BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080317-EI

In the Matter of:

PETITION FOR RATE INCREASE BY
TAMPA ELECTRIC COMPANY.
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VOLUME 4

Pages 403 through 541

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PROCEEDINGS: HEARING

BEFORE: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Wednesday, January 21, 2009

TIME: Recommenced at 9:30 a.m.
Recessed at 6:28 p.m.

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

REPORTED BY: MARY ALLEN NEEL, RPR, FPR

APPEARANCES: (As heretofore noted.)

INDEX

EXHIBITS

P R O C E E D I N G S

(Transcript continues in sequence from Volume 3.)

Thereupon,

GORDON L. GILLETTE

a witness on behalf of Tampa Electric Company, continues his testimony under oath as follows:

CROSS-EXAMINATION

BY MR. WRIGHT:

Q. Aren't the capacity payments typically fixed for the projected time period covered by the ensuing fuel and/or capacity cost recovery dockets?

A. They are.

Q. You also spoke of performance risks. Do you recall that conversation?

A. I do.

Q. Isn't it true that your power purchase agreements have performance security provisions in them?

A. Yes.

Q. Isn't it also true that they, before the facility comes on line, have completion security provisions?

A. Yes.

Q. And that first went to these provisions. If somebody fails to meet a milestone date, come on line when they say to or fail to perform, you can collect some money? You can call on the security; right?

A. Right.

Q. You also had a conversation with Mr. Moyle in which you suggested that there's some risk that a seller, be it QF, IPP, EWG, or whatever, could fail to perform and then sue you for payment despite its non-performance. Do you recall that conversation?

A. Yes.

Q. My question for you is this: Are you aware of any federal or state court in Florida ever having ordered a Florida investor-owned utility to make capacity payments when a seller was not performing?

A. No, I'm not.

Q. Are you aware of any such decision in any other jurisdiction in the United States?

A. I'm not personally aware, but it's been a while since I've been close to the independent power business.

Q. You had a conversation with Mr. Moyle about Standard & Poor's risk factor analysis and practice. I'm sure you recall that.

A. Yes.

Q. I believe that you said that Standard & Poor does the same thing for every utility it analyzes. Is that an accurate characterization of your testimony yesterday afternoon?

A. No.

Q. Oh. I recall there was some discussion about what Standard & Poor's does in other states with regard to other utilities. Can you tell me what your understanding of that is?

A. Yes. There's an attachment to my rebuttal testimony that specifically goes through what Standard & Poor's does. But bottom line, my understanding is they make a judgment on the ability of a utility to recover its payments, and where there are pass-through clauses like there are in Florida, they apply a 25 percent risk factor. But that 25 percent risk factor is not consistently applied to every utility across the United States. It depends on their particular regulatory situation.

Q. So your problem with my characterization of what I thought you said yesterday is that in fact Standard & Poor's applies the same analytical framework, but they assign different percentage risk factors to different jurisdictions. Is that --

A. Correct. I believe they try to be consistent in the application of their methodology, but their methodology allows for variations in the amount of risk that they apply.

Q. Are you aware of whether Standard & Poor's assigns a zero percent risk factor to any utility or regulatory jurisdiction?

A. From what I understand of their methodology, I would expect not.

Q. Are you aware of any state public utility commission, Public Service Commission, or similar regulatory authority that recognizes this purchased power agreement imputed debt adjustment in rate cases?

A. Not specifically, but in my experience, it has been my understanding just in interfacing within the industry and being involved within the industry for some time that there are regulatory jurisdictions, mostly west of the Mississippi River, that have different regulatory regimes. In some cases -- and I think it has pretty much become uniform now, but in some cases, not even allowing necessarily for the full recovery of fuel costs. And so I would expect that in especially some of those western states, there may have been some regulatory jurisdictions that didn't allow the direct recovery of purchased power costs as well, but I don't know specifically. And another reason that leads me to that conclusion is that S&P has room in its methodology for varying that risk factor.

Q. Thank you for that explanation. I think that you did answer my question, but I just want to make sure that you did. My question was, are you aware of any state regulatory authority that recognizes or that has recognized a power purchase agreement imputed debt adjustment in a general rate case? I think you said, "I don't know," or "I'm not aware of any," and then went on with your explanation. Is that accurate?

A. Yes. It might be helpful to maybe clarify just a little bit here, though, because it is my testimony and I do have direct knowledge of the fact that, for instance, Progress Energy Florida in their regulatory stipulation has a treatment of purchased power that's similar to what we're proposing. And I appreciate the difference between stipulations and specific Commission approvals on issues.

Q. Have you read that whole order, Mr. Gillette?

A. No, only the part of the order that is applicable to the purchased power, which I believe is on page 13.

Q. Do you know anything more about what was actually resolved in that settlement?

A. I have a pretty good working knowledge of Progress Energy Florida's regulatory deal, yes.

Q. Are you aware that the settlement was a global settlement of all issues that included no increase in base rates?

A. Yes.

Q. Are you familiar with the use by Florida investor-owned utilities of the imputed debt adjustment in evaluating proposed power purchase agreements in their RFP processes?

A. Can you repeat the question?

Q. Yes. Are you familiar with the use by Florida investor-owned utilities, y'all, Progress, FPL, Gulf --

A. Got it.

Q. -- of an imputed debt adjustment in their evaluations of proposed power purchase agreements in their power supply RFP processes?

A. I believe that in the rules for need for power, there is some requirement for utilities to look at those obligations.

Q. Is that the extent of your familiarity with that issue?

A. Yes.

Q. So would you be aware of what other states do or don't do with respect to proposed imputed debt adjustments?

A. I would not.

Q. Do you personally believe that S&P's practice of assigning a 25 percent risk factor to Tampa Electric Company's non-recovery of capacity payments under power purchase agreements approved by this Commission is appropriate?

A. You know, I really don't have an opinion on that.

Q. Would you agree that the risk of the Florida Public Service Commission not allowing full recovery of capacity payments under a power purchase agreement that it had approved is zero?

A. No, I would not.

Q. You think there's a risk that the Florida Public Service Commission, having approved a contract, would subsequently not allow recovery of capacity payments under that approved contract?

A. We have a lot of faith in the Florida Commission, and it has been, I think, very judicious in balancing the needs of companies and customers, but there always can be a change.

And I think that S&P -- I think the important thing here -- we've been through a lot of cross-examination with regard to the PPA adjustment. I think the important thing here is that whether I believe or anybody in Tampa Electric believes that it's correct or incorrect for S&P to impute 25 percent of the present value of those costs, they do. They do it in the ratings analysis of Tampa Electric Company.

And so the cash flows -- and specifically what S&P does is, they take the $77 million and they reduce the cash flows of the company by imputing that as debt as though it's interest expense to the company on an annual basis. And so when they calculate their ratios -- and I have some of those ratios in Document Number 5 to my testimony -- their ratios are in fact lower by virtue of this imputed interest. And so it is part of the ratings analysis that S&P does, like it or not.

Q. I understand your position on the issue. My question was, do you believe that there's a risk that the Florida Public Service Commission would not allow full recovery of capacity payments under a contract that it had previously approved under a final order of this Commission?

A. And my answer to the question is yes, there is a risk.

Q. Can you assign a percentage probability value to that risk?

A. I really can't.

Q. Have you ever personally challenged this practice in conversations with the Standard & Poor folks?

A. We've discussed it. We understand it. But it's really generally not our place to challenge it.

Q. So did you tell the Standard & Poor folks you think 25 percent is too high?

A. No.

Q. Did anybody else in the company to your knowledge challenge Standard & Poor's assignment of a 25 percent risk factor?

A. Not that I'm aware of.

Q. Are you familiar with the Commission's earlier orders on this subject matter?

A. Not specifically. I know that in the '90s, during a time when the investor-owned utilities and the Commission were looking at issues of equity ratio, there was a certain amount of activity in the case of FP&L, but I'm not intimately familiar with that.

Q. I apologize for the ambiguity of my question. I meant to ask more specifically, are you aware of the Commission's orders with respect to the effectiveness and future effect of their approval of power purchase agreements for cost recovery purposes?

A. I would say generally, yes. But obviously, there's a lot of specific orders out there and a lot of different deals.

Q. Will you agree that it's the Commission's expressed policy as articulated in its orders that having approved a power purchase agreement for cost recovery purposes, it will not subsequently disallow cost recovery of payments made under those contracts?

A. I do understand that to be -- I'm not familiar with all of the orders, but I do understand that to be a regulatory tenet.

Q. Thank you.

A. Having said that, you know, we've been on this for a while, but I would point out that, as I said yesterday, I can envision circumstances where, you know, a power purchaser isn't performing, but they're trying to get paid, you know, and the Commission and the power purchaser effectively indirectly don't see eye to eye, and the company gets caught in between.

Q. In that regard, I think you previously testified during my cross-examination that you're not aware of a single instance in the United States where a company has been required to make capacity payments when a seller was not performing. Is that true?

A. I'm not aware, but I'm not aware of an awful lot of -- you know, the individual projects, you know, that exist in the IPP industry in the United States.

Q. Has it ever happened in Florida to your knowledge, Mr. Gillette?

A. Not that I'm aware of.

COMMISSIONER EDGAR: Mr. Wright, I'm having a little difficulty hearing you. If I could ask you to either speak louder or a little closer. Thank you.

MR. WRIGHT: Thank you for calling that to my attention, Madam Chairman.

BY MR. WRIGHT:

Q. Did I understand you to say in your cross-examination testimony yesterday that you cannot show any specific numeric adjustment that either Moody's or Fitch makes in evaluating Tampa Electric's or TECO Energy's financial condition or ratings?

A. Can you repeat the question?

Q. I believe yesterday I understood you to say that you cannot show any specific numeric adjustment that either Moody's or Fitch makes in their respective evaluations of Tampa Electric's or TECO Energy's ratings, financial condition, et cetera. Is that an accurate characterization of your testimony yesterday?

A. With regard to the purchased power?

Q. Yes, sir.

A. That is an accurate characterization. However, I did state yesterday that I am aware that Moody's does in some way take into account purchased power.

Q. And in that regard, is it your understanding that it's a qualitative consideration, that they consider the regulatory environment, or what?

A. I'm not completely clear on that, but I think witness Abbott may be able to shed a little bit more light on that.

Q. So if you didn't have the Standard & Poor practice of assigning the 25 percent risk factor, you wouldn't have any analytical basis for applying this adjustment to ask for an additional $5 million in this case, would you?

A. Standard & Poor's has been the most transparent on what they do. I would state, however, that Moody's for sure, and possibly Fitch, are in some way taking it into consideration. And I wouldn't say we -- you know, we necessarily wouldn't be talking about this if it weren't for S&P.

