related to the rates beginning as the  
8 commercial operation commences. What did you do with  
9 Odyssey? Were the rates and charges applied for Odyssey  
10 when the operation began?

11 MR. LONG: That's correct, Commissioner. And  
12 under that agreement, those rates escalate.

13 COMMISSIONER JABER: Okay. And, Mr. Ellis, your  
14 point is you want – you reject the offer of settlement  
15 because you all would like the rates and charges to apply  
16 immediately?

17 MR. ELLIS: We want the exact same terms as  
18 Odyssey. He wants us to start after two years of  
19 escalation.

20 COMMISSIONER JABER: But won't they be the  
21 same –

22 MR. ELLIS: No.

23 COMMISSIONER JABER: – by the time your  
24 commercial – okay. Explain that to me.

25 MR. ELLIS: Sure. Odyssey has had two years to

1 manufacture its product and enter the market with cost  
2 advantages. We should have, too.

3 MR. SCHIEFELBEIN: If I may, Commissioners,  
4 that's inaccurate.

5 CHAIRMAN JACOBS: Excuse me. Were you done,  
6 Mr. Ellis?

7 MR. ELLIS: Yes, thank you.

8 CHAIRMAN JACOBS: Mr. Schiefelbein first and  
9 then you, Mr. Long.

10 MR. SCHIEFELBEIN: Very briefly, and thank you  
11 for indulging me. That is simply not true. Mr. Ellis is  
12 taking liberties with the facts. Odyssey opened its  
13 doors, its manufacturing facility, on March 27th of 2000.  
14 Thank you.

15 CHAIRMAN JACOBS: Mr. Long?

16 MR. LONG: I'd just like to point out that  
17 although this is probably also pertinent to our discussion  
18 on the motion to dismiss, Allied has said to you that it  
19 is not making any claim before this Commission about  
20 damages that it may have suffered between the date that  
21 Odyssey Manufacturing went into business until the  
22 present.

23 They have told you that that matter is not  
24 before you, they're not making any claims or allegations.  
25 So, now, their claim that they object to the settlement

1 because Odyssey will have had its rate for a year or two  
2 years before their plant is built raises an issue that  
3 they're telling you is not before you.

4 The point is, and there are no smoke and mirrors  
5 here, the day that their plant goes into operation, if it  
6 ever goes into operation, they will have precisely the  
7 same rates, terms and conditions under this proposal that  
8 Odyssey will. And they will be able to compete  
9 head-to-head even though, quite frankly, I think, you'll  
10 see the record, if we go to hearing, suggests that they're  
11 doing quite well right now.

12 COMMISSIONER JABER: Mr. Long, that's what I was  
13 trying to understand. So, your point is it would be the  
14 rate and charge that Odyssey has at that time.

15 MR. LONG: That's correct, Commissioner.

16 CHAIRMAN JACOBS: Commissioner Baez.

17 COMMISSIONER BAEZ: Well, I just wanted to point  
18 out – and I went back and I read the issues in the  
19 prehearing statement which are ultimately the issues that  
20 we have to answer, if this hearing goes to its conclusion.  
21 And then I tried to match them up – I'm being terribly  
22 simple here – match them up to the offer of settlement.  
23 And I guess, I don't understand how the conclusions of  
24 law, points one and two of these conclusions of law, don't  
25 somehow correspond to conclusions or determinations that

1 we have to make as outlined in our prehearing statement.

2 I'd like someone to answer that question.

3 And secondly, I just want to say while I'm  
4 rolling here that if everyone agrees or accepts that we  
5 have to make a determination on the issues that are listed  
6 in a prehearing statement that have been agreed to and  
7 identified by all the parties involved, then, perhaps we  
8 shouldn't accept an offer of settlement.

9 I mean, I guess, our responsibility is to reach  
10 – is to make the determinations as they've been outlined  
11 for us. And if we can't get to that by ruling on an offer  
12 of settlement, because some people may think that we can  
13 only make a partial ruling on this offer of settlement or  
14 an incomplete ruling, then, I say, let's not rule on it.  
15 Let's not accept this offer of settlement, let's go to  
16 hearing, and let's reach all the questions.

17 COMMISSIONER JABER: I second that motion.

18 MR. McLEAN: Commissioner?

19 CHAIRMAN JACOBS: Yes.

20 MR. McLEAN: Harold McLean. I think, you're  
21 exactly right. If you do go to hearing, indeed, you do  
22 have to decide all of those issues. But, you know, let me  
23 point this out to you. There is considerable talk in the  
24 air about a settlement.

25 Mr. Ellis seems to say that what we want is the

1 rate that is currently or will be offered to Odyssey. Let  
2 Mr. Ellis --

3 **COMMISSIONER BAEZ: I under--**

4 **MR. McLEAN -- but maybe Mr. Ellis ought to tell**  
5 **the Commission under what conditions he'll withdraw his**  
6 **complaint, because if he gets those conditions and**  
7 **withdraws his complaint, the case is over, as I understand**  
8 **the notion of settlement.**

9 **COMMISSIONER BAEZ: Mr. McLean, I agree with**  
10 **your approach, because I think that it's hard for me to**  
11 **understand how, if we reach some type of ultimate result**  
12 **that's within our authority to reach that all of these**  
13 **other issues don't fall out. I mean, it makes no -- I**  
14 **don't know how anyone could object to a finding of the**  
15 **appropriate application of the CISR tariff if the end**  
16 **result is proper, you know, if you're getting the relief**  
17 **that you sought.**

