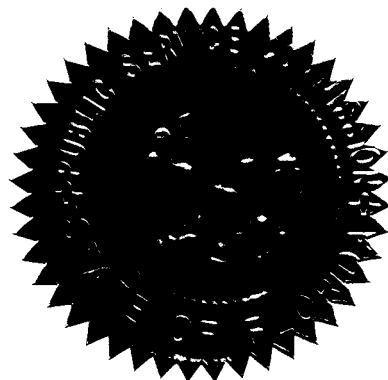


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080317-EI

In the Matter of:

PETITION FOR RATE INCREASE BY TAMPA  
ELECTRIC COMPANY.



PROCEEDINGS: PREHEARING

BEFORE: COMMISSIONER NATHAN A. SKOP  
PREHEARING OFFICER

DATE: Wednesday, January 7, 2009

TIME: Commenced at 1:00 p.m.

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

REPORTED BY: JANE FAUROT, RPR  
Official FPSC Reporter  
(850) 413-6732

DOCUMENT NUMBER-DATE

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## 1 APPEARANCES:

2 LEE WILLIS, ESQUIRE, JIM BEASLEY, ESQUIRE, KENNETH  
3 HART, ESQUIRE, and JEFF WAHLEN, ESQUIRE, Ausley Law Firm, Post  
4 Office Box 391, Tallahassee, Florida 32302, appearing on behalf  
5 of Tampa Electric Company.

6 JON MOYLE, ESQUIRE, and VICKI KAUFMAN, ESQUIRE,  
7 Anchors Law Firm, 118 North Gadsden Street, Tallahassee,  
8 Florida 32301, and JOHN W. MCWHIRTER, JR., ESQUIRE, McWhirter  
9 Law Firm, Post Office Box 3350, Tampa, Florida 33601-3350  
10 appearing on behalf of Florida Industrial Power Users Group.

11 R. SCHEFFEL WRIGHT, ESQUIRE AND JOHN T. LaVIA, III,  
12 ESQUIRE, Young Law Firm, 225 South Adams Street, Suite 200,  
13 Tallahassee, Florida 32301, appearing on behalf of Florida  
14 Retail Federation.

15 CECILIA BRADLEY, ESQUIRE, Office of Attorney General,  
16 The Capitol - PL01, Tallahassee, Florida 32399-1050, appearing  
17 on behalf of the Office of Attorney General.

18 PATRICIA CHRISTENSEN, ESQUIRE, Office of Public  
19 Counsel, c/o The Florida Legislature, 111 W. Madison Street,  
20 Room 812, Tallahassee, Florida 32399-1400, appearing on behalf  
21 of the Citizens of the State of Florida.

22 MICHAEL B. TWOMEY, ESQUIRE, P.O. BOX 5256,  
23 Tallahassee, Florida 32314-5256, appearing on behalf of AARP.

24

25

1 APPEARANCES (continued:

2 KEINO YOUNG, ESQUIRE, MARTHA BROWN, ESQUIRE, and JEAN  
3 HARTMAN, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard  
4 Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on  
5 behalf of the Commission Staff.

6 MARY ANNE HELTON, ESQUIRE, FPSC General Counsel's  
7 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida  
8 32399-0850, appearing as Advisor to the Commission.

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## P R O C E E D I N G S

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2           **COMMISSIONER SKOP:** Good afternoon, everyone, and  
3 Happy New Year. We're here today to have the prehearing for  
4 the TECO rate case, Commissioner Skop presiding.

5           Mr. Young, I think there is a preliminary issue that  
6 we would like to take care of.

7           **MR. YOUNG:** Yes, sir. But before that, I'd like to  
8 read the notice so we can be in the proper posture.

9           **COMMISSIONER SKOP:** If staff could please read the  
10 notice.

11           **MR. YOUNG:** By notice issued December 22nd, 2008,  
12 this time and place has been set for a prehearing in Docket  
13 Number 080317. The purpose of the prehearing is set out in the  
14 notice.

15           **COMMISSIONER SKOP:** Thank you. And at this point I  
16 guess we'll take appearances from the parties, please.

17           **MR. WILLIS:** I'm Lee L. Willis appearing together  
18 with James D. Beasley, Kenneth R. Hart, and Jeffrey Wahlen,  
19 P.O. Box 391, Tallahassee, Florida, 32302, appearing on behalf  
20 of Tampa Electric Company.

21           **COMMISSIONER SKOP:** Thank you.

22           **MR. MOYLE:** Jon Moyle. With me is Mark Slager  
23 (phonetic) in person. Also representing FIPUG, our client, is  
24 Vicki Kaufman and John McWhirter.

25           **COMMISSIONER SKOP:** Thank you.

1           **MS. BRADLEY:** Cecilia Bradley, Office of the Attorney  
2 General on behalf of the Citizens of Florida.

3           **COMMISSIONER SKOP:** Thank you.

4           **MR. WRIGHT:** Robert Scheffel Wright of the law firm  
5 of Young, Van Assenderp, PA. I would also like to enter an  
6 appearance for my partner, John T. LaVia, III, appearing on  
7 behalf of the Florida Retail Federation. Thank you.

8           **MR. TWOMEY:** Mike Twomey on behalf of AARP.

9           **MS. CHRISTENSEN:** Patty Christensen on behalf of the  
10 Office of Public Counsel.

11           **COMMISSIONER SKOP:** Thank you.

12           **MR. YOUNG:** Keino Young, Martha Carter Brown, and  
13 Jean Hartman on behalf of Commission staff.

14           **MS. HELTON:** And Mary Anne Helton, advisor to the  
15 Commission.

16           **COMMISSIONER SKOP:** Thank you.

17           At this point I believe there is a preliminary  
18 matter, and, Mr. Young, if you could speak to that briefly.

19           **MR. YOUNG:** Yes, Mr. Commissioner.

20           Mr. Twomey asked that we take a twenty-minute break  
21 for him to review the draft prehearing order to see if he has  
22 any changes to his positions or anything of that nature. TECO  
23 has agreed to that request.

24           **COMMISSIONER SKOP:** From the parties that have made  
25 appearances, are there any objections to doing that, at which

1 point I guess we would adjourn?

2 **MR. TWOMEY:** Mr. Commissioner, pardon my  
3 interruption. I didn't realize that me doing this was going to  
4 slow everybody by 20 minutes. So I don't need to do that.

5 **COMMISSIONER SKOP:** Okay. Well, I guess, Mr. Twomey,  
6 what I'm trying to facilitate, if it would be a matter not  
7 objected to by the parties, I would be agreeable to adjourning  
8 for a few minutes as long as it would not cause delay and  
9 disruption to the parties, to the extent they would allow you  
10 to review the prehearing order, and if there were any changes  
11 that needed to be made, we could address those while we are  
12 here today instead of having to reconvene at a later date.

13 **MR. TWOMEY:** Yes, sir. I appreciate that. I got  
14 held up yesterday here, and so I don't want to inconvenience  
15 anybody else in the process, so I won't worry about it.

16 **COMMISSIONER SKOP:** Okay. Thank you.

17 With that, Mr. Young, are there any other additional  
18 preliminary parties that staff is aware of?

19 **MR. YOUNG:** Not at this time, no. But some will come  
20 up during the course of the respective sections when we go  
21 through the draft prehearing order, and staff will alert you at  
22 that time.

23 **COMMISSIONER SKOP:** Okay. So I guess at this point  
24 we will proceed with the review of the draft prehearing order,  
25 and I would respectfully ask that the parties speak out if

1 there are any changes or corrections to be made to the  
2 prehearing order, and we'll identify the sections on an  
3 individual basis as follows: With respect to Section I, Case  
4 Background.

5 I'm hearing no objection from TECO, would that be  
6 correct?

7 **MR. WILLIS:** No objection.

8 **COMMISSIONER SKOP:** Okay. FIPUG? None. AG? None,  
9 okay. Moving on.