MR. WRIGHT: Madam Chairman, the pending question was, if you didn't have the Standard & Poor practice of assigning a 25 percent risk factor, you wouldn't have any analytical basis for applying this factor so as to propose collecting an additional $5 million a year from customers; isn't that true? I would appreciate a yes or no --

COMMISSIONER EDGAR: Are you speaking to me?

MR. WRIGHT: I was attempting to rather than engage in anything like argument with the witness, Madam Chairman. I asked him what I believe was a yes or no question, in which he spoke about Moody's and Fitch taking a look at this stuff. I asked him, "Do you have any other analytical basis other than Standard & Poor's 25 percent risk factor application to support asking our members, their customers, to pay an extra $5 million a year. I would appreciate a yes or no answer.

COMMISSIONER EDGAR: Mr. Willis.

MR. WILLIS: To the contrary, I think Mr. Wright has been arguing with this witness for some time. He doesn't like the answers that he's getting, and he just is continuing to repeat the questions. And I think this question has been asked and answered, and I think we should move on.

COMMISSIONER EDGAR: I do know we've heard it three times.

Mr. Gillette, can you respond to the question that Mr. Wright has most recently posed to you with a yes or no answer?

THE WITNESS: I will, but I need to hear it one more time to hear if it was stated in the negative or the positive.

COMMISSIONER EDGAR: That's fine. One more time, Mr. Wright, please.

BY MR. WRIGHT:

Q. I'll try to state it in a more positive orientation. Isn't it true that the only analytical basis you have for asking your customers to pay this extra $5 million or so per year is the Standard & Poor's practice of assigning a 25 percent risk factor to capacity payments under power purchase agreements?

A. Yes, from an analytical standpoint. But again, from a qualitative standpoint, the other rating agencies consider it, as I understand it. If in analytical you mean quantitative, the answer to your question is yes.

Q. Thank you. I think I understood your earlier testimony to indicate that Standard & Poor will not produce a witness to testify regarding its practice. Is that accurate?

A. We have not -- we do not have anybody from the company from Standard & Poor's, nor do we have anybody from the company that's currently from Moody's. But as I testified, our witness on financial integrity, witness Abbott, I think can speak very well to the practices of any of the three rating agencies.

Q. Have you asked Standard & Poor to produce a witness to testify to this Commission with authoritative testimony as to their practice and the justifications therefor?

A. No, I have not. Having said that, I do believe that either formally or informally, back in the 1990s, Florida Power & Light had somebody with S&P engage with this Commission on this very topic.

Interestingly enough, in the context of this topic, this is on a pro rata basis fairly small, the amount of purchased power that we buy, relative to Florida Power & Light. We're requesting effectively a 100 basis point adjustment in ROE. Florida Power & Light with all of its purchases from Southern Company and cogenerators has probably some 7- or 800 basis points worth of purchased power. And I believe that the Commission at some point in time has heard a lot on this particular matter.

Q. To your knowledge, has a Standard & Poor employee ever testified under oath to this Commission regarding this practice?

A. No, but I believe there has been communication on this issue either with staff or the Commission in some form.

Q. Did I understand your testimony this morning to be that Standard & Poor will not produce a witness to testify to a regulatory commission on this issue?

A. That's my understanding, that that's their policy. On the other hand, in the instance that I referenced in the late '90s, I think some means of getting direct information from S&P was employed.

COMMISSIONER EDGAR: Mr. Wright, as you mentioned in your -- or as you alluded to in your question, this seems to me to be ground that was well tread this morning and partially yesterday, which makes -- in my opinion, we're awfully close to friendly cross, which, as you know, our Chairman yesterday asked us to avoid.

MR. WRIGHT: Thank you.

BY MR. WRIGHT:

Q. You've been around regulation a pretty long time, haven't you?

A. Yes.

Q. Do you believe that it's right to let a single rating agency who won't produce a witness for the Commission to question about its practices cost Tampa Electric's customers an extra $5 million a year?

A. I can only speak to what S&P does when they rate us, and they do adjust the cash flows. And we think in this regulatory proceeding, the cash flows need to be adjusted as such.

Q. Just so I'm clear, the answer to my question is, you don't have an opinion or a position as to whether it's right for that to work that way?

A. I think that's a fair characterization.

Q. Thank you. I'm going to change lines now.

I would like -- these questions relate to the meaning of the information presented in the company's MFR Schedule D-1a, Mr. Gillette.

A. I'm there.

Q. Thank you. I note that in the header of this schedule next to the word "explanation," it says, "Provide the company's 13-month average cost of capital for the test year, the prior year, and the historical base year." My question is, what does the 13-month average refer to there?

A. It's an average taking into account the test year and I believe the prior month of December.

Q. And does that mean that, for example, the -- let's say the value for the total -- let's say the total jurisdictional capital structure in column 9, row 18, $3,656,800,000. Is that the sum of 13 average capital structure numbers, 13 monthly capital structure numbers divided by 13?

A. I believe that to be the case, although I didn't physically perform that particular calculation on this MFR. We have three sponsors to the MFR. Mr. Chronister can probably walk you through the specifics of the mathematics better than I can.

Q. The company projects that it will earn a 4.3 percent rate of return on equity without rate relief. Is it true that this conclusion assumes that the company will actually spend everything it claims it will spend in 2009?

A. Yes.

Q. Is that true both for capital investments that would be reflected in rate base?

A. You said one thing.

Q. And for O&M expenses.

A. Yes.

Q. Thank you. I realized during my question it was compound, so I was going to let him answer the first one and then ask the second one.

Does this analysis that shows the low ROE -- D-1a shows 5 percent, but I think we can all agree that you really want 4 -- you really believe it will be 4.38 percent. So the question is, does the company's analysis that shows this result assume that you put the five combustion turbines that have been discussed in this case into rate base for the whole year?

A. Yes.

Q. Same question for the Big Bend rail facilities.

A. Yes. Let me clarify. Again, we're getting into territory where witness Chronister did the actual calculations, and I would feel much more comfortable if Mr. Chronister were answering these specific questions. So what I'm stating to you is, not having physically done the calculations, that's what my understanding is.

Q. As a general proposition, would you expect that if the company got no rate relief, but deferred substantial amounts of investment in the combustion turbines, say, that would increase the company's achieved rate of return on equity?

A. I mean, I think as a generic question, if we spend less on rate base, will the ROE go up, I think that's the case. I think it's important to state, as Mr. Black was saying yesterday, though, that we do have needs for new capacity, both driven by peak demand and the black start capability. So I assume your question was a hypothetical one, because I don't know that we can defer those projects and serve customers reliably.

Q. Well, Mr. Black did testify yesterday, did he not, that the company is considering deferring at least a substantial amount of investment in the three CTs that are scheduled to come on line in September?

A. I think he did say something along that line.

Q. And I was really just trying to understand the financial mechanics. If that occurs and the company gets no rate relief, your ROE will be higher; right?

A. That is true. You know, I would think -- I'll leave it at that.

Q. To your knowledge, is the company considering deferring any other investments in capital items from 2009 to any later year? And when I say any other investments, I mean investments that are presently in your MFRs, projected to be in service in 2009.

A. The only thing I think that may be in play a bit is the timing of some of the out year generating capacity, which I think affects 2009, you know, only to a small degree. But we're watching the load growth carefully in terms of our generation needs for the out years.

Q. Would that be a question that I would be better off asking Mr. Chronister or another witness?

A. Probably witness Chronister.

Q. Thank you.

A. I would add, just to provide a little bit of color on this, the need that we have in 2013 for base load capacity that we've identified in our Ten-Year Site Plan is not only driven by load growth, but also by the fact that we have purchased power contracts going away. And so the fact that we are obviously looking at what's happening with our sales in the service territory, and they are lower than we expect, may or may not change the need for the out year capacity.

Q. To your knowledge, is there investment capital reflected in the company's MFRs associated with base load capacity in 2013?

A. I think there may be some expenditures in -- small expenditures in 2009 for the early stages, but Mr. Chronister is better able to speak to that.

Q. Do you agree that Tampa Electric has an excellent business risk profile?

A. Could I ask for a clarification on that question? Are you speaking generally, or are you speaking to the specific S&P designation?

Q. I think I was really asking both, but I meant it more generically, in your own opinion. I'm sure you're aware Ms. Abbott testified that she agrees with the S&P assessment that it's excellent, and I'm asking you, do you agree that Tampa Electric has an excellent business risk profile?

A. Yes, I do. And I would supplement my answer by saying -- I think Commissioner Argenziano asked some questions along this line yesterday, and it might be helpful just to provide a little bit of explanation here.

When S&P looks at business risk profile, they look at the risk of recovering revenues and those kinds of things, but they also look at a separate type of risk profile, and that's financial risk profile, and financial risk profile is driven by the level of leverage in the company. And I think it would be interesting for the Commission to know that in the case of Tampa Electric, we are judged by S&P to have an excellent business risk profile, but at our triple-B rating with the equity ratio that we have now, we have what's called an aggressive financial profile.

Interestingly, if you contrast that with, say, Mosaic Phosphate Company, they have a very poor business risk profile, but over time, they've been working to improve their financial risk profile. In 2006, Mosaic Phosphate Company, according to public documents, was about a 60 percent equity ratio. They took it to 65 percent equity ratio in 2007. But only in 2008 when Mosaic Phosphate took their equity ratio all the way to 80 percent equity ratio --

MR. MOYLE: I think, Madam Chair, this is the point that I'm supposed to object and say this is beyond the scope of the question that was asked.

MR. WILLIS: He's explaining business and financial risk.

MR. MOYLE: Particularly now that he's bringing in one of my member companies.

COMMISSIONER EDGAR: I was kind of surprised that I had not heard an objection, but that's neither here nor there. Mr. Willis.

MR. WILLIS: Both Mr. Wright and Mr. Moyle have opened up the issue of the difference between business and financial risk, and he's just explaining it.

COMMISSIONER EDGAR: Commissioner.

COMMISSIONER ARGENZIANO: Just for clarification for myself, are the ratings just based on risk, or are they based on other criteria, such as management? And I believe TECO took equity -- the parent company took equity out of TECO a number of years ago. Does that type of -- does that have anything to do with the ratings, or does it factor in, or is it just risk?