18 **Now, Mr. Ellis has pointed some discrepancy with**  
19 **what they're seeking and what TECO is offering. And maybe**  
20 **we need to talk about that or maybe they need to talk**  
21 **about that but, you know, to me -- and I'm looking at it**  
22 **from a perspective of if the result is reached, if the**  
23 **ultimate offer of the rates and terms are agreeable to**  
24 **everyone, then, I can't see -- I wouldn't have any problem**  
25 **saying the CISR tariff is appropriate, that not finding**

1 that TECO has acted discriminatorily in it, you know, and  
2 it's just my -- but again, I hold to my previous  
3 statement. If in considering this offer of settlement we  
4 can't reach the questions that are in this prehearing  
5 statement, then, let's not consider it.

6 MR. McLEAN: I think, you're exactly right,  
7 Mr. Commissioner. However, let me point this out, we're  
8 here on Allied's complaint.

9 COMMISSIONER BAEZ: Yes.

10 MR. McLEAN: That's what we're doing today. If  
11 Allied withdraws its complaint, then the case is over. If  
12 we hear from Allied under what conditions they will  
13 withdraw the complaint and then hear from TECO whether  
14 they're willing to meet those conditions, we'll know, I  
15 think, whether we should go to hearing or whether we  
16 should call it a day.

17 COMMISSIONER BAEZ: And I would adopt your  
18 question and pitch it out to the parties.

19 CHAIRMAN JACOBS: Mr. Ellis first.

20 MR. ELLIS: Then, let me speak to that. Thank  
21 you, Chairman Jacobs.

22 Our complaint will be withdrawn upon the  
23 Commission's order that TECO should provide to Allied/CFI  
24 the same rates, terms and conditions as those stated in  
25 Odyssey's Contract Service Agreement starting from the

1 date we begin operations, and we begin operations within  
2 24 months and nothing further.

3 **CHAIRMAN JACOBS:** I'm sorry. I misunderstand,  
4 because I thought that was the basic point of  
5 disagreement. That is what I thought was on the table  
6 that you would get the terms and conditions that were in  
7 existence in Odyssey's agreement on the day you begin  
8 operations. And what I thought you said earlier is that  
9 you wanted the rates and terms and conditions that were in  
10 Odyssey's agreement on the date it began operations.

11 **MR. ELLIS:** You're correct. We do want the  
12 rates, terms and conditions on the rate – excuse me, on  
13 the date that Odyssey began; that is, we want –

14 **COMMISSIONER BAEZ:** Let me restate it for you  
15 and see if I can understand what you're saying. You want  
16 to start at day zero just like Odyssey started at day zero  
17 on their agreement –

18 **MR. ELLIS:** Exactly.

19 **COMMISSIONER BAEZ:** – whatever it was. And  
20 now, can somebody answer this question: When did  
21 Odyssey's agreement start? I mean, are we talking about  
22 the 12 months that Mr. Schiefelbein identified or roughly  
23 the 11 months? Is that what we're talking about?

24 **MR. ELLIS:** Well, it started March 27th, as  
25 Mr. Schiefelbein said, and the anticipated time for



1 construction of the plant is one to two years. So, it  
2 will be about two years before we can start operations.

3 At that point, we'd like the same first-year rate they  
4 had --

5 COMMISSIONER BAEZ: So, you want three years of  
6 benefit --

7 MR. ELLIS: -- and so forth.

8 COMMISSIONER BAEZ: I guess, my rough math is  
9 saying you want to start on day one after three years of  
10 some type of operation -- after their three years into  
11 their agreement, whatever it is?

12 MR. ELLIS: It'll be about two years into their  
13 agreement, that's correct, yes.

14 COMMISSIONER JABER: I'm inclined to move on. I  
15 completely agree with Commissioner Baez. I am not  
16 comfortable with issuing a PAA order on a unilateral offer  
17 of settlement, I never have been. I think, we get into  
18 more questions than it's worth. We're here, and we have  
19 already discussed this for an hour.

20 COMMISSIONER BAEZ: Yeah, it's been made clear  
21 that it's going to be protested anyway. I don't see any  
22 point in -- look, and to Staff, I think, if I felt I had  
23 the freedom without any disagreement that part of the  
24 offer of settlement involved determinations on issues that  
25 we were going consider anyway so that what it is,

1 essentially, and I may be mangling the terms here, but  
2 this is somehow a judgment on the pleadings or on the --  
3 no, it's a summary, is it -- it starts looking that way to  
4 me.

5 MR. ELIAS: It's a proposed resolution.

6 COMMISSIONER BAEZ: Well, it's been cast that  
7 way, but after we -- all we're saying is that we decided  
8 this is appropriate or this is the way we would decide.

9 Now, we make determinations on Issues, you know, 3 and 4,  
10 you know, ultimate Issues 2 or 3 or 3 and 4, and then, we  
11 throw it out there PAA and it gets protested. So, the  
12 only thing that we're saying is this is how we would --  
13 based on the evidence that we have right now, without  
14 hearing word one, this is how we would decide.

15 MR. ELIAS: Well -- and I wouldn't characterize  
16 it as evidence. I mean, it's just that it appears to be a  
17 reasonable resolution.

18 COMMISSIONER BAEZ: That's a fine point that we  
19 make, and forgive me for not recognizing it, but it just  
20 seems that in a practical sense all that we're saying is  
21 that this looks like a pretty good resolution to us.