10 Hearing no objections, we will move to Section II,  
11 conduct of proceedings. And any objections or comments?

12 Hearing none from the parties, we'll proceed to  
13 Section III, jurisdiction.

14 Hearing no comments or concerns from the parties,  
15 we'll proceed to Section IV, procedure for handling  
16 confidential information. And, staff, I guess there are some  
17 pending issues with respect to confidentiality, is that  
18 correct?

19 **MR. YOUNG:** Yes, sir, which will be addressed during  
20 the section.

21 **COMMISSIONER SKOP:** Thank you.

22 Hearing no comments or concerns as to Section IV, we  
23 will proceed to Section V, which is the Prefiled Testimony and  
24 Exhibits, Witnesses.

25 Hearing no comments from the parties, we'll proceed

1 to Section VI, order of witnesses. I will look to staff.

2 **MR. YOUNG:** Yes. TECO has a request.

3 **COMMISSIONER SKOP:** And we'll hear that request from  
4 TECO at this time.

5 **MR. WILLIS:** Commissioner, we would agree to have the  
6 direct and rebuttal heard simultaneously with all of our  
7 witnesses except for Witness Murray. I think that would help  
8 expedite the hearing considerably.

9 **COMMISSIONER SKOP:** Okay. I'd like to hear from  
10 staff with respect to the request, and any of the other  
11 parties.

12 **MR. YOUNG:** Yes. That's a request that will have to  
13 be taken up by the Commission as a whole. Staff will alert the  
14 parties by January 15th, 2009, for, one, if the witnesses can  
15 excused and, second, if that request is amicable by the  
16 Commission.

17 **COMMISSIONER SKOP:** Okay. Any other comments from  
18 the respective parties here today?

19 **MR. MOYLE:** On behalf of FIPUG, we would just note  
20 the we have no objection, and think it's a good idea, because  
21 it probably will expedite things to put on direct and rebuttal  
22 at the same time. I have made staff aware, we did spend some  
23 time with TECO, all of the parties talking about ways in which  
24 we might be able to help facilitate the proceeding. And at the  
25 appropriate time we have one expert witness who has some



1 obligations I think at another commission, and TECO has agreed  
2 to take that witness on a date certain in the second week, so I  
3 want to put that on the table at the appropriate point in time.

4 **COMMISSIONER SKOP:** Okay. Comments from any of the  
5 other parties?

6 **MR. WRIGHT:** I just wanted to add that we don't  
7 object to Tampa Electric's proposal, and we agree with Tampa  
8 Electric and FIPUG that it should expedite the proceeding.

9 **COMMISSIONER SKOP:** Okay. And, again, I tend to  
10 agree that such action would expedite or likely expedite the  
11 proceeding, but in deference to my colleagues that are not here  
12 today, I think that what we are going to do is defer taking up  
13 that request as a preliminary matter at hearing, and that way  
14 we will know what witnesses have been excused and what the  
15 preference of my colleagues will be. So we'll defer that as a  
16 preliminary to hearing.

17 **MS. CHRISTENSEN:** Commissioner, I'm not sure if now  
18 is the appropriate time or if it would be later regarding  
19 orders of witnesses and dates on which they should appear. As  
20 you are aware, the hearing is scheduled for the 20th and 21st,  
21 and then we will resume the following week beginning, I  
22 believe, the 27th.

23 We have discussed amongst the intervenors and  
24 broached it with TECO, and I think we are in agreement that it  
25 would be advisable and cost-effective for us to only have to

1 have our witnesses appear on a date certain, like on the 27th,  
2 for that following week, because TECO's witnesses will, in all  
3 likelihood, take the full two days, if not longer, and it would  
4 be an additional expense on the Citizens of the State of  
5 Florida to have us fly our witnesses down for two days of  
6 hearing, which they are unlikely to testify, and then come down  
7 the subsequent week.

8 And any of the parties can let me know if I'm  
9 misspeaking, but I think we would ask that the Commission allow  
10 the intervenors' witnesses to have to appear no sooner than the  
11 27th of January and that would take care of our travel issues.

12 **COMMISSIONER SKOP:** Thank you, Ms. Christensen.

13 And at this point I would like to hear from the  
14 parties and then staff with respect to that request. It seems  
15 rather reasonable, but --

16 **MR. WILLIS:** We do not object to that.

17 **COMMISSIONER SKOP:** FIPUG, Mr. Moyle.

18 **MR. MOYLE:** No, we think it's a good idea and would  
19 support it.

20 **COMMISSIONER SKOP:** Staff.

21 **MS. BROWN:** Commissioner, we can reflect this request  
22 in the prehearing order and run it by the Chairman's Office and  
23 get back to the parties about it. It seems reasonable to us  
24 under the circumstances, but we think we need to run it by the  
25 Chairman's Office first.

1           **COMMISSIONER SKOP:** Okay. With respect to, I guess,  
2 the request, I think that the Office of Public Counsel, if my  
3 understanding is correct, is that they are looking to have a  
4 date certain with respect to their witnesses to avoid  
5 substantial cost and inconvenience in terms of what they are  
6 trying to accomplish, and it should be readily straightforward.  
7 Hearing no objections from the parties, I would be inclined to  
8 grant the request subject to furthering the details through the  
9 prehearing order that would come out.

10           **MS. BROWN:** Sounds like a good way to do it, and we  
11 can run it by the Chairman's Office in the meantime.

12           **MR. WILLIS:** To be clear on what I think we're doing  
13 is rather than stating a date certain that they would not have  
14 to appear before the 27th, so if our case is still ongoing we  
15 would complete that, and then they just would not have to bring  
16 them in the first week, which would be wasteful.

17           **COMMISSIONER SKOP:** And I stand corrected. Again, my  
18 throat is a little scratchy today, so I may be misspeaking.  
19 But my understanding was also yours, that they would not appear  
20 before a certain date rather than a date certain, and I stand  
21 corrected.

22           So if staff will incorporate that within the  
23 prehearing order and clear that through the Chair's Office,  
24 that will be sufficient to apparently address the concerns that  
25 the parties expressed here.

1           **MR. MOYLE:** And on behalf of FIPUG, since we are  
2 talking about witnesses now, let me just go ahead. And I have  
3 talked to all the parties about this, and I think there was  
4 agreement among the parties that Mr. Pollock, who is one of  
5 FIPUG's expert witnesses, has obligations in another state, and  
6 I think everyone has agreed that he could testify on the 27th  
7 out of order. So I wanted to put that on the table and would  
8 ask that that also be considered, respectfully.

9           **COMMISSIONER SKOP:** Thank you, Mr. Moyle.

10           As Mr. Moyle suggested, he's asking to take a witness  
11 out of order on a date certain, and I would just like to hear  
12 from the parties with respect to any objections on that issue.

13           **MR. TWOMEY:** No objection, Commissioner Skop, from  
14 AARP.

15           And just to be clear on the earlier issue, AARP  
16 supports the notion of your granting Public Counsel's request  
17 for obvious reasons of saving money in these times. Thank you.

18           **COMMISSIONER SKOP:** Thank you, Mr. Twomey. Based on  
19 the parties no objection, we'll show that the witness will be  
20 taken on a date certain and appear out of order.

21           **MR. WILLIS:** We would ask that that be done at the  
22 end of the company's case, or at the end the day, I guess, if  
23 we're not finished.

24           **MR. MOYLE:** I think so long -- I think he has the  
25 other obligation, and we don't want to interrupt your case, but

1 even if your case takes four days, if we could put him on on  
2 the end of the day of the 27th, take him out of order, that  
3 would be appreciated.

4 **COMMISSIONER SKOP:** Would that be acceptable to TECO  
5 and the other parties at the end of the day on the 27th?

6 **MR. WILLIS:** Jon, when we talked -- can we go off the  
7 record just a second?

8 (Off-the-record discussion.)

9 **MR. WILLIS:** We had talked earlier about this and we  
10 had thought it was going to be the 29th, which we felt we very  
11 comfortably could have finished the company's case. And I  
12 think Mr. Moyle just misspoke.

13 **MR. MOYLE:** Yes, I got the dates wrong. It's the  
14 29th. Sorry.