THE WITNESS: What the rating agencies attempt to do, as I understand it -- and again, S&P has been, you know, most prolific in the literature on this. They attempt to take some of these very qualitative factors, like business risk and financial risk, and boil them down into what ranges are required in terms of coverage ratios for people with varying levels of risk in their ratings process. In other words, if someone -- if a company has a very low financial risk profile and a very low -- I mean an excellent financial risk profile and an excellent business risk profile, the bar that they have to get over with regard to their coverage ratios, the numbers that they have to meet are lower. And conversely, if they have a high level of business risk and a high level of leverage, it translates to higher numbers that they have to meet, and they -- S&P has grids in this regard.

With regard, Commissioner, to your question on holding company versus Tampa Electric Company and those kinds of things, the rating agencies -- obviously, we're a consolidated entity, and so the ratings agencies use different methodologies to look at on a consolidated basis what the rating should be for the holding company versus what the rating should be for the utility.

But I would say where we are right now, the rating agencies have been crystal clear in their report, and already in the record there are rating agency reports that state basically this, and that is that the rating agencies are looking to our investment in equity, our capex program at Tampa Electric, and this

Commission's decision as the major qualitative factors with regard to risk that are going to drive the ratings of Tampa Electric going forward.

COMMISSIONER ARGENZIANO: Since the last rate case, since TECO's last rate case, has TECO been an A rated or triple-A rated, ever?

THE WITNESS: Our ratings have varied. In the '90s, we were in the low double-A, single-A range. And since about 2003, Tampa Electric has been in the triple-B range. And some of my testimony this morning was along the lines of our interest in achieving ratings parameters, in other words, those specific coverage ratios and those kinds of things that would allow us to ascend to the single-A rating again. And we believe that our proposal on capital structure and return on equity in this case would in fact allow us to get there.

COMMISSIONER ARGENZIANO: Just one other question. Does management set the debt, the amount of debt?

THE WITNESS: Certainly management and the board are involved in the decision-making on the various debt issues that we go to the market for, and we view it as management's responsibility to go to the market at good times when rates are the best. And we also view it as, in our corporate structure, the holding company's responsibility to fund adequate amounts of equity in order for on a combined basis the debt of Tampa Electric and equity infusions from the holding company to meet any needs for external financing.

COMMISSIONER ARGENZIANO: Thank you.

COMMISSIONER EDGAR: To state the obvious for the record, the objection is overruled.

MR. WRIGHT: I did not hear that, Madam Chairman. I apologize.

COMMISSIONER EDGAR: The objection is overruled. But I would appreciate the opportunity to remind the witness, as we have discussed, to try to answer the question to the best of your ability that is posed to you, and if you need to elaborate, we certainly will continue to allow.

And on that note, let me ask you this, Mr. Gillette. We've been going at it for quite a while, and we've kept you there for a while. Would you like to proceed, or would you like to take a short break?

THE WITNESS: I'm fine.

COMMISSIONER EDGAR: Okay. Then we will go for a while longer, and then we will take a break.

Mr. Wright.

MR. WRIGHT: Thank you.

BY MR. WRIGHT:

Q. Mr. Gillette, yesterday I believe that from the bench, it was suggested that Tampa Electric faces risks that are extremely minimal as compared to other industries. Do you agree with that?

A. From a business risk perspective, yes. From a financial risk perspective, no. And I'll explain simply by saying that we are a very capital-intensive industry, and it is in the ratepayers' best interests for us to finance a reasonable amount, as reasonable an amount as possible, with debt, because debt is a cheaper source of capital. But there are limits to that, and utilities work through their regulators to determine the very best means of doing that.

Other industries are not as concerned with the level of leverage. And in fact, most general industry has much less leverage, including Mosaic Phosphate, which is at an 80 percent equity ratio.

Q. Do you agree that Tampa Electric has a high degree of revenue certainty?

A. No.

Q. Do you agree that Tampa Electric has a high degree of certainty of recovering its operating costs?

A. Well, the answer is yes and no. In the context of operating costs in the area of fuel and purchased power, as we've been discussing for some time, vis-a-vis the clause mechanisms, there's a fairly regular treatment of that by the Commission.

In the case of operating and maintenance costs, as everybody I think in the room is aware, they're a subject in this base rate proceeding. And we have been effectively recovering those costs by earning a return that has been within our allowed range of return. But a combination of things, including increases in operating costs, have caused us to be below our allowed rate of return, and as a result of that, it is this Commission's decision in this rate case whether they're going to make us whole on those expenses or not.

Q. Isn't it true that before the company can book a positive return on equity, it has to pay all of its operating costs?

A. Yes.

Q. Since your last rate case, which was decided by an order issued about 16 years ago, what's the lowest annualized ROE Tampa Electric has achieved?

A. 8.66 percent, that which was on our September surveillance report.

MR. WRIGHT: Madam Chairman, my colleague is handing out a document that I would like marked as -- I think it's going to be 98.

COMMISSIONER EDGAR: Yes, I'm showing 98.

MR. WRIGHT: Thank you. And its short title is FPSC Revenue Decoupling Report.

COMMISSIONER EDGAR: Okay. As requested, we will mark the exhibit just distributed as 98 and title it FPSC Revenue Decoupling Report.

MR. WRIGHT: Thank you.

(Exhibit 98 was marked for identification.)

BY MR. WRIGHT:

Q. Mr. Gillette, have you seen this document before?

A. No, I have not.

Q. I would like to ask you, please, to look at pages 15 and 16 of the report. We'll start with the table at the bottom of page 15.

A. I see it.

Q. That purports to show costs recovered through clauses as a percent of annual revenues by utility for the nine years indicated; correct?

A. Yes.

Q. And that shows that Tampa Electric's percentage increased from 34 percent in 1999 to 57 percent in 2007.

A. Yes. And I believe that's mostly the result of rising fuel costs.

Q. Do you agree that --

A. And environmental costs.

Q. Do you agree that those values represent an accurate characterization of the percentage of Tampa Electric's costs recovered through clauses as a percent of annual revenues?

A. As I see here, the source of the information is the earnings surveillance reports, and I think the earnings surveillance reports do provide adequate information to make these types of calculations.

Q. So the answer to my question is yes?

A. I'm not familiar with exactly the calculations that were done here. This is the first time I've seen this document. But given the source of information and given what I understand the calculation to be, I believe the answer would be yes.

Q. Thank you. If I can ask the same ultimate question with regard to the table at the top of page 16, do you agree that this, at least to the best of your knowledge, represents an accurate representation of the percentage of Tampa Electric's costs recovered through clauses as a percent of annual expenses for the time period shown?

A. Yes, that's what it appears to be to me.

Q. Thank you.

A. I would just quickly comment to say that this is clearly showing that this percentage has risen over time, and as I say, I think it's the result of increased fuel and environmental costs. This case is about the base rate side, which has from a rate perspective been the same since 1992.

Q. When you referenced fuel there, did you mean to include capacity costs as well that are recovered through the capacity cost recovery clause?

A. Yes.

MR. WRIGHT: Okay. I'm going to change lines again, Madam Chairman.

BY MR. WRIGHT:

Q. In a response that you made a few minutes ago, you made the statement, I believe, that it's in the ratepayers' best interests for the company to raise capital through debt because it's lower cost. Is that an accurate characterization of what you said?

A. Yes, debt is a lower cost source of capital.

Q. Thank you. And you would understand our respective parties' positions to be that the company should raise more through debt, and that's why we advocate a lower equity ratio? Is that your understanding?

A. I understand that's the position. In light of the current environment, I do not understand that rationale for that position, either from an access or a cost perspective.

Q. Did Tampa Electric raise any new capital in 2008?

A. Yes.

Q. And what was that?

A. The company raised $100 million of debt in May of 2008, and TECO Energy injected roughly $300 million of equity into Tampa Electric in 2008.

Q. Where did TECO Energy get the equity funding that it infused into Tampa Electric?

A. From internally generated funds. In other words, we didn't go to the market for either debt or equity.

Q. Does that mean retained earnings out of the dividends paid in to TECO Energy by its subsidiaries?

A. That's correct. Our policy at TECO Energy is that the operating subs dividend 100 percent of their net income to TECO Energy, and TECO Energy redistributes those funds either in the form of dividends to external shareholders or investments back into the subsidiaries, of which our strong focus has been this year, and will continue to be as we're targeting the single-A ratings, injection of equity into Tampa Electric.

Q. I would like the record to make clear what the mechanism for these equity infusions is. Is it by a purchase of Tampa Electric common stock by TECO Energy, or is it by paid-in capital or some other mechanism?

A. It's by virtue of paid-in capital.

Q. I think that at least Mr. Black testified that you also -- that either Tampa Electric or TECO Energy recently renewed a credit facility. Is that accurate?

A. That's correct.

Q. Did you describe that borrowing or credit arrangement in your previous answer? I'm just trying to understand what all you've got here.

A. Understood. No. I was speaking to long-term sources of capital in my previous answer.

Q. Thank you.

A. But you are correct to point out that we did renew a credit facility.

Q. Approximately what date did you renew the credit facility?

A. It was in late December, and it was renewed at a much higher rate than we had before.

Q. What rate?

A. It's a LIBOR-based credit facility. There's a fixed commitment fee to the new credit facility of 125 basis points, and then there's fee on use of the facility of 50 basis points on top of the three-month

LIBOR, so the effective cost is LIBOR plus 175 basis points. That particular credit facility in the past has had a fixed commitment fee of 17 basis points and a drawn adder of 17 basis points, for a total of 34 basis points. And I think this is another demonstration of the very significant increases in the cost of all sources of capital, including short-term debt, as a result of the financial crisis.

Q. I want to ask, what is the typical maturity of funds that you would borrow under this credit facility? Does that question make sense to you?

A. It makes sense to me actually more in the context of long-term debt. In the context of the credit facility, we use those for the very short-term borrowing needs of Tampa Electric. And so in any given month, if there's a big fuel bill due or a big interest payment due, we might draw on that credit line, and then revenues will come in and we'll be able to pay down the credit line, and so we use the credit line as a source of liquid financing.

But I would say, importantly, one of the things that we try to do at TECO Energy and Tampa Electric both is to be sure that our credit lines are not significantly in use during the beginning of hurricane season so we've got adequate funds if we do have hurricane damage.

Q. So would it be accurate that your use when you use it is typically in the range of, say, 15 to 60 days?

A. Yes, and it's highly, highly variable. It's paid up and down on a regular basis.

Q. Currently, what is the relationship between the LIBOR rate and the comparable U.S. Treasury rate?

A. There was a page handed to me earlier that provides what looks to be some fairly recent information, showing that the three-month U.S. Treasury rate was trading at about 12 basis point or .12 percent. And I believe the 30-day LIBOR has closed recently in the neighborhood of about 1 percent.