22 MR. WHARTON: Commissioner Baez, can we request  
23 10 minutes to discuss the offer as Commissioner Jaber  
24 suggested earlier?

25 COMMISSIONER BAEZ: I have no problem that you

1 all go --

2 MR. WHARTON: Okay. We would like to suggest  
3 that, and we'd like to engage in those discussions.

4 CHAIRMAN JACOBS: Before we go off the record,  
5 while you're doing that maybe we can find a room that you  
6 guys can meet in, something about this docket has always  
7 been important, and one of the reasons why I found it  
8 necessary to pursue it, and that is the policy decision  
9 that is at stake here. There was a policy decision that  
10 we will allow companies to deviate from tariffs, and we  
11 decided to do that because we deemed it would be in the  
12 public interest to allow them to retain load.

13 This docket says, well, how far do you allow  
14 them to deviate from tariff? And what we're being driven  
15 toward is a decision that says we're going to litigate how  
16 far. That was never the direction of a CISR tariff. It  
17 was to allow as much flexibility to negotiate on equal  
18 terms. If there is undue discrimination, I think, a  
19 complaint is called for. But our ability to deal with the  
20 undue discrimination has to do with to what extent the  
21 provisions of the CISR outlined are adhered to.

22 Once you lay those two applications down, side  
23 by side, figure out how closely they approximate to one  
24 another and then look at how the company assesses those  
25 two applications, that's our case, that's our

1 jurisdiction. And it troubles me that we are pursuing  
2 avenues of the date and remedies way beyond that. If we  
3 wanted to pursue these issues, we ought to set up a tariff  
4 and come in and say if you deviate two cents from this  
5 tariff to any customer, then you can be fined.

6 But there's an important public policy issue  
7 here that, I think, we ought to be real clear about when  
8 we go down this road. I don't want to deprive anybody of  
9 their due process rights. And, I think, we're here, and  
10 we ought to well pursue the claims legitimately. But I  
11 wanted to bring that up, because we were addressing our  
12 context, and moving forward in this docket seemed to be  
13 addressing those public policy concerns.

14 And I want to make it clear, in my mind, if we  
15 go forward with this docket, we're dealing with the  
16 specific allegations in this docket and not whether or not  
17 we were withdrawing what we said the CISR tariff is  
18 supposed to be about or, for that matter, expanding what  
19 it is it's supposed to be about. I don't see us expanding  
20 or withdrawing anything about what CISR tariff is supposed  
21 to be about, if we proceed forward in this docket.

22 MR. WHARTON: And Mr. Chairman, I sort of  
23 thought that was the beauty of the discussion earlier that  
24 reduced to its essence what was suggested was a PAA that  
25 said should identical companies receive identical terms,

1 rates and conditions from the identical electric company?  
2 It certainly narrows the issue right down, in terms of  
3 kind of taking it out of the context that you were just  
4 talking about.

5 CHAIRMAN JACOBS: Having said that, Mr. Long.

6 MR. LONG: Mr. Chairman, we don't want to be in  
7 a position of saying that we're not interested in talking  
8 settlement. I think that we have made, I think, a very  
9 generous offer of settlement. Having done that, if that's  
10 not going to be accepted, we'd like to go to hearing,  
11 because quite frankly, we are ready to demonstrate that  
12 their case has no merit, and we don't want to waste  
13 anymore of your time. We want to put that evidence in  
14 front of you.

15 CHAIRMAN JACOBS: If that's the position, that's  
16 fine. We need to take a break now anyway, because the  
17 court reporter has been sitting over there for an hour  
18 tapping away these wonderful comments.

19 COMMISSIONER BAEZ: Before we go, and forgive me  
20 for extending this. Mr. Ellis (sic), I'm hearing you  
21 saying something different than what Mr. Wharton is asking  
22 for. Are you telling me that you're not going to be in  
23 that room when we break for 10 minutes? And it's entirely  
24 your right to say so.

25 MR. LONG: Not at all, Commissioner. I would

1 not shy away from any settlement discussions. But what I  
2 am saying is that the offer of settlement that we made, in  
3 our view, is incredibly generous, and we are not inclined  
4 to offer anything more generous.

5 CHAIRMAN JACOBS: Understood. So, we'll break,  
6 and we'll come back at 10:45.

7 (Brief recess.)

8 CHAIRMAN JACOBS: It looks like the parties are  
9 going to engage in negotiations for another 15 minutes, so  
10 we'll go off the record and we'll come back at 11:20.

11 (Brief recess.)

12 CHAIRMAN JACOBS: Very well. We'll go back on  
13 the record. Mr. Hoffman.

14 MR. HOFFMAN: Thank you, Mr. Chairman. TECO and  
15 Allied/CFI have reached what we believe to be an agreement  
16 in principle. We will be working out the mechanics of the  
17 language of the agreement and commit to do so by this  
18 Friday as Mr. Long will explain.

19 We are going to ask that Mr. Long outline the  
20 basic components of the agreement, which I would add  
21 fulfil and satisfy the relief requested by Odyssey in  
22 Odyssey's petition to intervene, so we think that we've  
23 satisfied the goals that they seek in this proceeding.  
24 And we will supplement, as we deem necessary, Mr. Long's  
25 comments. I just wanted to make that preliminary

1 statement and ask the chairman to hand it over to Mr. Long  
2 to outline the basic terms and conditions of our  
3 agreement.

