BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 950379-EI

In the Matter of

DETERMINATION OF REGULATED EARNINGS OF TAMPA ELECTRIC COMPANY PURSUANT TO STIPULATIONS FOR CALENDAR YEARS 1995 THROUGH 1999.
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VOLUME 1

Pages 1 through 163

PROCEEDINGS: HEARING

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

DATE: Monday, August 27, 2001

TIME: Commenced at 9:30 a.m.

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

REPORTED BY: TRICIA DeMARTE
Official FPSC Reporter
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APPEARANCES:

LEE L. WILLIS, JAMES D. BEASLEY, and KENNETH R. HART, Ausley & McMullen, Post Office Box 391, Tallahassee, Florida 32302, appearing on behalf of Tampa Electric Company.

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ROBERT V. ELIAS, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870, appearing on behalf of the Commission Staff.

I N D E X

MISCELLANEOUS

WITNESSES

EXHIBITS

NUMBER:		ID.	ADMTD.
1	DMB-1	23	162
2	Deposition transcript of Delaine M. Bacon	57	162
3	Excerpt of 12/16-17/92 FPSC agenda conference transcript	58	162
4	Excerpt from the Final Hearing in TECO's last rate case, Pages 1009, 1010, 1013 and 1018	61	162
5	1/12/93 Letter to Steve Tribble from Lee Willis	67	162
6	8/2/00 Letter to Christine Romig from Ron Neil with attachments	74	162
7	TECO's Cost/benefit analysis	80	162
8	TECO's Answer to Interrogatory 13 of OPC's Second Set of Interrogatories	137	162

P R O C E E D I N G S

CHAIRMAN JACOBS: Good morning. We'll call the hearing to order and go on the record. Counsel, read the notice.

MR. ELIAS: Notice issued by the Clerk of the Florida Public Service Commission announces that a hearing will be held in Docket Number 950379-EI; that is, the determination of the regulated earnings of Tampa Electric Company pursuant to stipulations for calendar years 1995 through 1999, beginning at 9:30 a.m. today, Monday, August 27th, 2001, Room 148 of the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida.

CHAIRMAN JACOBS: Take appearances.

MR. WILLIS: I'm Lee L. Willis, appearing with James D. Beasley and Kenneth R. Hart of Ausley & McMullen, Post Office Box 391, Tallahassee 32302, appearing on behalf of Tampa Electric Company.

MR. HOWE: Chairman Jacobs, Commissioners, I'm Roger Howe with the Public Counsel's Office, appearing on behalf of the Citizens of the State of Florida.

MR. ELIAS: And I'm Bob Elias, appearing on behalf of the Commission Staff.

CHAIRMAN JACOBS: Very well. Do we have any preliminary matters?

MR. ELIAS: None that I'm aware of. I would note that there is a pending motion to strike which I would suggest be taken up at the time the witness takes the stand. I would also note that the prehearing order provides that parties may offer opening statements limited to ten minutes in length; that would probably be appropriate at this time.

CHAIRMAN JACOBS: Mr. Howe, is that sufficient for your motion, to take it up when the witness takes the stand?

MR. HOWE: Yes, sir.

CHAIRMAN JACOBS: Very well. With that, we will then move to opening statements. I believe they are ten minutes.

MR. WILLIS: Very well.

CHAIRMAN JACOBS: And we'll begin with the company, Mr. Willis.

MR. WILLIS: I would like to make a short opening statement and reserve some time to respond to OPC.

CHAIRMAN JACOBS: Very well.

MR. WILLIS: We are here before you today for the final hearing to conclude the amount of refunds due with respect to Tampa Electric's earnings for 1999. I think it's very important to place this hearing in the context of the full events that have occurred since 1995 in this docket. The stipulations that the company has entered into with the Office of Public Counsel and approved by this Commission have provided tremendous benefits to customers by freezing rates and providing total benefits of some $120 million over the stipulation period, including $63 million of refunds, not including the refunds that are at issue here.

Throughout this stipulation period, Tampa Electric has worked hard to reduce its expenses across the board, to reduce its costs, and increase the amount of refunds paid to customers under the agreements. The company has been successful in that effort. And one way the company has attempted to reduce its costs is by taking aggressive positions before the IRS. We firmly believe, and we have shown in a cost/benefit analysis, that the company's actions, which later led to an assessment of interest on tax deficiencies, was prudent. Both this Commission and your Staff have made a thorough review of this issue, and you issued a well-reasoned PAA Order Number 0113.

You ruled in that order that consistent with prior orders in this docket that the guiding principle of the stipulation is that all reasonable and prudent expenses will be considered in the calculation of the company's earnings. You have determined that the stipulation provides specific instructions for specific investments and expenses that are to be included or excluded. But these specific guidelines were not intended to be a complete laundry list of all of the issues to be considered in the company's -- in the review of the company's earnings. Additional issues have arisen, and every year the stipulations have been in effect, and those issues have been resolved on the basic principle of whether or not the investment or expense was reasonable and prudent.

Turning to the specific issue of the appropriate treatment of interest on tax deficiencies. We strongly support the Commission's decision in Order 0113 and sharply disagree with OPC here. OPC contends that to consider interest on tax deficiencies in 1999 would be to make an adjustment inconsistent with the company's last rate case, and that only adjustments that were made in the company's last rate case can be made under the stipulation. Such a ruling would be in direct contradiction to numerous decisions of this Commission on various years under the stipulation in 1996, 1997, 1998, and 1999 where adjustments were made to the company's detriment. It would also be in direct contradiction to the positions OPC has taken on these issues. OPC, in this docket, has actively supported adjustments not made in the last rate case and has remained silent at other times when adjustments were made -- or proposed by Staff and approved by this Commission. Such action and inaction equitably estops OPC from asserting a contrary position here. OPC says he's just being an advocate, and that he, as an advocate, can take inconsistent positions. Our reply is that equity and justice don't allow that.

The key here is to give the full effect of the meaning of Paragraphs 7 in the first stipulation and Paragraph 11 in the second stipulation which contain identical language.

Those paragraphs read that the calculation of the actual ROE for calendar year 1999 would be on an FPSC adjusted basis using appropriate adjustments approved in Tampa Electric's full revenue requirements proceeding. All reasonable and prudent expenses and investment will be allowed and no annualization or pro forma adjustments will be made. Interest on tax deficiency is certainly a prudent expense incurred in 1999, as you correctly found in your order. OPC contends that the prudence of this expense is irrelevant, that the assertion -- this assertion is obviously and plainly incorrect, as you concluded in your order. The language referring to the company's last rate case was never intended to define the entire universe of prudent expenses for Tampa Electric.

It's important for you to also read Paragraph 10 of the stipulation. That paragraph states, "The parties agree that any interest expense that might be incurred as the result of a Polk Power Station related tax deficiency assessment will be considered a prudent expense for ratemaking purposes and will support this position in any proceeding before the FPSC." You correctly pointed out in your PAA order that the stipulation forecloses the possibility of challenge to the prudence of these costs. It was not meant to, it has not been interpreted to and should not be interpreted to limit the possible prudent expenses to those categories either included in the last revenue requirements case proceeding or specifically enumerated. This ruling is absolutely correct.

The stipulation has several other specific directions. One of them is that the Polk Power Station will be included in the company's rate base, and another one is that the Port Manatee site, generating site, will be excluded. It's never been determined by this Commission, or even argued, that the direction with respect to these two items says anything with respect to other items within that class. Obviously, other generating plant is in the rate base as is other property held for future use. These specific instructions requiring an adjustment has never been interpreted at any time to disallow or allow any other asset in that category. We believe that OPC's position on interest on tax deficiencies tips the scale of reasonableness against the company and penalizes it for actions taken that have lowered costs for the company and its customers. The company has showed that the benefits associated with the tax positions taken have -- are outweighed by the -- or outweighed the interest expense assessments by the IRS.

It is eminently fair for the Commission to recognize the interest associated with these tax issues in 1999 because accounting standards unquestionably require that the company recognize this expense. Commissioners, no reasonable person faced with the facts and circumstances Tampa Electric was faced in 1999 would have failed to record interest on tax deficiencies in 1999. In fact, in hindsight, the amount that was booked, while appropriate at the time based on what the company knew at the time, was very conservative. The bottom line is, the ISR assessments and the resulting interest due to proactive but reasonable positions taken by the company in the best interest of the ratepayers should be recognized in 1999.

OPC's contentions here are not logical or reasonable. If you assume that the specific provisions in the stipulation precluded consideration of interest on tax deficiency, the company would be encouraged, if not forced, to abandon any position the IRS might reverse. That clearly was not the intent of the stipulation and would not have been in the best interest of any party.

And finally, Commissioners, I urge you to remain focussed on the real issue and not any innuendo or distractions OPC has attempted to interject in this case. OPC has resorted to strained interpretations of the language of the stipulation, hypertechnical legal arguments and other distractions. Your order concludes that consistency, fairness, and the most reasonable interpretation of the stipulations led Staff to recommend to you that the appropriate -- it was appropriate to include the interest expense associated with tax deficiencies in the calculation of 1999 actual ROE, and you agreed with that and placed that in the order. We strongly believe at the end of the day customers have faired well under the agreement, and we urge you to reaffirm your well-reasoned decision in

Order 0113. Thank you.

CHAIRMAN JACOBS: Mr. Howe.

MR. HOWE: Chairman Jacobs, Commissioners, in the last few months of 1999, Tampa Electric recorded on its books approximately $12.7 million of interest expense on tax deficiencies. They included this expense as an adjustment to the income statement portion of their December 1999 surveillance report. The expense reduced earnings. The reduction in earnings reduced the refunds that we believe the customers are entitled to pursuant to two stipulations we signed with the company in 1996. Under those stipulations, in particular, the second one, which we signed in September of 1996, the company is required to refund to its customers 60 percent of earnings above a 12.75 percent return on equity, I'm sorry, a 12.0 percent return on equity.

Now, we think that this -- whether this should be included as an expense really doesn't deal with prudence, accounting standards and so forth. It deals with the stipulation. As parties in negotiations who finally entered a stipulation, we believe we were free to agree to terms. We didn't have to be consistent with generally accepted accounting positions. They were just the terms we agreed to. And as is important here today, the important provisions are Paragraphs 10 and 11 of the first stipulation that was signed in March of 1996 and approved by the Commission in May of that year.

Now, Paragraph 10 of the first stipulation provides that Tampa Electric can include interest expense on tax deficiencies related to its Polk Power Station if they arise out of a dispute between Tampa Electric and the IRS over the tax life of their unit. This isn't just our interpretation, Commissioners. If you recall, I'm sure you've read the prefiled direct testimony of the company's witnesses, Ms. Bacon at Page 12 of her prefiled direct testimony, referring to Paragraph 10 says, through the language proposed by the company in the stipulation, Tampa Electric sought assurance from the parties to the stipulation that the Polk tax life decision would be supported if the IRS agreed (sic) with this specific tax position.

In her rebuttal testimony at Page 6 she states, "The purpose of Paragraph 10 is to document an agreement among the parties to support recovery should the Polk Power Station tax life position be questioned by the IRS at a future date." Commissioners, we addressed the subject of interest expense on tax deficiencies, and we limited it to those involving the tax life of the Polk unit. This is a very unusual case, because if I understand what Mr. Willis just said, we have the company's position disagreeing with the prefiled testimony of the company's own witness.

Commissioners, let's move in steps. If we go past Paragraph 10, let's assume that it's not there for purposes of discussion, we're then left with Paragraph 11 of the first stipulation. That says, Tampa Electric in calculating -- it will calculate its earnings on an FPSC adjusted basis using adjustments from the company's last rate case. There's no adjustment for interest expense on tax deficiencies. That was the very reason we needed Paragraph 10 to allow for them to recover it at all. So in the absence of Paragraph 10, Tampa Electric could not claim any interest expense on tax deficiencies at all. With Paragraph 10, they can claim it if it arises out of a dispute with the IRS over the tax life of the unit.

Now, let's move beyond even the stipulation. To support their position, Tampa Electric has offered you a cost/benefit analysis. And, Commissioners, in your order you said the sole reason for your decision to allow the inclusion of interest expense on tax deficiencies was because you accepted the company's cost/benefit analysis. That's the only reason you allowed them to include this expense.

Now, Commissioners, the cost/benefit analysis is flawed in several respects. Most fundamentally, I'd have to say that in my experience I've always viewed a cost/benefit analysis as something that answers the question, what are my costs going to be, and what are the benefits I'm going to receive? Looking back you might even say, what were the costs I incurred, and what were the benefits I received in the past?

But, Commissioners, I have never seen one like this where Tampa Electric says, what costs should the customers bear in the future in the form of lower refunds in 1999 because of benefits Tampa Electric thinks they got as much as eight years ago in 1993? I've never seen a cost/benefit analysis that the cost was forward-looking, the benefits were retroactive.

The cost/benefit analysis is also flawed in several factual respects. For example, the cost/benefit analysis that you accepted in your PAA order is based upon the assumption that rates for 1993 and 1994 for Tampa Electric were set in the same manner. Tampa Electric had a rate case in 1992 in which the Commission set rates for 1993 and then a step increase for 1994. The 1993 rate award was set in the traditional manner, based on rate base, income statement, capital structure.

The Commission at first did a similar evaluation for 1994 and came up with a revenue requirement, but they tested it against a newly adopted financial integrity standard of 3.75 times interest coverage. And they found that the revenue requirement established in the traditional way for 1994 was not adequate, and so the Commission instead substituted a revenue requirement calculated as 3.75 times interest, and it was only that financial integrity standard that set rates for 1994. So rates were not set on the same basis for 1993 and for 1994. So the cost/benefit analysis that you accepted in your PAA, and even the new one that the company is going to offer to you today, is factually inaccurate. It doesn't track reality. The Commission did not set rates the same way. And most importantly, the company's analysis is based on the assumption that a lower level of deferred taxes attributable to their aggressive tax positions caused deferred taxes to be greater in the capital structure in 1994, more zero cost capital led to lower rates, and the customers have gotten the benefit of that. Commissioners, you didn't set rates that way for 1994. The rates that were charged for 1994 up to and including today, because those are the same rates now in effect, were based solely upon a financial integrity standard.

There's other factual problems with the cost/benefit analysis that I think will come out today. For example, in their cost/benefit analysis, the company is going to portray to you the benefits the customers got from tax positions the company took in 1991 and in 1992 through 1998, a period of eight years altogether. Commissioners, at the time of the rate case hearing in 1992, Tampa Electric had not yet filed its 1991 tax return. So, Commissioners, there is no way that tax positions taken by the company in 1991 through 1998 could have had any effect on rates charged to the customers. It's an impossibility.

One other thing wrong with that cost/benefit analysis which is going to come out today is, you'll find that the Commission, excuse me, the company quantifies costs and benefits, and they assign a dollar to these calculated benefits. But, Commissioners, the way the stipulations work, even if there were benefits -- for example, let's pick a number, $100. If there were $100 of benefits identified and the customers really received them, let's go that far, the way the stipulation works, the company got to keep all that money up to the amount necessary to allow them to earn the sharing point, which was 11.75 in prior years and 12.0 for '99, and after that, the customers only got 60 percent. Again, the analysis is flawed in its philosophy. It's flawed in its methodology. It is flawed in its facts. And, Commissioners, the reason we filed our protest was to point these things out to you. So we don't think you need to get to the cost/benefit analysis because we think the stipulation itself is dispositive.

COMMISSIONER JABER: Mr. Howe, where in the order -- I'm trying to find exactly what you are talking about -- where in the order does it say we relied -- that the only reason we accepted TECO's position is because we were relying solely on the cost/benefit analysis?

MR. HOWE: If you'll give me just a moment, Commissioner Jaber.

MR. ELIAS: I believe that's the first full paragraph on Page 11.

MR. HOWE: Well, I would refer you to Page 10 of

Order Number 0113. And if you look at the second -- or the first full paragraph beginning on Page 10, you will see the reference there referring to the cost/benefit analysis. "This analysis does not consider the time value of the savings. It shows customer benefits of approximately $10,742,000." Okay. The first sentence of the next paragraph, "However, it should be noted that the above-the-line treatment of the interest on tax deficiencies/issues for TECO is approved solely upon the merits of the company's cost/benefit results." And that's what I was referring to, Commissioner Jaber.

COMMISSIONER JABER: Thank you.

MR. HOWE: Commissioners, you made a decision accepting a cost/benefit analysis provided by the company. It was factually flawed. For to you accept it, we believe, would also cause you to violate the prohibition against retroactive ratemaking to the extent that you would be allowing -- you would be requiring customers to pay higher rates in the form of lower refunds for 1999 because of purported inadequate rates in the years 1993 through 1998. We feel that would violate the proscription against retroactive ratemaking.

But we think, Commissioners, most of this is beside the point. The real issue is, we sat down with Tampa Electric. We negotiated a stipulation. We specifically addressed the issue of interest expense on tax deficiencies, and we addressed it in one place and one place only, Paragraph 10. Our interpretation is that they are entitled, completely entitled, to any interest expense on tax deficiencies related to the Polk tax life. And under that stipulation, we are bound, and we will certainly honor that provision, to support them in the request. However, Commissioners, Tampa Electric is not here today telling you they incurred any interest expense on tax deficiencies related to the Polk tax life. Thank you very much.

MR. WILLIS: Commissioner, I'd just like --

CHAIRMAN JACOBS: I believe you reserved a brief amount of time to respond.

MR. WILLIS: Yes, I did.

CHAIRMAN JACOBS: You have a short time.

MR. WILLIS: With respect to retroactive ratemaking, OPC's assertion is just totally without merit. The company's use of a cost/benefit analysis as a study and a method of review simply didn't result in any actual change in rates. It is nothing more than a method you use to determine whether or not an expense was prudent under the provisions of the statute -- of the stipulation. The key is that parties agree that all prudent expenses would be considered in the calculation, and the company is free to present to the Commission and the Commission is free to determine what method it would use to make that determination.

I would like to refer you to the interpretation that you made in Order 0113 which sets out the most reasonable interpretation of the stipulation, that if an adjustment was made in the last revenue requirements proceeding, the methodology employed in the full revenue requirements proceeding would control. The fact that no adjustment was made in the last full revenue requirements proceeding does not preclude an adjustment in any year covered by the stipulation.

COMMISSIONER JABER: Where are you reading from, Mr. Willis?

MR. WILLIS: In Order 0113. I believe it is on Page 18, but I can -- it's set out in Page 18 of Order 0113.

CHAIRMAN JACOBS: Thank you.

MR. WILLIS: The second point was the fact that no adjustment made in the last full revenue requirements proceeding does not preclude an adjustment in any year covered by the stipulation. The relevant question is one of prudence.

Three, with respect to the potential interest on tax deficiencies associated with the Polk Power Station addressed in Paragraph 10, the stipulation forecloses the possibility of any challenge to the prudence of those costs. It was not meant to, has not been interpreted to, and it shall not be interpreted to limit the prudent expenses to those categories either included in the company's last full revenue requirements proceeding or specifically enumerated in the stipulations.

With respect, to Mr. Howe's assertion with the various elements of the cost/benefit study, that study is sound. It shows significant net benefits to customers, and even if you assume for the purposes of argument, which we do not agree, but if you assume that you remove the 1994 test year rate case results, there's still $8.5 million of net benefits to customers. So in any event, this cost/benefit analysis shows that the company was prudent.

I would also contend the sentence that was read with respect to the reliance on the cost/benefit analysis. It probably was taken out of context and really refers to the precedent for the future. And I think that, in any event, this Commission made a very sound decision, and there are a number of bases upon which you can base your decision to include this in the calculation for 1999, including the cost/benefit analysis, but the general principle of encouraging companies to take an aggressive tax position is sufficient as well. Thank you.

CHAIRMAN JACOBS: Very well. That takes care of all preliminary matters, I believe. We now can swear the witnesses. Will all those who will testify please stand and raise your right hand.

(Witness collectively sworn.)

CHAIRMAN JACOBS: Thank you. You may be seated. Mr. Willis, you may call your first witness.

MR. WILLIS: We call Ms. Bacon.

DELAINE M. BACON

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

DIRECT EXAMINATION

BY MR. WILLIS:

Q Would you please state your name, address and occupation and employer.

A Yes. My name is Delaine M. Bacon. I work for TECO Energy. My title is director of strategic and financial analysis.