15 **COMMISSIONER SKOP:** So if I understand correctly,  
16 FIPUG via Mr. Moyle has made a request to have the witness  
17 appear out of order date certain at the end of the day of the  
18 29th.

19 Any objections by the parties to that?

20 **MS. CHRISTENSEN:** No.

21 **MR. WRIGHT:** No objection. Thank you.

22 **MS. HELTON:** May I pose a question? I'm sorry,  
23 Commissioner.

24 **COMMISSIONER SKOP:** Ms. Helton, you're recognized.

25 **MS. HELTON:** If we get done before the 29th, are we

1 then going to be coming back, or is the expectation that we  
2 will be coming back just to hear Mr. Pollock? I'm a little bit  
3 confused there.

4 **MR. MOYLE:** Given the breadth of the witnesses that  
5 the intervenors have and that Tampa Electric has, I don't think  
6 we would wrap up by the 29th. I don't think that's much of a  
7 possibility, so I think it will work out okay where  
8 Mr. Pollock, you know, appears on the 29th. Does anybody think  
9 we will be done before the 29th?

10 **COMMISSIONER SKOP:** I'm an optimist.

11 **MS. HELTON:** I just wanted to pose that question,  
12 because I think that is something that should be considered in  
13 working out the schedule here.

14 **COMMISSIONER SKOP:** Okay. To staff, again, I was  
15 inclined to grant the motion if there is some -- let me choose  
16 my words carefully here -- if there is some chance that that  
17 would have a disrupting impact upon the proceedings, or cause a  
18 delay, or having to reconvene at the end of the day should the  
19 testimony, direct testimony of TECO conclude earlier than  
20 expected, then certainly I would be open to deferring that to  
21 the Chair as a preliminary matter at the start of the  
22 proceedings. But, again, if it's something that can be ruled  
23 comfortably on, I'm happy to do it if there is no objection  
24 from the parties.

25 Ms. Helton.

1           **MS. HELTON:** I mean, the Commission always attempts  
2 to accommodate witness schedules to the best of its ability,  
3 but we also want to get through with the hearing, too. But I  
4 do agree that it seems that we have quite a few witnesses lined  
5 up, and the likelihood of us being done by the 29th, based on  
6 recent history, is probably pretty slim.

7           **COMMISSIONER SKOP:** Based on the request and hearing  
8 no objection by the parties, if staff could show that done and  
9 incorporated into the prehearing order I'd appreciate it.

10           **MR. MOYLE:** And thank you and all the parties for  
11 working with us on that.

12           **COMMISSIONER SKOP:** I appreciate that.

13           Moving on to Section VII, Basic Positions. And  
14 hearing no comments or concerns with respect to Section VII, we  
15 will move on to Section VIII, Issues and Positions.

16           **MS. BROWN:** Commissioner, the Office of Public  
17 Counsel and I have discussed some of the positions that they  
18 have taken in this case where they have not taken a position.  
19 It appears to me that they are willing to do so now, and we  
20 wanted to bring that up to you before we got started. If OPC  
21 wants to comment.

22           **MS. CHRISTENSEN:** There are a few issues where we  
23 have taken no position at this time awaiting evidence, and we  
24 can take an affirmative yes or no position on those. I think  
25 the ones that read yes, awaiting evidence adduced at hearing or

1 no can be just shortened to yes or no. And for those issues  
2 where it's no position at this time awaiting evidence, I think  
3 in most circumstances if we just put no period, that will work.

4           There is only one issue in my brief review of the  
5 prehearing order, Issue 40, which appears that the question is  
6 looking for some more definitive answers, and it's on the  
7 inflation factors. And I had a question about that and we can  
8 either address it as we get to that issue, Commissioner, or we  
9 can discuss it now. I'm comfortable with either. That was the  
10 only one that I could not address easily up front.

11           **MS. BROWN:** Commissioner, we'll have OPC's position  
12 reflected in the final prehearing order, and then I guess we  
13 should wait on the Issue 40 question.

14           **COMMISSIONER SKOP:** Okay. And also, Mr. Young, I  
15 believe there are some other issues that you've been aware of  
16 that we need to address, and I don't know whether parties would  
17 be the appropriate time to address those issues, but if you  
18 could comment on that, please.

19           **MR. YOUNG:** Yes, sir. And they are Issues 35 and 36.  
20 FIPUG proposed these issues, TECO objected to them, and all the  
21 parties, respective parties, FIPUG, TECO, and Staff, and other  
22 parties have taken a position on those. I'll turn it over to  
23 FIPUG to address the issues in terms of the need for the  
24 issues.

25           **COMMISSIONER SKOP:** Mr. Moyle, you're recognized.



1           **MR. MOYLE:** Thank you.

2           This is a case that has a lot of testimony, a lot of  
3 documents. It's the first rate case that has been considered  
4 involving Tampa Electric in a considerable period of time. As  
5 it stands now, I think there's over 100 issues, 114 issues. I  
6 think the parties were able to do a pretty good job of agreeing  
7 to the issues. There are two exceptions, Issue 35 and 36.

8           And what these two issues do, 35 says does TECO's  
9 request for return on common equity appropriately consider  
10 current economic conditions, and 36 is similar with respect to  
11 common equity, but does it consider the recovery of funds via  
12 the Commission's recovery clauses.

13           There's a lot of testimony both by experts sponsored  
14 by FIPUG, the other intervenors, and Tampa Electric about the  
15 appropriate ROE given the current market conditions. Witness  
16 Abbott on behalf of TECO talks about current market conditions,  
17 Witness Herndon on behalf of FIPUG talks about current market  
18 conditions, and we think that is an issue that should be  
19 addressed as well as the recovery of monies through the  
20 clauses. And given the magnitude of the case, the fact that I  
21 think there are 114 issues, we would ask that these be  
22 included.

23           And by way of example, just to make the point, I  
24 mean, staff kind of said, well, this might be able to be  
25 subsumed within another issue. I would refer you to Issues 42,

1 43, 44, and 45, which deal with appropriate adjustments being  
2 made to certain clauses. And, you know, you could say have  
3 appropriate test year adjustments been made to recovery  
4 clauses, but it's not done that way for the same reason I would  
5 urge that it not be done with respect to the return on equity  
6 issue and the current market conditions and the recovery  
7 clauses. Forty-four talks about adjustments to the capacity  
8 cost-recovery clause, 45 talks about the environmental  
9 cost-recovery clause, 42 talks about the fuel and purchased  
10 power recovery clause, and 43 talks about the conservation  
11 cost-recovery clause.

12           You know, all of those are specifically identified,  
13 we would argue, in the same way that we have specifically  
14 identified two key components that should be considered in the  
15 return-on-equity analysis. And, you know, we don't think it is  
16 proper to have one issue that says were the proper adjustments  
17 made to all the clauses, that it's appropriate to break it out  
18 the way it has been broken out in this prehearing statement,  
19 and given the magnitude of the case, the fact that we have been  
20 able to, in effect, work out all of the issues with the  
21 exception of two, we would ask, respectfully, that the two  
22 issues that FIPUG considers very important, and we have  
23 witnesses testifying to, other parties have witnesses  
24 testifying to, be considered and laid out expressly and  
25 specifically. Thank you.

1           **COMMISSIONER SKOP:** Thank you.

2           I'd like to hear from TECO at this point, and then  
3 staff.

4           **MR. WILLIS:** Commissioner, Issues 35 and 36 without a  
5 doubt are subsumed under Issue 37. They are an attempt to  
6 break out two arguments with respect to what the appropriate  
7 return on equity should be. These arguments can be made easily  
8 under Issue 37. It would be like our listing several other  
9 issues. Does it consider the current debt and equity markets  
10 and market conditions? Does it comport with the principles of  
11 the Supreme Court in the Hope and Bluefield decisions? Does it  
12 appropriately consider the various risks associated with debt  
13 financing? Does it consider the overall need for ratepayer  
14 benefits flowing from financial integrity and stronger credit  
15 ratings? And on and on. These are arguments that the parties  
16 will present and they can all be presented under the label of  
17 that Number 37. So it's entirely unnecessary, and we  
18 completely agree with staff that Issues 35 and 36 are subsumed  
19 in Issue 37.