4 CHAIRMAN JACOBS: Okay. Well, Mr. Schiefelbein,  
5 do you want to wait until he's done?

6 MR. SCHIEFELBEIN: We'll defer at this point to  
7 Mr. Long with the understanding, hopefully, that we might  
8 be heard, if necessary.

9 CHAIRMAN JACOBS: Okay.

10 MR. SCHIEFELBEIN: Thank you.

11 CHAIRMAN JACOBS: Mr. Long.

12 MR. LONG: Thank you, Mr. Chairman. Let me  
13 outline, briefly, the agreement in principle that we've  
14 reached and then indicate to you which pieces are left to  
15 be resolved.

16 The first element of the settlement is that all  
17 prefiled testimony, exhibits, all depositions and  
18 deposition exhibits would be identified and moved into  
19 evidence in this proceeding. Now, much of this  
20 information is confidential and all of the depositions are  
21 sealed. And we would propose that the confidential status  
22 of that information continue, but that it be made part of  
23 the record in this proceeding.

24 The second element of the agreement in principle  
25 is that Allied/CFI would get the same rates, terms and

1 conditions as those presently contained in the Odyssey  
2 CSA. Now, there are a couple of adjustments that I'll  
3 need to describe. The general agreement is that in order  
4 to be eligible for those rates, terms and conditions,  
5 Odyssey – Allied's new bleach facility must be in  
6 commercial operation within 24 months of the date that the  
7 Commission approves this settlement.

8           However, the parties recognize that there may be  
9 certain force majeure events which would prevent Allied's  
10 completion within that 24 months. So, the parties have  
11 agreed to try to work out language for a force majeure  
12 provision, which would be included in the agreement to  
13 cover that eventuality.

14           And although we've not worked out the specifics  
15 in concept, to the extent that a force majeure event  
16 occurs within the 24-month period that I just mentioned,  
17 that period would be extended day for day consistent with  
18 the duration of a force majeure event.

19           Finally, one nuance is that in the Odyssey CSA  
20 there is an initial rate, and then there is some provision  
21 for adjustment over time. As part of this agreement, in  
22 principle, what the parties have decided is that the  
23 starting rate, which would be the same as the starting  
24 rate in the Odyssey contract, would become effective 24  
25 months following the date of the Commission approval of



1 this agreement, whether or not Allied's plant is in  
2 commercial operation at that time. And then, to the  
3 extent that under that agreement that initial rate would  
4 escalate periodically, the time for the escalation would  
5 start running as of that initial date, which is 24 months  
6 from the date of the Commission approval.

7 Now, there are a few other provisions, and these  
8 are pieces that the parties would ask the Commission to  
9 include in its order adopting this settlement, if that is  
10 the ultimate decision. First, Allied has agreed that it  
11 will not pursue any action against Odyssey at this  
12 Commission with regard to Odyssey's CISR rate or the CSA.  
13 The parties have not discussed exactly what wording should  
14 be used, but the concept is that the Commission would make  
15 that point clear in any order accepting the overall  
16 settlement.

17 The second provision that we would hope to see  
18 in a Commission order approving the settlement would be  
19 some clear statement that the questions of prudence or any  
20 questions of review or rate adjustment with regard to the  
21 Odyssey CSA or the settlement CSA with Allied would be  
22 closed, so that there would be no future review or further  
23 consideration of the prudence or the ratemaking in  
24 connection with either of those CSAs.

25 And finally, we would hope that a Commission

1 order would include the language that, I think,  
2 accompanies most decisions accepting settlements, namely  
3 that the settlement would not have any precedential value.

4 Now, the two pieces that the parties have left  
5 to work out are, first of all, a general release by Allied  
6 to Tampa Electric for any and all claims in any future  
7 litigation. And the second piece that we have to work out  
8 is the force majeure clause that I mentioned earlier. The  
9 parties have made a start at addressing that language, and  
10 we have agreed that we will either reach agreement on the  
11 language for those two provisions by Friday of this week  
12 or we will conclude that we are unable to reach agreement.

13 If we are successful by Friday of this week, we  
14 would ask the Commission to set for the next agenda  
15 conference a time to hear what we hope will be a positive  
16 recommendation from the Staff and pass on the settlement.

17 If we are unsuccessful in resolving the language  
18 in these two clauses by Friday, our request would be to  
19 ask the Commission to schedule the earliest possible  
20 hearing date so that we can bring this matter to closure.  
21 That, Commissioners is, essentially, the settlement in  
22 principle that the parties thus far have worked out.

23 MR. ELLIS: On behalf of Allied/CFI, we are in  
24 agreement in principle with the features of the settlement  
25 that Mr. Long has outlined, pursuant to which Allied/CFI

1 agrees to withdraw its complaint in this proceeding based  
2 on a settlement with TECO. I noted one comment I wanted  
3 to add with respect to any future prudence review, that  
4 was with respect to prudence reviews by this Commission;  
5 is that correct?

6 MR. LONG: That's correct.

7 MR. ELLIS: Thank you. Yes, that's the  
8 statement of our agreement in principle.

9 CHAIRMAN JACOBS: Mr. Schiefelbein.

10 MR. SCHIEFELBEIN: May we have a few moments to  
11 ourselves?

12 CHAIRMAN JACOBS: Why don't I let Staff go, and  
13 then, we'll come back to you. Staff?

14 MR. SCHIEFELBEIN: Except, Commissioner, we  
15 would like to hear what Staff says and then, I think, we  
16 need to talk among ourselves as well, whichever you're --

17 CHAIRMAN JACOBS: Okay. We'll take a couple  
18 moments, then.

19 MR. SCHIEFELBEIN: All right.

20 (Discussion held off the record.)