Q Did you prepare and cause to be prefiled in this docket a document titled, "Prepared Direct Testimony of Delaine M. Bacon"?

A Yes, I did.

Q If I were to ask you the questions contained in that document, would your answers be the same today?

A Yes, they would.

Q Did you also prepare an exhibit attached to your testimony?

A Yes.

MR. WILLIS: Commissioners, we would like for Ms. Bacon's exhibit to be marked for identification, please.

CHAIRMAN JACOBS: Very well. This is just -- we're only doing direct; correct?

MR. WILLIS: Yes.

CHAIRMAN JACOBS: Okay. So we will mark as Exhibit 1 the exhibit entitled, "DMB-1."

(Exhibit 1 marked for identification.)

MR. WILLIS: We would move that Ms. Delaine Bacon's prepared direct testimony be inserted into the record as though read.

MR. HOWE: And, Commissioner -- Chairman Jacobs, you know I have an objection pending in the form of a motion to strike.

CHAIRMAN JACOBS: Very well. You want to state your motion and argument, Mr. Howe?

MR. HOWE: Chairman Jacobs, Commissioners, our office is still wrestling with the Commission's interpretation of Section 120.80(13)(b). We understand from the Commission's practice and prior decisions that the Commission's view is that only those matters placed in dispute through a protest are subject to a hearing. As I stated earlier, our understanding of the Commission's proposed agency action order was that it reached the decision it did solely based upon the cost/benefit analysis that the company had provided, your Staff had recommended approval of, and the Commission had accepted it in its order.

That cost/benefit analysis purported to demonstrate a $10.7 million benefit to customers from the company's approach to interest expense on tax deficiencies. We were telling you, Commissioners, that that was a mistake for you to have relied on that cost/benefit analysis. We asked for a hearing in which we understood that that cost/benefit analysis would be the subject of the hearing, and that nothing else would be the subject of the hearing because, Commissioners, we understood that to be your interpretation of this provision in the Administrative Procedure Act.

The company, through Ms. Bacon, responded with, first, a cost/benefit analysis that says $12.4 million in net benefits. Apparently, she has included in that analysis things that happened after 1999, and in fact, I believe, incorporated positions the Commission espoused in its proposed agency action order. These were all after-the-fact things. They were not things that went into the analysis the Commission accepted.

In other places in her testimony she says that even in the absence of a cost/benefit analysis, Commissioners, you could rely on logic and judgment. You can take into consideration other things the customers have gotten under the stipulations. Commissioners, this is not our understanding of how you view the purpose of a protest of a PAA, that it's very narrow. For example, I believe in the Mid County case the utility had protested just one small part of a used and useful adjustment. I'm not sure of the specific facts but, for example, the water treatment plant. And since nobody had protested the sewage treatment plant or the distribution system, that was off limits. Nothing could be addressed except the one item that was protested, and our protest went to the cost/benefit analysis that the Commission relied upon. And so we're here objecting to the company's prefiled testimony on that basis in two regards. One, we think it's inappropriate under your interpretations, but moreover, we're also asking for some understanding in what you believe is an acceptable response.

We think that the company in this case has essentially told the Commission that they also disagreed with your proposed agency action. You shouldn't have relied on the $10.7 million proposed cost/benefit analysis. You should rely instead on a $12.4 million one, or a $6.8 million one, if I recall the number correctly, or an $8.5 million one, but not the one you've relied on. We believe this is inconsistent with your interpretation of Section 120.80(13)(b). Thank you very much.

CHAIRMAN JACOBS: Mr. Howe, as part of your section that you dispute on Page 2 specifically which has to do with essentially an explanation of the cost/benefit analysis, how is that -- how does that fall within the concerns that you raise?

MR. HOWE: I tried to address that, Chairman Jacobs, somewhat in Footnote 3 to the motion in which we said, although certain language appears that it may -- in isolation it looks like it might be addressing cost/benefit analyses generally, it's clear within the context of the full testimony that in each instance she's referring to the $12.4 million analysis.

CHAIRMAN JACOBS: Okay. Mr. Beasley.

MR. BEASLEY: Commissioners, Public Counsel says that if a party doesn't protest a part of a proposed agency action order, then you can't visit it later. Issues not protested are deemed stipulated, he says. Well, we'll accept that and look at what the Office of Public Counsel protested. Citizens, and I quote from the protest, citizens protest this Commission's proposed agency action in Order Number 0113 which determines Tampa Electric's earnings share amount for 1999 pursuant to stipulations previously approved by the Commission.

Commissioners, that places it all on the line, and we submit that Tampa Electric is free to present anything relevant to proving the Commission's PAA decision was correct insofar as Tampa Electric's earning share for 1999 is concerned. Now, to counter this, Public Counsel says he's only protesting the cost/benefit analysis the company presented, and therefore, we're boxed in, and we can't do anything but rehash that earlier cost/benefit analysis. But Public Counsel overlooks the fact that the PAA order in question devotes some nine single-spaced pages of discussion and analysis before making the following specific finding. And I quote from the order, we believe this interest, referring to the interest on the tax deficiencies, is a prudent expense. Consistency, fairness, and the most reasonable interpretation of the stipulation lead us to find it is appropriate to include the interest expense associated with the tax deficiencies in the calculation of Tampa Electric's 1999 actual ROE, end quote.

Despite OPC's claim that he's only focussing on the company's previous cost/benefit analysis, he nevertheless is either protesting that finding I just read or he's not protesting it. If he's not protesting it, then under his own argument, it's stipulated, inclusion of the interest is appropriate. We can all go home without having an academic exercise regarding the cost/benefit analysis. If, on the other hand, OPC is protesting the Commission's conclusion that consistency, fairness, and the most reasonable interpretation of the stipulation make including the interest expense reasonable, then Tampa Electric has every right to present any relevant evidence and argument it can muster to demonstrate to the Commission on a brand new basis that the Commission's earlier determination was correct.

I suggest to you, Commissioners, that you ask Mr. Howe whether his protest is directed at the provisions in the order that I just read, and if not, whether the finding by the Commission, the nine-page analysis and that finding that I read, is stipulated. The point I wish to make is that OPC should not be permitted to parse words in a hypertechnical way as to what is or isn't protested in this proceeding in an effort to stifle your consideration of evidence that is relevant to the real issue before you today.

Now, on the question of whether the tax deficiency interest --

CHAIRMAN JACOBS: Excuse me. Before you go to that point --

MR. BEASLEY: Yes, sir.

CHAIRMAN JACOBS: -- if we adopt as broad an interpretation of the scope of issues in a protest, how do -- where is our limit after that? How do we limit that going forward?

MR. BEASLEY: I think Public Counsel's protest made a broad allegation, and that opened up anything that we needed to do to reestablish what you approved in the first instance. I mean, that's how it was defined by what Public Counsel did in its protest. And, of course, this is only limited to that issue about interest on tax deficiencies. That's the subject of the hearing, and that's the subject of what Public Counsel protested.

On the question of whether the tax deficiency interest was decided solely on the basis of the cost/benefit analysis, Public Counsel quotes you the sentence really out of context which says, "However, it should be noted that the above-line treatment of the interest on tax deficiencies issues for Tampa Electric is approved solely upon the merits of the company's cost benefit results." OPC omits the very next sentence which follows that sentence I just read, and it reads, "Therefore," and that's a connecting word, "Therefore, the above-line treatment of interest on subsequent tax deficiencies issues should not be assumed to be appropriate." So those two sentences read together are simply a caveat that what we're doing here with respect to the periods in question should not be considered any kind of precedent for subsequent periods that aren't covered in the cost/benefit analysis that was presented.

Even if Public Counsel were correct in its effort to parse the protest into something that only allows us to address the cost/benefit analysis that was used, the cost/benefit analysis in Ms. Bacon's testimony is the exact same cost/benefit analysis. All she did was update it with data to reflect what the Commission ultimately decided. And Public Counsel has cited no authority for the proposition that a witness, when preparing testimony, is stuck with something that was present in a prior case or a prior effort. The witness knew what she knew when she prepared her testimony, and she was entitled to use it.

Our written response addresses three other topics where Public Counsel has similarly attempted to use the parsed wording of its protest to block a fair presentation of argument in support of the tax treatment that the Commission approved in the PAA order. We submit to you that those other instances should be rejected as with respect to the cost/benefit analysis argument. Thank you.

CHAIRMAN JACOBS: Staff, do you have a recommendation?

MR. ELIAS: Fairly briefly. First of all, it's been the long-standing law of this State and administrative jurisprudence that a protest of an agency's proposed action renders that action a nullity, and that any hearing that is to be held subsequently to resolve that protest is a de novo proceeding. The Commission in issuing proposed agency action frequently covers more than one subject area, as was the case with this particular order. And in an attempt to clarify the fact that our orders sometimes cover more than one subject area, the Legislature some years ago passed Section 120.80(13)(b) of Florida Statutes, and let me read it in its entirety. "Notwithstanding Sections 120.569 and 120.57, a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute. Issues in the proposed action which are not in dispute are deemed stipulated."

And the core question for the Commission to resolve here is exactly what was protested, and let me read a couple of sentences from Public Counsel's protest that may be helpful in that area. On Page 1, the very first paragraph, "Dispute the order which determines Tampa Electric Company's earnings sharing amount for 1999 pursuant to stipulations previously approved by the Commission."

Then in Paragraph 4, beginning at the bottom of Page 2, "The citizens dispute all the factual data, assumptions, and methodology used in and conclusions drawn from the cost/benefit analysis used to justify the interest expense on income tax deficiencies claimed for 1999, including, but not limited to, the Commission's factual assertions that the cost/benefit analysis demonstrate a net benefit to Tampa Electric's customers. The citizens also dispute the Commission's finding that had the company recorded the interest expense in prior years when it was actually accruing, then the prior year's earnings and the prior year's refunds that have already been distributed would have been less. It is Staff's belief that the issue that was raised in the protest is the inclusion of interest expense on the tax deficiencies in the calculation of the 1999 earnings and thus refund amount. Staff believes based on a review of the testimony that it does address that issue, and accordingly, we would recommend that the motion to strike be denied."

CHAIRMAN JACOBS: Very well. Any questions, Commissioners?

Staff, on Page 9 of Ms. Bacon's direct testimony, beginning at Line 3 --

MR. ELIAS: Beginning at Line 3?

CHAIRMAN JACOBS: Yes. The concern there is that the cost/benefit analysis is projecting in somewhat of a greater light than I think initially it was interpreted.

MR. ELIAS: I'm sorry, I didn't catch the last part of your question.

CHAIRMAN JACOBS: My concern is that the answer there, beginning at Line 3 on Page 9, projects the cost/benefit analysis in somewhat of a larger light than I think it was initially interpreted. And, in essence, what that answer says is, it proves out something that I don't know the facts substantiate, do they?

MR. ELIAS: I didn't catch the last four words of what you're saying.

CHAIRMAN JACOBS: This answer says that the cost/benefit analysis proves that customers have already received more refunds than they otherwise might have. And my question is, is that projecting this analysis in a broader light than it should be?

MR. ELIAS: No. I think that goes to one of the points that the Public Counsel specifically raised in the protest, which was that had the company recorded the interest expense in prior years when it was actually accruing in the prior year's earnings and prior year's refunds that have already been distributed would have been less. I think that that issue was specifically raised in --

CHAIRMAN JACOBS: Is that proven out by the cost/benefit analysis or by other facts?

MR. ELIAS: I think that was one of the underlying assertions with respect to the cost/benefit analysis that was offered.

CHAIRMAN JACOBS: I agree it was an assertion, but was it proved out by the cost/benefit analysis?

MR. ELIAS: I don't know that the order specifically addressed that assertion in great detail. That will be a question of proof for this proceeding.

MR. BEASLEY: That's correct.

CHAIRMAN JACOBS: Okay. Very well. I'm persuaded by the essential analysis of Staff. I agree that -- I should say, with the exception of this section that I just referenced on Page 9, beginning at Line 3, I would grant the motion after the word "no" on Line 3 to Line 17.

COMMISSIONER JABER: Mr. Chairman, let me just seek some clarification because I may stand to be corrected here. Page 9, Line 3 was not part of OPC's motion, or was it? I'm looking at Page 2 of OPC's motion, and they ask that you strike Page 9, Line 25 through Page 10, Line 6.

CHAIRMAN JACOBS: You're right.

COMMISSIONER JABER: So I don't think they asserted that Lines 3, 4 needed to be stricken.

CHAIRMAN JACOBS: Right, I misread that.

COMMISSIONER JABER: And then, also, just to bring to your attention, first of all, I don't know if you need a motion. I'd be glad to make the motion for you if --

CHAIRMAN JACOBS: Oh, I'm sorry, they did. On the top of Page 3, they asked for Page 5, Line 25 through Page 9, Line 17.

COMMISSIONER JABER: Okay. The whole thing. Do you need me to make a motion for you?

CHAIRMAN JACOBS: Yeah, sure.

COMMISSIONER JABER: I would move that we deny OPC's motion to strike prefiled testimony and accept Staff's recommendation.

COMMISSIONER BAEZ: Second.

CHAIRMAN JACOBS: Okay. I would -- there was a motion and a second. I would say that I would continue to raise that -- I would grant it as to this section that I indicated on Page 9 because I think it does cast the cost/benefit analysis in a light beyond what I think we would want to accept it. We don't want the record to reflect that the cost/benefit analysis does that. I think it's exactly as what counsel says, that's the object of this hearing, is to bring to light that proof.

But that's a motion and second. All in favor, aye.

COMMISSIONER JABER: Aye.

COMMISSIONER BAEZ: Aye.

CHAIRMAN JACOBS: Aye.

Oppose? Show me concurring except as to that section.

COMMISSIONER JABER: And with your indulgence, Mr. Chairman, I want to remind Staff of something that I was reminded of with Mr. Howe's argument. Mid County, very similar issues came up in that proceeding, and our Staff was supposed to, at the direction of the Commission, begin rulemaking because we don't have rules on 120.80(13). And the issue arose there, well, how do you determine what broad is, and what's a specific protest, and furthermore, is a party entitled to cross-protest if they want to raise new issues after one party, in this case OPC has protested. And I would agree that we need that rule. And Mid County, as I recall, that hearing was conducted two or three years ago, and I have yet to see any sort of rulemaking proceeding. So I would, with your indulgence, Mr. Chairman, direct our Staff once again to start that process.

CHAIRMAN JACOBS: So directed. Why don't you come back with a timetable on that for us?

So we now have Ms. Bacon's prefiled direct testimony as entered into the record.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

PREPARED DIRECT TESTIMONY

OF

DELAINE M. BACON

Q. Please state your name, address, occupation and employer.

A. My name is DeLaine M. Bacon. My business address is 702 North Franklin Street, Tampa, Florida, 33602. I am the Director, Financial and Strategic Analysis for TECO Energy, Tampa Electric Company's ("Tampa Electric" or "company") parent.

Q. Please provide a brief outline of your educational background and business experience.

A. I received a Bachelor of Science in Accounting from St. Leo College and a Masters of Business Administration from the University of Tampa. I am a Certified Public Accountant and a member of the Florida Institute of Certified Public Accountants. I joined Tampa Electric in October 1984 where I have held various positions within the Regulatory Affairs department, including the Director of Utility Financial Analysis until July 2000 when I was promoted to my current position. I am responsible for strategic and financial-related issues for TECO Energy, as well as developing TECO Energy's long-term financial forecasts.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to address the approach and validity of the company's cost/benefit analysis. The cost/benefit analysis was developed to demonstrate the net benefits that customers received from certain tax positions taken by Tampa Electric that were later disputed by the Internal Revenue Service ("IRS"). I will also address the consistency of the cost/benefit analysis with the intent of the settlement agreement dated September 25, 1996 between the Office of Public Counsel ("OPC"), the Florida Industrial Power Users Group ("FIPUG") and the company (the "Stipulation").

Q. Have you provided any exhibits to support your testimony?

A. Yes. My Exhibit No. ______ (DMB-1) consists of two documents.

Q. Why would a cost/benefit analysis be used?

A. A cost/benefit analysis is generally used to either determine the best approach for making a decision on a prospective basis or to confirm whether a previous decision was appropriate.

Q. Please describe the basis used in the cost/benefit analysis for determining the treatment of Tampa Electric's tax deficiency interest expense.

A. The cost/benefit analysis examined Tampa Electric's past tax positions to determine the appropriateness of including tax deficiency interest expense in the calculation of 1999 earnings. These tax positions created deferred taxes that were included in the company's last rate case and in the calculations of deferred revenues that benefit customers.

The basis of the cost/benefit analysis, therefore, is to determine whether the deferred tax benefits resulting from Tampa Electric's tax positions outweighed the eventual cost of associated tax deficiency interest expense. It is important to recognize that the deferred taxes and tax deficiency interest expense included in Tampa Electric's cost/benefit analysis are related to the very same tax positions. The cost/benefit analysis is included as Document No. 1 of my exhibit.

Q. Did Tampa Electric's cost/benefit analysis include all of the tax positions that were contested by the IRS, including those unrelated to the tax deficiency interest expense booked in 1999?

A. No. The company took a very conservative approach to its cost/benefit analysis by only including deferred taxes that were linked to the balance of tax deficiency interest included in its 1999 surveillance report. There were additional deferred tax benefits for ratepayers on issues contested by the IRS that did not lead to tax deficiency interest because the issues were resolved in the company's favor.

The approach for Tampa Electric was more conservative than the approach referenced by the Florida Public Service Commission ("Commission") when approving the tax deficiency interest for Florida Power Corporation ("FPC") in Docket No. 910890-EI, Order No. PSC-92-1197-FOF-EI. Document No. 2 of my exhibit shows the $17.8 million benefit that the Commission cited for approving FPC's tax deficiency interest. This $17.8 million result included the deferred taxes related to all issues raised in the

IRS Revenue Agent's Reports ("RAR"), regardless of whether the issues were later resolved for lesser amounts. This provided a larger deferred tax balance to compare to the tax deficiency interest. In contrast, Tampa Electric made a decision to narrow the benefits to only include those deferred taxes that were directly related to the interest expense included in its 1999 surveillance report. The benefits would have been greater if analyzed consistent with FPC's approach.

Q. Has the cost/benefit analysis approach utilized for Tampa Electric been accepted by the Commission in other cases?

A. Yes. The Commission required a cost/benefit analysis from FPC in its last rate case. The Commission also required an analysis from Peoples Gas System ("PGS") in Docket No. 971310-GU for determining whether tax deficiency interest expense should be allowed for determining the amount of over-earnings subject to refund for 1996. The Commission examined the benefits provided to customers from including deferred taxes in PGS' last rate case compared to the cost of the tax deficiency interest.

Q. Please explain the approach of the cost/benefit analysis used for determining the prudency of tax deficiency interest expense in 1999 for Tampa Electric.

A. The cost/benefit analysis for Tampa Electric considered two separate rate impacts to customers. First, it looked at the revenue requirements used in determining the company's current, permanent base rates. Second, the analysis considered the costs used in determining the deferred revenues and eventual refunds designated by the Stipulation.

The approach of the cost/benefit analysis was to examine the impact of the company's tax positions on these two separate rate impacts. The analysis first evaluated whether the tax positions taken by the company up to its last rate case resulted in lower permanent rates. The tax positions were then analyzed to determine their impact on the deferred revenue refunds provided to customers under the Stipulation.

The analysis proved that the company's actions leading up to its rate case, and for each year of the Stipulation period, lowered Tampa Electric's cost of capital. The lower cost of capital provided benefits to customers in excess of the tax deficiency interest expensed in 1999.

Q. How was the company's cost of capital reduced as a result of its tax positions?

A. The company's tax positions increased its deferred taxes, which are considered a cost-free source of funds and are included in the capital structure at a zero cost. If deferred taxes resulting from the company's tax positions were not utilized, then the company would have had to fund investments with other sources of capital such as debt and equity. These higher cost sources of funds would have increased revenue requirements for the rate case and for refund calculations under the Stipulations.