20           **COMMISSIONER SKOP:** Thank you. Any other comments?

21           Mr. Wright, you're recognized.

22           **MR. WRIGHT:** Thank you.

23           Commissioner Skop, very briefly. Broadly in  
24 Section 366.01, the Commission is charged to regulate in the  
25 public interest. These two issues proposed by FIPUG, and we

1 support their inclusion, are clearly very important public  
2 interest issues that are very important in the minds of  
3 probably every Floridian who has any idea of what's going on in  
4 the world, and we will respectfully ask that the Commission  
5 vote on them as requested by FIPUG. Thank you.

6 **COMMISSIONER SKOP:** Mr. Twomey.

7 **MR. TWOMEY:** We support their inclusion as well for  
8 the reasons given by FIPUG and Mr. Wright.

9 **COMMISSIONER SKOP:** Thank you.

10 Ms. Christensen.

11 **MS. CHRISTENSEN:** And Office of Public Counsel would  
12 echo the comments of my colleagues. We would support the  
13 inclusion of these issues. We would also note that there are  
14 very few disputed issues and these are not going to create an  
15 overly burdensome addition to the workload, and that in  
16 fairness they should be allowed to be addressed.

17 **COMMISSIONER SKOP:** Ms. Bradley.

18 **MS. BRADLEY:** Thank you. We would also support the  
19 inclusion.

20 **COMMISSIONER SKOP:** Thank you.

21 Briefly going back to Mr. Moyle and then staff, with  
22 respect to the two FIPUG proposed issues, Issue 35 and 36, can  
23 you please briefly articulate as to why those issues would not  
24 be appropriate to be subsumed into Issue 37 to the extent that  
25 they could be briefed and discussed at hearing within the

1 prefilled direct and rebuttal testimony of any respective  
2 witnesses that would choose to address those issues.

3           **MR. MOYLE:** Well, I think, you know, you will  
4 consider the testimony as it comes in. I mean, a lot of, you  
5 know, the issues, the big issue is is the rate increase  
6 appropriate. And I guess in theory you could have that issue  
7 and everything would be subsumed underneath it. My  
8 understanding of the practice of the Commission is not to  
9 necessarily lay out an issue in that broad level of detail, but  
10 to have some more specific questions asked.

11           And I think, you know, given the return on equity  
12 point, the public interest point referenced by Mr. Wright,  
13 there are some key factors, I think, that are considered in  
14 that. The clause recovery that the Commission has in place  
15 being one and the current market conditions being another. You  
16 know, so I think that it's appropriate and warranted to go  
17 ahead and have those issues specifically laid out so that there  
18 is a full robust discussion of those issues.

19           I know we will get to it at probably a later point in  
20 time, but there is also limitations on statements of positions  
21 that can be set forth. I think that, you know, staff has  
22 recommended a limitation on words that can be set forth for  
23 statements of basic position, so it somewhat could become  
24 cumbersome if you have a broad issue where you want to really  
25 nail your position down specifically on current economic

1 conditions and recovery clauses to be hamstrung with the  
2 limitation on the ability to set forth your position by a word  
3 limitation.

4           So we would urge that it be included just briefly to  
5 the position of Tampa Electric and Mr. Willis. And we are not  
6 trying to make an argument here. I mean, I think the issue as  
7 stated is fairly stated, and I think there is testimony that  
8 will be considered and support certain positions, but I think  
9 the notion that somehow this issue is framed as argument is off  
10 base. And I think what we are trying to make the point, and  
11 FIPUG has, you know, expert witnesses that are going to address  
12 this. It is a very important issue to FIPUG and we would  
13 respectfully ask and appreciate the intervenors also suggesting  
14 that given the magnitude of the issue before you that it be  
15 separately stated and separately considered and that these two  
16 issues be included.

17           **COMMISSIONER SKOP:** Thank you. And, again, on a  
18 procedural note, it's very evident that return on equity and  
19 the issues surrounding that are very much at issue in this  
20 proceeding. I would like to briefly hear from staff with  
21 respect to staff's position. Again, based on the comments from  
22 the respective parties.

23           **MR. YOUNG:** Yes. I'll start, and I'll turn it over  
24 to Mr. Maurey; he'll end it. The issue of ROE has always  
25 historically been a single issue, like staff stated in this

1 prehearing statement, to the public interest. I think staff is  
2 of the view that we have extended the issue positions -- to say  
3 that we are going to recommend extending the issue positions to  
4 75 words and the brief to 100 pages. I think FIPUG can argue  
5 those positions, as it relates to did the Commission consider  
6 the current economic conditions, in Issue 36 based on -- with  
7 the extended pages. So I think the public interest is  
8 protected by that, by if you rule to extended the pages and  
9 extend the wording for the statement. So with that, I'll give  
10 it to Andrew.

11 **COMMISSIONER SKOP:** Mr. Maurey.

12 **MR. MAUREY:** I really can't amplify more that this is  
13 an issue that has historically been taken up in one issue. The  
14 economy, while there is disruption in the credit markets today,  
15 the economy has always changed over time and an ROE is set  
16 based on the capital cost at that period in time. That there  
17 is more being written about the economy now than in the past it  
18 doesn't change the Commission's obligation or the parties'  
19 obligations to flesh out what the cost of capital is at this  
20 point in time.

21 Another problem we had, though, is when they say the  
22 current economic conditions, that was problematic for us  
23 because is current last summer when the company filed its  
24 testimony, or the fall when the intervenors filed, or late  
25 January when we hear this record? The Commission will have to

1 base a decision on the record and will base it on the evidence  
2 in that record at that time.

3 We believe also with TECO counsel that there are a  
4 number of spin-off issues that are possible with this. If we  
5 do this, then we could also go down that laundry list of which  
6 models to use, which proxy companies to use. It could get  
7 quite lengthy if we break it out.

8 We believe it can be subsumed with the expansion of  
9 words in the position and pages in the brief that these two  
10 matters can be adequately addressed by the parties.

11 **COMMISSIONER SKOP:** Thank you.

12 Based on the positions of the parties and having  
13 listened carefully to the parties as well as staff's position,  
14 I tend to concur that historically ROE has been addressed as a  
15 stand-alone issue, so with that I would be inclined to deny  
16 FIPUG's request to include Issues 35 and 36, to the extent that  
17 those will be subsumed within the broader issue of Issue 37  
18 with respect to what is the requested return on common  
19 equity -- excuse me, what is the appropriate return on common  
20 equity for the projected test year. So that will be my ruling.

21 I do respect the position of the parties, and if  
22 there is any consternation over that ruling, certainly there  
23 will be the ability to submit a motion for reconsideration that  
24 the Commission could take up as a preliminary matter prior to  
25 hearing.



1           So with that issue resolved, are there any other  
2 issues with respect to Section VIII that staff is aware of?

3           **MR. YOUNG:** No, there are no issues that staff is  
4 aware of -- no, excuse me.

5           **COMMISSIONER SKOP:** Mr. Young.

6           **MR. YOUNG:** The parties and staff have not had an  
7 opportunity to discuss stipulations and issues at this time,  
8 but we expect to have those discussions before the hearing on  
9 the 20th. We just want to bring it to your attention. We will  
10 bring a list of proposed stipulations to be addressed at the  
11 commencement of the hearing.

12           **COMMISSIONER SKOP:** Thank you. Any other concerns or  
13 questions with respect to Section VIII before we move to  
14 Section IX?

15           **MS. CHRISTENSEN:** Commissioner, I think I needed to  
16 address Issue 40. And in Issue 40 it asks what is the  
17 appropriate inflation factors for use in forecasting the test  
18 year budget. This is obviously an issue that was raised by  
19 staff. Staff has taken no position at this time. Tampa  
20 Electric has put in some numbers. We had taken the position no  
21 position at this time awaiting evidence adduced through  
22 discovery and/or hearing. And I guess my question is we are  
23 still in the process of doing some discovery and there is still  
24 some outstanding discovery. I just want to know if staff is  
25 aware if there is any outstanding discovery still on this

1 issue, because I would not want to be precluded from taking a  
2 position if some sort of discovery or something comes out at  
3 hearing that would cause me to question Tampa Electric's  
4 position. And I might ask for indulgence on this one  
5 particular issue, given the way that it's stated.