21 CHAIRMAN JACOBS: Anything else?

22 MR. SCHIEFELBEIN: Thank you.

23 Just a few comments that we have at this point.

24 First of all, we'd like to gently -- of course, this is

25 hard for me to make the comment or observation that

1 Mr. Long and Mr. Ellis seem to be talking about two  
2 entirely different approaches to how this would be  
3 procedurally resolved.

4 We were not privy to the discussions that were  
5 going on between TECO and Allied, so it may be our  
6 misunderstanding, but if I heard correctly, what they just  
7 said -- TECO said we would have a settlement order with  
8 all of the evidence moved in. And Mr. Ellis just  
9 indicated they would be withdrawing their complaint.

10 CHAIRMAN JACOBS: I did hear that.

11 MR. SCHIEFELBEIN: And we are, without  
12 belaboring the point -- I'm being as gentle as I can -- we  
13 are very much in favor of Mr. Long's approach, very  
14 strongly opposed to Mr. Ellis's approach. And we're more  
15 than glad to give the parties some breathing room to talk  
16 about that amongst themselves and see if they can resolve  
17 that impasse, but we wanted to go on the record at this  
18 point to pointing out that apparent contradiction.

19 A second rather limited observation we'd like to  
20 make is that force majeure, of course, can be defined to  
21 include just about anything. And I understand the parties  
22 are going to be talking amongst themselves as to how we  
23 define that term. But we want it understood, at least as  
24 far as our position, that the force majeure,  
25 notwithstanding that the timing of the effectiveness of

1 the rate that we have now would begin after the 24-month  
2 period; and that any escalation, according to the same  
3 escalation schedule that we have, would be kicking in. So  
4 that if they have a five-year force majeure that there may  
5 have been some escalations to that rate.

6 We cannot afford to be, shall we say, five years  
7 -- competing with someone who has a rate that we had five  
8 years ago. I think that's much too much to our  
9 disadvantage. And the last point, I'd like to defer to my  
10 co-counsel, Mr. Wharton on.

11 MR. WHARTON: Just very quickly, Commissioners.  
12 We don't want to do anything that is counterintuitive in  
13 terms of continuing to discuss settlement this week, but I  
14 think we know how difficult it is to get the three of you  
15 together for maybe a couple of day trial. I didn't really  
16 think we were going to finish in a day here.

17 Let's set the motion to dismiss -- I think,  
18 tomorrow's agenda. Let's set the motion to dismiss on the  
19 next agenda. Nobody will have to work on that this week,  
20 and it's better not to have a motion to dismiss at the  
21 beginning of trial anyway. I think, it will create some  
22 incentive for the parties to continue to discuss  
23 settlement and stop this from just turning into some kind  
24 of de facto continuance which we oppose and TECO opposes.  
25 The pleadings are in. I think that motion is something

1 that can be argued to the panel at the end of a regular  
2 agenda, and I would request that that be done.

3 **CHAIRMAN JACOBS:** Let's see, before I hear  
4 Staff, that was a point that -- well, actually two  
5 questions that I wanted to bring up. But one was what  
6 sounds like there may be a discrepancy in the procedural  
7 resolution here.

8 If we withdraw your complaint, Mr. Ellis, upon  
9 the acceptance of the settlement by our decision, then,  
10 that removes the record from this case. Is that how you  
11 -- and I can see your views working consistent, because we  
12 would create the record today, but upon the acceptance of  
13 the settlement, he withdraws his complaint, then the  
14 record goes away.

15 **MR. LONG:** Mr. Chairman, Mr. Schiefelbein is  
16 correct, that there is not a complete meeting of the minds  
17 with regard to that point. Tampa Electric feels very  
18 strongly that if there is to be a settlement, it must be  
19 just that, a settlement adopted by the Commission based on  
20 the record before it. However, I would say that that is  
21 something that the parties, Allied and Tampa Electric,  
22 will have to resolve by Friday.

23 **CHAIRMAN JACOBS:** No. Let me be clear, because  
24 I think I just got an agreement on that. I think, what  
25 Mr. Ellis said was that he would anticipate we create the

1 record today, but that it goes away when we accept a  
2 settlement.

3 MR. LONG: Well, Commissioner, it is of critical  
4 importance to us that the record not go away.

5 COMMISSIONER JABER: I don't think the two go  
6 hand in hand. If we're going to enter the evidence into  
7 the record, it's the record that has resulted because of  
8 the complaint. This docket is the complaint. So, the two  
9 don't go hand in hand. Mr. Hoffman's been dying to say  
10 something, Mr. Chairman.

11 MR. HOFFMAN: Mr. Chairman, just in terms of  
12 clarification of how we envisioned it, first of all, let  
13 me concur with Mr. Long. We have not yet worked out the  
14 mechanics of that issue, but just for purposes of  
15 explanation, what we envisioned was a settlement agreement  
16 in the nature described by Mr. Long, a component of which  
17 would be if that agreement was approved by the Commission,  
18 then, the complaint filed by Allied/CFI would then be  
19 withdrawn; not unlike perhaps the agreement that you  
20 approved -- that the Commission approve for Florida Water  
21 just two weeks ago where there was a settlement agreement,  
22 and upon approval of the settlement agreement an appeal  
23 was then -- pursuant to the settlement agreement, Florida  
24 Water dismissed its appeal with the first ECA. So, we  
25 think you would be within your jurisdiction to approve a

1 settlement agreement, a component of which would then  
2 require a party to withdraw its complaint. But having  
3 said that, we will continue to discuss that issue with  
4 Mr. Long.