Q. What is the impact to customers in the cost/benefit analysis from deferring less taxes?

A. As shown in Document No. 1, the results of the cost/benefit analysis proved that customers enjoyed a \$12.4 million nominal net benefit (\$18.3 million if the historical benefits were brought to 1999 dollars with the opportunity cost of funds) as a direct result of Tampa Electric's tax positions on the specific issues included in the tax deficiency interest. In the cost/benefit analysis, the deferred taxes associated with the contested tax positions were removed from the capital structure and replaced with other external sources of funds, which resulted in an increased cost of capital.

The cost/benefit analysis measures the impact of how much higher rates would have been and how much less the deferred revenue refunds would have been during the Stipulation period if the company had not taken its tax positions. The higher permanent rates that were avoided and the potential for lower refunds were then compared to the actual cost for the tax deficiency interest to determine if customers received a net benefit (or cost) from the tax positions taken by the company.

Q. Would the cost/benefit analysis prove benefits for customers if the rate case impacts were ignored?

A. Yes. The cost/benefit analysis would still provide net benefits to customers even if the rate case items were ignored. If the rate case impacts were excluded from the cost/benefit analysis and only the deferred revenue years were analyzed, a $6.8 million net benefit would have been realized for customers.

Q. Is Tampa Electric requesting that the net benefits to customers resulting from the cost/benefit analysis be used to offset refunds for 1999?

A. No. The cost/benefit analysis proves that customers have already received more refunds than they otherwise might have because of the company's tax positions, and that customers have enjoyed lower base rates. However, Tampa Electric is not requesting that these benefits be returned to the company in 1999.

The reason for identifying the benefits is simply to prove that customers received net benefits from the company's tax positions despite the fact that the company incurred tax deficiency interest expense as a result of ultimately losing those positions. Since a $12.4 million net benefit over and above the tax deficiency interest is proven, the above-the-line treatment of tax deficiency interest expense for 1999 is fair and reasonable.

Q. In its protest, OPC states that "Tampa Electric wants to recover purportedly foregone revenues related to deferred taxes, which had not been requested previously, in the form of reduced refunds for the future." Is this correct?

A. No. The net benefits to customers related to the tax issues being addressed are $12.4 million. If the company sought to recover "foregone revenues," i.e., the $12.4 million of benefits that customers have enjoyed over and above the tax deficiency interest expense, there certainly would be no 1999 refund. In simple terms, Tampa Electric has proven quantitatively that its tax positions have been in the best interest of customers, and its decision making should not be penalized when some of those tax positions are disputed by the IRS.

Q. OPC's protest contends that since FPC asked for tax deficiency interest expense in its last rate case and Tampa Electric did not, then Tampa Electric is precluded from recording the expense. Could you please address that position?

A. Yes. OPC suggests that if a balance of tax deficiency interest is not included in base rates, then no tax deficiency interest can be placed as an above-the-line expense in the future. This type of policy would not reflect reality. FPC's current rates include $1.2 million of tax deficiency interest expense. OPC's logic implies that FPC could record no more than this balance in the future. In reality, FPC recorded $1.8 million in 1995, $2.5 million in 1996, $3.6 million in 1997, $4.2 million in 1998 and $6.0 million in 1999. What FPC recorded was appropriate as long as it was prudently incurred.

In addition, Tampa Electric had no tax deficiency interest to claim during its last rate case. To penalize Tampa Electric because another company <u>did</u> have current tax deficiency interest expense during their rate case would not be logical or fair.

In no way are the expenses presented in the utilities' rate cases meant to represent the only recoverable expenses in future years. Expenses for each period under review are examined for prudency. A cost/benefit analysis is a Commission method for determining whether tax deficiency interest is a prudent expense.

Q. Since the Stipulation specifically allowed tax deficiency interest related to the Polk Power Station, does this mean that all other tax deficiency interest expense is disallowed?

A. No. One of the controlling events surrounding the Stipulation was the construction of the Polk Power Station. The reference to tax deficiency interest for the Polk Power Station was included to address the tax position that the company was taking on its seven-year tax life. Through the language proposed by the Company in the Stipulation, Tampa Electric sought assurance from the parties to the Stipulation that the Polk tax life decision would be supported if the IRS disagreed with this specific tax position. The provision in the Stipulation was never intended to exclude or limit other similar expenses.

OPC's argument also falls short when you take it one step further. For example, the Stipulation addresses the inclusion of the Polk Power Station in rate base. Obviously, the fact that the Stipulation specifically allowed for the investment in the Polk Power Station did not mean that all of Tampa Electric's other new construction projects should be excluded from rate base.

Q. OPC contends that "there would have been no reason to state that tax deficiency interest related to the Polk Power Station would be recoverable since all such expenses would be allowable pursuant to the second sentence of Paragraph 11" of the Stipulation. Could you respond to this statement?

A. Yes. Paragraph 11 does not allow for any and all tax deficiency interest expense. It allows for reasonable and prudent expenses. The actual language in Paragraph 11 states:

> The calculations of the actual ROE for each calendar year will be on an "FPSC Adjusted Basis" using the appropriate adjustments approved in Tampa Electric's full revenue requirements proceeding. All reasonable and prudent expenses and investment will be allowed in the computation and no annualization or proforma adjustments shall be made.

Therefore it is inaccurate to say that Paragraph 11 required guaranteed above-the-line treatment by the Commission for Tampa Electric's expenses.

Q. Could you please respond to other assertions made by OPC regarding the intent of the Stipulations?

A. Yes. OPC's arguments can be easily refuted by focusing on the language OPC chose to add when describing the Stipulation. OPC makes the following statement in its protest:

> "A fair reading of these provisions, giving effect to each, should require Tampa Electric to calculate its 1999 earnings by first recognizing any interest expense on a tax deficiency assessment related to the Polk Power Station and then by using <u>only</u> adjustments consistent with those used in the last rate case. All reasonable and prudent expenses <u>within these categories</u> would be allowed to derive the excess earnings to be refunded." (Emphasis added)

OPC's position would alter the Stipulation language in two important places. OPC states "only" adjustments consistent with the last rate case can be used. The Stipulation referenced by OPC does not contain the term "only." OPC then states that reasonable and prudent expenses "within these categories" would be allowed. Once again, OPC has added limiting language because the second sentence of Paragraph 11 does not contain the words "within these categories." When reading the entire agreement, it is clear that several investments and expenses were listed with no intent to include or exclude any other items within the same categories.

OPC also wrote in its <u>Statement of Position on Appropriate Treatment of Interest Expense on Tax Deficiencies</u> that "Tampa Electric is faced with the first sentence of Paragraph 11 limiting adjustments to those with the last rate case," and "the surveillance report is first limited to adjustments consistent with the last rate case." Paragraph 11 of the Stipulation does not include the terms "limiting" or "limited."

The Stipulations were not designed as a "limit" to exclude all costs that were not specifically identified in its provisions. If so, there would have been no reason to state that all reasonable and prudent expenses will be allowed. Just because Polk-related tax deficiency interest expense was specifically mentioned in the Stipulation does not infer that all other tax deficiency interest is disallowed, whether prudent or not.

A more appropriate reading of the Stipulation would require that adjustments made in the last rate proceeding must be made in determining the return on equity during the deferred revenue period. Then, all reasonable and prudent expenses will be allowed. This is, in fact, the rationale approved by the Commission and explained on page 18 of its Order No. PSC-01-0113-PAA-EI.

Q. OPC has also made statements that tax deficiency interest expense beyond that related to the Polk Power Station cannot be allowed because it was never negotiated. Could you please respond?

A. Yes. OPC has stated that "nothing outside the stipulations can be relevant to calculations consistent with the stipulations," and "something not contemplated by the stipulations could not have any effect, positive or negative, on the amounts deferred pursuant to the stipulations' explicit terms." If this were so, then all adjustments made by the Commission to date that were not contemplated in the Stipulations would not be allowed and should be removed. For example, this would include the adjustments to the company's equity ratio, its short-term debt rate, and to its capital structure for specifically identifying deferred revenues. None of these adjustments were specified in the Stipulations nor included as adjustments in the last rate proceeding, but have been made by this Commission based upon a "reasonable and prudent" criteria.

As mentioned on page 18 of the Commission Order No. PSC-01-0113-PAA-EI, "the interpretation urged by OPC could lead to an unintended result." Using OPC's logic, the Commission would be required to reverse its decisions on several adjustments made over the Stipulation period to the detriment of customers. Tampa Electric does not believe any reversals are necessary, though, because the Commission's decision to not adjust for tax deficiency interest expense was consistent with its decisions to make the other adjustments. As in the past and as it should be in this instance, the Commission has examined the prudency of all expenses and investments for Tampa Electric and has included what is deemed reasonable in the calculation of deferred revenues.

Q. Please summarize your testimony.

A. Tampa Electric's actions in taking certain deductions on its tax returns benefited its customers despite the fact that the IRS rejected some of these positions by the end of 1999. The company's cost/benefit analysis shows that the tax deficiency interest expense was much less than the benefits that accrued to customers as a result of the company's tax positions. This tax deficiency interest was properly considered in the calculation of 1999 earnings as a reasonable and prudent expense.

Q. Does this conclude your testimony?

A. Yes, it does.

BY MR. WILLIS:

Q Please summarize your testimony.

A Yes. Good morning, Commissioners. My testimony demonstrates that the interest on tax deficiencies that was incurred by Tampa Electric in 1999 was prudent and in the best interest of ratepayers. My testimony supports that conclusion through a cost/benefit analysis. This cost/benefit analysis shows that the benefit of deferred taxes associated with these tax positions far outweigh the interest expense associated with these taxes. The cost/benefit analysis examined the impacts on customers due to the tax positions taken by the company. This cost/benefit analysis is consistent with previous cost/benefit analyses accepted by this Commission when examining the prudency of tax deficiency interest expense.

The deferred tax benefits included in the last rate case and in the deferred revenue years were compared to the tax deficiency interest costs, and the result was that customers received a $12.4 million net benefit over and above the cost of the tax deficiency expense. Even if all of the rate case benefits from the cost/benefit analysis are excluded and only the deferred revenue years are analyzed, customers still received a $6.8 million net benefit.

The benefit shown in the study prove that Tampa Electric's tax positions have been in the best interest of ratepayers, even after including the tax deficiency interest cost incurred in 1999. Therefore, it is appropriate to consider the 1999 tax deficiency interest expense as a prudent and allowable expense in the calculation of 1999 earnings.

Commissioners, the cost/benefit study is simply one tool the Commission can use to test the reasonableness and the prudence of this expense to determine whether or not to allow that expense in the calculation of Tampa Electric's 1999 earnings. This is all this cost/benefit analysis does. It is important to note that the company is neither asking for the net benefits to be returned to the company nor requesting changes to the deferred revenue plan because past rates are too low. We are simply saying that the analysis shows that the company's actions with respect to its tax positions resulted in net benefits and therefore are prudent.

It was appropriate for the Commission to rely on this analysis when it approved the tax deficiency interest expense in the PAA order. My direct testimony also addresses the content of the stipulations. The stipulation contains two key provisions that are being addressed in this proceeding. The first provision is Paragraph 10 which addresses the Polk Power Station. This provision is an agreement between the parties that if the company incurred any tax deficiency interest expense related to the Polk Power Station, the parties agree that such expense will be considered prudent in any proceeding before the Commission. This provision does not exclude or limit this Commission's approval of the recovery of this or any other prudently incurred expenses in any way.

The second key provision in the stipulation, Paragraph 11, includes the guiding principle that all reasonable and prudent expenses and investment will be allowed. Paragraph 10 does not limit Paragraph 11 in any way. Paragraph 11 clearly would allow for all prudent and reasonable tax deficiency interest expense. It does not conflict with Paragraph 10 which simply forecloses the possibility of any challenge to the prudency of any tax deficiency interest related solely to the Polk Power Station.

Paragraph 11 is very clear. The only way to construe Paragraph 11 as OPC would have you to do is to add language to the provision. OPC stated in its protest that Paragraph 11 says that only adjustments from the last rate case can be considered, and that prudent and reasonable expenses within these categories would be allowed to draw the refund. Commissioners, Paragraph 11 does not contain the term "only," nor does it contain the terms "within these categories." It plainly states that all reasonable and prudent expenses and investment will be allowed.

This Commission has consistently interpreted the stipulation time and time again. The stipulation requires that adjustments made in the last rate case proceeding must be made in determining the ROE during the deferred revenue period.

Then, and only then, all reasonable and prudent expenses are allowed.

Finally, the tax deficiency interest expense was included in the calculation of 1999 earnings because it was a prudent cost incurred in 1999. The prudency was tested and quantified through a properly calculated cost/benefit analysis. There is nothing in the stipulation that restricts this Commission from including a prudently incurred expense in the calculation of the company's earnings in 1999. Thank you.

CHAIRMAN JACOBS: Mr. Howe.

MR. HOWE: Thank you, Chairman Jacobs. As a preliminary matter, we've identified a couple of exhibits. One was the deposition of Ms. Bacon and another was a portion of the Commission's transcript from its 1992 rate case. Would it help things if I distributed those right now, and then I could not interrupt at cross?

CHAIRMAN JACOBS: That's fine. So we'll mark the exhibit, I'm sorry, the transcript as Exhibit 2.

(Exhibit 2 marked for identification.)

MR. WILLIS: Commissioners, I would point out that Mr. Howe has asked for this deposition to be marked as an exhibit and, presumably, moved into the record, I guess, in lieu of doing some cross examination. I would just point out that by presenting the deposition, we are permitted under the rule to ask questions of Ms. Bacon with respect to this exhibit just like any other cross examination exhibit that would be presented. So with that understanding, we don't object to it being marked, but we need that understanding.

CHAIRMAN JACOBS: Let me make sure I understand. What you're saying is, you want to be able to pose redirect based on a deposition exhibit?

MR. WILLIS: Yes, of course.

CHAIRMAN JACOBS: Okay. I think that's understandable.

Mr. Howe.

MR. HOWE: I have no objection.

CHAIRMAN JACOBS: Staff, we have a transcript of an agenda conference. Yeah, I first had a question of whether or not we should just take official notice of this, but we'll just go ahead and enter that.

MR. ELIAS: I think it would be easier for the sake of the record to have it marked as an exhibit and moved.

CHAIRMAN JACOBS: All right. Show this marked then as Exhibit 3, and that will be the transcript of -- I'm looking for -- the December 16th, 1992 agenda conference.

(Exhibit 3 marked for identification.)

MR. HOWE: Chairman Jacobs, just so I understand, so is the transcript of the deposition with the exhibits, that will be Exhibit 2 --

CHAIRMAN JACOBS: Two, correct.

MR. HOWE: -- and the transcript of the agenda conference will be Exhibit 3?

CHAIRMAN JACOBS: That's correct.

MR. HOWE: Thank you.

CROSS EXAMINATION

BY MR. HOWE:

Q Hello, Ms. Bacon.

A Good morning, Mr. Howe.

Q Ms. Bacon, could you first summarize what your role was and what your participation was in Tampa Electric Company's last rate case?

A I believe at the time it was 1992. I was working in the regulatory affairs department. I believe my title was administrator of revenue requirements. I basically handled the financial side of the regulatory issues before the Florida Public Service Commission. My role in the rate case was, of course, I had a large involvement in preparing the minimum filing requirements and the revenue requirements for the company.

Q Which minimum filing requirements did you prepare?

A Quite a few of them.

Q Well, for example, did you prepare the minimum filing requirements as they pertained to accumulated deferred income taxes?

A I think that there were capital structure MFRs that I prepared that had the accumulated deferred income taxes in them. There were also some backup schedules that I helped prepare with the tax department that had more detail in there.

Q Did you testify in that case?

A No.

Q Did you attend all the hearings?

A Yes, I did.

Q Did you attend the agenda conference?

A Yes.

Q And by the "agenda conference," I mean the one at which the Commission voted at the end of the hearings.

A Yes, I believe I was there.

Q In the -- when did the company file its rate case?

A I believe the filing was in April, May; May, I think, of 1992.

Q And what were the test years that were considered?

A There was a 1993 and a 1994 test year.

Q And how did the Commission set rates for 1993?

A Using 1993 as the test year.

Q And then was there a change in rates for 1994?

A Yes. There was a subsequent adjustment in the 1994 rates using the 1994 test year.

Q Are the rates that Tampa Electric is charging its customers today the same rates the Commission set for 1994?

A Yes, I believe so.

MR. HOWE: Chairman Jacobs, could I have another exhibit number, please. This is an excerpt from the final hearing in Tampa Electric Company's last rate case, and I believe that would be Exhibit 4.

CHAIRMAN JACOBS: Yes. Show that marked as Exhibit 4. And this is a transcript from the hearing?

MR. HOWE: Yes, sir. It's an excerpt; it is Pages 1009, 1010, 1013, and 1018.

(Exhibit 4 marked for identification.)

BY MR. HOWE:

Q Ms. Bacon, what we have provided is, the first page is just the first page of Volume 10 of the transcripts of the final hearing. The second page is just the index. And would you note there please on that second page, it refers to a Benjamin A. McKnight, III, whose prefiled direct testimony was inserted by stipulation. Who was Mr. McKnight?

A He was an external witness that Tampa Electric used to examine the taxes, the income taxes, and proposed the taxes in the rate case.

Q And if you would refer to the next page, it's just the first page of his prepared direct testimony. And what I would like you to refer to specifically is the last page.

A Uh-huh.

Q Now, there down on Lines I guess it's 20 through 22, it states, "The 1991 tax returns are being prepared and are not expected to be filed until September 15, 1992." Is this the normal pattern for Tampa Electric to file its tax returns approximately --

A Approximately, yes.

Q September 15th of the year following the year in question, is that it?

A Yes, September following the previous year.

Q And would it then be correct to state that at the time of Tampa Electric Company's last rate case, the company had not yet filed its 1991 tax return?

A That's correct.

Q And if you'd look at the preceding sentence to the one I just referred you to, Lines 19 through 20, it states, and I quote, we reviewed Schedule M included in the 1954 to 1990 tax returns. Is Schedule M the schedule and tax returns that reconciles book and tax timing differences?

A I know it does detail the timing related items that are included in the tax return, yes.

Q And would this indicate that at the time of the company's last rate case the only Schedule Ms that had been reviewed by your outside expert from Arthur Andersen & Company was the Schedule Ms for 1954 through 1990?

A Right. Those are the only ones that had been filed by the Commission. However, the test years that we included in the rate case did include timing related items, and we did have schedules that detailed those down to the actual timing related item itself in the calculation of our budgeted deferred income taxes.

Q But those were projected, were they not?

A They were projected, but they still were based upon tax positions that we were going to be taking on particular tax related items. So they had to have assumptions behind the -- you know, each one.

Q Would it be fair to say that what you projected may or may not have been identical to what was actually incorporated in the tax returns that were actually filed by the company for the years 1991 through 1998?

A I believe it probably was not identical, but what we did in preparing the cost/benefit analysis is, we went back to the tax department and asked them to examine the work papers from the 1993 and 1994 test years, and only those tax positions that were included in those test years did we include in the cost/benefit analysis for the '93 and '94 years. So we -- so to the extent that there was a tax position that we took that we are trying now to seek recovery for the interest on the tax deficiency, if it were not included in those test years, we did not put it in the cost/benefit analysis for those two years.

Q Are you going to be offering any evidence, though, to demonstrate exactly what positions were included in your projected test year filing for 1993 and 1994?

A I'm trying to think about, you know, all the paperwork that we've provided so far. I know we have discussed this issue. We prepared a paper that we provided to the parties on May 24th when we met with the parties to review our cost/benefit analysis. And in that paper, we did describe this issue and how that we did not include the full amount. I do have the numbers that I can tell you how much of the total that we did back out because it was not in the test years. I do not have with me, I don't believe, the detail of that number, though.

Q And when you said "May 24th," just so the record is clear, you are referring to the meeting that was held on May 24th of the year 2000?

A Yes, I'm sorry, the year 2000.

Q Okay. We'll get to that in a minute. Ms. Bacon, would you agree that the rates for 1993, the rate increase, I'm sorry, for 1993, the rate award for that year, was set in the traditional manner based upon the company's rate base, rate of return, income statement, capital structure?

A Yes, it was.

Q Would you agree that in -- that the rates for the final revenue award for 1994 was established based upon a financial integrity standard?