6 **COMMISSIONER SKOP:** If staff could speak to that and  
7 the ability to take a preliminary position or what options  
8 might be available to OPC with respect to the request.

9 **MS. BROWN:** Commissioner, it seems to me  
10 Ms. Christensen has provided good cause to be permitted to take  
11 no position at this time awaiting further discovery  
12 information. The order establishing procedure contemplates  
13 that exception if the party can demonstrate that there is good  
14 reason why they are not able to take a position at this time,  
15 so we would recommend that OPC be allowed to take no position  
16 at this time awaiting pending discovery.

17 **MS. CHRISTENSEN:** Thank you.

18 **COMMISSIONER SKOP:** Any other comments or concerns  
19 raised by the respective parties?

20 **MR. TWOMEY:** Yes, sir.

21 Commissioner Skop, I think since we're obliged, I  
22 believe, to not persist with any no-position-at-this-time  
23 positions beyond the prehearing conference, I think the  
24 cleanest way for staff to take care of this would be for any  
25 position where -- any issue where AARP still has a no position

1 at this time, to change it to agree with Public Counsel. And  
2 then, Commissioner Skop, I have a couple of specific changes.

3 **COMMISSIONER SKOP:** Are those in relation to Issue  
4 40?

5 **MR. TWOMEY:** I'm sorry.

6 **COMMISSIONER SKOP:** We're still on Issue 40.

7 **MR. TWOMEY:** I'm sorry, it has nothing to do with 40.  
8 Pardon me.

9 **COMMISSIONER SKOP:** Let's try and wrap that one up,  
10 and then we'll address your concerns. Based on no objection of  
11 the parties and the request made by OPC with respect to Issue  
12 40, it will be ruled that that will be included in the  
13 prehearing statement without prejudice to OPC to change their  
14 position at a later date based on discovery.

15 Mr. Twomey, you're recognized with respect to any  
16 remaining issues you may have.

17 **MR. TWOMEY:** Yes, sir. Thank you. On Issue 95,  
18 please change AARP's position to no.

19 On Issue 97, change AARP's position to no.

20 And then on 98, at the bottom, late payment charge,  
21 however you would reflect it, Staff, to say the late payment  
22 charge should not include a minimum payment of \$5.

23 **MS. BROWN:** Commissioner, having looked at the issues  
24 that AARP is bringing to our attention, I see that there are  
25 other parties who have not taken positions at this time, also.

1 I think we probably need to go through with each party to get a  
2 no position, or an affirmative position, or a negative position  
3 on all of these issues. Let me also say that if Mr. Twomey  
4 wants to contact us and give us the language of that position  
5 that he wants, we can reflect that in the prehearing order.

6 **COMMISSIONER SKOP:** Why don't we do this, and, again,  
7 if there is any objection by the parties, because I want to  
8 make sure that we get this incorporated. I guess I was trying  
9 to do it the expeditious way where we would have concurrence of  
10 the parties and just deal with those issues that there may be  
11 issues with. However, maybe we should do a quick review  
12 issue-by-issue. Any objection to doing that?

13 Okay. Let's start with Issue 1.

14 **MR. WILLIS:** We would hope that that issue could be  
15 stipulated. There's not really any position taken in  
16 opposition of it, really, except kind of as a placeholder.

17 **COMMISSIONER SKOP:** Okay.

18 **MS. CHRISTENSEN:** Office of Public Counsel would just  
19 take no position. I think in previous cases the staff's  
20 practice is where we have taken no position and other parties  
21 have taken no position and there seems to be no controversy,  
22 then the issue is stipulated between staff and the party,  
23 depending on how staff ultimately decides. But for that issue,  
24 we would just take no position.

25 **COMMISSIONER SKOP:** Any other comments on Issue 1?

1           **MR. WRIGHT:** We also would take no position on  
2 Issue 1.

3           **COMMISSIONER SKOP:** Thank you. Staff.

4           **MR. YOUNG:** With Ms. Christensen's statement, that  
5 can possibly be -- we can reflect that as a possible  
6 stipulation between all the parties and staff.

7           **MS. CHRISTENSEN:** Excuse me. That's not quite what I  
8 said. What I said is we would just take no position. I think  
9 historically those where we have taken no position, for those  
10 issues if it has been reflected that we have taken no position,  
11 and then if staff ultimately agrees with the company's  
12 position, then that gets reflected in the order as an agreement  
13 between the company and staff, but we are still reflected as  
14 having taken no position, and we would ask that that remain so.

15           Mr. Young probably just intended that, but I want to  
16 be clear.

17           **MR. YOUNG:** I just intended it as a possible  
18 stipulation. Ms. Christensen is absolutely correct.

19           **COMMISSIONER SKOP:** Okay. All right.

20           **MR. WRIGHT:** Commissioner Skop.

21           **COMMISSIONER SKOP:** Mr. Wright, you're recognized.

22           **MR. WRIGHT:** Thank you, sir.

23           I apologize for this, but since we are going to go  
24 through this issue-by-issue, I do have several issues that we  
25 will be changing from no position at this time to no position,

1 others on which we will be changing to agree with OPC or FIPUG.  
2 I am realizing that I have gotten myself into a time bind, and  
3 I need -- if I may have about three or four minutes to go  
4 dictate an e-mail to my secretary to alleviate the time bind.  
5 I do apologize. I thought we'd be done sooner.

6 **COMMISSIONER SKOP:** If there's no objection of the  
7 parties, we can take a brief three or four minute recess. We  
8 stand adjourned. We will reconvene in five minutes.

9 (Recess.)

10 **COMMISSIONER SKOP:** Okay. We are going to go back on  
11 the record, and hopefully I'm going to try and expedite this  
12 process. Normally it would be my preference to go  
13 issue-by-issue, unfortunately in this docket there are many  
14 issues, to say the least. I guess the way I would like to  
15 proceed in terms of maximizing the value of everyone's time is  
16 that I have affirmatively ruled and denied the inclusion of  
17 Issues 35 and 36 with respect to the proposed issues.

18 Are there any questions by the parties with respect  
19 to the wording of any remaining issues? That's what I would  
20 like to start with. Okay. So the only issues that remain -- I  
21 mean, the only issue, if you will, that remains left is to  
22 provide the updated party positions on each of those respective  
23 remaining issues. And I think what I'd like to do in the  
24 interest of economy is to allow the parties the option of  
25 e-mailing the Commission, providing copies to each of the

1 respective parties of their position statements by the close of  
2 business on January 9th, which is Friday, and that would allow  
3 each of the respective parties to fine-tune their respective  
4 positions expeditiously for those issues that will be included.  
5 And if they could provide Commission staff, again, by 5:00  
6 o'clock on Friday, January 9th. And if staff has any comment  
7 to that.

8 **MS. BROWN:** Commissioner, I would just like to ask  
9 that the parties -- to ensure that the parties are going to  
10 take a position one way or another on these issues and not come  
11 back on the 9th with no position at this time again.

12 **COMMISSIONER SKOP:** Can the parties speak to that,  
13 please.

14 **MR. WILLIS:** We support that. You know, the purpose  
15 of the prehearing conference is to simplify the issues to see  
16 what we are really going to hearing on. That has been the  
17 procedure in the fuel docket and every other proceeding, and  
18 that's reasonable and we support it.

19 **COMMISSIONER SKOP:** Thank you. FIPUG, Mr. Moyle.

20 **MR. MOYLE:** Can I go last on that one? Can I defer?

21 **COMMISSIONER SKOP:** Yes.

22 Ms. Bradley.

23 **MS. BRADLEY:** I am going to defer to Ms. Christensen,  
24 because I think she has a specific issue, or has already  
25 brought up a specific issue and they've granted an extension.