I would just -- I would add, you know, on this particular question, this level of Treasury and LIBOR rates is indicative of what's happening in the financial markets right now and the flight to quality that we talked about earlier. We've seen three-month LIBOR rates as high as 5 percent in the last five years, and commensurately, Treasury rates almost that high as well.

Q. I think in your answer just now you referred to a three-month LIBOR rate, and in your previous response you said the current 30-day LIBOR rate is about 1 percent. Is that what you said?

A. I think I meant to say three months in both cases.

Q. Okay.

A. And the reason I reference that is, that's the basis for the pricing of our bank line.

Q. So your bank loan is the three-month LIBOR rate?

A. I believe so.

Q. Plus the 175 basis points?

A. Yes, I believe so.

Q. So if you had a draw against that credit facility right now, you would be paying 2.75 percent, roughly?

A. That's about right.

Q. How much debt does Tampa Electric plan to issue in 2009?

A. $125 million.

Q. And do you plan to issue that debt in November?

A. Yes. That's where it is in our budget.

Q. Is there any significant chance that it could move from November to an earlier or later month?

A. We're going to watch that closely throughout this year. We've been watching fuel over- and under-recoveries very closely. And at one point in the fall of this year, I think in our preliminary fuel adjustment filing, we had filed for an under-recovery in 2008 of $209 million. And at that point in time, we made consideration of an acceleration of that debt issuance. But when ultimately fuel prices came down and we refiled expecting a fuel under-recovery of $133 million, we felt more comfortable that we wouldn't have to move the debt issuance. But we're watching that closely, and we're watching the markets closely as well.

Q. Do you have an estimate for how much debt the company plans to issue in 2010?

A. I think it's roughly an equivalent amount.

Q. So roughly 125 million?

A. That's correct.

Q. Do you have a similar estimate for 2011?

A. Yes. I mean, if you would like, we have actually filed documents on this, but I think in 2011, it's another 125 million. And then in 2012, it's a fairly high number, because it's kind of the regular amount we need to fund our ongoing capital expenditures, and we have a very large maturity, I think $500 million in 2012.

That all, on a total basis, I think I testified this morning, over the period 2009 through 2013, with refinancings, gets to us an estimated $1 billion in capital raising during the 2009 through

2013 time period.

Q. Thank you. Now, you've expressed on several occasions concern about Tampa Electric being able to access debt financing; is that fair to say?

A. Yes.

Q. Is it your testimony that the company has to show a high equity ratio in order to access capital markets, the debt market specifically?

A. My answer to that is yes, but I would supplement my answer by saying it's an indirect relationship, in that higher equity ratios translate to higher coverage ratios, which in turn translate to higher ratings, which in turn translate to better access, and in this market, better costs in the capital markets, lower costs in the capital markets. So there is a relationship there, but it takes some steps to get there.

Q. Would it be fair to say that it's kind of a combination of factors, including equity ratio, ROE, revenue certainty, and perhaps other factors?

A. Absolutely no question. And I think my previous testimony is pretty clear that the decisions this Commission will make on ROE and equity ratio will have a very direct bearing in this high time of financial market uncertainty and the high capex that we're facing.

COMMISSIONER ARGENZIANO: Let me ask a question.

COMMISSIONER EDGAR: Commissioner.

COMMISSIONER ARGENZIANO: Pertaining to that, does this Commission have the authority to hold TECO to a specific level of debt-to-equity ratio?

THE WITNESS: The regulatory regime as I have understood it in Florida is that the companies invest equity and debt as they are able into the utility, and the equity ratio can float in between rate cases.

COMMISSIONER ARGENZIANO: But does this Commission have the authority to set a level? Or maybe I should ask staff, but I figured you could answer that.

THE WITNESS: That may be a legal question. I don't know what the extent of your authority is in that regard.

COMMISSIONER ARGENZIANO: Can I ask staff to answer that?

MS. HELTON: That may be a subject that's better addressed in staff's recommendation to you.

THE WITNESS: I would say certainly --

COMMISSIONER ARGENZIANO: I feel like I'm here with my hands tied. I believe that this Commission has no authority to do that.

THE WITNESS: Okay.

COMMISSIONER ARGENZIANO: Thank you.

THE WITNESS: I would just add maybe one point from a layman's point of view on this, and that is, I believe the Commission does have authority in this rate proceeding to decide the equity ratio on which rates will be set.

COMMISSIONER EDGAR: And actually, on that note, the witness may be just fine, but I could use a stretch. So, Mr. Wright, if you will defer, we are going to take a short stretch break for me. And we will come back at 25 after, and you, of course, will continue to be up.

MR. WRIGHT: Thank you, Madam Chairman.

(Short recess.)

COMMISSIONER EDGAR: Mr. Wright, you're recognized.

MR. WRIGHT: Thank you, Madam Chairman.

I'm trying to get a clarifying question together, Madam Chairman. Thank you for your patience.

BY MR. WRIGHT:

Q. Mr. Gillette, I would like to ask you to look at what has been marked for identification as Exhibit Number 94, please.

A. Is that this?

Q. Thank you. I just want to make sure I understand what the --

COMMISSIONER EDGAR: Let me just make sure that we're all looking at the same thing. Mr. Gillette, this is the document that you had a color copy of initially, and then we also gave you the black and white.

THE WITNESS: Yes. Thank you.

BY MR. WRIGHT:

Q. I just want to make sure that I understand what the value that is shown in the column right in the middle of the page that says "Return on Equity" beneath the header "Increase Authorized" represents. To the extent applicable, does that represent the midpoint of any authorized range, does it represent the high end of any authorized range, or does it represent something else?

A. I'm not sure that all regulatory jurisdictions have the same concept of midpoint and those kinds of things. But, for instance, in the case of Tampa Electric, on the page here, it's showing 11.75, which is the midpoint of Tampa Electric's allowed range.

Q. So would it be your understanding that if there's a range, the number shown would be the midpoint?

A. In the case of the Florida utilities, that certainly would appear to be the case, and I would expect Regulatory Research Associates to try to be consistent in that regard, yes.

Q. And otherwise, would it be your expectation and understanding that the number is a fixed number without a range banding it?

A. Well, in virtually all the cases, there's just one number there, so, yes.

Q. Thank you. We were talking a short while ago about your credit facility and the fact that it's pegged to the LIBOR rate. I want to ask you a couple of follow-up questions about that. Say a year ago, January, February, March, some relevant time period of roughly a year ago, what was the LIBOR rate, the three-month LIBOR rate to which the credit facility was pegged? What was the actual interest rate on LIBOR three-month lending?

A. It was pretty close to 5 percent. It was actually over 5 percent.

Just to give a little bit of historical perspective to the Commissioners, for the period 2004 to 2008, the three-month LIBOR rate was 3.8 percent on average, and for the period 2006 through 2008, the LIBOR rate was 4.5 percent on average. And that, by the way, was the basis for the company's proposed 4.63 percent cost of short-term debt in this case.

Q. Just so I'm -- I missed a date number in your response because I was trying to write. You said from 2004 through 2008, the average three-month LIBOR rate was 3.8 percent?

A. That's correct.

Q. And was it 2006 through 2008 that the average LIBOR three-month rate was 4.5?

A. That's correct.

Q. Thank you. So a year ago -- I just want to make sure I'm interpreting what you told us correctly. A year ago, you were paying something in the range of 5.34 percent on your facility?

A. That's correct.

Q. And today you're paying roughly 2.75 percent?

A. Right. And that's again part of the last three months' craziness in the financial market that we've discussed in this proceeding.

Q. And is that representative of what you've characterized in your testimony as the flight to quality?

A. That's correct. And also in my testimony, I've stated that while the Treasury rate, for instance, has gone down very significantly, the spreads have increased, and therefore, the costs of long-term issues have risen.

Q. Would you agree that utility credit is generally regarded as high quality credit?

A. Utility credit is rated by the rating agencies just like all other credit, and it's my understanding that a single-A rating in this industry is -- at least the rating agencies attempt for it to be equivalent to a single-A rating in another industry.

Q. Well, what I'm getting at is that your current interest rate is a lot less than it was a year ago. It's about 2.75 percent. And my question is, is the fact that you're able to borrow on these terms representative of the fact that lending capital is flying to quality, in this instance, to the quality investment in Tampa Electric's credit?

A. No. And the reason I state that is, we, like other corporates, happen to have bank lines that are tied to LIBOR, which is the London interbank lending rate. And as a result of all the money that has been injected in banks all over the world, that rate is very low right now. It doesn't have a darn thing to do with Tampa Electric. In fact, on the other hand, when we renewed the bank line, the spread that's affixed to LIBOR, as I testified earlier, actually went up.

Q. Thank you. You've spoken about dislocations in the credit market; correct?

A. Yes.

Q. And you've also in at least one response to Mr. Moyle's questioning referred to a period October, November, December of 2008. Is that roughly the period of which you were speaking of these dislocations having occurred in the credit markets?

A. Yes. There have been previous dislocations, but this one, as I've testified, is the most recent, and perhaps unprecedented in its degree. But I would, by example, just state for the Commission's knowledge that back in the late 2002, early 2003 time period, there was a time when it was very difficult for electric utilities to obtain debt financing.

Q. I'm sure we've all heard the expression "the financial meltdown" applied to at least the U.S. capital markets. You're familiar with that term?

A. Yes.

Q. Is that kind of the same thing that you're referring to when you say the dislocations?

A. Yes. And you once again are -- I referred to an earlier time, but you're referring, as I understand, in your question to this --

Q. I was referring to the late 2008 events.

A. Yes, sir.

Q. Is it your understanding that the time period of these dislocations was October through December, or is it continuing through today, or -- I'm trying to understand. I'm trying to get a time period applicable to these dislocations, if you could help me with that.

A. I completely understand the question. As we were referring earlier to the chart, the file period started, you know, for major dislocation, on September 8th, when the debt markets were ostensibly closed, and has continued through today. And in my opinion, there's every reason to believe, given the continued financial uncertainty in the markets, that it will continue for quite a while longer.

MR. WRIGHT: Madam Chairman, I'm having my colleague -- excuse me. I should say my colleague is kindly distributing an exhibit that I would ask be marked as, I think, 99.

COMMISSIONER EDGAR: Yes, 99.

MR. WRIGHT: Thank you. It's a copy of an article from the Wall Street Journal of January 13th. If you wanted to give it a short title, you could say WSJ Utility Bonds Article, 1/13/2009.

THE WITNESS: I've actually seen this article before.

COMMISSIONER EDGAR: And we will so mark.

(Exhibit 99 was marked for identification.)

BY MR. WRIGHT:

Q. You just said you've seen this article. Do you believe that everything that's represented in there regarding borrowings discussed in the article and in the table is accurate?