A There was an additional adjustment -- or there was an adjustment within the case. I wouldn't say it's an additional adjustment. But the company -- or the Commission did make an adjustment in 1994 to target a 3.75 times coverage ratio, and they did that by increasing the amount of eligible CWIP that you place in rate base of which the company would earn a cash return as opposed to accruing allowance for funds used during construction, or AFUDC. And by doing so, we targeted the 3.75 times coverage ratio in 1994.

Q Referring, first, to the 1993 revenue award. Did the company -- did the Commission test the calculated revenue requirement for 1993 against this same financial integrity standard?

A Yes, they did. The number was above 3.75, so no adjustment was necessary for 1993.

Q And then did they test the 1994 revenue requirement against this same standard?

A Yes, they did.

Q And did they find that the revenue requirement calculated in the traditional manner was inadequate in that it did not meet the standard?

A That's correct. They increased the amount of CWIP eligible -- or they increased the amount of eligible CWIP in rate base to target the 3.75.

Q And did this provide sufficient revenues then for 1994 for the company to meet the 3.75 times interest coverage?

A Based upon that projected test year, yes.

Q After the Commission reached its decision for 1993 and 1994 initially in the December agenda conference, which an excerpt from that special agenda conference has been identified as Exhibit Number 3, did the company find something wrong with the Commission's math?

A I believe we did send a memo to the Commission after the initial decision was made detailing out some calculation problems that we had. And I think we sent that memo back to the Commission and the issue was reheard.

Q I'm sorry, the issue was what?

A In other words, they revoted on the amount of CWIP and changed the final ruling for 1994.

Q And when you say, "they changed the final ruling," do you mean that they found that the company was correct that the Commission had originally not done the math correctly, that the revenue award for 1994 as originally voted would not, in fact, allow the company to earn a 3.75 times interest coverage?

A Yes. Basically, what happened I believe was, there was one of the adjustments that the Commission made at the last minute that did not get into the calculation, so we pointed that out, and they went back and readjusted the calculations to target the 3.75.

MR. HOWE: Chairman Jacobs, if I could have an exhibit identified. What we have distributed is a -- it's a letter dated January 12th, 1993 to Mr. Steve C. Tribble from

Mr. Lee Willis.

CHAIRMAN JACOBS: Very well. Show that marked as Exhibit 5.

(Exhibit 5 marked for identification.)

BY MR. HOWE:

Q Ms. Bacon, have you seen this letter before?

A It's been a while, but I'm sure I have, yes.

Q Is this the letter that you were referring to -- the way the company notified the Commission that, in fact, the revenue requirement for 1994 had not been calculated sufficiently -- or had not been calculated in a way to allow the company to, in fact, earn a 3.75 times interest coverage?

A That's correct.

Q And the company's position was that the Commission's calculation only allowed a 3.72 times interest coverage; is that not correct?

A That's correct.

Q And if you'd look at that last page. Did you have any role, Ms. Bacon, in the calculation of the interest coverage?

A Yes, I did.

Q This last page then, does this show your own calculations?

A Yes, it does.

Q And would this demonstrate that the Commission needed to increase the revenue requirement? Because under your calculations, the company would only earn a 3.72 times interest coverage, not the 3.75 times the Commission intended.

A That's correct.

Q And to do this calculation, would it be correct to state that you kept the interest expense constant in your calculation even after you added additional CWIP?

A That's true, because the interest expense is based upon the real capital of the business, and whether or not you put CWIP in and out of rate base does not change the real cash interest cost.

Q What is the real interest that is used in the calculation? It's 3.75 times interest, but what is that interest?

A It's the allowed interest in the revenue requirement. Basically, the interest on the investment that you are allowed to earn a return on.

Q All right. And would it be fair to state that you were able to do this calculation without reference to either the rate base or the capital structure?

A Could you repeat that?

Q Would it be fair to state that you were able to do this calculation as shown on this last page without reference to the rate base or the capital structure?

A I mean, those particular portions of the revenue requirement are buried within this. When you say, not to use those, I mean the fact that they might have remained consistent, but they are necessary parts of the input. So I'm not exactly sure of your point.

Q All right. Where was the rate base taken into consideration in your calculation of the amount of additional CWIP to add to rate base to achieve the 3.75 times interest coverage?

A Well, like I said before, they take the rate base times the cost of capital, that's the interest-related pieces of the cost of capital, to derive the interest that's allowed of which they then take the 3.75 times. I think to that interest amount, they do add the interest on the CWIP that's outside the rate base such to get to the total cash interest.

Q Would that be what's referred to down here, the little asterisk you see down towards the bottom, maybe a fifth of the way up from the bottom, where it states, and I'll quote, assumes all CWIP and rate base except for, quote, over projection, close quote, amount of $11,959,000?

A Yes, I think that's -- it's been a while since I've seen this page, but yes, I think that's correct.

Q Would it be fair to state that once you identify the amount of interest that needs to be covered, that you can calculate the revenues by multiplying it by 3.75 times?

A Well, I don't know if it's quite that easy. I believe what you're actually getting with the 3.75 times is the net operating income, not necessarily the revenues. In other words, what you're basically doing is, you're adjusting the CWIP amount that they put into rate base of -- when they go through and they multiply that through the revenue requirement formula, that you would get sufficient net operating income of which when they add the taxes back on a pretax basis, you would get a pretax coverage of 3.75.

I think, you know, the formula should be on here. So it really doesn't have anything necessarily to do with revenues. It's more like pretax income that they're targeting --

Q All right. And then --

A -- in the numerator.

Q Right. But you set the revenues at a level that it will provide that pretax income calculated in the manner you just described?

A That's true.

Q From your participation in the last rate case, Ms. Bacon, who was the member of the Commission Staff who advised the Commissioners on how --

A I'm sure it was a number of them.

Q Yes. But, for example, if we refer to what has been identified as Exhibit Number 3, which is the transcript of the December 16th to 17th, 1992 special agenda conference, and if you would, just kind of leaf through to Page 194. And I guess, actually, I should put you even further ahead to Page 214 and 215. And on forward, we seek repeated references to a Mr. Neil advising the Commissioners on how to meet the 3.75 times interest coverage. Do you know who that Mr. Neil is?

A Yes, I do.

Q Who is he?

A He's an employee of Tampa Electric. He works in the regulatory affairs department.

Q And was he formerly a Staff member of the Public Service Commission?

A Yes, at this time he was.

Q Do you recall him as the individual who advised the Commissioners on the 3.75 times interest coverage issue?

A I believe there were other people that also helped work with him on this. I don't believe he was the sole person that was dealing with this, but he appears to be answering questions here related to it.

Q I'd like to move on to another topic now and that would be your cost/benefit analysis. But before we address the specifics of the one you've offered here today, when did Tampa Electric first start performing or start compiling the information for a cost/benefit analysis to explain the inclusion of interest expense on tax deficiencies for 1999?

A I believe it was soon after the company booked the items in the fall of 1999.

Q Ms. Bacon, did you participate in the Commission docket concerning Peoples Gas Systems 1996 earnings?

A Yes, I did. It was my participation in the 1996 overearnings docket for Peoples Gas that -- where I became aware and familiar with the cost/benefit analysis methodology of the Commission using that to test the prudency of interest on tax deficiencies.

Q Were you the person then with Tampa Electric who first realized that perhaps a cost/benefit analysis could be used to justify interest expense on tax deficiencies for 1999?

A I think it was my area of expertise, yes.

Q Did you pattern your initial cost/benefit analysis after the one used and accepted by the Commission in the Peoples Gas case?

A Yes. The fundamentals of the cost/benefit analysis are identical, yes. It looks historically back in terms of what would have been the impact on revenue requirements and therefore customers rates, given a different decision on taking tax positions on these issues.

Q When did you complete your first cost/benefit study?

A The first one ever, or the first one in this particular hearing?

Q The first one addressing 1999.

A I believe we probably completed the cost/benefit analysis probably April of the year 2000.

Q Now, you referred earlier to a meeting on May 24th, I believe, of the year 2000.

A Yes.

Q What was that meeting?

A I called the Staff and requested that they set up a meeting between Staff and the other parties in this docket such that we could bring the cost/benefit analysis up there and review it with them.

Q And you were in attendance of that meeting, were you not?

A Yes, I was.

Q And I was there, too, wasn't I?

A Yes.

Q And what was the magnitude of the net benefit that the company had calculated at that time?

A I believe at that point in time the amount was 18,263,000, approximately. That would be a net benefit.

Q So, Ms. Bacon, then am I correct that on May 24th, 2000, the company first presented a cost/benefit analysis to the Staff and other parties which the company believed showed a net benefit to customers of approximately $18.3 million?

A That's correct.

MR. HOWE: Chairman Jacobs, if I could, I'd like to have another document marked for identification.

CHAIRMAN JACOBS: Very well. Show this -- and we'll title this, I guess, let's say, August 20, 2000 letter --

MR. HOWE: Chairman Jacobs, this was received by our office on August 2nd, 2000. If I might, it's a correspondence to Christine Romig from Ron Neil, that's spelled N-E-I-L, with documents attached to it.

CHAIRMAN JACOBS: You said "7th," I see 2nd. It doesn't matter, though.

MR. HOWE: I'm sorry, I thought you said "20th" at first. August 2nd?

CHAIRMAN JACOBS: Yes.

MR. HOWE: Okay.

CHAIRMAN JACOBS: That's date stamped, I see.

MR. HOWE: Yes, that's the date that we received it. And would that be Exhibit 6?

CHAIRMAN JACOBS: Yes.

(Exhibit 6 marked for identification.)

BY MR. HOWE:

Q Ms. Bacon, are you familiar with this document?

A Yes, I am.

Q Did you participate in any way in its submittal?

A At this point in time, I had already left the regulatory affairs department when this was filed but certainly the preparation of the cost/benefit analysis, and I was familiar with the fact that this package was being brought together at that point in time, yes.

Q Now, this is from Ron Neil. Is this the same Mr. Neil who was formerly on the Commission Staff and advised the Commissioners on the 3.75 times interest coverage?

A Yes, it is.

Q Did the two of you work at any point in putting together the cost/benefit analysis that was first presented to the Commission, I'm sorry, presented at the meeting on May 24th, 2000?

A Yes. Ron reported to me before I moved from the regulatory affairs department.

Q So were the two of you working together?

A Yes.

Q And he was under your direction and supervision?

A Yes, he was.

Q Now, looking at the letter itself, I note first that it is not dated. And do you know how this was -- who this was distributed to? There's no carbon copies designated. Obviously, we came into possession of it on August 2nd, 2000.

A As far as I'm aware, this was sent to all of the parties, including the Commission Staff, and filed with the Commission. I believe the date of the memo that was sent out from Tampa Electric, it was sent out July 27th, even though it's not dated.

Q I'm sorry, could you give me that date again?

A July 27th.

Q Now, that second full paragraph states that, and I will quote, we were also asked to make some adjustments to the benefit analysis based upon discussions we had at our May 24 meeting. You didn't have any discussions with my office, did you?

A No. I believe it was at the meeting where, you know, just general conversation and questions were being asked as to, you know, what was included in the cost/benefit analysis is what derived these changes.

Q In Paragraph B, continuing down, it states, and I quote, we had not included the deferred revenue benefits/costs to customers for 1999 in our initial analysis of the impact to customers and have now provided these results.

A Correct.

Q Did somebody ask that you include deferred revenue benefits/costs to customers for 1999?

A Some of these changes were initiated on our own, and some of them actually did come from suggestions. I'm not exactly sure which ones were which. It could be that that one was one that we thought it was, you know, at the point in time to go ahead and include 1999. I think we had not included it earlier because the numbers were just being developed for the historical year 1999.

Q You don't recall my office suggesting you make any changes to your cost/benefit analysis, do you?

A No, I don't believe so.

Q All right. Where would suggested changes have come from then?

A Probably from Staff and just conversations at the meeting in general.

Q Ms. Bacon, if I might, you notice I've, Commissioners, also, I put -- there's a tab here. The reason for that is, these pages are not numbered, and the tab is to indicate the start of the cost/benefit analysis that was provided. If you could, refer to that, Ms. Bacon.

A Yes.

Q Now, this cost/benefit analysis shows net benefits of $11,085,000, does it not?

A Correct.

Q So, now, is this -- essentially we have seen the first cost/benefit analysis go from approximately $18.3 million, and we're now down to 11.1 million, approximately; is that correct?

A Yes. I think there was one change that primarily drove the majority of those -- that difference.

Q And what was that one change?

A I believe in the previous cost/benefit analysis we weren't completely including the income tax true-up adjustment. To the extent you have more interest in your cap structure, you are going to get a benefit in your income taxes and the net operating income through the revenue requirement formula. We were not fully passing that benefit through, and when we changed it, it caused quite a substantial drop in the benefits.

Q Who suggested you make that change?

A Again, you know, I'm not just sure of the details as to, you know, exactly who had offered up that. It probably just -- through just discussions we might have thought about it. I'm not really sure.

Q Do you mean discussions internally or discussions between the company and the Staff?

A Well, I think just presenting the cost/benefit analysis to the parties even got us also just thinking more about, you know, what we did. It was quite an effort to pull this level of detail together, and I think taking a step back and presenting it to the parties, you know, gave us a fresh look at it ourselves. And it was that and also just other questions that Staff raised at the meeting.

Q All right. And --

COMMISSIONER JABER: Ms. Bacon?

THE WITNESS: Yes.

COMMISSIONER JABER: I'm sorry, Mr. Howe. May I interrupt for just a minute?

MR. HOWE: Certainly.

COMMISSIONER JABER: What you just said was that you made an accounting error.

THE WITNESS: Pretty much.

COMMISSIONER JABER: And our Staff pointed that out to you?

THE WITNESS: Yes, ma'am.

COMMISSIONER JABER: And that was pointed out to you at that meeting, at the May 24th meeting?

THE WITNESS: Right. There were a number of things that were pointed out, and there were a number of changes that were made. And like I said, I'm not exactly sure if it were -- if all the changes were pointed out by the Staff, but generally through the meeting and subsequently we found these issues, and we made corrections for them.

COMMISSIONER JABER: Those accounting errors, are they accounting errors pursuant to the NARUC system of accounts, or is it related to FASB?

THE WITNESS: No. It's really more associated with the revenue requirement formula and just, you know, putting the calculations together. Because what we're basically doing is pushing through the capital structure and the rate base and the net operating income, the impacts of taking different tax positions. And buried in there, there is just, you know, room for some -- a lot of calculations, and this one was just a substantial one that we corrected.

COMMISSIONER JABER: When we considered this item at the December 2000 agenda, had these changes already been made?

THE WITNESS: Yes, ma'am. Yes.

MR. HOWE: Commissioner Jacobs, we're going to now distribute another cost/benefit analysis.

BY MR. HOWE:

Q Ms. Bacon, if you could, I'd appreciate it if you'd hold this last exhibit, which has been identified as Exhibit 6, open to the summary of your cost/benefit analysis.

MR. HOWE: Chairman Jacobs, this is a cost/benefit -- I'd ask this be marked for identification, and as to what title, I would suggest "Cost/Benefit Analysis Showing $10.7 Million of Net Benefits."

CHAIRMAN JACOBS: Conducted by yourself? This is done by your --

MR. HOWE: No, no. This is the one the company provided. This is in fact, Chairman Jacobs, the one that the Commission accepted in its proposed agency action order.

CHAIRMAN JACOBS: Okay. Show then marked as Exhibit 7, TECO cost/benefit analysis.

(Exhibit 7 marked for identification.)

BY MR. HOWE:

Q Ms. Bacon, do you recognize this document that has just been distributed as the cost/benefit analysis submitted by the company to the Commission and, in fact, the one that the Commission accepted as the basis for its proposed agency action order?

A Yes. It shows a net benefit of 10,741,000.

Q And if you would, holding these two summary pages side by side, the one from Exhibit 6 and from Exhibit 7, first of all, would you agree that all of the footnotes are the same in both?

A Subject to check, they look similar, yes.

Q Now, would you also agree that on both analyses the rate case benefits shown for the years 1993 through 1999 are the same?

MR. HOWE: And, Commissioners, rate case benefits are identified on three separate lines. Going down the left-hand column, if you'll look at the period 1992 to 1994, tax period, you'll see rate case benefits beginning with a negative 13 and continuing on. And then you'll see it also for the 1989 to '91 tax period and for the 1986 to '88 tax period.

A I would point out, Mr. Howe, that that's not all of the impacts of the rate case included in that line, though, just so the Commissioners understand that.

Q My question is just, are the entries the same in both analyses? In other words, the rate case -- on the lines that you have designated as, quote, rate case benefits, close quotes, are the entries the same on the cost/benefit analyses shown on Exhibit 6 and Exhibit 7?

A Actually, it appears, and this is my recollection as well, that, really, all of the years for 1993 through 1998 are identical to what they were before. I mean, if you go across the page, if I'm not mistaken --

Q That's what I mean. They're all -- they are identical. The rate case benefits are the same in both these analyses.

A Well, not just the rate case benefits. I would say the entire year, including even the deferred revenue. You know, refund impacts are also the same through 1998. The only number on this particular cost/benefit analysis that was changed, if you look under the 1999 column, the first number up at the top of the deferred revenue benefit/cost, it went from 1,722,000 to 1,376,000. That's really the only change between these two cost/benefit analyses.

Q Okay. And for the record, when you say "between," the 1,722,000 is the numbers for 1999, is deferred revenue benefit --

A Right --

Q -- in Exhibit 6 --

A -- it's the first number under the '99 column.

Q Yeah. I just want to make sure the record is clear. That's Exhibit 6 and you were comparing that to the 1,376,000 shown under 1999 for Exhibit 7?

A That's correct. And as we pointed out before, one of the changes that we had made was to include 1999 in the

July 27th filing. When we went to go do that, again, a slight, a very minor mathematical error. The expansion factor had gotten zeroed out, and it basically overestimated the benefits in the July 27th filing by $343,000. We realized it as soon as this filing went out the door, and we went back and immediately corrected it and sent it back to the Staff.

COMMISSIONER JABER: Ms. Bacon, then let me come back to my question, because I thought you said to me that Exhibit 6 is what we had at the December 2000 agenda. I asked you if you had corrected that number when we considered the item at the December 2000 agenda, and you said yes.

THE WITNESS: Yeah.

COMMISSIONER JABER: In response to Mr. Howe's questions, it appears that Exhibit 7 is what was included in the PAA order. I want to give you an opportunity to clarify it for me so that I'm clear.

THE WITNESS: Certainly, Commissioner. I apologize. There is no doubt Exhibit 7 is the cost/benefit analysis that was used by the Commission in the PAA. What I was responding to when you asked me the question was, did the correction -- was the correction related to the income tax true-up adjustment that was of material amount that affected this cost/benefit, was it made prior to the PAA, and the answer to that was, yes.

But it is true, there was another minor change of $343,000 that was made within just, like, two weeks of this filing. And this became the final cost/benefit analysis that went into the PAA.

COMMISSIONER JABER: Exhibit Number 7.

THE WITNESS: Correct.

BY MR. HOWE:

Q Ms. Bacon, do you have -- what has been identified as Exhibit Number 7, do you have that there with you in your records?

A Yes, I believe so.

Q Do you have the cover letter that went with it?

A I could check. I don't believe there is a cover letter with this particular cost/benefit analysis. It was sent out, like I said, within a couple of weeks after the July 27th filing was sent out.

Q Do you know who it was sent to?

You may note, Commissioners, from the top of Exhibit 7, we received it from the Public Service Commission on December 18th of the year 2000.

Do you know how this -- was this only provided to the Staff?

A Mr. Howe, I'm not exactly sure why you did not receive your copy. I understand you pointed out to me in my deposition that you had not received this until a couple of days later directly from the Staff. I'm not exactly sure about what the circumstances were that drove that, but this is the final one that was used.

Q Just for clarity, keep in mind, it was first considered by the Commission at an October agenda conference, was it not?

A Yes.

Q I'm just -- sorry, your reference to a couple of days later, I just wanted to be clear that this --

A That's when it was sent, yes.

Q All right. If you would now turn please to Exhibit 1, which has been identified as the exhibit appended to your testimony.

A Did you give me a copy of that or is that --

Q That's the exhibit to your prefiled testimony --

A Oh, okay.

Q -- and that was identified, I believe, at the very beginning as Exhibit 1.

A That's correct. Okay.

Q All right. Ms. Bacon, now, you have arrived at a -- you are alleging a net benefit of $12.4 million; is that correct?