1           **COMMISSIONER SKOP:** Well, that was on one specific  
2 issue. Again, that was Issue 40. We'll go to Ms. Christensen,  
3 and hopefully we can get some agreement amongst the parties on  
4 this, because it seems to be a very straight-forward way to  
5 allow everyone to update their positions.

6           **MS. CHRISTENSEN:** My understanding is that it has  
7 been staff's practice that where you have taken no position at  
8 this time they change it to no position, and I understand that  
9 that's the procedure that staff is going to employ, and we  
10 understand that that -- and we've talked about that. There are  
11 only a few issues on which I have taken no position at this  
12 time where AARP has raised a new position today that I may  
13 adopt an actual specific position. And I will forward those to  
14 staff at the appropriate time.

15           And I think I have also discussed the other issues on  
16 which I've taken a yes or no position awaiting evidence, and I  
17 think we have resolved those. And the only one other issue  
18 that was outstanding that had no position awaiting evidence, I  
19 think the Commission has made a specific ruling on that. So my  
20 understanding is that if there is any issue that still has no  
21 position at this time on Friday, staff is going to change that  
22 to no position. And that has been the Commission practice, so  
23 we are aware of that.

24           **COMMISSIONER SKOP:** Thank you.

25           Mr. Twomey.



1           **MR. TWOMEY:** I don't have any problem. I mean, we  
2 recognize that Ms. Brown has taken a position that no position  
3 is a position, right? And I understand that has been the  
4 Commission practice generally since I was here a long time ago,  
5 and I don't really have any problem with that. Although I will  
6 tell you that I believe I'm in agreement with what I think Mr.  
7 Moyle is going to suggest to you, that pursuant to the  
8 Administrative Procedures Act that if one -- for example, if  
9 AARP took a no position on an issue in this case and then saw  
10 something in the cross-examination that one could make a strong  
11 argument that we would change that and would attempt to, and  
12 the APA would not foreclose you there. But that is for another  
13 day if we have to worry about that.

14           So I will submit all the changes I gave earlier by  
15 e-mail to the staff and then go from there.

16           **COMMISSIONER SKOP:** Staff.

17           **MS. BROWN:** Two comments. The Commission also has  
18 considered where there is a change in circumstances has allowed  
19 parties to change their position if something new has come up.  
20 So I don't think anything that we are saying here is  
21 inconsistent with that.

22           Second of all, this isn't just staff's practice. I  
23 mean, this is codified in the order establishing procedure for  
24 this particular case and all other cases that are heard before  
25 the Commission.

1           **MR. MOYLE:** And I probably bear some responsibility  
2 for raising this question, and part of it, I must confess is,  
3 you know, having litigated over at the Division of  
4 Administrative Hearings and some other places. I mean, we  
5 haven't had any evidence at this point, and staff has taken a  
6 lot of positions, and they say no position at this time I think  
7 in part because they want to hear what the witnesses say  
8 subject to cross-examination and be tested on that.

9           So, you know, I don't want to be a stick-in-the-mud  
10 on this, and I will kind of work through it and manage through  
11 it, but to the extent you had a witness that got up on the  
12 stand and under cross-examination said some things that were  
13 particularly relevant and pertinent, I wouldn't think that you  
14 would be foreclosed from arguing that in your post-hearing  
15 briefs and whatnot.

16           But I don't want to make a bigger issue out of it.  
17 I don't think it is, it's just I'm reminded a little bit about  
18 a story I heard one time where somebody was cooking up a ham  
19 and they took the ham and chopped off a third of it and threw  
20 in the garbage can. And the little kid asked the mom, "Why are  
21 you doing that?" "Well, that's how my mom did it." And they  
22 went back and asked the grandmother and it got to the point  
23 finally where the person who originally did it said, "Well, the  
24 pot was only this big. That was the only way I could took it."

25           And just because we have done things historically a

1 certain way -- but I'll defer to my colleagues' comments. And  
2 I don't want to -- you know, I think we have stated positions  
3 on almost everything. To the extent somebody happened when you  
4 did have a live witness on the stand, I would think there would  
5 be an ability to assert a position.

6 **COMMISSIONER SKOP:** Thank you. And I guess my  
7 question to staff, is there an opportunity at the end of the  
8 hearing in the post-hearing brief to state your basic position?  
9 I believe that is what we give them the opportunity to do, and  
10 they would be free to amend that as they felt accordingly to do  
11 so. Is that correct?

12 **MS. BROWN:** Well, I think if there were good cause to  
13 do it, if some surprise occurred in the hearing, we contemplate  
14 that. It would be probably by a motion, or at the end of the  
15 hearing or something before we adjourned, we could address it.  
16 So I don't think that's really a problem.

17 Mr. Moyle's issue, Mr. Moyle does have a lot of  
18 issues in the case that he hasn't taken a position on, so I  
19 would assume that he's going to e-mail that to us before the  
20 close of business on Friday.

21 **COMMISSIONER SKOP:** I have a question with that, too.  
22 I mean, it is difficult to take a position until you have seen  
23 the evidence. So, again, I'm a little --

24 **MS. HELTON:** Mr. Commissioner, Mr. Chairman.

25 **COMMISSIONER SKOP:** Ms. Helton.

1           **MS. HELTON:** We are set up a little bit differently  
2 than DOAH. DOAH, the testimony in my experience except for  
3 maybe a few rare instances is all live. Here we have prefiled  
4 testimony, and on that prefiled testimony the parties should  
5 have -- if they have not, but they should have conducted  
6 extensive discovery. The company has filed its MFRs at the  
7 beginning of the case, and they filed their testimony at the  
8 beginning of the case, and the parties have been given time to  
9 conduct discovery on that, to file their own prefiled  
10 testimony, to depose the witnesses who will be here. So there  
11 really should not be many, if any, surprises.

12           There is a reason why we have the process that we do  
13 here, and that is to -- a lot of our cases, as you well know,  
14 are large, complex, deal with many parties and many issues, and  
15 this is a process that has developed over time here at the  
16 Commission to help kind of distill into what we really need to  
17 spend time on in the hearing room.

18           So, yes, we have a mechanism in place to deal with  
19 those surprise instances where there is good cause to provide  
20 the Commission with argument after a hearing if the party has  
21 not taken a position prior to. But in most instances the  
22 parties should be in a position where they can take a position  
23 on the issues.

24           **MS. CHRISTENSEN:** Commissioner, may I just briefly  
25 address that.

1           **COMMISSIONER SKOP:** Hold on for a second. And, Ms.  
2 Helton, that's my understanding of our procedures at the PSC  
3 also, that there is that prefiled testimony, the ability to  
4 conduct discovery, and to take those initial positions.

5           And to Mr. Moyle and the parties, I would expect that  
6 they would be doing that concurrently to the extent that they  
7 would be able to either adopt a no position or state expressly  
8 their given position by the close of business on the 9th.

9           And, Ms. Christensen, with that you're recognized.

10          **MS. CHRISTENSEN:** Commissioner, just factually in  
11 this case, and this is one of the unusual circumstances we have  
12 here, rebuttal testimony was not filed until December 18th and  
13 the hearing starts January 20th. Had we -- and I did  
14 expeditiously get out one round of discovery on the rebuttal  
15 testimony, I will not get those answers until the day before  
16 hearing. And as well as taking depositions that staff has  
17 scheduled, we still have numerous outstanding late-filed  
18 exhibits that we may or may not get on certain of the issues.

19          So given the expedited time frame for this particular  
20 hearing, it places a unique set of circumstances that there may  
21 be things that are not discovered until after the prehearing.

22 And I just want to bring that to the attention of the  
23 Commission, that while we are trying to do all within our  
24 ability to uncover all of the evidence that we can to bring it  
25 forth to the hearing, we are still waiting for some of that to

1 come in.

2           **COMMISSIONER SKOP:** Ms. Christensen, with all due  
3 respect, and then I'm going to go to staff, because I think  
4 they will want to chime in on this issue. But, again, in my  
5 over-40 moment, as Prehearing Officer, I do distinctly remember  
6 that this issue came up in, I believe, this exact same case to  
7 the extent that there was an accommodation made, a shifting of  
8 the deadlines to accommodate some of the concerns that OPC had  
9 raised over no objection by TECO previously.