A. I'm just reviewing it again. One moment.

Q. Certainly.

A. Like any newspaper article, there are a lot of opinions and quotes and those kinds of things in it, and as a result of that, I don't know that I can generally agree, you know, to everything that's in this article as my thought or opinion.

As I said earlier, we've been through a difficult time. There have been a few deals in 2009 that have gotten off, and Progress Energy, for instance, issued both equity and debt in the market. I think the jury is still out as to where spreads are going this year.

And I think a lot of this article, in my opinion, speaks to things that were going on before the dislocation in the financial markets. The headline of the article is "Bonds Are a Bright Spot for Utilities in 2008," basically saying there were a lot of bonds that were sold in 2008. I would testify that there were a lot of bonds sold in 2008 at decent rates before the financial crisis occurred. After that time, it's been pretty rough going.

Q. To the best of your knowledge, is it true that Progress Energy sold $600 million of bonds on January 8th, as indicated in the article?

A. Yes, they did. I don't have the information with me. I believe those bonds were long-term and secured.

Q. To the best of your --

A. And I believe that they also issued equity in parallel with those bonds.

Q. To the best of your knowledge, is the statement, the partial statement around the middle of the page that the 10-year bonds, referring to the Progress Energy bonds, carried a coupon rate of 5.3 percent? Is that true to the best of your knowledge?

A. Yes. And I would testify that that very same week, there were triple-B utilities that were issuing in the high 7 percent range. And that's the reason for my testimony that I think the jury is still out.

The Progress Energy deal was a very unique deal because they issued equity in parallel, and the market really liked that. Very few of the other utility companies that are issuing debt are issuing equity at the very same time. And I believe in this article, Mr. Johnson testified that it -- it says, "It felt good to get this one off the table," and I think that speaks to the fact that he was concerned about what the rate might be as well.

MR. WRIGHT: Madam Chairman, Mr. Moyle is again kindly distributing an exhibit that I would ask be marked as Exhibit 100. And we can call that, if you will, S&P Rating Summary for Progress Energy, 1/21/2009.

COMMISSIONER EDGAR: We will so mark.

(Exhibit 100 was marked for identification.)

BY MR. WRIGHT:

Q. I'm sure you've seen pages like this a lot, Mr. Gillette; isn't that right?

A. Yep.

Q. Will you agree that this is an accurate representation of Progress Energy's bond rating at BBB+ by Standard & Poor as of today, or as of March 15, 2007?

A. Yes. Like our company, the company has ratings from different rating agencies and also has different entities that have debt ratings, and I believe this is on the holding company, and it's BBB+ at S&P, but it would appear to me that at Moody's, just looking at the top credit rating lines -- this printout is not very good. It's somehow wrapped around, so it's a little bit hard to see, but it looks to me like at Moody's, they're at A-2. Is that right? Okay. That's their commercial paper rating. I'm sorry.

MR. WRIGHT: Madam Chairman, Mr. Moyle is again kindly distributing another exhibit, which I would ask be marked as Exhibit 101. And a short title would be PEF Earnings Surveillance Report, 11/30/2008.

I apologize. There is a typographic error in the title on the document. Where it says energy surveillance, it should say earnings surveillance.

COMMISSIONER EDGAR: Okay. So noted for that change on the cover page. And as you have described, we will mark 101, PEF Earnings Surveillance Report, 11/30/08.

(Exhibit 101 was marked for identification.)

COMMISSIONER EDGAR: Commissioner Skop.

COMMISSIONER SKOP: Thank you, Madam Chair. It has been a lengthy day, and I'm a little confused, so I'm going to ask Mr. Wright. What is -- I guess in the line of questioning with respect to the Progress documents and asking the witness to testify to documents not related to his own company, is there something behind that that I'm missing?

MR. WRIGHT: The point of these exhibits, Commissioner, is to show that another Florida regulated utility with a BBB+ rating was able to access the credit market as recently as 13 days ago and raise $600 million worth of debt at a very favorable interest rate. And Progress Energy Florida, as the latest exhibit will show, for the most recent reported time period has a rate of -- reported rate of return on equity of 9.3 percent.

COMMISSIONER SKOP: Thank you.

THE WITNESS: Just one quick clarification. I do think this A-2 rate is a Moody's debt rating. And just looking at something, I believe their current -- Progress Energy Carolinas was the issuer, and I believe they're rating A2 and A- at Moody's and S&P, so I would consider them to be an A rated utility. I think what you printed out here, Mr. Wright, is the ratings for the -- again, it's very hard to read because it wrapped around, but I think it's the ratings for the holding company. And the issuer of the debt in the case of Progress Energy was Progress Energy Carolinas, which carries a higher debt rating than Progress Energy, Inc.

And this is very much the case with Tampa Electric as well. Tampa Electric is triple-B rated, and TECO Energy is low triple-B rated. And I think you mistakenly printed out the rating for the holding company, and the issuer of the debt was Progress Energy Carolinas, which is a strong single-A.

MR. WRIGHT: The article says that Progress Energy, Inc., a utility that operates in the Carolinas and Florida, that sold 600 million of bonds January 8th. So the point --

THE WITNESS: But newspapers don't always get it right, do they?

MR. WRIGHT: Okay.

MR. MOYLE: Madam Chairman.

COMMISSIONER EDGAR: Mr. Moyle.

MR. MOYLE: I know there has been a request, that there's an exhibit that is going to be prepared after the fact, and my understanding was that you've asked staff and/or TECO to go out and try to put together an exhibit. Presumably that exhibit will include what is referenced in the article in the Wall Street Journal and will have good information about that.

COMMISSIONER EDGAR: I am hopeful.

MR. MOYLE: I just wanted to kind of make sure. I hope that that shows up in this to-be-filed exhibit.

COMMISSIONER EDGAR: I am hopeful. And again, we expect to all have the opportunity to look at that together next week at some point in time.

Mr. Wright, I'm sorry. I was just going to make sure that I knew where we were, which was, you had just distributed a document that we had marked 101. And since we've kind of been flipping back and forth, I wanted to make sure the witness had that as well. Are we in the same place?

MR. WRIGHT: Yes, ma'am.

COMMISSIONER EDGAR: All right. Go ahead.

BY MR. WRIGHT:

Q. Mr. Gillette, I'm sure you're familiar with the earnings surveillance reports filed with the Commission.

A. Yes.

Q. And we agree that this report looks like other earnings surveillance reports you've seen, and at the second page, it shows that Progress Energy reports a 9.3 percent ROE for the most recent 12 months reported ending November 30, 2008?

A. Yes. Looks like they need a rate case too.

Q. We hear one is coming.

You have stated both in your cross-examination responses and in your direct testimony that you think it's best to meet a company's capital spending needs in the most cost-effective and timely manner possible;

correct?

A. Yes, while maintaining access to capital.

Q. Define "most cost-effective" as you use the term, please.

A. You want me to define cost-effective?

Q. Yes, as you used the term in your testimony, the phrase "most cost-effective."

A. Sure. As it relates to the costs of capital that ultimately get flowed through rates.

Q. So do you mean most cost-effective to the company's customers?

A. Yes, sir.

Q. Such that they would have adequate service at the lowest possible cost?

A. Right, while maintaining adequate access to the capital markets.

Q. Can you tell us as you sit here today what the interest rate differential on debt would be if Tampa Electric were a BBB -- just say BBB rated company versus if it were an A- rated company?

A. We've looked at a lot of information during the course of the day today that I think shows that there is a significant differential in the current market. That long page that we were looking at earlier that showed after September 25th what the debt issuances were I believe I characterized was showing triple-B utilities issuing in the 8 to 9 percent range in the late 2008 time period, while single-A utilities were issuing in the 6 and 7 percent range. And so the differential, it would appear to me to be about 150 to 200 basis points at this point in time.

And I believe that's roughly the amount that J.P. Morgan factored into their study which we provided on deposition that showed it would be more cost-effective on a weighted cost of capital basis to be single-A in this current market than it would be to be triple-B. And in that, I'm referring to my late-filed exhibit to my deposition.

Q. Tampa Electric has never defaulted on its debt, has it?

A. No.

Q. Are you aware of any Florida investor-owned utility regulated by the Florida Public Service Commission that has ever failed to pay its debt service?

A. I couldn't name names, but I would imagine that -- I seem to recall that there have been some gas utilities and water utilities that have failed to meet debt service and ostensibly gone bankrupt.

Q. Any electric company?

A. Not to my knowledge.

Q. Do you know how long the Florida Public Service Commission has been in business regulating electric public utilities in Florida?

A. No, but I'm sure you're going to impress me with your knowledge of that. It's a long, long time.

Q. I think the year is about 1951, but that's easily verifiable from the statutes.

A. I do know it used to regulate railroads as well.

Q. I want to ask you a question that I asked Mr. Black yesterday. I'm going to state a proposition and then ask whether you agree with it. Absent a finding of gross imprudence, the Florida Public Service Commission would ensure that Tampa Electric or any other Florida investor-owned electric company would have sufficient funds available to pay its debt service. Do you agree or disagree?

A. I generally agree with that. I think, you know, that's one of the reasons that in the exhibit in Ms. Abbott's testimony she has shown that this Commission has above average ratings as a regulatory commission in balancing the needs of customers and companies. Having said that, it's hard to foresee, you know, in an Entergy New Orleans type circumstance what this Commission would be able to do.

And by the way, that's one of the reasons that with a relatively compact service territory that has the potential to be hit dead-on by a hurricane, not dissimilar to Entergy New Orleans, we think the safety net that would be afforded by a single-A credit rating is especially important.

Q. You just mentioned Entergy New Orleans. Were you referring to some specific event relative to Entergy New Orleans?

A. Yes. When Hurricane Katrina hit the Louisiana/Mississippi/Alabama coast, we're all familiar with the inundation and the challenges that not only Entergy New Orleans had, but Entergy Louisiana, Mississippi, and the holding company had.

And while we're talking debt ratings, during the time that Entergy New Orleans went through its restructuring, it was downgraded from A to triple-B, ultimately to triple-C, and then to D. And so I think that's illustrative of some of the risks that we're very concerned about in this time period of what forecasters have said may be more hurricanes.

Q. Did Mississippi Power, which was also impacted by Katrina, have a similar experience, or do you know whether they were downgraded at all?