A That's correct.

Q What is the difference between Exhibit Number 1 and Exhibit Number 7, which purports to show a net benefit of $10.7 million?

A Well, first thing, let me make sure that everyone understands, it is not a correction or anything like that. It's not a change in the formulas. It's not a change in any of the mathematical calculations. What we simply did in this particular cost/benefit analysis was to push through the decisions that the Commission had made on 1999 in and of itself through the calculations for 1999.

If you recall, what we had put back in the summer for 1999 was simply the company's filing for 1999 because that's all we had at that point in time. 1999 had not been reviewed by the Commission. Once we received the final PAA, we basically just took those numbers for 1999 and pushed them through the cost/benefit analysis.

COMMISSIONER JABER: What does all that mean? That you've made now -- you have now made all of the adjustments that are appropriate for 1999, and your Exhibit Number 1 reflects that?

THE WITNESS: Yes. If you think about it, the whole cost/benefit analysis, it uses the rate base, the cap structure, the amounts of every single deferred revenue year. And to the extent that the Commission made decisions locking in those numbers for 1999, we simply incorporated those amounts into the calculations, did not change the methodology, or did not changes the mathematics of it, just simply just pushed through decisions so that it was consistent with your final decision.

COMMISSIONER JABER: "Pushed through decisions" means that you have incorporated all of the decisions and the adjustments we have made for 1999.

THE WITNESS: Yes, Commissioner.

BY MR. HOWE:

Q Ms. Bacon, would you agree that between Exhibit 7 and Exhibit 1, the only difference is that in your Exhibit 1 all the differences are in the year 1999 as deferred revenue benefits or costs; is that correct?

A That's correct.

Q I'll be referring now almost, hopefully, exclusively to Exhibit 1. Exhibit 1, then, the rate case benefits you show are the same as those were shown for Exhibit 6 and Exhibit 7, are they not?

A The avoided higher permanent rates are the same numbers, yes. I would point out that those are not all of the rate case impacts.

Q All right. And, for example, you break it down by tax periods, is that correct, three-year tax periods?

A That's correct.

Q And for the tax period 1995 to 1998, you do not have any rate case benefits for 1993; is that correct?

A That's correct.

Q But for 1993, you do have rate case benefits arising out of the 1992 to 1994 tax period. I should say in this case it's a cost of $13,000, is it not?

A Yes, it is.

Q And, again, for the 1993 rate case, you have for the 1989 to 1991 tax period $1,231,000 of benefits; is that correct?

A Yes.

Q And for the 1986 to 1988 tax period for 1993, you have a benefit shown of $487,000; is that correct?

A Yes.

Q Moving to the 1994 column. Again, you have no entry as a rate case benefit for the 1995 to 1998 tax period; is that correct?

A Yes, it is.

Q And for the 1992 to 1994 tax period, you show an amount of 268,000, and that is repeated in each year 1994 through 1999; is that correct?

A Yes, it is.

Q Why are those numbers the same?

A You mean the --

Q Why is it 268,000 each year 1994 through 1999?

A Because we're basically assuming that once the rates are set in 1994, that amount of higher rates was locked in for the remainder of the permanent rates through 1999.

Q And would that be then true for the $1,307,000 entry you show under the column 1994 for the 1989 to 1991 tax period?

A Yes, it is.

Q And for the 1986 to 1988 tax period, you show an amount of $517,000; correct?

A That's correct.

Q And that for the same reasons then continues through until 1999?

A That's correct.

Q Now, Ms. Bacon, for purposes of this cost/benefit study, have you implicitly or explicitly assumed that rates were set for 1993 and 1994 in the same manner?

A We basically ran the numbers through the revenue requirements in a similar fashion, yes.

Q Why did you treat 1993 and 1994 in a similar fashion if rates were set differently for 1994 than for 1993?

A If you're referring back to the financial integrity study, Mr. Howe, I will tell you that at the time that we prepared the cost/benefit analysis, I simply did not think -- or recall the cost -- the financial integrity adjustment for the 3.75 times and did not put it into the cost/benefit analysis.

However, I will tell you that I think we have to -- I don't think that it's necessarily appropriate to do that. I think we have to keep -- what's important here is the impact -- the actions that the company took in relation to its tax positions on the revenue requirements and the calculations of the company's test years. And whether or not the Commission would have went over into the CWIP issue within the rate case and made a separate adjustment over there does not take away from the fact that this particular decision, you know, increased deferred taxes and therefore brought benefits into the test year. And we can sit here today and speculate whether or not the Commission would have made that separate adjustment. It was in another whole part of the rate case, but I would point out that even if we pulled out all of the 1994 test year results, the benefit is still 8.5 million for the entire cost/benefit analysis.

So, I mean, we can debate that. I believe it is debateable. I don't believe it's appropriate to include it, but at the same time the net result after you pull out the '94 impacts is $8.5 million, so the cost/benefit analysis still stands. In fact, it proves that it was a prudent decision to take these tax positions.

Q Now, Ms. Bacon, I guess to go back to the beginning of the statement you just made, did you state you simply forgot that the rates for 1994 had been set on a different basis than they had for 1993?

A I did not put it in the cost/benefit analysis. It did not come up in our discussions, and the best I can tell you is, no, I did not think about it.

Q All right. And these various cost/benefit analyses have these same numbers in them for the years 1994 through 1999, did they not, the one in May of 2000 and what is shown in Exhibit 6 and 7?

A That's correct.

Q And these analyses were provided to Staff members, some of whom also worked on your 1992 rate case; isn't that --

A It was a long time ago, Mr. Howe. I mean, I can tell you I honestly do not believe that anyone thought about it.

Q All right. Well, I guess then, Ms. Bacon, my question is, did the Commission itself then accept in its PAA order a cost/benefit analysis that contained a factual misrepresentation either -- even if it was by oversight of the party who provided the cost/benefit analysis and the Staff members who provided the recommendation to the Commissioners?

A I think given the fact that it did not come up, it was not discussed, but at the same time I also believe that it's a very debateable thing as to whether or not it's even appropriate to include the 3.75 times calculation. Like I said, that was another part of the rate case. The Commission would have had to take separate action away from and apart of this particular decision. They would have had to have made a decision to lower the CWIP and rate base. And it does not take away -- I think you have to keep in mind what we're trying to get to here.

What we're trying to do is to look at the impact of this action on the revenue requirements of the company. And there is no doubt about it, this created higher deferred taxes. And higher deferred taxes are cost-free sources of funds. And to the extent that they offset other, you know, sources of funds that have a cost rate, there's savings there. And whether or not the Commission would have went and then made a separate adjustment in the CWIP I think is arguable of whether or not it should even be in the cost/benefit analysis.

And the other point, too, that I would make is that if you go down the path and if you'll assume, okay, the Commission would have made the adjustment, there's two things to consider. One I've already pointed out, that even if you removed the 1994 test year from the cost/benefit analysis, it's still $8.5 million net benefit. And the second thing I would point out is, when you would have made that adjustment to lower the CWIP in rate base, we would have booked higher AFUDC. And right now, today, the scrubber that is being recovered through our environmental cost recovery clause would be more expensive, and so customers still would have been paying higher rates. And if you really wanted to push through that assumption, you would have to push through those costs as well, so I think it still would have come out to be a net benefit, but I also believe it's arguable whether or not you should even do that.

CHAIRMAN JACOBS: Mr. Howe, is there a point in time where we can take a break in your cross?

MR. HOWE: Anytime you'd like would be fine.

CHAIRMAN JACOBS: All right. Why don't we do that? We'll take a break and come back at 11:30.

(Brief recess.)

CHAIRMAN JACOBS: We'll go back on the record. Mr. Howe, you may continue.

BY MR. HOWE:

Q Ms. Bacon, still referring to the first page of Exhibit Number 1. I have written down some numbers, and I'd appreciate it if you'd write them down, too, and see if you agree with me. I've totaled up the various categories of numbers that you have on this Page 1 of your Exhibit Number 1. And for the category of quote, avoided higher permanent rates, close quote, for 1993, I show a total of 1,705,000, and that's just by adding those things you have -- the entries you have under 1993. And you have the total there at the bottom, I believe, 1,705,000.

A That's correct.

Q All right. Now, the next thing I did was, again, still in the category of avoided higher permanent rates, I added all of your entries for 1994 through 1999: The 268,000 you have for the 1994 tax periods, the 1,307,000 you have for the 1989 to 1991 tax period, and the 517,000 you have for the 1986 to '88 tax period. I just added those all up, and I get a total of 12,552,000. And so you'll know how I did that, it's just 268,000 times 6 plus 1,307,000 times 6 plus 517,000 times 6.

A That's in addition to the 1993 impact?

Q I'm treating those separately. 1993 I have as 1,705,000. For 1994 to 1999 I have a total of 12,5--

A Subject to check, I agree with your calculation.

Q I added those together, I got a total of 14,257,000.

A Okay.

Q I then added up all the pluses and minuses for the category of, quote, avoided lower/higher deferred revenue refund. And when I add all those together, I get a total of 5,690,000.

A Okay. Hang on just a second if you want me to check that number.

Q Yes, please.

A Five million, six, nine, zero?

Q Yes, ma'am.

A Uh-huh, yes.

Q And then adding that to the 14,257,000 I had before, I get a total of $19,947,000.

A Correct.

Q Now, the next category, I went to your, quote, tax deficiency interest expense, close quote, and I added those pluses and minuses. And I got a total of negative 7,542,000.

A Yes.

Q And when I subtract that from the previous subtotal of 19,947,000, I get a total of 12,405,000, which I think is real close to the 12,406,000 you are showing.

A That's correct.

Q Now, Ms. Bacon, if you'll note, the total of deferred revenues that are shown here, would you agree, are in an amount of 5,690,000?

A That is the impact of the deferred revenue years, yes.

Q Now, Ms. Bacon, if I take your -- would you agree that mathematically if we take your total of $12,406,000 and subtract the avoided lower/higher, I'm sorry, the avoided higher permanent rates for 1994 through 1992 of 12,552,000, we get an amount equal to a negative $146,000?

A Mathematically it may work out that way, Mr. Howe, but that is not appropriate to do that calculation. Basically, the reason why, and I know this has been a difference of opinion between your office and Tampa Electric in this hearing since the beginning, but as the preparer of the cost/benefit analysis I can tell you that there's two portions -- two impacts related to the rate case numbers.

The first is shown as being the higher permanent rates. When we went into 1994, to the extent that rates were set at a higher amount, those are shown there. But the other part that we included in the cost/benefit analysis is the impact those higher rates would have had on the deferred revenue amounts, and to pull out one without pulling out the other makes no sense at all. If you're really going to exclude the rate case impacts for 1994, it will affect both the avoided higher permanent rates line, but it also -- a portion of the avoided lower/higher deferred revenue refund also would be affected. And that's the reason why we're getting a benefit of 8.5 million, and then you remove that line, you're getting a negative million or negative whatever the number is.

Q Ms. Bacon, are you suggesting that if the Commission determines that the cost/benefit analysis that was provided to them and on which they have based their proposed agency action and the one that you're presenting here as Page 1 of your Exhibit 1, that if the Commission accepts our position, Public Counsel's position, that there were no -- there could not be any rate case benefits for 1994 because the way rates were set for 1994 that the Commission could not just remove your numbers from this analysis?

A I'm saying that if you remove just the avoided higher permanent rates, you're only removing half of it. There is another impact that's included in the cost/benefit analysis of those varied -- of that 1994 test year. And I can tell you that to exclude it, you have to affect both of those lines.

If you think about it, if we would have came in here with a cost/benefit analysis that had reflected higher rates in

1994 and beyond and not also taken it to the next step to look at what those higher rates would have also had impacted the deferred revenue refunds, I think you would have argued that we didn't take it to the next step.

And when we did the analysis, we thought, well, okay, we're going to have higher rates come out of the test year, but then as we, without using this term again, push it through the years, if we run the calculations through each of the deferred revenue years, we're also going to have higher refunds from those very higher rates. And so included in the avoided lower/higher deferred revenue refunds is those refunds. So if you are going to say that the 1994 test year would not have changed, you've got to pull up both lines. And the only way to do that is to run the model. The numbers as they're shown here you can't mathematically add them up to get back to the correct number, and the correct number is the 8.5 million.

MR. HOWE: Chairman Jacobs, I'm going to do something I have never done. I'm going to renew my motion to strike. I'm going to modify it that this witness not be allowed to refer to any other cost/benefit analyses. And let me state my reason.

Commissioners, we protested your proposed agency action because we thought the cost/benefit analysis you had relied upon was factually incorrect. I think what we're hearing now is the company's position; that is, that if we protest a proposed agency action that is factually incorrect, the company, without protesting it, can then take the position Public Counsel might be right. We provided an analysis in which we portrayed rates for 1994 as being established on the same basis as 1993, and that's factually incorrect. But since Public Counsel protested that, we the company should be given the opportunity to present new cost/benefit analyses that show that what we first offered was not the appropriate basis for your decision.

So, Chairman Jacobs, I would ask that this witness be limited in her answers and in her testimony to the cost/benefit analysis they are portraying as being identical, except for modifications for 1999, to the one the Commission accepted in its proposed agency action order.

CHAIRMAN JACOBS: Mr. Willis, do you have a response?

MR. WILLIS: I think that Public Counsel's argument and position is totally without merit. He has asked her a series of cross examination questions, identified a series of cost/benefit analyses, and is asking her questions designed to try to get her to change the benefits that are shown and to -- for the purpose of representing to you that if certain changes are made to that cost/benefit analysis, then it would result in a change in the net benefits. And that was the purpose of the series of questions, and Ms. Bacon has responded directly to him. He didn't get the answer that he wanted, but he got the answer that he asked. And it's certainly not a basis for now trying to strike or limit this witness in what she's testifying.

He's opened the door wide open to testing the cost/benefit analysis, and in fact both in Ms. Bacon's direct and rebuttal testimony, she testifies that if you remove all of the rate case benefits, you still have $6.8 million in net benefits, and if you remove only the 1994 test year results, which is OPC's theory here, that you get $8.5 million in net benefits. He was testing that and trying to ask her questions with respect to that, and she was responding to him. I mean, that's clearly an appropriate answer, and this motion to strike is inappropriate.

CHAIRMAN JACOBS: Mr. Howe, any response?

MR. HOWE: All I can say, Chairman Jacobs, is, we protested a proposed agency action, and we understood that our opportunity was to show the Commission was mistaken in relying on the cost/benefit analysis it did. Essentially, I think we're at a stage where it's acknowledged, and that's my word, that rates were not set for 1994 on the same basis they were for 1993. And a cost/benefit analysis that portrays them as if they were is factually incorrect.

We have a cost/benefit analysis in which, as we just went through, the deferred revenue benefit identified by the company totals to $5,690,000. If I'm understanding the company's position now, it's you Public Counsel had to exercise a protest to get this before the Commission. But since you did and since it looks like you're right, we're going to tell the Commission they should look at other cost/benefit analyses that have different numbers that show net -- deferred revenue benefits I think I've heard of $6.8 and perhaps $8.5 million. If the company wanted to put these cost/benefit analyses before the Commission, they had an obligation to file their own protest.

CHAIRMAN JACOBS: I will deny the motion to strike. Noting that we're engaging in cross examination now and when the door is open to a line of testimony, the witness can respond to that question. As to unsolicited questions, or answers, I should say, that will be a different matter. As to aspects of an answer that are not supported by the record, that can be dealt with in your brief.

MR. HOWE: Thank you, Chairman Jacobs.

BY MR. HOWE:

Q Ms. Bacon, still referring to Page 1 of your Exhibit 1, the top left, it refers to a 1995 to 1998 tax period. And my question is, how could a 1995 to 1998 tax period affect deferred revenues under a stipulation that makes no reference to that tax period but does require the Commission to calculate its earnings consistent with adjustments made in the last rate case?

A I'm not exactly sure I understand your question, Mr. Howe. Could you repeat it again?

Q I'll try to be clearer. Rates were last set in 1994 for this company; is that correct?

A Yes, that's correct.

Q Those are the rates that are in effect today; is that correct?

A The permanent rates, yes.

Q Yes. And by that, I mean the base rates.

A Correct.

Q Would it be fair to say that those rates were not set in recognition of any tax positions taken in the 1995 to 1998 tax period since the Commission voted in 1992?

A I think to the extent that it was using a 1994 test year, I would agree that the '95 to '98 tax periods did not affect those setting of those base rates.

Q All right. Now, moving across the top of the page, we see an entry for 1995 of $281,000. Do you see that?

A Yes.

Q And that's portrayed as an avoided lower/higher deferred revenue refund; is that correct?

A Correct.

Q What is that $281,000? Is that money that was refunded to customers?

A That's basically the impact of including higher deferred taxes -- or backing out those higher deferred taxes on the deferred revenue calculation in 1995. It simply shows that the company's actions reduce costs to its customers. It's not trying to change the deferred revenue amount in 1995, but it is a tool to show that our actions were prudent.

Q Well, are you saying that the -- how much did the Commission order to be deferred for 1995?

A I think it was 50.5 million. I can get the exact number, but I believe it was right at $50 million that we deferred from 1995 into 1996.

Q I think we might need the exact number, if you don't mind.

A Yes.

Q And I'd ask you to verify whether that amount would be $50,517,063.

A Yeah, $50,517,063.

Q Was that number too high or too low?

A No. It was appropriate given the Commission's decisions.

Q Did the customers receive any extra benefit in the fact that that number was set at 50,517,000 as opposed to some other number?

A That is the amount that was deferred from 1995 into 1996.

Q And isn't that the amount that was required by the stipulations?

A Yes.

Q Wasn't that the amount calculated pursuant to the stipulations?

A Yes. But I believe the cost/benefit analysis, Mr. Howe, is not trying to go back and change this amount. I guess the best way I can describe it in terms of the cost/benefit analysis is, let's say, if you were sitting here and you were trying to make a decision about whether or not we were correct in replacing a used truck three years ago. Now, what you would probably do is to look historically back and say, well, what if I wouldn't have replaced the truck, what would have been my costs? What would have been the impacts to my business, assuming that if I'd made a different decision?

It doesn't mean that you're rewriting history. You purchased the truck. Your costs are what they are. Your revenues are what they are. But what the tool is doing is basically just showing that you made the prudent decision. And I think that's all that we're trying to do here.

Somehow quantitatively you want to try to judge whether or not this was a prudent action. You could probably use other tools other than this quantitative analysis. Just the fact that, you know, you might want to send a policy to utilities to basically -- that encourages us to lower our tax bill to the IRS. That qualitative judgment, I think, is also there. But quantitatively all we're trying to do with a cost/benefit analysis is just to show a what-if if we had taken a different position, but it's not changing the deferred revenue amounts that were actually deferred from 1995.

COMMISSIONER JABER: Ms. Bacon, if we take the $50,517,063 just as an example, this is what according to your testimony the PSC allowed TECO to defer for 1995-'96 as part of the stipulation.

THE WITNESS: That's correct.

COMMISSIONER JABER: Associated with that amount alone, what is your position with respect to what TECO saved its customers? You said in the beginning of this latest round of exchange that TECO saved its customers by deferring that amount.

THE WITNESS: That's correct.

COMMISSIONER JABER: What amount of savings are associated with that 50 million --

THE WITNESS: With the cost/benefit analysis? Basically, what we're saying is, is within that $50.5 million there was 3,496,000 of benefits that are buried within that, that if we had not taken the action we would have, we would have deferred less money.

COMMISSIONER JABER: What was that amount again?

THE WITNESS: $3,496,000. It's shown in the 1995 column in the exhibit that we were just referencing in the total.

COMMISSIONER JABER: Okay. Now, had you paid the taxes when they were due, what interest would have not accrued?

THE WITNESS: I don't know that I can break it down by year. The total amount for the whole period is the $13.2 million that we booked in 1999, because, remember, the interest on the tax deficiency wasn't incurred year by year. It is a 1999 expense. And so, collectively, if we had not taken the tax positions, we would have avoided $13.2 million of interest on tax deficiencies, but there would have been far greater costs to the extent that we would have had to have replaced those deferred taxes with equity and debt which carry a cost of capital, and those far outweighed the interest of the $13.2 million.

COMMISSIONER JABER: And the longer the interest accrues, though, the bigger the incremental -- the longer the deferral accrues, the bigger the interest amount?