5 MR. LONG: Mr. Chairman, I think, the bottom  
6 line is that we have a difference of opinion on that  
7 point, which we may or may not be able to resolve by  
8 Friday. We will work diligently to do that. If we can't,  
9 we'll ask you to set this matter for hearing.

10 CHAIRMAN JACOBS: Okay. But I want -- I think,  
11 I understand where you are, because I didn't want us to  
12 proceed here where we weren't on the same page, but you  
13 guys know you're on the same page, that's fine.

14 Next point is, as I understood it, one of the  
15 provisions that you also intend to incorporate is a -- I  
16 don't want to use those words that we got caught up in  
17 this morning -- is the clause that would deal with other  
18 actions.

19 MR. LONG: Well, Commissioner, Allied and Tampa  
20 Electric have agreed that Allied will provide Tampa  
21 Electric with a general release with regard to any future  
22 litigation, and that would be an agreement signed by Tampa  
23 Electric.

24 CHAIRMAN JACOBS: And that's outside of the  
25 settlement.



1           **MR. LONG:** Yes.

2           **CHAIRMAN JACOBS:** That's the only point I wanted  
3 to make.

4           **MR. LONG:** But that is a key element in our  
5 agreeing to the settlement.

6           **CHAIRMAN JACOBS:** Great. Any other comments  
7 from the parties? Commissioners, any questions? Staff?

8           **MR. ELIAS:** Mr. Schiefelbein, did you have  
9 something that you wanted to --

10          **MR. SCHIEFELBEIN:** I apologize. Was there going  
11 to be any discussion or acknowledgment of our other two  
12 points, as far as the force majeure and the -- at least an  
13 acknowledgment that our concerns are out there?

14          **CHAIRMAN JACOBS:** Well, it's my understanding  
15 that you're going to be -- well, I guess, I didn't  
16 understand it. Are you going to be a part of the  
17 negotiation where the force majeure is defined?

18          **MR. SCHIEFELBEIN:** Well, certainly on the back  
19 end of them, but if the front end has been any indication,  
20 we're apparently not invited to the front end of the  
21 negotiations, so...

22          **CHAIRMAN JACOBS:** So, then, what I hear you  
23 saying then is if force majeure is defined in too broad a  
24 fashion, you would have a problem with --

25          **MR. SCHIEFELBEIN:** No.

1           **CHAIRMAN JACOBS:** -- with entering into that  
2 settlement?

3           **MR. SCHIEFELBEIN:** Excuse me, I apologize.

4           That could be a concern, but more pointedly,  
5 just the fact that the rate -- despite any force majeure,  
6 that that rate would go into effect after the two-year  
7 period with escalation clauses that would follow.

8           **CHAIRMAN JACOBS:** I see.

9           **MR. SCHIEFELBEIN:** And I'm not expecting you to  
10 bless that. It may be a great idea. We think it's a  
11 great idea, but it may be negotiated. And also, I don't  
12 know if we'll have another opportunity to speak. You  
13 know, can we get some indication as to whether if we're  
14 not successful this week, whether or not we can get an  
15 expedited date on a motion to dismiss?

16           **CHAIRMAN JACOBS:** I'll come back to that motion  
17 to dismiss.

18           **MR. SCHIEFELBEIN:** Thank you.

19           **CHAIRMAN JACOBS:** Where are we? I guess,  
20 Mr. Long, since you've been the spokesperson, what I  
21 understand to be the concern of Odyssey is that effective  
22 date of the rate is a term that they would have important  
23 concerns about and may affect their willingness to enter  
24 into any settlement that's offered. And I don't think we  
25 can say -- make you negotiate with them, but I guess I'm

1 asking would your negotiations either address their  
2 concerns or would they have an opportunity to have input?

3 **MR. LONG:** Mr. Chairman, let me make our  
4 position clear. We are happy to have Odyssey participate  
5 fully in any and all settlement discussions. That is our  
6 position. And we would certainly not intentionally do  
7 anything that would be adverse to Odyssey. We're trying  
8 to do what's fair to all the parties in this proceeding.

9 **CHAIRMAN JACOBS:** And Mr. Ellis?

10 **MR. ELLIS:** I think, Odyssey's concern with  
11 respect to the force majeure clause can be resolved. I  
12 don't think we've had the opportunity to discuss that, but  
13 I believe, that we will be able to resolve it.

14 **CHAIRMAN JACOBS:** Okay. And the timing issue, I  
15 wouldn't expect that you guys would naturally agree on  
16 that, but I assume that whatever you agree to, you'll have  
17 a chance to review.

18 **MR. ELLIS:** Certainly.

19 **CHAIRMAN JACOBS:** That might be a bit much to  
20 ask for, but we'll hope for it.

21 **Now, the motion to dismiss, Staff?**

22 **MR. ELIAS:** Well, first, I think that generally  
23 the procedure that's been outlined, and I realize that  
24 there's several permutations of it that have been floated  
25 out here, but generally, it sounds workable. As far as

1 the motion to dismiss, that was just filed last Thursday  
2 so that the time for filing responses to it has not yet  
3 run.