A. At the time of the Katrina event, Mississippi

Power, Louisiana Power, Entergy holding company were all put on negative watch by all of the rating agencies, and there was great concern for their financial viability, even the holding company. But due to some swift action on the part of Entergy and its supporting banks, they were able to get loans at the Entergy parent level and the Louisiana and Mississippi subsidiaries that were well, well in excess of their bank lines. Their bank lines were in the neighborhood, I believe, of a billion dollars. They were able to get short-term loans of upward of $3 billion from their banks in order to avert being downgraded. And then they had to take the very difficult action of declaring bankruptcy in the New Orleans utility, as I understand it. And those things combined allowed Mississippi Power and Louisiana Power to avert a downgrade, but they were certainly on the verge, and there were moments when the financial community was concerned that the entire holding company was on the verge.

Q. Just following that briefly, is it true that Entergy Corp., the parent company, averted a downgrade?

A. Ultimately, yes, but they were placed on negative watch for a time. And it was by the grace of the banks that gave them short-term lending that they were able to do that. And in this bank market, I don't know about the rest of the folks in the room, but I don't think we could rely on the banks to the same degree that Entergy was able to rely on the banks.

MR. WRIGHT: Madam Chairman, Mr. Moyle is distributing another exhibit, which is an article from Business Week immediately after Katrina impacted the Gulf Coast. You can just call it Business Week Katrina Article of 8/31/2005 and mark that Exhibit 102, please.

COMMISSIONER EDGAR: Yes, 102, Business Week, "Katrina: How Big a Blow to Credit," 8/21/05.

MR. WRIGHT: Thank you.

(Exhibit 102 was marked for identification.)

BY MR. WILLIS:

Q. Do you read Business Week, Mr. Gillette?

A. Periodically.

Q. Certainly with the understanding and exposition that you gave in response to previous questions, I would ask you to look at what is the third page of this document. There's a section around the middle of the page that's headed in bold face type "Utilities"?

A. Yes.

Q. To summarize it, I read it as saying Katrina's impact was unfavorable, but the ultimate effects will be worked out. As of the present, it looked like things would be okay. And that's generally consistent with your testimony as to what ultimately happened with respect at least to the parent company and Mississippi Power; correct?

A. Yes. Thank goodness for the grace of the banks and the fact that Entergy is a fairly far-flung entity.

Q. Is it your understanding that a whole lot of City of New Orleans is constructed below sea level?

A. Yes.

Q. And surrounded by levies?

A. Yes.

Q. You all don't have any levies in Tampa, do you?

A. We do not. But the damage to our T&D system in the event of a hurricane, and possibly our power plants, could equal that of New Orleans. We would hope that the loss of population and therefore the corresponding loss of customers and revenues would not occur in the case of Tampa Electric, but no one can be sure.

MR. WRIGHT: Madam Chairman, Mr. Moyle is distributing a news article from USA Today regarding Florida Power & Light Company, a company regulated by this Commission, and its experience following Hurricane

Wilma.

COMMISSIONER EDGAR: Okay. So this will be 103, marked USA Today Article, October 25, '05.

MR. WRIGHT: Thank you.

COMMISSIONER EDGAR: 10/25/05.

(Exhibit 103 was marked for identification.)

BY MR. WRIGHT:

Q. Just to summarize, Mr. Gillette, I think this article says that Florida Power & Light was able to cover its costs through insurance, storm reserve, and rate increases, and that Hurricane Wilma specifically should not be expected to hurt FPL's credit ratings. Is that a fair characterization of what happened to FPL following the '04 and '05 storm seasons?

A. It would appear to be so from the article and my general knowledge. I would note in the middle of the page, there's a quote from Jodi Hecht, an analyst at Standard & Poor's who I know, where she said that the company had enough liquidity, 2.3 billion in cash and revolving credit, and then she went on to say it shouldn't hurt their credit ratings. And I think this is somewhat consistent with what I testified to earlier, the fact that we try to keep our bank lines of credit powder dry going into storm season.

But I think this article points out kind of an important point in the context of this case and our proposal to move to single-A credit ratings, and that is, it's one thing to have enough cash on hand. And obviously, that's very important. Finance 101 would say don't run out of cash, and so it's very important to do that. And in this case, FP&L had adequate cash on hand.

But what Standard & Poor's talks about is the potential aftereffects of a storm, because even if one can get the short-term money to repair the system, significant questions will remain. And those questions are, what will be the utility's ability to finance long-term and repay those short-term loans; what will be the character of the company's customer base after the storm; during the storm, what will be the amount of lost revenues associated with the time that the system is being returned to service. And those are all nagging questions, and the reason that you have all of these rating agency analysts being quoted and asked questions in the events of these storms is that there's obviously concern. The newspapers don't print things unless there's concern for the financial health of companies in situations like this.

Fortunately, FP&L had adequate capital resources, and by the grace of this Commission was able to secure adequate regulatory mechanisms to recover after the storm. But in the case of Tampa Electric, a relatively compact utility in west central Florida, with the understanding that this Commission I believe in my heart of hearts would do everything to help us recover from a storm, it's not clear if we had a direct hit from a hurricane that we would be in a position to recover in the best way if we were rated triple-B minus like we are at S&P. And that's the secondary part. It's the repayment of the short-term loans and the financing of those with long-term loans. And that's why I've testified that we would like to have the safety net of being single-A rated so that we don't run that risk of S&P being on a hair trigger and taking us below triple-B in the event of a storm.

Q. Is it a fair characterization of your testimony that you trust this Commission to make sure you have adequate money to repay -- to cover all your storm restoration costs reasonably and prudently incurred?

A. Generally, yes. We think the best way for that to be done is through a storm reserve of $20 million a year like we've submitted in this case for the up to medium size storm event of potentially $120 million like we've testified -- as we've said in our direct testimony in this case. For storms beyond that magnitude, we would certainly be at the mercy of this Commission for recovery of costs beyond the storm reserve.

Q. Do you have any doubt that the Commission would exercise that mercy and make sure that you recovered all your reasonable and prudent costs?

A. I think they very likely would. I'm not exactly sure if the rating agencies would think the same thing, and the important thing in this context is what the rating agencies think. And the rating agencies don't live like we do every day in Florida and don't always understand all the intricacies of regulation, don't understand all the intricacies of hurricane risk as we do. And I'm being very forthright in telling you that being at our current rating with S&P, triple-B minus, is a place in this financial market --

MR. MOYLE: Madam Chair, I would move to strike. The question was whether the Commission would allow recovery, and now we're off about what the rating agencies may do. It's nonresponsive, the answer to the question is.

COMMISSIONER EDGAR: Mr. Willis.

MR. WILLIS: I think he's adequately explaining his position and should be given latitude to do so. And it's not Mr. Moyle's question that he's responding to.

MR. MOYLE: It's also triple hearsay.

MR. WILLIS: I mean, it's kind of like --

COMMISSIONER EDGAR: One at a time.

MR. WILLIS: -- the old Toyota. If you asked for it, you got it.

COMMISSIONER EDGAR: I think that we have shown latitude, and I also think that Mr. Wright has opened the door quite far. My opinion, Mr. Wright, maybe not yours. But I would ask the witness to stick to the questions that are asked, and let's see if we can move forward.

Mr. Wright, in other words, motion to strike overruled.

MR. MOYLE: I'll withdraw it.

MR. WRIGHT: I didn't object. We're committed to the truth, and whatever Mr. Gillette wants to add to the truth of the matter is okay.

MR. MOYLE: Mr. Gillette, I was kidding with him and said he may have to take up residency in Leon County at this rate.

THE WITNESS: And I'm running out of shirts.

COMMISSIONER EDGAR: I understand. I'm trying to get to the dry cleaners myself, which isn't working with our schedule.

Okay. Let's get back on task. Mr. Wright.

BY MR. WRIGHT:

Q. Mr. Gillette, Florida Power & Light Company is presently rated single-A; correct?

A. Yes. And there's that whole -- there's different gradations amongst the rating agencies, but yes, they're generally a single-A.

Q. I was pulling that off the RRA report.

A. Okay.

MR. WRIGHT: Madam Chairman, Mr. Moyle is distributing an exhibit I would like marked for identification as Exhibit 104, FPL rating information from FPL website, 1/21/2009.

COMMISSIONER EDGAR: So marked, Exhibit 104.

(Exhibit 104 was marked for identification.)

MR. WRIGHT: Thank you. A short title is FPL Rating Summary, Storm Recovery Bonds.

BY MR. WRIGHT:

Q. Mr. Gillette, will you agree that FPL successfully issued storm recovery funding bonds following the '04 and '05 storm seasons pursuant to a financing order issued by this Commission that received a triple-A rating from all three rating agencies?

A. Yes. But it would be my testimony that that may not be the best mechanism for Tampa Electric.

Would you like to know why?

MR. WRIGHT: I certainly don't want to ask that question. I think he has already answered it, in fact.

COMMISSIONER EDGAR: I understand. I understand.

Are you hanging in there, Mr. Gillette? Are you okay?

THE WITNESS: If I could supplement my answer, I --

COMMISSIONER EDGAR: That's all right. I think we're good. Mr. Wright, further questions?

MR. WRIGHT: I do have further questions for the witness, but not on this line, Madam Chairman.

COMMISSIONER EDGAR: Okay.

THE WITNESS: Can I supplement my answer, or should I supplement my answer to the last question with regard to them not being the appropriate mechanism for us?

COMMISSIONER EDGAR: I think that you have answered that previously. Mr. Wright, you and I have the same issue here.

Commissioner Argenziano, did you have a question?

COMMISSIONER ARGENZIANO: Yes, before I

forget. And I appreciate Mr. Wright hanging on a minute.

I just want to ask the same question that I asked Mr. Black. Could you tell me your total compensation from TECO, total package, bonuses, stock awards, or anything else?

THE WITNESS: Yes, ma'am. I believe there was an MFR filed in that regard, and I think if I dig here just a minute, we can find it. One moment.

COMMISSIONER ARGENZIANO: Thank you.

THE WITNESS: I am so sorry. I thought I had a copy of an MFR that we filed in this regard in front of me.

Yes, ma'am. I've now found it. For 2008, the total compensation as reported on line F of Interrogatory Number 1, page 405, for the 2008 projected test year is 1,304,504. But I would very quickly say that in this case, we filed the budgeted number, and virtually 60 percent or maybe more of this is at risk. 2008 was not a very good year for us, and so as a result of that, the number -- I don't know if you're looking at the same MFR, but --

COMMISSIONER ARGENZIANO: No, I'm not.

THE WITNESS: The breakdown of that 1,304 is 455 in base salary.

COMMISSIONER ARGENZIANO: 455?

THE WITNESS: Yes, ma'am. 542 in stock awards, 24 in option awards, 273 in equity incentive plan compensation, and then 9,000 in all other compensation.