THE WITNESS: That's correct. You know, the longer that we would have not have, you know, paid the cash to the IRS, the interest amount would grow, that's true.

COMMISSIONER JABER: Okay.

BY MR. HOWE:

Q Ms. Bacon, just for clarification, when you were answering Commission Jaber's question you referred to the number 3,496,000. That's by adding both deferred revenue benefits and rate case benefits; is it not?

A Yes. But I believe that the impact of the 50 million would have reflected all of that, so that's why I answered that way.

Q In what form did the customers receive this $281,000 of benefits you show under the 1995 column?

A Those amounts were deferred into 1996 and subsequently deferred into 1997. And a portion of those amounts made up the $13 million refund that was returned after the 1998. The deferred revenues kind of flow year by year. 1995 went into '96, '96 went into '97, '97 went into '98, and what came out of '98 was the amount that was refunded to customers. That was how the stipulations, you know, kind of worked collectively over the years.

COMMISSIONER JABER: But I guess my questioning with respect to the accrual and the incremental amount of increase goes to, as we allow the deferral to continue, the greater the amount of interest. And I'm trying to reconcile that with the benefit the customer would receive if the deferral is taken each year and the interest is capped, for lack of better word. And the longer the deferral goes on, the bigger the interest amount, and how is that a benefit to the consumer?

THE WITNESS: Well, also, there's a time value of money in terms of the deferred taxes that are in the revenue requirement formula as well. So to the extent that these moneys were, you know, sitting out there saving money in the revenue requirement side, there's also a time value of money. So the interest might be growing, but I would also argue that, really, the whole benefit should also grow, too, to the extent that every year it continues to be compounded with the time value of money.

That's why on the cost/benefit analysis we actually did show a line that takes into account kind of the time value of money. And you see down there, we have a cumulative net revenue requirement at year-end 1999 to also reflect that there is a time value of money in terms of the company's cost of capital as well.

BY MR. HOWE:

Q Ms. Bacon, would you agree that to the extent the company needed this $281,000 to reach its sharing point, which was 11.75 for 1996, '97, and '98, that the company kept all $281,000?

A That's not correct. First thing, the numbers that we kept are the numbers that we kept. Again, this is a tool just to show the prudency of what would have happened, a what-if, to say that, did we make a prudent decision? But even in regards to that, Mr. Howe, that these numbers are over and above the top of the sharing range, this 281,000 would not have made up any part of the money that we earned up to the 12.75. This incorporates the full effects of the stipulation. This 281 is the amount over and above.

Q Are you then essentially tracing funds? And you're saying -- you're labeling this 281,000 and saying, this is the piece that was above the sharing point; is that correct?

A All I'm doing is taking what occurred and then adjusting incrementally the impact of a different decision to show what would have happened.

Q All right. And --

A I mean, if you think about it, any cost/benefit analysis always is looked at on an incremental basis. You know, you don't try to rewrite the whole book. You'd basically go back and say, what would have been the differential impact if I would have made a different decision? And all we did was take what happened and then push or adjust the deferred taxes for the different tax positions, and then say what would have happened given that.

And really, you know, I mean, there's a lot of numbers here, but really, what it boils down to is, deferred taxes are cost-free sources of funds. And to the extent that we took these tax positions, we created deferred taxes, and those deferred taxes offset other sources of capital that have a cost to them. And, you know, you can set aside this entire cost/benefit analysis, and if you just think about in terms of the economics of that and what kind of impact it has on the company's costs and therefore ratepayers' cost, anytime that the company can defer tax payments to the IRS, they create benefits. And that's all that we're trying to show here.

Q Ms. Bacon, would you agree to the extent that this 281,000 was a dollar benefit to Tampa Electric's customers, that the most they could have received in concrete benefits in the form of money returned to them would have been 60 percent of the amount of the earnings above 11.75 for 1996, or I'm sorry, for 1998?

A Mr. Howe, you are going to have to repeat that again. I've heard you make that argument before, and I don't exactly follow it.

Q Well, Ms. Bacon, let's talk about the way the stipulations work in general. And tell me if you agree with this characterization. And for this purpose, I'm setting aside the refunds that were made. I'm just talking about the deferred revenue. And the way I view it is, for 1995 and 1996, the company was allowed to defer revenues above a certain earnings level, and for my own understanding, I kind of view it as being set aside in a deferred revenue pot. And then the company was allowed to tap that pot to sure up its earnings in 1997. And for 1998, they were also allowed to tap that pot to sure up their earnings. But to the extent that there was anything left over, they had to make refunds after 1998.

A That's correct.

Q And so money was deferred from 1995, 1996. It was tapped in 1997, 1998. Anything left over, including interest, was returned to the customers?

A That's basically correct, yes.

Q All right. But it was returned to the customers, was it not, based upon 60 percent of earnings above an 11.75 percent return on equity?

A In 1998, it's 60 percent above 11.75, but then anything above 12.75 was returned 100 percent.

Q Right. So we have this sharing. So if you identify some benefit from a past period, it's just going to get thrown into this pot, is it not? And it may not get returned at all if the company is not able to exceed the 11.75. Only 60 percent will be returned to the extent it contributes to earnings between 11.75 and 12.75 and only if the company exceeds 12.75 on a net basis where the customers get 100 percent of that return too.

A Yes, but we greatly exceeded 11.75. I'm not exactly -- I'd have to look up the number as to where we ended up on an ROE basis in 1998 after making the $13 million refund. But if I'm not mistaken, it might have been 12.75. It certainly wasn't below 11.75.

Q Yes, I understand. But my point is just that there's a sharing arrangement, and of earnings above 11.75, the customers got 60 customers and the company got 40, did they not?

A Again, probably before answering that, I'd probably want to go back and look at the record and make sure I'm familiar with the details of 1998.

Q All right.

A I know I have it here with me.

Q And to the extent that the Commission ordered more deferred than they otherwise would have because of the company's aggressive tax positions, 40 percent of that amount that was deferred was kept by the company, was it not?

A Again, if you don't mind, I would like to go back and look at that detail real quickly.

Q Certainly.

A Okay. Mr. Howe, I went back and looked at the detail for 1998. It appears that that year did not cap out to the 12.75. We were within the 60/40 sharing range. But I believe your question is, we have taken that into account throughout the entire cost/benefit analysis. So not only is the benefits ratio to the extent that we were in a 60/40 sharing but also obviously the $13.2 million is also shared 60/40, so we have reflected in the cost/benefit analysis exactly where we would have been at in the deferred revenue for that year.

So I'm failing to see your point, but I believe we have reflected a consistent treatment for both the benefit side as well as the cost side in terms of where we were at within the sharing range for 1998.

Q Ms. Bacon, if you would, refer please to Page 2 of your Exhibit 1.

A Yes.

Q This is where your $281,000 comes from, does it not?

A That's correct.

Q And this does not show any proration on a 60/40 or any other basis, does it?

A This is 1995. I think you asked me about 1998.

Q No. I was referring to the 1995 to '98 tax period under the column 1995 where it shows the entry 281,000.

A In 1995, we exceeded the 12.75 times. And so to the extent that we'd had lower benefits related to deferred taxes, they would have been backed off of the deferred revenue as 100 percent. Again, we took each year as they occurred, and we reflected that in the cost/benefit analysis.

Q I understand that, Ms. Bacon, but my question is, in 1995, you weren't going to make any refunds, were you? That went into the deferral pot for us in 1996 and 1997, did it not -- or 1997 and 1998?

A True. But every one of these numbers were pushed through each -- or every one of these numbers -- to the extent that we had additional impact in 1995, we reflected that into 1996. And then we went to 1996 and calculated the numbers for that year. And to the extent that that number came out, we then pushed it into 1997. That is the way the stipulation worked.

Q I understand. And the only year for which customers were to receive refunds was 1998; is that correct?

A That's correct, but that doesn't mean that the 1995 number does not matter.

Q I understand. Had the company not earned an 11.75 return on equity in 1998, would you agree that none of these amounts identified for 1995, '96, '97, or '98 would have been returned to the customers in 1998?

A You're making an assumption of a reality that did not exist.

Q Okay. Well, then maybe what you just said will help me a little bit then. Are you saying that given what you knew happened in 1998 is what allowed you to go back and figure up what happened in 1995?

A No. I took -- we based 1995 upon the 1995 record as it stands within itself. You know, we didn't look at 1995 any differently because of what happened in 1998. We basically took and said, if we were to go back -- I mean, our cost/benefit analysis is a little bit more tricky because we did have all the deferred revenue years, but we tried to be true to what the historical pattern that we would have looked at and seen if we'd have went back in time and said, let's go and take a different tax position.

And in 1995, we were in 100 percent sharing range, and we calculated that number. And we said, okay, we would have deferred less. And then we pushed that into 1996, and we calculated that year under the -- which was a 60/40 sharing year. 1996 was 60/40 sharing to infinitum, so it was definitely a 60/40 sharing year. And we pushed through the calculations for that. So in essence, at that point in time, only 60 percent probably of the 1995 number might have survived into 1997 because that's the way the stipulation actually worked. We took every year the way they were laid out, and then what ended up coming out of 1998 was basically just based upon the mechanics of the calculations.

Q All right. But are we in agreement that what actually went to the customers in 1998 was only 60 percent of earnings above an 11.75 percent return --

A That is a true statement, but at the same time, customers only paid for 60 percent of the $13.2 million.

Q And would it be fair to say that had the company not earned above an 11.75 percent ROE for 1998, the customers would not have received anything in refunds?

A They also wouldn't have paid for the 13.2 million, and we might not be here today.

Q Are you stating that --

A I'm saying --

Q Excuse me, excuse me. Let me finish my question. Are you stating that the amount the company booked as interest expense on tax deficiencies in 1999 is in any way dependent upon the cost/benefit analysis that was provided as an after-the-fact justification?

A Mr. Howe, usually the way that you-all like to look at this, OPC, as well as Staff, is that if it does not affect the refunds, then customers are not incurring the cost. I'm not exactly sure I exactly -- have always agreed with that philosophy. But that's what I basically said, that to the extent if we would have been below 11.75, the refunds wouldn't have been affected by either the $13.2 million or the benefits associated with that. It doesn't mean that those numbers might not have still existed within the 11.75 return. I'm just saying it wouldn't have affected the refund coming out of 1998.

Q Are you saying that the company would not have included the 13.2 million, which was a total company number, of interest expense on tax deficiencies in its December '99 surveillance report but for the fact that it earned above 11 -- or above 12.0 in --

A No, that's not what I'm saying. I'm just saying it wouldn't have -- there would not have been a refund at that point in time that we would be perhaps looking at this impact to see what the impact was. No. The company would have booked the $13.2 million on its surveillance report, and the benefits associated with that 13.2 million would also have been included.

Q Benefits would also have been included. Is that what you said?

A Yes, in the surveillance report.

Q What benefit did the customers receive in 1999?

A The benefits of all of these deferred revenue years.

Q I see --

A To the extent that if there were benefits that existed since 1995, they have created benefits that rolled up through each of the deferred revenue years. They were there. Those deferred taxes created additional refunds that also would -- or they would have created additional deferred revenues that would have been rolled forward to 1998. And so those amounts would have been there as well.

Q Ms. Bacon, would it be fair to say, at the end of 1998, or whenever the Commission got around to issuing the order for 1998, what the company did is, they returned all the principal and all the interest that was left in the deferred revenue pot?

A At the end of 19--

Q '98.

A I believe based upon the sharing amounts of 60/40 is what was returned.

Q All right. But basically the pot was emptied at the end of 1998, was it not, the deferred revenue pot, including interest?

A To the extent that we reversed the full deferred revenue pot to earnings in 1998 and then you share 60/40, they basically got 60 percent of above 11.75, and in essence the pot was zero.

Q All right. And then for 1999, the way the stipulation worked, the second stipulation we entered in 1996, it was, more or less, an old-fashioned earnings sharing, wasn't it? In other words, to the extent the company earned above 12.0 ROE for 1999, it's required to refund 60 percent of those earnings to its customers?

A There was no amounts of deferred revenues pulled over from 1998, so you're correct. It was just a sharing above 12 percent up to 12.75.

Q All right. Then my question is, why for 1999 do you show amounts of avoided lower/higher deferred revenue refunds in 1999? And that is for each tax audit period: 1995 to '98, '92 to '94 and so on.

A Basically, those are the amounts between the 12 and the 12.75 at the 60 percent. I mean, you know, they might be called "deferred revenues," but deferred revenue refunds, I mean, basically it's the refund coming out of 1999.

Q Well, help me out on that one, Ms. Bacon. The deferred revenue refund for 1999 was 1,034,000; correct?

A Excuse me?

Q The deferred revenue refund for 1999 for the 1995 to

1998 tax period was 1,034,000; is that correct?

A Yes, that's what the number says there.

Q Now, am I correct that the customers in 1998, I'm sorry, in 1999 are, under the company's approach, to receive lower refunds because the company included on a jurisdictional basis approximately $12.7 million of interest expense on tax deficiencies?

A Yes. That's the jurisdictional amount of the $13.2 million that was incurred in 1999.

Q And we can kind of just hit that with 60 percent to figure out what the refund amount was, couldn't we?

A Effectively, yes.

Q What is that? What would that be? About $7.5 million?

A Subject to check.

Q Well, Ms. Bacon, are you saying the customers lost $7.5 million of refunds by the inclusion of interest expense on tax deficiencies as an adjustment on the December '99 surveillance report, and at the same time, they received 1,034,000 of benefits from positions taken on the '95 to 1998 tax returns?

A Mr. Howe, you are looking at one year.

Q Yes, ma'am.

A Well, you can't do that. The deferred taxes that resulted from these tax positions have provided impacts and benefits ever since they were created. And even though we incurred the interest on the tax deficiency in 1999, which was a large number given the savings within that one year, you cannot ignore the impacts of those deferred taxes in all of the years when looking at the reasonableness of that $13 million.

Q I'm sorry, the $13 million from 1998?

A No. The $13.2 million of interest on tax deficiencies, your 12.7 on a jurisdictional basis. You cannot ignore those previous benefits that are incurred when looking at the reasonableness of that 1999 amount.

Q But see, Ms. Bacon, but didn't we establish earlier that 1999 was a fairly traditional overearnings test that was not saddled with deferred revenues? It was just to the extent the company in calendar year 1999 earned above a 12.0 return on equity, the customers would receive --

A Mr. Howe, I don't believe --

Q -- 60 percent of that amount in refunds.

A -- I don't believe that the test for prudency should be looked at in a single year. If the Commission did that in every year, I mean, you know, you might send signals that would be inappropriate in terms of what decisions the company should make. You know, we incurred the interest expense in 1999.

That interest expense was for many years, though, and you cannot -- this cost/benefit analysis looks back historically to see all of the impacts of that decision and to judge whether or not that $13 million of interest on tax deficiency was a reasonable number and should be included in the calculation of the deferred revenues. But just because there's not enough deferred revenue benefits related to those deferred taxes in 1999 alone should not have any bearing on whether or not the $13.2 million is prudent.

Q Is it your position then that the Commission should determine the reasonableness of refunds not just by looking at the earnings above 12.0 for 1999, but should look at whether or not the customers got benefits from a previously expired stipulation that ended in 1998, and use that to justify the earnings in 1999?

A I'm saying that we ought to do a cost/benefit analysis that looks back historically that said what would have happened on a what-if basis if we had made a different, you know, taken a different tax position.

I mean, yes, we're not trying to rewrite history here, but all you're trying to do is determine whether or not we made correct decisions and if whether or not that $13 million is a prudent expense. But whether or not those deferred tax years are closed, I mean, excuse me, deferred revenue years have close should not be a determinate in whether or not those benefits really existed.

Q Ms. Bacon, can we agree that by including $12.7 million on a jurisdictional basis as interest expense on tax deficiencies on the company's 1999 calendar year surveillance report, customer refunds were reduced by approximately $7.5 million?

A To the extent that it was a prudent expense and it was included above the line, it did reduce the refund by 60 percent of $12.7 million, that's correct.

Q All right. So your answer is, yes, with that qualification?

A Yes.

Q Now, are you saying that in calendar year 1999, the customers also received a $1,034,000 benefit because of positions the company took on its tax returns for the period 1995 to 1998?

A That is the number for that one period, yes. 1995 to 1998 is $1,034,000.

Q In what form did customers receive that benefit in 1999?

A To the extent that we had higher deferred, excuse me, lower -- to the extent that we had higher deferred taxes in our capital structure and thereby reduced our cost of capital.

Q In 1999?

A Yes.

Q Ms. Bacon, would it be fair to say that when you recorded the interest expense on tax deficiencies in 1999, you also recorded the deficiency itself?

A To the extent that it existed, this would have reflected that.

Q And to --

A We didn't pay the tax deficiency in all the cases.

Q But if you record a tax deficiency in 1999 to go along with the interest expense on tax deficiency, that would have reduced the deferred taxes in the capital structure in 1999, would it not?

A On some of the interest on tax deficiencies, the cash was actually paid to the IRS. And basically what he's saying is, by paying that tax deficiencies those deferred taxes would have been reversed. To the extent that that was the case for any of the tax positions, we reflected that, but we did not pay the tax deficiency on all of the interest. In other words, sometimes when you pay the cash to the IRS, it doesn't necessarily line up when you would reflect the accrual related to the probable loss. But to the extent that we did, that's reflected in these deferred tax savings.

Q Ms. Bacon, put this question in proper framework for me. What I'm looking at is simple dollars. It appears to me the customers lost out on $7.5 million of refunds. Now, are you suggesting that they shouldn't look at that as a reduction of $7.5 million of refunds but some smaller number because they got something else that they can't put in their pocket?

A No. I would say that customers got $12.4 million of benefits throughout the entire deferred revenue years, including the $13 million of interest on tax deficiencies that we're seeking recovery for today.

Q I see. So you're treating 1999 as something other than a simple overearnings stipulation. In other words, not just a sharing of 60 percent above 12.0 but incorporating deferred revenues and interest from prior periods that were fully refunded at the end of 1998; is that correct?

A I'm basically saying that you cannot isolate the $13.2 million and only look at that. You also have to look at the benefits that that has created throughout the deferred revenue years.

Q And would you agree -- but in 1999 there were no deferred revenue benefits or costs because --

A I disagree with that.

Q Would you agree that the pot had been cleared, both principal and interest, with the refunds at the end of 1998?

A Okay. Maybe we're -- it's semantics and we're talking past each other, Mr. Howe. I look at the money between 12 and 12.75 in 1999 as deferred revenues. Granted, they weren't deferred into another year. I just see all these years as collectively the deferred revenue years. Whether you call it "deferred revenue" or you call it "refund," there was dollars coming out of 1999 that are going to be refunded. $6.1 million, I believe, is what's on the table right now, and that's what I would point to as being that there are dollars.

MR. HOWE: No further questions. Thank you very much, Ms. Bacon.

CHAIRMAN JACOBS: Staff, is your questioning going to take some time?

MR. ELIAS: It's very brief, Chairman.

CHAIRMAN JACOBS: Okay. Go ahead.

CROSS EXAMINATION

BY MR. ELIAS:

Q Ms. Bacon, we've heard extensive discourse so far on the numbers that are in these cost/benefit analysis, and I want to step back for a second. The purpose of this analysis is simply to determine the prudence of the expense that was booked in 1999; is that correct?

A That's correct.

Q So that adjustments to the numbers that have been discussed here as a result of a change in the way the cost/benefit analysis is viewed do not have a direct correlation to a reduction of the refund amount?

A That's correct.

Q And that's to the extent that the ultimate question of prudence is answered in the affirmative?

A That's correct. We could have also just did a revenue requirement calculation. I mean, you know, we could have just looked back historically and said, you know, what if we had lower deferred income taxes and we had higher equity and long-term debt? And we could have just did an analysis going back five years. What we tried to do was to mimic it to the situation that we were at hand and the fact that we had those deferred revenue years, but we could have also just did a more straightforward revenue requirement calculation to show the same type of benefit.

Q If you would, turn to what's been previously marked as Exhibit 6, the third page.

A Yes.

Q Would you describe what you see on that page?

A Yes. This is basically a description of each of the audit years 1986 to 1998, and basically breaks down for each of those years the issues that were outstanding with the IRS in terms of the tax positions that Tampa Electric took.