10           Now, I might stand corrected in that, and I will look  
11 to staff to refresh my memory, but the prefiled testimony had  
12 been filed, we had shifted those dates, but I will look to  
13 staff to better explain this. I could be wrong.

14           **MR. YOUNG:** You are absolutely correct. We did  
15 modify the dates to accommodate a more lenient schedule because  
16 of the uniqueness of the time.

17           **MS. CHRISTENSEN:** Right, and I'm not --

18           **COMMISSIONER SKOP:** Hold on for a second. In that  
19 same regard, again, with all due respect to OPC, again, and to  
20 the other parties, the parties had adequate notice that this  
21 case was docketed; they had adequate notice of the dates, the  
22 critical dates in this process; and I don't understand, or I  
23 would like to gain a better appreciation that since  
24 accommodation has once been granted how that would be not  
25 unduly prejudicial to TECO to continue to rely on the facts

1 that, oh, we have not had adequate time to review prefiled  
2 testimony and all of that when adequate notice has been given  
3 that this is the schedule we are on.

4 **MS. CHRISTENSEN:** Commissioner, I think maybe we are  
5 having a miscommunication of my point. My point isn't that,  
6 you know, that we moved the testimony dates back and we have a  
7 shortened discovery. I think that has always been a problem in  
8 this case with the original dates and today's dates. It's just  
9 a recognition that there is still some outstanding discovery  
10 that will not come back in until the hearing is starting, and  
11 we are in the process of conducting some depositions to meet  
12 the current schedule, and we still have some outstanding  
13 late-filed exhibits, so that the Commission is aware that there  
14 may be some information coming in after the prehearing and  
15 possibly even after Friday that may change positions. And I'm  
16 not trying to address the accommodation of the schedule, which  
17 we appreciated the additional time, just the reality of the  
18 facts and the ability to take positions.

19 **COMMISSIONER SKOP:** And I appreciate that. And I  
20 understand that, again, accommodation was made to accommodate  
21 the concerns that were validly raised by OPC over a  
22 nonobjection by TECO. I understand the fact that there may be  
23 some late discovery and late-filed exhibits, and if something  
24 changes the dynamics in a very extraordinary manner, I think  
25 staff has mentioned that there is a provision when adequate

1 cause is shown to allow parties to change their position. But  
2 other than that, the positions for the most part should be  
3 pretty much readily established by the close of business on the  
4 9th.

5           And I would appreciate that if the parties could make  
6 the best effort to clearly articulate their positions for the  
7 respective issues that they would like to see a change of  
8 reflected in what is currently stated in the document before us  
9 that that be done very expressly by issue to staff so they will  
10 have the time to incorporate it so we can get the order issued  
11 by the 14th.

12           Any questions or concerns with respect to that? I  
13 think that is very fair and straightforward, and the more  
14 effort that the parties could put into identifying  
15 issue-by-issue any changes that would need to be made, I think  
16 the easier it would be for our staff to turn around all of  
17 those respective inputs in short order so we can get the  
18 prehearing order out.

19           All right. With respect to that, the deadline again  
20 is set for Friday, January 9th, 2009, 5:00 p.m. If the  
21 parties, again, could mail that to staff and the respective  
22 intervenors and related parties that would be appreciated.

23           Moving on to Issue 9 on the Exhibits List.

24           Staff.

25           **MR. YOUNG:** Staff will prepare a Comprehensive



1 Exhibit List to be entered into the record at the hearing.

2           **COMMISSIONER SKOP:** Thank you. With respect to  
3 Section X, Proposed Stipulations. Staff.

4           **MR. YOUNG:** There are no proposed stipulations at  
5 this time.

6           **COMMISSIONER SKOP:** Thank you. Moving on to Section  
7 XI, Pending Motions. Staff.

8           **MR. YOUNG:** There is one pending motion. There's a  
9 motion to strike by FIPUG. However, in terms of the Proposed  
10 Stipulations, Section X, as stated, staff will be working with  
11 the parties to see if we can reach resolution of this docketed  
12 matter in terms of proposed stipulations.

13           **COMMISSIONER SKOP:** Okay. And with respect to the  
14 pending motions, I guess you mentioned there is a pending  
15 motion to strike. And it's my understanding, I guess that that  
16 was filed recently, and TECO has not had a chance to respond to  
17 that motion.

18           **MR. YOUNG:** Yes, sir. I think around 11:30 this  
19 morning FIPUG filed a motion to strike portions of Susan  
20 Abbott's testimony and Witness Gillette's testimony, and both  
21 are TECO's witness. It is my understanding that TECO has not  
22 had a chance to review that motion and they are seeking to file  
23 something in response to that motion.

24           Staff recommends that we defer that by written order  
25 and rule upon that motion by written order at a later time.

1           **COMMISSIONER SKOP:** And what date would staff suggest  
2 it's seeking to obtain the TECO response to the motion to  
3 strike, by what date?

4           **MR. YOUNG:** Hopefully, I think, if TECO can respond  
5 to that, next week sometime.

6           **MR. WILLIS:** We can do so. I think we have a set  
7 number of days in the rules to do it. I believe seven days,  
8 and we will do it within that time period.

9           **MR. YOUNG:** If time allows, seven days if time  
10 allows.

11           **COMMISSIONER SKOP:** Okay. Well, we'll rule on that  
12 motion to strike at the appropriate time via separate order.

13           With respect to the -- I guess, are there any  
14 confidentiality motions or protective orders?

15           **MR. YOUNG:** Yes. There are several motions for  
16 temporary protective orders, and those will be addressed by  
17 separate order.

18           **COMMISSIONER SKOP:** Okay. Show it done. Moving on  
19 to Section XII, Pending Confidentiality Matters.

20           **MR. YOUNG:** There are pending several confidentiality  
21 requests and that will be addressed by separate order.

22           **COMMISSIONER SKOP:** Show that done, also. Moving on  
23 to Section XIII, Post-hearing Procedures.

24           Staff.

25           **MR. YOUNG:** Yes. First, the post-hearing briefs are

1 due on February 17th, 2009. Staff's post-hearing  
2 recommendation on the revenue requirements and the rate issues  
3 is scheduled for March 5th, 2009, with agenda on March 17th,  
4 2009. Staff's post-hearing recommendation on the rate design  
5 issue is scheduled for March 26th, 2009, with agenda on  
6 April 7th. It has come to my attention that the parties might  
7 want to make a request to you as relates to the words for issue  
8 positions and page limit for post-hearing briefs.

9 **COMMISSIONER SKOP:** Okay. TECO, you're recognized.

10 **MR. WILLIS:** Commissioner, with discussion with the  
11 intervenors, we have agreed to request from you that in lieu of  
12 50 words per issue that that be 75 words per issue. That's  
13 consistent with what has been done previously in the fuel  
14 docket, and that the limit of the total of the issues and  
15 positions and brief together shall total no more than 100  
16 pages. It reads 40 pages now, and we all believe that  
17 100 pages is more reasonable.

18 **COMMISSIONER SKOP:** Okay. Any other comments with  
19 respect to that? Ms. Christensen, you're recognized.

20 **MS. CHRISTENSEN:** Commissioner, I would ask on the  
21 post-hearing brief date, if we could get until the end of the  
22 week. I think Tuesday -- it's a long week, I think Tuesday is  
23 the first day back at business for that week. I would ask to  
24 move it until Friday, and that should not create too much of a  
25 problem for staff. We are talking a significant number of

1 issues in this matter, and that's fairly expedited given the  
2 close of the hearing would be likely on January 30th. That's  
3 less than two and a half weeks to do a more than 100-page  
4 brief.

5 **COMMISSIONER SKOP:** For the moment, let's stick on  
6 the issue of the number of the words in the statement and pages  
7 if we could, and we'll get back to you. Any other objection or  
8 questions to that?

9 TECO.

10 **MR. MOYLE:** We have talked about it and we support  
11 it.