4 Having said that, we can proceed on the basis  
5 that if there is a settlement Friday, we will be bringing  
6 a recommendation to you at the next available agenda to  
7 address that settlement. Failing that, we will be  
8 bringing you a recommendation on the motion to dismiss to  
9 the next available agenda conference. And depending on  
10 the resolution of the motion to dismiss, we'll see about  
11 rescheduling the hearing.

12 CHAIRMAN JACOBS: Very well.

13 MR. HOFFMAN: Mr. Chairman?

14 CHAIRMAN JACOBS: Yes, Mr. Hoffman.

15 MR. HOFFMAN: If I may, I believe, that that  
16 motion was faxed to our office last week, which means that  
17 we would not have the typical five additional days. We  
18 will be focusing on what's exclusively this week on these  
19 negotiations and the drafting of the language, so I would  
20 ask that we be given an additional week to respond to the  
21 motion to dismiss.

22 MR. WHARTON: Mr. Chairman, without having  
23 consulted with my client or TECO, why don't we say  
24 anything any party wants to get in on the motion to  
25 dismiss is due by a date certain that would allow Staff

1 time to digest that, give the parties an opportunity to  
2 concentrate their efforts on settlement this week, because  
3 we may have supplemental filings, too, if we're going to  
4 have a Staff recommendation and perhaps a limited  
5 opportunity to argue.

6 CHAIRMAN JACOBS: Any idea on the timing, Staff?

7 MR. ELIAS: My thought, we've got two agendas  
8 back-to-back in early March, one the 6th and one the 13th.  
9 My thought is that if parties want to wait until sometime  
10 next week to file this, perhaps if we said Wednesday of  
11 next week and then we would ask for permission to file a  
12 recommendation a couple of days late for consideration at  
13 the 13th agenda would be filed, I would say, probably on  
14 Monday the 5th.

15 CHAIRMAN JACOBS: So, Wednesday of next week  
16 would be the filing deadline for response, any and all  
17 materials regarding the motion to dismiss?

18 MR. ELIAS: In the event that there's no  
19 settlement filed.

20 CHAIRMAN JACOBS: All right. Very well.

21 MR. HOFFMAN: Mr. Chairman, may I ask one more  
22 clarification so we're not all making phone calls on this  
23 issue?

24 CHAIRMAN JACOBS: All right.

25 MR. HOFFMAN: If the parties are able to reach

1 an agreement in terms of the language for the release and  
2 the force majeure provision and so forth and that  
3 agreement is timely filed on Friday, are we to then move  
4 forward with efforts on a motion to dismiss or –

5 **CHAIRMAN JACOBS:** Yes. It's my understanding  
6 that Staff would bring a recommendation on that settlement  
7 to the 13th agenda as opposed to the motion to dismiss.

8 **MR. HOFFMAN:** So, we would then be relieved of  
9 the obligation in the meantime to file a response to the  
10 motion to dismiss.

11 **CHAIRMAN JACOBS:** Yes.

12 **COMMISSIONER JABER:** If you all reach a  
13 settlement, can't TECO withdraw the motion to dismiss?

14 **CHAIRMAN JACOBS:** That would be cleaner. If you  
15 reach a settlement, I would prefer to see also an  
16 accompanying motion from TECO withdrawing their motion to  
17 dismiss.

18 **MR. HOFFMAN:** Thank you.

19 **CHAIRMAN JACOBS:** That would be cleaner.

20 **COMMISSIONER JABER:** And I have a logistical  
21 question, Mr. Chairman. If the parties reach settlement,  
22 when is it – and maybe this is a question for Staff –  
23 when is it we would move the exhibits and the testimony?

24 **CHAIRMAN JACOBS:** I say now.

25 **COMMISSIONER JABER:** Right.

1           **CHAIRMAN JACOBS: How does that work?**

2           **COMMISSIONER JABER: I mean, how else would it**  
3 **work, Mr. Elias?**

4           **MR. ELIAS: Well --**

5           **CHAIRMAN JACOBS: Better now than have to come**  
6 **back and do it.**

7           **MR. ELIAS: Would we move them on a contingent**  
8 **basis, because it seems to me like there's some discussion**  
9 **as to whether or not that's appropriate.**

10           **CHAIRMAN JACOBS: No. As I understand the**  
11 **parties, that issue they're going to have to talk about,**  
12 **so I'll let them talk about that. We can create the**  
13 **record, and they can figure out how they want to deal with**  
14 **it given the settlement.**

15           **MR. ELIAS: Yeah.**

16           **CHAIRMAN JACOBS: The only issue that we would**  
17 **have is there's a motion to strike. And what I'd like to**  
18 **do is to go ahead and move it, defer ruling on the motion**  
19 **to strike, unless we come back with a motion to dismiss --**  
20 **I'm sorry, if the motion to dismiss is denied, we can then**  
21 **in that same recommendation when we come back with the**  
22 **motion to dismiss have the motion to strike as a secondary**  
23 **issue in that.**

24           **MR. ELIAS: I'm not clear. Are we moving the --**

25           **COMMISSIONER JABER: That's our question to you**

1 all. When would we move the testimony and the exhibits,  
2 if we don't do it now? I guess, at the beginning of  
3 agenda we could convene the hearing, couldn't we?