Q To your knowledge, is there any other evidence that has been or will be proffered in this proceeding that would describe for the Commission the specifics of the adjustments that resulted in the deficiencies?

A I'd have to definitely look back through everything that's been provided in terms of the detail. I mean, we have provided production of documents that has a lot of information by item. The RARs, the revenue agent reports, that were in some of my deposition exhibits break down these items issue by issue. I'm sure there's a few more places where we have talked about what the tax positions were.

Q Would you turn to your deposition and the exhibits attached thereto? I believe it's Exhibit 4.

A Hold on just a second. Yes, I have that. This appears to be the revenue agent report for the tax years '89, '90, and 1991.

MR. WILLIS: Excuse me, Bob. Could you give me that reference again?

MR. ELIAS: Well, since it's wrong, let me try again. Exhibit 6 --

THE WITNESS: Okay.

MR. ELIAS: -- for the deposition transcript.

BY MR. ELIAS:

Q This particular page that I'm looking at has got a Bates stamp on the bottom of it that's 53.

A Okay.

Q Now, did Tampa Electric --

COMMISSIONER JABER: Mr. Elias, my Exhibit 6 is not a deposition transcript.

MR. ELIAS: No. It's the exhibit that's attached to the deposition transcript.

COMMISSIONER JABER: Thank you.

MR. ELIAS: It's Exhibit 6 of Exhibit 2.

COMMISSIONER JABER: And what page?

MR. ELIAS: The Bates stamp on the bottom of the page is 53.

COMMISSIONER JABER: Thank you.

CHAIRMAN JACOBS: These are journal entries; correct?

MR. ELIAS: I'm sorry?

CHAIRMAN JACOBS: They're journal entries?

MR. ELIAS: Yes.

BY MR. ELIAS:

Q Did Tampa Electric Company in March of 1997 record the amount from the revenue agent's report dated February 24th, 1997, as current tax expense and defer the interest on tax deficiencies at the same time?

A I believe what this adjustment, this entry is doing is basically reversing the deferred tax amounts that were on the company's books, setting it up as a current tax payable, and then recording the amount of interest in the deferred debit account, Account 186. A portion of that $9,369,000 was subsequently taken to the income statement as part of the interest on tax deficiencies in 1999.

Q And the question is, why would it not recognize the interest expense in 1997?

A Because at that point in time, we were still -- we were optimistic that we were going to win some of these issues. A lot of these issues coming out -- let me back up and give a little bit of the perspective of how these events occurred.

In 1994, we received the first RAR on the '86 to '88 tax period. A lot of the issues that were included in that RAR were coming from the 1986 Tax Reform Act that had changed a lot of the tax laws that the utilities fell under. So there was a little bit of a difference of opinion among the tax experts as to, you know, how it was all going to shake out.

At that point in time when we received the RAR in 1994 for '86 to '88, Tampa Electric was very optimistic that we would ultimately succeed on those issues. In 1997, we received an RAR for the '89 to 1991 amount which had a lot of same issues. And we also received a denial for the claim for refund on the '86 to '88. We had put in a claim for refund, and they had denied it 100 percent.

So at that point in time, we decided to go ahead and pay the tax on the '89 to '91 and set this up in a deferred debit account at Tampa Electric. At the same time, though, we still had hoped that, you know, optimism, that we would ultimately win on these issues. It was only until 1999 when we got our second denial for claim to refund on the '89 to '91, and we ended up settling the '86 to '88, that we realized that, you know, we probably were not going to win these issues, and we went ahead and took the item to the income statement.

Can I point out one more thing, too, Mr. Elias?

Q Sure.

A We did not take the entire amount to the income statement in 1999. A portion of that $9,369,000 is still sitting in the deferred debit account at Tampa Electric. And again, that's because, you know, we still have hope of winning on some of the issues. We only book to the income statement those items that we thought we had a probability of loss on.

MR. ELIAS: We have no further questions. Thank you.

CHAIRMAN JACOBS: Commissioners?

Redirect.

MR. WILLIS: Would it be appropriate to take a lunch break at this juncture?

CHAIRMAN JACOBS: Okay. You think you will take some time? Very well. We will take a break and come back at 1:30.

(Lunch recess.)

CHAIRMAN JACOBS: We'll go back on the record. Mr. Willis, I think you were going to do redirect.

MR. WILLIS: Yes.

REDIRECT EXAMINATION

BY MR. WILLIS:

Q Ms, Bacon, Mr. Howe in your deposition at Pages 9 through 36 asked you several questions about Staff's recommendations and method of analysis in the company's last rate case. And he also asked you a series of questions referring you to Exhibit 1 and led you through a series of numbers related to the calculation of rate case benefits.

Did you prepare and furnish to the Office of Public Counsel a calculation of removing the rate case benefits from the cost/benefit analysis?

A Yes, I did. Interrogatory Number 13 of OPC's second set of interrogatories included the calculation of removing both the 1993 and the 1994 test years from the cost/benefit analysis. The result was a $6.8 million net benefit.

Now, how does that compare to the $8.5 million number that we've also assumed? I think later on in the case it became apparent that OPC was really suggesting that the 1994 test year be removed, and the $6.8 million removes both the '93 and the '94. But that number was included, yes.

MR. WILLIS: Commissioners, we would ask to be marked as an exhibit Tampa Electric's exhibit -- or Tampa Electric's answer to Interrogatory 13 of OPC's second set of interrogatories.

MR. HOWE: Chairman Jacobs, I'd like to object.

CHAIRMAN JACOBS: Hear your objection.

MR. HOWE: Ms. Bacon in her prefiled direct and in her prefiled rebuttal has made reference, and also on the stand, to various cost/benefit analyses. If they wanted to support those with exhibits, since they were included in her direct and rebuttal testimony, they should have done it at that time. This is an attempt by the company to buttress its direct case by providing the schedules or the calculations that would support her direct testimony.

In the case of the $12.4 million cost/benefit analysis, the company included the exhibit, the calculations that supported that. They provided no exhibits in support of these other claims, the six-point-some million or the eight-point-some million. And it's too late for them to do it now. Under the guise of redirect, they are attempting to introduce new evidence.

Furthermore, I did not question Ms. Bacon on these matters or ask her to provide support or anything else for these numbers. So I think it's -- this is an after-the-fact attempt by the company to bolster its direct case under the guise of redirect and should not be permitted.

CHAIRMAN JACOBS: Mr. Willis.

MR. WILLIS: Commissioner, the point Mr. Howe did through asking in a series of questions was that he placed at issue the appropriate calculation of removing rate case benefits assuming for the purposes of argument that his adjustment that he suggests should be made. By taking Witness Bacon through the series of calculations that he attempted to make, it is certainly -- he certainly opened the door for us to explain why that's wrong and to provide the appropriate calculation. And that's all this does.

He opened the door. Ms. Bacon has already testified with respect to the numbers that he asked her to calculate, and we're entitled to -- on redirect for her to explain the appropriate calculation that should be made.

MR. HOWE: Chairman Jacobs, if I might. I cross examined Ms. Bacon --

CHAIRMAN JACOBS: Excuse me, just a second. I think I'd like to have that exhibit in front of me. You can hold on to further copies. To the other Commissioners, we can pass them.

Now, explain to me what this answer says, if you would, to the extent that you would be at liberty to go into details, Mr. Howe.

MR. WILLIS: It shows --

MR. HOWE: Are you asking me?

CHAIRMAN JACOBS: Well --

MR. WILLIS: -- the proper way -- if you take Mr. Howe's suggestion that certain rate case benefits should be removed from the calculation, it shows the proper way to do it. He was attempting to go through a series of calculations with Ms. Bacon which erroneously calculated those benefits, and we're entitled to explain why that's wrong and to provide the appropriate calculation to you.

CHAIRMAN JACOBS: Okay. Thank you. Now, Mr. Howe.

MR. HOWE: Chairman Jacobs, I would ask you to please refer to Page 8 of Ms. Bacon's prefiled direct testimony, Lines 17 through 22.

CHAIRMAN JACOBS: Okay.

MR. HOWE: And you will note there, it states, and I will quote, the cost/benefit analysis would still provide net benefits to customers even if the rate case items were ignored. If the rate case impacts were excluded from the cost/benefit analysis and only the deferred revenue years were analyzed, a $6.8 million net benefit would have been realized for customers.

It's in her direct testimony. The company chose to support the $12.4 million she claims in her testimony with an exhibit. The $6.8 million, they chose not to support with an exhibit. In her prefiled rebuttal testimony, you will see the same number repeated as well as an 8 point, I think, 5 million dollar number. In each of those cases, the company chose to support with detailed exhibits only the $12.4 million. Our witness, when we filed our direct testimony, did not have a supporting schedule. They chose not to provide it in their direct case or in their rebuttal case. Now they're trying to use my discovery as substantive evidence to prove their own direct case, and I think it's totally improper.

CHAIRMAN JACOBS: Now, how do you respond then to the assertion from counsel that this is purely a calculation of the 6.8 which you opened on cross -- which you opened up on cross?

MR. HOWE: First of all, I did not open -- I questioned Ms. Bacon on the 12.4. Ms. Bacon referred to this -- these numbers here, but she had also referred to them in her direct testimony. Now, the exhibit that she provided with her testimony, that very extensive exhibit, is the support for her claim 12.4 million. For whatever reason, the company chose not to produce any support for its claimed 6.8 million shown on direct or -- and if I might for just a moment refer you to her rebuttal testimony, you'll find that, if I can find the page, she refers again to the 6.8 and adds another number. And for whatever reason, they chose not to support it there.

If you'll look on Page 11 of her prefiled rebuttal testimony, she says, "I explained on Page 8 of my direct testimony, $6.8 million of net benefits result from the cost/benefit analysis even if all of the rate case benefits are ignored." I did not open the door to what the result would be from ignoring rate case benefits. Tampa Electric's witness did in both her direct and rebuttal testimony. To suggest that I introduced something that they hadn't considered and therefore they need to protect their interest is just simply wrong.

They addressed it in two separate places. I have not questioned them on either the 6.8, or whatever, the 8.6 or 8.5, here it is on the bottom of Page 10, 8.5 million. Those are their numbers. They have the burden of proof. It was their choice not to support those numbers with detailed evidence. This is still a back door attempt to introduce matters through my discovery that they chose to leave out of their direct case.

MR. WILLIS: Mr. Howe challenged those numbers through the cross examination that he made here this morning, and we're entitled to respond to it.

MR. HOWE: Chairman, if I might? Okay. I'm sorry.

CHAIRMAN JACOBS: Here's what we'll do. First of all, I think it is a fair statement that the door was opened on the 6.8 numbers. As I'm looking at this document, it does primarily simply take the -- remove the rate case expense and comes up with another calculation. However, to the extent it doesn't and to the extent you want to challenge that and because this matter is in rebuttal, I will allow you to address this exhibit in rebuttal. As I understand, this witness is coming back for rebuttal; is that correct?

MR. WILLIS: Yes.

CHAIRMAN JACOBS: This witness is coming back for rebuttal. On its surface it simply seems to be a fallout calculation once you -- from the original number to 12.7 or I think it was 12.4 on the original -- on Exhibit 1, and what would happen to that number if you removed the rate case dollars.

MR. HOWE: Excuse me. On that, Chairman Jacobs, I took her through that, and we established that the amount of deferred revenue benefits in the 12.4 million is 5,690,000. That was the number we quantified. The 6.8 is something that was in their testimony.

I would also point out, Chairman Jacobs, that the -- I would ask that the company cite to the exact provision or the exact language in the deposition where I purportedly opened the door for them to buttress their direct case.

MR. WILLIS: You opened it up right here in front of --

CHAIRMAN JACOBS: Excuse me, excuse me, excuse me, excuse me, excuse me. It was not necessarily the question of buttressing their direct case. I think there was ample questioning testimony on the derivation of the benefit, the net benefit, with and without these numbers that were demonstrated on the table here for rate case benefits. Now -- and that, in my mind, does open the door for demonstrating what the impacts were with and without the rate case benefits.

To the extent it differs from the conclusions that you would have reached pursuant to your methodology and your calculations is what I'm suggesting will be open for cross on rebuttal. Clear?

MR. WILLIS: Okay. Could you give us a number for that exhibit, please.

CHAIRMAN JACOBS: With that, though, Counsel, I would hope -- and I know given the complexity of this here, it may not have been much of a notice to bring this out in advance of redirect, but particularly since this is the response to discovery, the timing on it will be useful. So make sure everybody has full advance notice it. But with that, show that this is marked as Exhibit 8 and will be from TECO.

(Exhibit 8 marked for identification.)

BY MR. WILLIS:

Q Could you please explain what Exhibit 8 is.

A This is a cost/benefit analysis. This would be the exhibit that you just handed out; correct?

Q Yes.

A Okay. Yeah. This includes a cost/benefit analysis that we prepared which removed both the 1993 and the 1994 test year impacts from the cost/benefit analysis for all of the years. The result again is $6,759,000 of net benefit.

Q Now, based on the questions Mr. Howe asked you here this morning and during your deposition with respect to the applicability of the financial integrity test in the company's last rate case, if you apply that test for purposes of argument, would that affect the test year of 1993 at all?

A No, it would not.

Q Have you calculated the difference -- or the rate case benefits being removed just for the 1994 test year, what the results would be in the cost/benefit analysis?

A Yes. It would change the $6,759,000 net benefit to $8.5 million, a $8.5 million net benefit. The difference there is only that in the second number, we removed only the 1994 test year impacts because under OPC's theory that would be the test year that the financial integrity adjustment would be applied. Other than that, there's no differences between these two cost/benefit analyses.

MR. WILLIS: I would request that an additional document be identified, which is cost/benefit analysis related -- restated to exclude benefits from the 1994 test year. Again, Mr. Howe opened this line of questioning just as he did before, and we're entitled to explain that calculation.

CHAIRMAN JACOBS: Help me understand this now, Mr. Willis. I can see some distinction on this issue. First of all, help me understand the line of questioning that you are posturing this exhibit to deal with.

MR. WILLIS: Mr. Howe asked a series of questions relating to the applicability of the financial integrity tests to the company's last rate case. And if you went back and reapplied that and excluded all of the rate case benefits for 1994, that -- his theory only applies to 1994. And so in order to make the calculation that he was attempting to make, well, with Ms. Bacon by asking the series of questions with respect to numbers, we are entitled to show the proper calculation here today. She's under oath and asked to speak the truth to questions that are put to her. And she's entitled to explain her answers.

CHAIRMAN JACOBS: While that did -- first of all, let me ask one other question. If I recall that line of questioning, was it -- wasn't that extrapolated -- taken the beginning of 1994, the beginning of the period, but extrapolating that out to the end of the period?

MR. WILLIS: What Mr. Howe was attempting to do was to calculate through cross examination of Ms. Bacon what were the effects of the rate case benefits in order to sum up the numbers and make an adjustment. And he was -- as Ms. Bacon explained in her answers, he was doing it incorrectly, and we're entitled to show what the correct calculation is. And that's what this exhibit does.

CHAIRMAN JACOBS: Then shouldn't your redirect go to the methodology more so than the numbers?

MR. WILLIS: Well, we have explained the methodology, but I think you need to have the numbers.

MR. HOWE: Chairman Jacobs --

MR. WILLIS: He had the numbers in his explanation and was asking her to make calculations. This just simply makes the correct calculation.

CHAIRMAN JACOBS: Mr. Howe.

MR. HOWE: Chairman Jacobs, if you'll recall when I was cross examining Ms. Bacon, I asked her to follow along with some calculations I had done and see if she agreed. I asked her if in her cost/benefit analysis showing a $12.4 million total benefit, as that company claims, it included $12,552,000 of rate case benefits for the period 1994 through 1999. That was it.

And I asked her a question as far as the calculation.

I said, mathematically, if we take your 12.4 and subtract the 12,552,000 do we get a negative number of 146,000? That is what I asked the witness.

Chairman Jacobs, one of the things I'd ask that you keep in consideration here is, Tampa Electric filed its direct testimony on April 30th. We filed Mr. Larkin's direct testimony on May 14th. The company filed its rebuttal testimony on June 8th. On June 18th, I filed an interrogatory Number 13, which is what you have as Exhibit 8, saying refer to her testimony. What does that number mean? I'm engaged in discovery because they have offered no support.

Now, I understand your ruling, Chairman Jacobs. You said this comes in. I'm in a position where next time I don't ask the discovery because it's going to be used against me just trying to learn what the background is. But now, they have gone a step further. Now, they have offered a new exhibit, and this one is, take Public Counsel's interrogatory, our response -- the company's response came after the company filed its rebuttal testimony, and then let's build on that to create the direct case we chose to ignore. So my objections to Number 9 are very similar to Number 8, only it is that much more egregious.

MR. WILLIS: Mr. Howe, by asking the questions that he asked today, placed that issue, the appropriate calculation of that number, he challenged it. The numbers that he just mentioned to add up were incorrectly calculated, as Ms. Bacon stated in response to him, and we're entitled to show what the correct calculation is.

COMMISSIONER JABER: Mr. Willis, your intent is to show us that OPC's methodology and questioning the philosophy and the questioning is incorrect; right?

MR. WILLIS: It is to show that if you accept for purposes of argument that you make an adjustment to the cost/benefit study for test year 1994, what the result of that is. Now, he tried to go through to extract numbers that he would use to make his argument about what it is.

COMMISSIONER JABER: I guess the reason I'm asking for some clarification, I heard your witness loud and clear say that she disagreed with OPC's methodology. And when Mr. Howe took her through those series of questions, she said, loud and clear, you are adding up the numbers incorrectly and applying them incorrectly. This exhibit -- it seems to me OPC has a witness. It seems to me this exhibit might be more useful on cross examination of OPC's witness.

MR. WILLIS: Well, it certainly could be useful there as well, but I don't think that diminishes our right to ask this witness, who was asked how to make the calculation, to show how it should be made.

COMMISSIONER JABER: I guess my point to you is, I already heard your witness say that she disagreed with OPC, so

I don't know what more this exhibit would do with this witness but --

CHAIRMAN JACOBS: Which makes it -- goes back kind of where I was headed. It makes it a troubling proposition for your witness to support this methodology in her testimony. I would think you would want to have this contrasting methodology to go against the other party's witness. In other words, your witness has testified that she disagrees with this methodology, so --

MR. WILLIS: Mr. Larkin doesn't testify on this subject at all.

CHAIRMAN JACOBS: Where I'm headed is, let's -- that was speculation and conjecture. What I'm suggesting, though, is, this is being offered for your witness to proffer this exhibit in support of her testimony. And what I'm suggesting to you is that sounds somewhat in contradiction with what I've heard her testify live. Now, what you're suggesting is this simply is a fallout of her cross examination. What I'm suggesting to you is that I heard her more concerned with methodology in her response to cross examination than actual numbers.

MR. WILLIS: Well, I think she also responded that the numbers that Mr. Howe was attempting to calculate were incorrect because he was only making part of the calculation and not considering all of the effects.

CHAIRMAN JACOBS: Great. And so the engagement of that line of cross had to go -- went to methodology. And so if I had an exhibit here which contrasted the methodology that Mr. Howe was espousing, then I feel like I'm more at a position that I can look at something that's point to point, apples to apples.

MR. WILLIS: We placed a number; she stated a number. Mr. Howe has challenged it, and we are entitled to explain and respond to the questions he asked.

CHAIRMAN JACOBS: As to this proffered exhibit, I'm going to deny it.

MR. WILLIS: Okay.

BY MR. WILLIS:

Q Ms. Bacon, on Page 80 of your deposition, Mr. Howe identified as Deposition Exhibit 12 a letter dated November the 17th, 1999, from the IRS director. What is this correspondence?

A Exhibit 12, that includes the revenue agent report, or an RAR, for the tax years 1992 to 1994. It includes several pages which I'd like to describe. First, on Bates stamp Page 23, it includes Form 4549-A. This page identifies the amount of the tax assessments that the IRS has placed for those tax years. On Line 14, it actually shows the deficiency in the tax itself. Those amounts for 1992 is $1,333,558. For 1993, it's 1,847,042. And finally, for 1994, it's 4,619,518.