12 **COMMISSIONER SKOP:** Mr. Moyle, going back to you,  
13 being on the adverse side of my ruling, is 75 words going to be  
14 adequate to address in a statement some of the concerns that  
15 you raised in the issues that didn't prevail?

16 **MR. MOYLE:** We will strive to be clear and succinct.

17 **COMMISSIONER SKOP:** I was willing to go to 80, but  
18 we'll show it done at 75 words and 100 pages pursuant to the --

19 **MR. WILLIS:** There is one thing I wanted to mention.  
20 With respect to some of the rate issues, the matrix itself just  
21 to set out what our position is may be even longer than  
22 75 words, and I would request that we have leeway to at least  
23 state what we propose.

24 **COMMISSIONER SKOP:** Can staff chime in on this one?

25 **MR. YOUNG:** Staff doesn't see a problem with that in

1 terms of the rate design issues in terms of stating -- more  
2 opportunity to flesh it out.

3 **COMMISSIONER SKOP:** Parties, any objection? Showing  
4 none, show it done. With respect to Ms. Christensen's issue of  
5 the sliding of the date for the post-hearing briefs from  
6 February 17th to February 20th, will that cause any hardship to  
7 any of the parties, and does staff have any concerns?

8 **MR. TWOMEY:** We support it.

9 **MR. WILLIS:** So long as the other dates stay in place  
10 with respect to the staff recommendations and the agenda  
11 conference, that is fine with us.

12 **MR. YOUNG:** Mr. Commissioner, staff isn't real  
13 concerned about that. It's a very condensed schedule already,  
14 and we're scheduled to go to agenda on March 5th, so it doesn't  
15 really give us -- to file in terms of March 5th, and it doesn't  
16 really give us sufficient time if we move it back to the 20th.  
17 It will put staff in a real quagmire to say the least.

18 **COMMISSIONER SKOP:** What accommodation could staff  
19 make, if any, with respect to the current date of the 17th?

20 **MR. YOUNG:** Speaking of technical staff, there is  
21 really no time in terms of any leeway that we can accommodate  
22 in terms of pushing the briefs back. I want to note that  
23 transcripts -- we did put for daily transcripts, so we  
24 expedited that process. So the parties will have the  
25 transcripts on a daily basis.

1           **COMMISSIONER SKOP:** Any other comments from the  
2 parties?

3           **MR. WILLIS:** We're fine with February 17th, and it  
4 has been noticed a long time, and we will be ready to go by  
5 then.

6           **COMMISSIONER SKOP:** All right.

7           Based on the staff and hearing the request from OPC,  
8 Ms. Christensen, I'm inclined to deny the request. There  
9 appears to be no room to accommodate the request. I know that  
10 there is a hardship because of the issues involved, but  
11 equally, too, staff has a role to play in this and they have to  
12 meet their noticed deadlines also, so I'm going to respectfully  
13 deny the request. So the post-hearing briefs will be due close  
14 of business February 17th, 2009.

15           Moving forward to Section XIV, Rulings. Staff.

16           **MR. YOUNG:** Staff recommends that you make a ruling  
17 that any opening statements that the parties wish to make  
18 should not exceed five minutes.

19           **COMMISSIONER SKOP:** Any comments of the parties on  
20 that?

21           **MR. WILLIS:** That's fine with us.

22           **MR. WRIGHT:** The draft order says ten. We would  
23 prefer ten.

24           **COMMISSIONER SKOP:** Staff, can you reconcile that  
25 difference.

1           **MR. YOUNG:** That was probably scrivener's error, sir.  
2 Staff would recommend seven, if possible.

3           **COMMISSIONER SKOP:** Mr. Wright, can you live with  
4 seven?

5           **MR. WRIGHT:** If that's your pleasure, Commissioner,  
6 of course. This is a big case. There are a lot of issues. A  
7 lot of money.

8           **COMMISSIONER SKOP:** Given the issue -- this is going  
9 to be my ruling. And my colleagues may have my head for this,  
10 but given the issues at stake -- and how many parties are  
11 there? Five. I'm going to go with -- I'm going to get killed  
12 for this. I'm trying to allow -- we're going to go with  
13 seven minutes per party. And, again, my inclination would have  
14 been to go to ten, but, again, there are a lot of parties in  
15 there. I'm going to ask the parties to try to adhere to  
16 seven, but I think that's a fair compromise.

17           Okay. Staff, I guess there's another issue under  
18 rulings with respect to -- I guess the prehearing order will  
19 reflect my rulings that I made on the denial of the FIPUG  
20 proposed issues as well as changing the date to allow the  
21 parties to submit their revised issue statements to the 9th.

22           Any other matters that we need to consider from the  
23 parties?

24           Mr. Moyle.

25           **MR. MOYLE:** I just had a question. I hope the staff

1 would indulge me, and this is the first rate case I've been in  
2 involved in, so I'm learning a lot as we move forward. I know  
3 sometimes like in need determination matters that, you know,  
4 other parties are allowed to address the Commission. I presume  
5 that that would not be permitted, or you have already covered  
6 that with your service hearings. I mean, in any previous rate  
7 case, have members of the public been able to address the  
8 Commission?

9 **COMMISSIONER SKOP:** Staff.

10 **MS. HELTON:** That's what the service hearings are  
11 for. And I, quite frankly, don't know whether we have  
12 completed the service hearings for this case or not.

13 **COMMISSIONER SKOP:** Have we for this case?

14 **MR. WILLIS:** Yes, we have.

15 **MR. YOUNG:** Yes.

16 **COMMISSIONER SKOP:** I guess my understanding is  
17 typically before a big case if consumers were to show up they  
18 would probably -- sometimes we take it as a preliminary matter  
19 and we let them say what they want to say? Just not to turn  
20 anyone away at the door. But, again, I will leave that to the  
21 discretion of the Chair as he deems fit. But, again, with a  
22 rate case in a docketed proceeding, that may be a little bit  
23 different, but I have seen it done during my time at the  
24 Commission.

25 **MR. TWOMEY:** Commissioner Skop.



1           **COMMISSIONER SKOP:** Mr. Twomey, you're recognized.

2           **MR. TWOMEY:** I didn't participate in the case, but I  
3 listened to part of it on the Internet, and I think the  
4 Commission has done this and recognized customers coming to  
5 Tallahassee as recently as the Aqua Utilities case.

6           **COMMISSIONER SKOP:** And I believe you're correct, and  
7 I think we share the same memory. So if consumers were to show  
8 up, I would expect the Chair probably to allow them to speak.

9           Going back to one issue just in the sense of the time  
10 allowed for opening statements. I'm going to change that. I'm  
11 going to make that an even ten minutes with the aspirational  
12 goal that the parties will limit it to lower than that. I  
13 realize this is a very complicated issue, and my colleagues are  
14 going to kill me for this. But, again, this is a big issue. I  
15 want the parties to be able to make a very concise opening  
16 statement.

17           But, again, I think in the interest of fairness and  
18 some of the concerns I have heard, there is not a big comfort  
19 with seven, either. So, again, I'm going to extend that to  
20 ten. But, again, I would greatly appreciate it, as each of my  
21 colleagues would, given the nature of the hearing, if we could  
22 limit that more towards five. But, again, I will leave that to  
23 the self-policing of the parties and those that adhere to that  
24 will probably get smiles from my colleagues. So, thank you.

25           With respect to any other matters? Hearing none.

1           **MR. YOUNG:** There are no other pending matters.  
2 Just, I think, Mr. Commissioner, you were talking about your  
3 rulings. The rulings today will be reflected in the Rulings  
4 Section of the Prehearing Order.

5           **COMMISSIONER SKOP:** Okay. And with that, hearing no  
6 other concerns, we stand adjourned.

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STATE OF FLORIDA )

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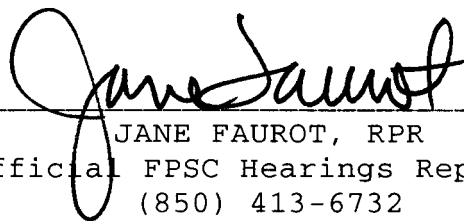
COUNTY OF LEON )

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, 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' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 12th day of January, 2009.



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