4 MR. ELIAS: Well, that was my first thought,  
5 we'd just continue the hearing to the November – excuse  
6 me, November, I'm a few months ahead of myself.

7 CHAIRMAN JACOBS: That's not a problem for me.

8 MR. ELIAS: March 13th. That way we can make  
9 arrangements to have the court reporter here. We can  
10 address this stuff on the record and make sure that we  
11 don't do anything that's inconsistent with some – do  
12 anything today that might be otherwise inconsistent or  
13 confusing with what may file as subsequently.

14 COMMISSIONER JABER: So, if you made this the  
15 very last item on agenda, then we'd actually convene the  
16 hearing.

17 CHAIRMAN JACOBS: On the 13th. We'd know well  
18 in advance.

19 Let me just restate. What we're suggesting is  
20 not moving the testimony and exhibits today, deferring  
21 that until the same day as we bring recommendation to  
22 agenda and then, if need be, convening the hearing at the  
23 end of that agenda to enter those into the record where  
24 necessary.

25 MR. LONG: Mr. Chairman, you're saying we would



1 simply reconvene this hearing at that point?

2 **CHAIRMAN JACOBS:** Right.

3 **MR. LONG:** That's fine. If we're on that  
4 settlement track, then I take it that none of the  
5 witnesses would need to be available?

6 **CHAIRMAN JACOBS:** I would doubt we would  
7 actually go through the testimony. We'd just put those  
8 into the record. Well, take that back. If we're going to  
9 go to hearing – if we don't do a motion to dismiss and we  
10 go to hearing, we probably just need to set up another  
11 date; is that correct?

12 **MR. LONG:** Well, that was my point, originally,  
13 Commissioner. If we're able to resolve things by Friday,  
14 then we're on the track of just having a very short  
15 reconvening at the end of the agenda conference to accept  
16 the testimony and, hopefully, adopt the settlement.

17 **CHAIRMAN JACOBS:** That's correct.

18 **MR. LONG:** If by Friday we have not been able to  
19 reach agreement on the outstanding points, then we will be  
20 asking you simply to set a new date for the hearing as  
21 soon as possible.

22 **CHAIRMAN JACOBS:** Very well. Mr. Schiefelbein.

23 **MR. SCHIEFELBEIN:** If the settlement is  
24 unsuccessful – I'm sorry for being a little slow but –  
25 you would consider motions to dismiss on the 13th. If it

1 was not dismissed, we would reconvene the hearing with the  
2 witnesses?

3 CHAIRMAN JACOBS: No.

4 MR. SCHIEFELBEIN: I'm sorry.

5 CHAIRMAN JACOBS: On the 13th, all we're going  
6 to do is do the motion -- you've got me confused now.

7 On the 13th, we'll either take up the motion --  
8 recommendation on the settlement. Absent a settlement,  
9 we're going to take up the motion to dismiss. If the  
10 motion to dismiss is granted, then -- if the motion to  
11 dismiss is denied, then at that point -- I'm sorry, let me  
12 go back for a moment, also. If there is a settlement, we  
13 were going to do the record; is that correct?

14 MR. ELIAS: Yes.

15 CHAIRMAN JACOBS: If there is a settlement, we  
16 would do the record, temporarily reconvene the hearing.  
17 If there's no settlement, we will take up the motion to  
18 dismiss. If it's granted, it will go away. If it's  
19 denied, then we set new dates. I think, I've got it  
20 straight now.

21 MR. SCHIEFELBEIN: That sounds great. And the  
22 only thing that we would want to just let you know, we  
23 don't get to communicate very often with you, is that a  
24 couple of our people that need to be here is our banker  
25 and our banker's counsel, who have come down from Saginaw,

1 Michigan today and are not really at our beck and call, so  
2 some sensitivity on that, perhaps, would be appreciated.

3 CHAIRMAN JACOBS: Okay.

4 MR. SCHIEFELBEIN: Thank you.

5 CHAIRMAN JACOBS: We'll make every effort to  
6 accommodate schedules and we can do some other technology  
7 things, if we can't.

8 Very well? Great. Well, I think, some pats on  
9 the back are in order here. Given how this has evolved, I  
10 congratulate the parties on at least reaching this  
11 milestone. Commissioners, if you don't have any other  
12 questions, anything else coming before us today? Then, I  
13 guess, we are --

14 MR. ELIAS: Continued until --

15 CHAIRMAN JACOBS: We are continued until March  
16 13th. Thank you all.

17 (Hearing adjourned at 3:55 p.m. to reconvene on  
18 Tuesday, March 13th, 2001.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

5 I, KORETTA E. STANFORD, RPR, Official Commission Reporter,  
6 do hereby certify that proceedings were conducted in docket  
7 number 000061-EI before the Public Service Commission at the  
8 time and place herein stated.

7

8 It is further certified that I stenographically reported the  
9 said proceedings; that the same has been transcribed under my  
10 direct supervision and that this transcript, consisting of 67  
11 pages, constitutes a true transcription of my notes of said  
12 proceedings.

10

11 I FURTHER CERTIFY that I am not a relative, employee,  
12 attorney or counsel of any of the parties, nor am I a relative  
13 or employee of any of the parties' attorneys or counsel  
14 connected with the action, nor am I financially interested in  
15 the action.

13

14 DATED this 23rd day of February, 2001.

15

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KORETTA E. STANFORD, RPR  
Official Commission Reporter  
(850) 413-6734

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