Also, included in the package on Bates stamp Page 24, again, Form 4549-B includes a description of the tax issues themselves that make up that deficiency. And I just would like to point out several items on here that are related to the Polk Power Station. Line F, which is Issue 04-01, and Line P, which is Issue 04-12, is research and development expense that's related to the Polk Power Station. The net adjustments for that is zero in '92, and this would be adjustments to taxable income, not the tax deficiency itself. It's zero in 1992; $2 million in 1993; and $20,629,387 in 1994.

Also, there's one other item. Line Q, which is Issue 04-13A, interest capitalization. A portion of that item is also related to the Polk Power Station. And I would just want to also point out there is a Form 870 on Bates stamp Page 21 which basically -- to the extent that we had agreed to this assessment of tax, we would have signed this and sent it back in, and then we would have probably put in a claim for refund as one of the avenues, but basically this is a formal document that the IRS is assessing the taxes to us. And from this point in time, TECO does have a legal obligation to respond to this assessment in one form or another.

MR. WILLIS: Commissioner, I'd like to have an exhibit identified. I'd request that you mark for identification an exhibit titled, "November 17, 1999, Revenue Agent Report (RAR) For Tax Years 1992 through 1994," which is

IRS Form 4549-B, Income Tax Examination Changes and IRS Form 886-A, Explanation Of Items.

CHAIRMAN JACOBS: Show this --

MR. HOWE: Chairman Jacobs, could I ask that this -- I don't know if I should object or not -- be placed in context with the direct testimony or my cross examination of Ms. Bacon?

MR. WILLIS: You, in your deposition, you asked to be marked for identification Deposition Exhibit 12, which is a revenue agent's report. And this exhibit that I just handed out has actually the same pages in -- the first two, Pages 23 through 25 at the bottom, are the same pages that are in your deposition exhibit which you've identified. And once having identified that, I think we're entitled to explain what this document is and what it includes. That's what this exhibit does.

MR. HOWE: Mr. Willis, I would then ask, I realize that the first few pages, 23, 24, and 25, are the same pages that are in Exhibit 12, but the following pages coming from the Department of Treasury, are these Internal Revenue documents that were not produced in response to my request for production of documents?

MR. WILLIS: These are the same items which we furnished you on August the 9th in a letter to you. They were not furnished in the discovery because they were not called for within the scope of what you asked, but it is an additional attachment to the RAR that you placed in evidence here.

MR. HOWE: If I could have just a moment, Chairman Jacobs. My first request for production of documents asked for all documents prepared or received by Tampa Electric Company related to the recording accrual or payment of interest expense on income tax deficiencies in 1999. I don't believe these pages, which apparently are from the IRS and are similar to the other IRS documents that were produced in response to my request for production of documents, I don't believe these particular documents were produced. And if they fit within the category of my request, I don't think it's proper for the company to be able to introduce documents they did not produce in response to my request for production of documents at this time.

MR. WILLIS: What we --

CHAIRMAN JACOBS: Excuse me. Now, I understand that you did provide them. It was a supplement to the discovery response?

MR. WILLIS: It was in a letter to Office of Public Counsel dated August the 9th in which we attached not only this item but we attached the part of the exhibit that he included in his exhibit for the deposition of Ms. Bacon.

CHAIRMAN JACOBS: And that was intended to supplement the discovery response. So in other words, to complete your discovery response, you provided these attachments.

MR. WILLIS: Well, Commissioner, we didn't think the discovery request included this. We did provide the additional information to the Office of Public Counsel to explain to him that a portion of the interest on tax deficiency that is at issue here relates to the Polk Power Station, as is clearly shown in this exhibit, and asked him at that time to withdraw his protest with respect to items related to the Polk Power Station.

CHAIRMAN JACOBS: Okay. Now, let's go back for a moment to the original issue that was raised. This goes to what part of the direct testimony?

MR. WILLIS: Well, it goes to the deposition that Mr. Howe took of Ms. Bacon, and the exhibit that he identified in that deposition is directly related to it.

CHAIRMAN JACOBS: But you did not include that in -- this reference to this item in your prefiled direct?

MR. WILLIS: I didn't. But he has placed it in evidence, and asked for it to be identified and to be moved into evidence in this proceeding.

MR. HOWE: Chairman --

CHAIRMAN JACOBS: Okay. And then -- and the cross examination, you would not argue that because he didn't exercise this from the deposition transcript -- well, let me ask it this way. Am I taking it then -- because I don't recall questioning specifically on this item -- am I to take it then because he didn't exercise this from his deposition exhibit, that it's automatically part of his cross?

MR. WILLIS: He put -- the first several pages in here is the Exhibit 12 to his deposition which he identified in this proceeding this morning.

CHAIRMAN JACOBS: Right. I understand that. My understanding of cross examination has to do with the actual matter of questioning.

MR. WILLIS: His cross examination, in effect, is the deposition that he took and that he's placed here before you in an exhibit.

CHAIRMAN JACOBS: Mr. Howe.

MR. HOWE: Chairman Jacobs, if I might. You were first referred by the company to the deposition and to Exhibit 12 of the deposition, and there you find Bates stamp Page Numbers 18 through 25 dealing with the tax years '92, '93, and '94. These Bates stamp numbers were placed on here by the company. In response to my request for production of documents, they produced approximately 102, 110 pages of documents, including all these IRS documents, the revenue agent reports and so forth. That was the production I received. The company has never moved to supplement that production.

Now, I find the company is producing new IRS documents also pertaining to '92, '93, and '94 that I haven't seen yet. This was clearly covered by the request for production and should have been produced at that time.

MR. WILLIS: We disagree with that.

CHAIRMAN JACOBS: Excuse me. You did not get the letter that was referenced?

MR. HOWE: I got that letter, but that letter was correspondence from Mr. Willis to me. Nothing in that letter represents, hey, we're supplementing your discovery response.

But I'd like to address another point. What Mr. Willis is doing right now is attempting to impeach his own witness. If you'll notice, what he is taking Ms. Bacon through and what he is doing here is, Ms. Bacon just identified things for the first time as dealing with research expense, research and development expense, interest capitalization which she portrays as being applicable to the Polk Power Station. But in her prefiled direct testimony -- keep in mind, this is the testimony the company witness filed, the attorneys reviewed, was submitted to the Commission, she took the stand. She had no revisions to make of it, and she said at the bottom of Page 11 of her direct that the only issue relevant to Polk is the tax life issue, nothing about research and development, nothing about interest capitalization.

In her rebuttal testimony at Page 6, it states, and she's referring again to Paragraph 10, "The purpose of Paragraph 10 is to document an agreement among the parties to support recovery should the Polk Power Station tax life position be questioned by the IRS at a future date."

Our position is that the only recoverable expenses for Polk are related to the tax life, any interest expense on a tax deficiency related to Polk. Their witness's direct testimony is that anything other than the tax life is basically irrelevant. They are trying to impeach their own witness by saying, what about our R and E expenses? What about interest capitalization on Polk?

CHAIRMAN JACOBS: How do you respond --

MR. HOWE: That's contrary to her position in her direct testimony. He's going totally outside the scope of my cross examination. He's also going outside the scope of her direct to try to introduce a new theory of the case contrary to the direct testimony she already supported.

CHAIRMAN JACOBS: How do you respond to the proposition that because you included this subject matter as an exhibit to the deposition transcript, it was your intent to open the door?

MR. HOWE: What I did is, I introduced the amounts -- and if I might, could I take you back to Exhibit 12 to her deposition? And if you'll look at Bates stamp Page 22, which Ms. Bacon has just referred to, I'm sorry, 23. She referred to Line 14, and she took you to deficiency increase -- decrease-increase in the tax. Then she took you to Page 24, and she said, up on Line F that research and development expense, that's Polk. I didn't know it was Polk. Certainly nothing came out in her deposition to tell me that was Polk.

Line P and Line Q, one dealing with the research expense, the other dealing with interest capitalization, they are now telling you those are Polk. Nothing came out in that deposition. I couldn't have asked her if those were Polk expenses because it doesn't say Polk. And apparently, the reason I didn't know it referred to Polk was, they didn't provide the rest of the discovery. The forms that actually said the deductions for research expense claimed for the engineering and management costs related to the construction of the new Polk Power Plant are decreased for 1992, '93, '94. I thought we were in agreement with the company's witness. The only issues related to Polk had to do with their tax life.

Now, the company is trying to introduce documents that were not provided to me in discovery. The witness is characterizing documents that I introduced at her deposition that make no reference whatsoever to Polk. Chairman Jacobs, what we tried to find out in this case is, was there any related to Polk?

If you'll notice in their direct testimony, they don't cite any expense related to Polk. In our prefiled direct testimony, one of the questions that Mr. Larkin has asked and answered is, has the company identified any interest expense on a tax deficiency related to Polk, and he says no. The company filed rebuttal testimony, and they still don't mention any Polk expenses.

Now, in redirect examination of their own witness, they're producing exhibits saying, hey, guys, there really are Polk-related expenses. But even these are inconsistent with their witness's direct testimony which says that under the stipulation, it's limited to tax life issues, not research and development, not interest capitalization. The company is trying to build a new case, impeach its own witness, and put us in a position where we have prefiled our direct testimony and our witnesses never had the opportunity to analyze any claimed expenses. And we said in our direct testimony, the company has not identified any Polk expenses. And I can show you exactly where that is in our prefiled direct testimony. And in rebuttal, they did not identify any then. It's a little late, and this is getting to be very unfair.

CHAIRMAN JACOBS: Mr. Willis, final answer.

MR. WILLIS: Commissioner, Mr. Howe asked the questions in his deposition which identified this revenue agent report that was dated November the 17th.

CHAIRMAN JACOBS: For what purpose are you offering the additional pages?

MR. WILLIS: To explain what this -- this explanation?

CHAIRMAN JACOBS: Yes.

MR. WILLIS: We're to show that certain amounts of it related to the Polk Power Station.

CHAIRMAN JACOBS: Why wasn't it considered a part of the complete discovery response?

MR. WILLIS: It was not because he asked what was used by the company to make their accrual. And what they used to make the accrual was the pages that we produced, which is Pages 23 through 25.

CHAIRMAN JACOBS: So if it was not used in order to extrapolate the accrual, why would it have relevance to the line of questioning?

MR. WILLIS: Well, Commissioner, I think that once someone introduces an exhibit and places a matter before you, we don't know what all he's going to extract from this when he writes his brief. We're certainly entitled to take the document, explain the numbers that are in it, and then to make whatever reference to that in our brief. We have -- Public Counsel has an obligation under the stipulation to support any matters related to the Polk Power Station under the clear wording of the stipulation. Now, he attempts to change the wording, add things to it, and get away from the plain meaning, which you can look at and I cited to you this morning.

CHAIRMAN JACOBS: Thank you.

COMMISSIONER JABER: But see, Mr. Willis, if that's the case, if that's the case, why not bring it to OPC's attention before today so that we wouldn't have to be discussing this today?

MR. WILLIS: We did.

COMMISSIONER JABER: Mr. Howe.

MR. HOWE: Commissioner Jacobs, the company's position through their prefiled testimony and our own is consistent in that we both agree that Paragraph 10 -- and by the way, it is fully quoted in Mr. Larkin's prefiled direct testimony --

COMMISSIONER JABER: That's not my question. This exhibit that they're attempting to put in right now, were you or were you not aware that they were attempting to put it in for the purpose of showing that those expenses were related to the Polk plant?

MR. HOWE: No.

COMMISSIONER JABER: Well --

MR. HOWE: Commissioners Jaber, let me be clear.

CHAIRMAN JACOBS: Excuse me, excuse me.

MR. HOWE: What the company did, they sent me a letter. And they said you -- they quoted one sentence out of Paragraph 10, not the full paragraph, and they said, you Public Counsel are obligated to support any interest expense on tax deficiencies related to Polk. It was inconsistent with their own prefiled testimony. It's inconsistent with our position.

The company apparently at this 13th hour has decided to retreat from their prefiled testimony, from the position they have taken up until mid August of this year -- keep in mind, we're dealing with 1999 numbers -- and say, wait a minute. The stipulation requires Public Counsel to support any and all interest expense related to a Polk tax deficiency.

But, again, Commissioner Jaber, we were operating from their prefiled direct, our prefiled direct. And their prefiled direct agreed with us, and it says, "Through the language proposed by the company in the stipulation, Tampa Electric sought assurance from the parties to the stipulation that the Polk tax life decision would be supported if the IRS agreed with this specific tax position."

Commissioner Jaber, if this -- if Tampa Electric comes up with interest on tax deficiencies related to Polk and related to their dispute with the IRS over the tax life of that unit, we are bound by the stipulation to support it. And I'm not trying to retreat from that in any way.

COMMISSIONER JABER: So would it be more productive if we took a few minutes to look at the document that they're attempting to identify today?

MR. HOWE: No, I don't think so, Commissioner Jaber. And the reason is, I think what you'll find is, the company is changing its theory of the case. Now, even though their witness in both direct and rebuttal has said only tax life, they want to claim any and all interest expense for any tax deficiency related to Polk.

COMMISSIONER JABER: Mr. Howe, let me ask the question this way. If this exhibit indicates to you that these expenses are related to the Polk unit, do you agree that you're bound by the stipulation and you would withdraw your opposition at least as it relates to these expenses?

MR. HOWE: No, ma'am. And for that, I would refer you to our position and the company's position on Issue 4 in the prehearing order.

COMMISSIONER JABER: I've seen your position on Issue 4, Mr. Howe.

MR. HOWE: Yes.

CHAIRMAN JACOBS: As to the exhibit, we are going to allow you to admit the pages that are -- the Bates stamp is 23, 24, 25, and deny the remaining pages. This arguably can relate to the line of questioning but can only be offered at this point now. And I think I would air to say that it has the greatest prospect of being offered now to expand the case in chief, but also, it arguably could have been provided as complete discovery on the request that was given. I don't think there's any ill will here because I think the company clearly indicated its intent and clearly provided it to counsel. But I would air to the -- if I air it, I would air on the side of saying it should have been officially noticed and supplemented to the discovery response. And it absolutely has a -- in weighing the balance of admitting it, it would weigh, in my mind, to expand the case, and so I deny the admission of these pages.

BY MR. WILLIS:

Q Mr. Elias referred you to Exhibit Number 7, excuse me, I believe it was Exhibit 6 --

A Yes.

Q -- and referred you to the third -- fourth page in that exhibit which lists certain issues. Do you see that?

MR. HOWE: Excuse me, is this Exhibit 6 to the deposition?

MR. WILLIS: No, this is exhibit --

CHAIRMAN JACOBS: It's the cost/benefit analysis.

MR. WILLIS: It is the letter we forwarded to Staff on the 27th that Mr. Elias asked about in his cross examination.

THE WITNESS: Exhibit 6 in the --

MR. WILLIS: It's Exhibit 6 --

CHAIRMAN JACOBS: I'm sorry, the letter from Mr. Neil.

MR. HOWE: Oh, I'm sorry.

MR. WILLIS: Hearing Exhibit 6.

MR. HOWE: Hearing Exhibit 6. Okay.

BY MR. WILLIS:

Q Have you identified the amount of interest on tax deficiencies related to the Polk Power Station in discovery in this docket?

A Yes, I have. There was an interrogatory that we provided to Staff. I can get the number for you, if you would like, that was provided that also documented how much was related to the Polk Power Station. Give me a second.

MR. WILLIS: Commissioner, I'd like to have a document marked for identification.

MR. HOWE: Chairman Jacobs, I will object for similar reasons as before. As I said, this is apparently -- if they want to ask if it relates to the tax life because that's what her direct testimony is about, well, so be it, but my impression is, the company is about to introduce interest expense on tax deficiencies not related to the tax life of the Polk unit --

MR. WILLIS: Well --

MR. HOWE: -- and as such, is outside the scope of her direct testimony.

CHAIRMAN JACOBS: Let's take a moment, please. Mr. Willis, you had a response?

MR. WILLIS: Yes. First of all, Mr. Howe continually is continuing to testify, really, before you and to characterize what our testimony is and to state that, first of all, none of this relates to the Polk tax life or it certainly relates to the Polk Power Station. He is also trying to say that if it doesn't fit with his theory of the case, that it can't be introduced and talked about.

What this exhibit shows is that back in August the 25th of 2000, the company submitted to -- in response to Staff's Request Numbers 15 and 16 a discussion with respect to the Polk Power Station and identified how much was calculated with respect to the R and E expenses, which was exactly what Mr. Elias inquired about in his cross. So I think that we're certainly entitled to -- I really want to identify just those two --

CHAIRMAN JACOBS: Did we get the right, the correct -- maybe I'm not reading carefully here, but what I'm seeing here are requests to Second Data Request Number 4, and I see a series of questions, and most of those are talking about particular tax deficiencies.

MR. WILLIS: What I wanted to refer you to is to the response to Requests 15 and 16.

CHAIRMAN JACOBS: Okay. I'm sorry. Now, go ahead.

MR. WILLIS: I'd just like for it to be identified as an exhibit.

MR. HOWE: Chairman Jacobs, if I might. What Mr. Willis has just provided you is discovery dated August 25th of 2000. Tampa Electric prefiled their direct testimony on May, I'm sorry, on April 30th, 2001. They filed their rebuttal testimony on June 8th, 2001, almost a year later. Apparently, the company wants to introduce their answers to discovery contrary to their witness's testimony.

Chairman Jacobs, Commissioners, I would point out to you, for whatever reason, I have no idea what's going on here. I'm kind of in the dark on all of this. For whatever reason, Tampa Electric chose to take the position through their direct testimony that matters relating to the interest expense on tax deficiencies relating to the tax life of the Polk unit were covered by the stipulation. For some reason, the company now wants to expand that to say, we didn't really mean it. We're really talking about any interest expense on any tax deficiency related to any matter with the Polk Power Station.

If they had something -- keep in mind, these are the company's responses to discovery that they had in August of 2000 that had some effect on the case, it would have been in the testimony they filed, what, nine months later? They are trying to go back to a date before they filed their direct testimony and incorporate it as part of their direct case under the guise of redirect.

MR. WILLIS: And that --

MR. HOWE: This is the strangest procedure I've ever been in.

CHAIRMAN JACOBS: Mr. Willis.

MR. WILLIS: Commissioner, again, Mr. Howe is trying to characterize and argue and testify with respect to our testimony that we've presented. This proceeding is -- relates to the plain meaning of Paragraphs 10 and 11 of the stipulation. This material that we have identified and would like to have included in the record directly relates to those issues. That's why we're here, is to discuss what is the appropriate interpretation of the stipulation and the appropriate interpretation of Paragraph 10. And Mr. Howe wants to incorporate his version of that interpretation and seek to exclude any other evidence that would support another position.

Again, there is information that we have provided to the Office of Public Counsel with respect to tax deficiency assessments that related to the Polk Power Station which obligated him not to protest or contest any of those amounts under the plain meaning and the intent of the stipulation.

CHAIRMAN JACOBS: Just a moment. We'll go off the record.

(Off the record.)

CHAIRMAN JACOBS: As I am understanding it, your proffer of this potentially -- more specifically goes to the responses to Numbers 15 and 16.

MR. WILLIS: That's correct.

CHAIRMAN JACOBS: Okay. The ruling on this would essentially mirror the ruling on the prior exhibit. As I look at it, it has -- and in balancing the admission of this, it has a very real prospect of going to matters that would expand the scope of the case, so we'll deny that as to that exhibit.

MR. WILLIS: No further questions.

CHAIRMAN JACOBS: Very well. Exhibits. For the company, we have Exhibits 1 and 8 for the company.

MR. WILLIS: That's correct.

CHAIRMAN JACOBS: Without objection, show Exhibits 1 and 8 are admitted.

(Exhibits 1 and 8 admitted into the record.)

CHAIRMAN JACOBS: OPC.

MR. HOWE: And we would move the admission of Exhibits 2 through 7.

CHAIRMAN JACOBS: Without objection, show Exhibits 2 through 7 are admitted.

(Exhibits 2 through 7 admitted into the record.)

CHAIRMAN JACOBS: Thank you, Ms. Bacon.

(Witness temporarily excused.)

(Transcript continues in sequence in Volume 2.)

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STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, TRICIA DeMARTE, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

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

DATED THIS 7th DAY OF SEPTEMBER, 2001.

Tricia DeMarte

TRICIA DeMARTE
FPSC Official Commission Reporter
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