And I would say the stock awards of 542 I can virtually say will not vest. We've had this program in place -- it's a long-term incentive program -- for some time. It's based on the comparison of our total return to shareholders with other utilities. And in the time that it's been in place, the program has been in place, it has only paid out once. And so that will not pay out this year.

COMMISSIONER ARGENZIANO: So by grace of -- God willing, it could pay off at 542, but you're saying it has not or will not, or your don't --

THE WITNESS: I can virtually say, unless our stock price absolutely, you know, increases, you know, 50 percent between now and March 31st, that it will not.

And then line D, the 273 non-equity incentive plan compensation, all of that is at risk as well. And again, due to lower than expected sales at Tampa Electric and tough times in the markets for our coal business, all of that line D is at risk as well.

Now, our compensation committee will be

meeting in late January to make their ultimate decision on that 273, but I don't expect to see all of that.

COMMISSIONER ARGENZIANO: That's for 2008; right?

THE WITNESS: That's correct.

COMMISSIONER ARGENZIANO: And in 2007, would you know offhand what your total compensation was that you actually received?

THE WITNESS: The basic numbers that are on those kind of lines that I went through were lower, for instance, on the base salary, probably by about 3 percent. I think I got about a 3 percent raise. By the way, I don't expect one of those this year either. And so all the numbers in 2007 would have basically been lower. The same was the case in 2007. The company didn't perform to the degree to allow the award of several of these line items.

COMMISSIONER ARGENZIANO: I'm trying to, I guess, grasp what you actually have been compensated. And since you can't tell me for 2008 yet, because it hasn't come to fruition, whether some of those things will pay off, do you know what you were compensated in total for '07?

THE WITNESS: I know some of the line items. I don't recall all of it. I believe that the base in

'07 was like a 439 number. And then none of the performance restricted stock vested in 2007, only the small portion that's time vested in 2007, so a very small amount of that 542 number in '07. And then for '07 -- I think Ms. Merrill is going to be able to testify to this for not only me, but the other witnesses. I believe we did receive some form of an award under the non-equity incentive plan, but I -- my recollection is that it wasn't the full amount.

COMMISSIONER ARGENZIANO: Okay. Thank you.

THE WITNESS: The board sets the targets pretty high.

COMMISSIONER EDGAR: Mr. Wright?

MR. WRIGHT: Thank you, Madam Chairman.

BY MR. WRIGHT:

Q. Following along the lines of some brief testimony given by Mr. Black yesterday, Mr. Gillette, he characterized himself as the head coach for the rate case. Do you recall that?

A. Yes. And I'm the head nerd for the rate case.

Q. I can relate. Would it be fair to extend that and say that Mr. Black is the head coach for Tampa Electric Company?

A. Yes, sir.

Q. Who would the general manager be? Would that be somebody at TECO Energy, or would it be the TECO Energy board, or --

A. It would be Chuck.

Q. Okay. And the owner would be whom?

A. TECO Energy.

Q. Would it be a fair question to ask you if you could identify an owner's rep, would that be Mr. Hudson?

A. Yeah. And John Ramil is the chief operating officer of the company. Basically, all of the operating company presidents report to Mr. Ramil, and so on a regular basis, obviously, Mr. Black and Mr. Ramil interface.

Q. Is it correct that TECO Energy controls the infusion of equity capital into Tampa Electric?

A. Yes.

Q. Is that a decision made by TECO Energy's board or by an individual?

A. It's made by TECO Energy's board at the request of Tampa Electric's management.

Q. Would it be fair to say that TECO Energy has a fair amount of leeway in determining Tampa Electric's capital structure using various combinations of equity and debt?

A. Well, just to be clear -- and we've covered this ground a little bit, but I think the record should be clear on this. What TECO Energy does is, it invests equity in Tampa Electric. Tampa Electric Company raises its own debt. Tampa Electric has its own debt raises, and it raises it's own debt externally. And I contrast that with the unregulated companies at TECO Energy for which TECO Finance raises the debt and TECO Energy invests the equity.

Q. Does Tampa Electric Company have complete autonomy in issuing debt?

A. As autonomous as you can get, you know, in a case where the chief financial officer is both the chief financial officer of TECO Energy and Tampa Electric. We are affiliated companies, obviously.

Q. Does someone in TECO Energy acting in his or her official capacity as an official of TECO Energy have to sign off on or approve a debt issuance by Tampa Electric Company?

A. The board of Tampa Electric approves debt issuances of Tampa Electric, as does this Commission. Every year in September, we seek permission from this Commission to have authorization to issue securities.

Q. Is any approval by any official within TECO Energy required for Tampa Electric Company to issue debt?

A. No. Again, the TECO Energy board and the

Tampa Electric board have basically approval authority on -- in the case of TECO Energy, the TECO Energy board, debt issuances at TECO Energy or TECO Finance. And the Tampa Electric board, which happens to be comprised of the same individuals as the TECO Energy board, approves debt issuances at Tampa Electric. And there's a finance committee of that board that signs off in concert with the full board signing off on those. And so to your question, there's no management individual that signs off on Tampa Electric debt issuances.

Q. But if I understood your response there, in practical terms, it's the same individuals sitting as the board of each company making the decisions?

A. That's correct, of which the majority are independent.

Q. As I understand the three pages of MFR D-1a, in 2007, Tampa Electric had on a -- I guess what we would call PSC basis 40.53 percent equity. Is that accurate?

A. Yes.

Q. And in 2008, 44.5 percent?

A. Yes.

Q. And continuing on a comparable basis, the projection is that in 2009, that would be 50.21 percent; correct?

A. That's correct.

Q. Has TECO Energy infused any equity into Tampa Electric in either December 2008 or January of 2009?

A. Yes.

Q. How much?

A. In December of 2008, we put $58 million into Tampa Electric from TECO Energy as the result of a return of capital from one of the unregulated subsidiaries.

And maybe to provide just a little background for the Commissioners on this, in 2006, TECO Energy injected $52 million, and in 2007, $82 million. And with the $58 million, close to $300 million will have been injected in 2008, with plans for significant continuing equity infusions in 2009.

Q. I think that in an earlier response, you indicated that the expectation is that TECO Energy would infuse something like $350 million of equity into Tampa Electric in 2009. Is that accurate?

A. Yes, that's about right.

Q. Can you tell us in what months those infusions are presently projected to occur?

A. Our budget for 2009 at TECO Energy is not completed or hasn't been approved by the board of directors at this point in time, but it's our target to put roughly the amount that you said in, in order to get to a total equity infusion during the 2008-2009 time period in excess of $600 million in order to achieve the targeted 55.3 percent equity ratio.

Q. Is it a fair interpretation of your response just now regarding your budget that you cannot tell us when that infusion is projected to occur?

A. No, I can't tell you exactly when it's going to occur. It will depend on such things as the amount of under- or over-recovery in Tampa Electric's fuel, because that affects what comes to TECO Energy. It will depend on Tampa Electric's level of sales, because that will affect TECO Energy and Tampa Electric's dividend of net income. And it will also depend on the performance of our unregulated subsidiaries as well.

Q. Will it also depend on the decisions that Tampa Electric makes with regard to its capital expenditure program, the CTs and the other generating assets you mentioned earlier?

A. Clearly, the goal here is for us to put in adequate equity to fund Tampa Electric's capex. We're looking at, as you know, in this case five CTs, and the first two CTs will be coming in in May at about the time that we expect to get rates in this case. And so, yes, we'll be looking to fund the capital expenditures that

Tampa Electric has planned.

Q. If the Commission does not award the company its entire requested increase, would the company still issue exactly the same amount of debt as presently planned?

A. Regardless of the decision of this Commission in this case, we have an obligation to find a way to meet the needs to add -- make capital additions for Tampa Electric. And so I think the answer -- you asked the question in the context of debt, and I would say what we do to finance Tampa Electric's overall external financing needs will be dependent, obviously, to a degree on the Commission's decision on equity ratio and those kinds of things as we think about the proportion of debt and equity. But we do have an obligation to, obviously, fund Tampa Electric.

Q. My question was this: If the Commission does not award the entire requested increase, will the company, Tampa Electric Company, still issue exactly the same amount of the debt as presently projected? If you could give me a yes, no, or I don't know before any further explanation, I would appreciate it.

A. Yes or no. It depends on the amount of equity that we're granted, and the equity ratio, and several other things. If the Commission, you know, grants a lower equity ratio in this case, we may be -- you know, we may be forced to issue more debt. My concern, as I've stated before, with that is that I don't think that will be the most cost-effective way to do the next round of incremental financings.

COMMISSIONER EDGAR: Mr. Wright, let me break in again. I apologize, but again, just for planning purposes, can you give me an idea of about how much longer you have on questions, roughly? We'll not hold you to it.

MR. WRIGHT: Can I have a moment to look at my stuff here?

COMMISSIONER EDGAR: Take a moment.

MR. WRIGHT: Thank you for that leeway, Madam Chairman. With the caveat that this is an interactive process, I don't think that I have very much more. In fact, I think I have very little more. My optimistic estimate would be five, six, seven minutes, but I think we could be done by five o'clock, even allowing for my typical overoptimism.

COMMISSIONER EDGAR: I understand. I would like to take a very short break just for a stretch, realizing it has been a long day. And we will come back right before five o'clock and give you the opportunity to continue.

MR. WRIGHT: Thank you, Madam Chairman.

COMMISSIONER EDGAR: So a short stretch for us all, and we'll come back at about 2 minutes to 5:00 by the clock on the wall.

(Short recess.)

COMMISSIONER EDGAR: Okay. We are back on the record. And, Mr. Wright, please proceed.

MR. WRIGHT: Thank you, Madam Chairman.

BY MR. WRIGHT:

Q. Mr. Gillette, for whatever amount of rate increase the Commission might grant, if the company subsequently decides to defer the investment in the combustion turbines until 2010 or later, the company's return on equity would be higher; correct?

A. Yes, depending on what the Commission does, obviously, with the pro rata or the annualization proposal that we've made in this proceeding.

Q. I was understanding that to be built into the rate increase, whatever it would be.

A. It is built into our request. And maybe just to go one step further on what Mr. Black said, we're very committed to getting those May turbines in because they replace turbines at Big Bend Station that we need for black start capability.

Q. So would it be true that if the company were to get the entire requested increase and then to defer capital spending on the September CTs beyond 2009, its rate of return would be expected, other things equal, to be greater than 12 percent?

A. Yes.

Q. Now, I had a chance during the break to look at the J.P. Morgan article regarding weighted average cost of capital.

A. Yes, sir.

Q. I'm just trying to translate that into numbers that I'm familiar with. Two of the ROE witnesses from the consumer side in this case recommend 9.75 percent. That company has asked for 12.0 percent. That's a difference of 225 basis points; correct?

A. In ROE, yes.

Q. And to calculate the ultimate effect on customers by equity funding, you would have to multiply that differential by the 1.63 factor you discussed earlier; correct?

A. Yes.

Q. I did that arithmetic during the break, and I get something like 366 basis points. And I just did a straight 1.63. I didn't do the 1.63490. Does that sound about right to you?

A. It's in the neighborhood of that.

Q. Okay. Now, in a previous response, you said that the difference between BBB and single-A rating would probably be between 150 and 200 basis points; correct?

A. Yes, for new issuance in the market.

Q. In fact, it could be less than that, couldn't it?

A. Could be more, could be less.

Q. What I'm having difficulty understanding is, let's say for any given $100 million of capital that could be funded either through equity or debt, how is it that -- when I do the arithmetic, the cost of the difference between the company's position and our position translates to 366 basis points versus 150 or 200 basis points. How can it possibly be cost-effective for us, the consumers in this case, for you to fund that hypothetical $100 million of investment with equity instead of debt?

A. Well, you missed something, and what you missed is that if we're at, say, a 50 percent equity ratio -- we're already, by the way, funded to a 52.6 percent equity ratio, but if we're at a 50 percent equity ratio like the intervenors suggest, we're going to stay triple-B. And if we stay triple-B, our issuance cost is going to be higher going forward. And if we, in the alternative, get the 55 percent equity ratio, our debt issuance cost will be lower. And so when you calculate the differential cost of those debt issuances and calculate the changes in the cap structure, that's how J.P. Morgan came up with their answer that they believe that on the increment, single-A is cheaper than triple-B.

Q. Now, did I understand the context of your answer then to refer to something longer term, i.e., beyond the test year involved in this case?

A. We are issuing debt in the test year, and so my answer applies to the test year and to the billion dollars of debt we have to issue. But I am talking about incremental issuances of debt.

Q. Well, let's say for 2009, you've indicated you intend to -- the expectation is that TECO Energy will infuse $350 million of equity and that Tampa Electric will borrow $125 million in debt. Is that accurate?

A. That's correct.

Q. Now, just assume that we moved $100 million of that projected equity and replaced it -- removed, I should say, and replaced it with $100 million of debt such that the total would remain the same, $475,000 (sic), but 250 million would be paid in capital from TECO Energy, and 225 million would be by Tampa Electric debt.

A. Right, right.

Q. Okay. From our perspective as consumers, we're avoiding 100 million of equity that costs us 366 basis points more in return for something that might cost us between 150 and 200 basis points more on the debt. How can that be cost-effective to us?

A. Right. What you're pointing out is something that I've testified to previously, and that is, there's nobody questioning, including me for sure, that debt is cheaper than equity. But what will be the cost of that debt at single-A versus what will be the cost of the debt at triple-B is the real question here. And given the 150 to 200 basis point differential in single-A and triple-B, which is dependent on the Commission's decision in this case on equity ratio, will cause not only the $125 million debt issuances, but a future billion dollars of debt issuances to have a different cost.

Q. So back to the previous question. It's really that long-term consideration that you claim is driving your conclusion; is that fair?

A. It is. And just to summarize and maybe get beyond this quickly, it's my testimony that the key on the single-A rating is access and a safety net in difficult financial markets, and the cost considerations in all of this are important and add to our case.

Q. Now, the analysis of which you were speaking was performed by somebody at J.P Morgan; correct?

A. That's correct.

Q. It was not performed by you, was it?

A. That's correct.

Q. I have a couple of more questions that key from Exhibit 94, which is your -- what was your color printed version of the RRA report, or also the black and white version.

A. Yes.

Q. Now, I went through this, and I was able to identify 11 rate of return decisions, as indicated by the effective date column in that table, that occurred after September 8th, 2008. Why don't I just hand you my copy that's highlighted.

A. Okay.

Q. First I would just like to ask you to verify that I did in fact catch all of the decisions reflected in this table after September 8, 2008.

A. Okay. It would appear that you did.

Q. And to make this quick, will you agree that the highest ROE reflected in any decision post 9/8 was 11 percent?

A. Yes, I would.

Q. And that there were four decisions reflected at the bottom of page 2 by the Virginia, Washington, and Oregon commissions that were in the range of 10.1 to 10.2 percent?

A. Yes, I would. I would point out as a supplement to my answer that none of those utilities are in the Southeast, and as I've testified, the utilities that are in the Southeast that have pending cases are all asking for 11.75 or more.

Q. There was some discussion about national versus regional capital markets. Is the meaningful capital market a national capital market, Mr. Gillette?

A. Yes, it is. But as I've testified, investors look at the characteristics of each individual utility that's issuing debt.

MR. WRIGHT: Thank you. Madam Chairman, I think with the break-adjusted calculation of the time I spent, I was about on target. That's all the questions I have. Thank you very much, Madam Chairman. Thank you, Mr. Gillette.

COMMISSIONER EDGAR: I agree. Thank you. And, Mr. Twomey, before we move to you, let me again just kind of see where we're at. To our staff, will there be staff questions on cross for this witness.

MR. YOUNG: Yes, ma'am.

COMMISSIONER EDGAR: Any idea about how long?

MR. YOUNG: Very short. Five, ten minutes, less than ten minutes for sure.

COMMISSIONER EDGAR: Okay. And, Mr. Twomey, roughly.

MR. TWOMEY: Optimistically, I would say 30 or 40 minutes, something like that, depending on his answers.

COMMISSIONER EDGAR: Mr. Willis, I'm expecting redirect. Any idea, again, roughly?

MR. WILLIS: Less than five minutes.

COMMISSIONER EDGAR: Oh, okay. All right. Well, let's see how far we can get.

Mr. Twomey.

MR. TWOMEY: Thank you, Madam Chair.

CROSS-EXAMINATION

BY MR. TWOMEY:

Q. Good -- whatever it is. Evening.

A. Good evening.

Q. I'm going to try not to be redundant. I wanted to say that again, but -- I'm going to try and be concise. And to the extent that you will observe the admonition of trying to give a yes or no answer and being concise, you can play a role in making this short as well, but talk as long as you want.

Isn't it true that the PSC historically grants the utility the weighted cost of capital based upon the face values of its issued debt, if still reasonable, plus the midpoint of the range of reasonableness of the approved equity?

A. Yes.

Q. My recollection from cases in the 1980s is that if a company had debt rates that were excessive as compared to current market, they might subject themselves to criticism. Does that sound logical?

A. Yes.

Q. Because from a business perspective, you would be expected to call your debt where you could and refinance whenever the spreads were appropriate; right?

A. Yes.

Q. I mean, that would be -- between rate cases, that would benefit your shareholders; right?

A. Yes.

Q. And then maybe prospectively, your customers if a case came up and you had lower debt.

A. Yes.

Q. Now, as just suggested, if you made such a debt refinancing between rate cases, the monetary benefit would flow solely to the shareholders initially?

A. Yes.

Q. That is, a change in debt rates either up or down is not reflected in customers' rates until the next base rate case?

A. Yes.

Q. Your current requested weighted cost of capital of 8.82 percent is based upon your requested ROE of 12 percent and a financial equity ratio of 55.3 percent; is that correct?

A. Yes.

Q. Your average cost of debt included in your 8.82 percent weighted cost of capital, as I understand it, is 6.8 percent; correct?

A. Yes.

MR. TWOMEY: Okay. I've got a handout, if one of you will do that, please.

Madam Chair, this doesn't need to be identified, I don't think. It's an excerpt. It's page 42 of the prefiled testimony of witness O'Donnell.

COMMISSIONER EDGAR: Okay. Thank you.

BY MR. TWOMEY:

Q. I assume you've seen this, sir.

A. Yes. I'm reviewing it. One second.

Q. Tell me when you're finished. And I'm just -- the yellow part is all I'm concerned with, the marked part.

A. Yes, I see it.

Q. Okay. As I think you may agree, at page 42 of his prefiled testimony -- pardon me for going ahead, Madam Chair, but I will. Mr. O'Donnell says that the cost of equity on a pre-tax basis is more than twice the cost of debt. Do you see that?

A. Yes.

Q. I believe I heard you earlier this afternoon tell Mr. Wright that the pre-tax equity rate associated with an after-tax equity rate of 12 percent is 19.6 percent; is that correct?

A. Yes.

Q. So if that's the case, the pre-tax ROE is actually about 2.9 times more as compared to his more than twice?

A. Yes.

Q. Mr. O'Donnell continues, saying that paying excessive ROEs to achieve a lower cost of debt is similar to asking customers to pay $30,000 for a $15,000 car in order to get a $500 manufacturer's rebate. Do you see that?

A. Yes.

Q. You don't agree with that, do you?

A. No. The only part I don't agree with is that our request I don't believe is excessive.

Q. I'm sorry. The only part you don't agree with is that your ROE is excessive?

A. That's correct.

Q. But that you believe that paying -- well, never mind.

Okay. Some of your other company witnesses testified that a 12 percent ROE is fair and reasonable, so I understand that your testimony and that of witness Abbott are more to the point that a 12 percent ROE is a means to the end of obtaining a single-A rating. Is that generally true?

A. It's one of the means. Also, the equity ratio is important as well, as I've testified.

Q. Yes, sir. So you hope, don't you, that a 12 percent ROE and a single-A rating will give you greater access to debt and at a lower cost rate?

A. Yes.

Q. If I understood your testimony in the last four days, you've conceded several times that you have zero assurance that you will get a single-A rating equivalent from any of the three rating agencies if awarded a 12 percent ROE; is that correct?

A. None of them have told us that they'll give us it, but they've also said in their reports that the outcome of this case is very important to their determinations. And two of the three rating agencies have us on outlook positive pending the finalization of this case.

Q. So if that's the case, would you agree with me that increasing equity rates, that is, your achieved ROE here -- not your achieved, your awarded ROE -- solely for the purpose of obtaining lower debt rates has clear costs and unknown benefits?

A. No, I wouldn't agree with that. And you weren't present at my deposition, but this J.P. Morgan paper that we've been talking about I think speaks to the contrary.

Q. Okay. Let me ask you a few follow-up questions, then. Mr. Moyle yesterday, I believe it was, asked Mr. Black and yourself, I think, or at least Mr. Black, if it wasn't true that increased ROE -- an increased ROE would be reflected almost immediately in customers' new rates, and that it would have that impact until a new rate case. Did you hear that?

A. Yes, I did hear that.

Q. Do you agree with that conclusion that if there was a -- whatever your authorized ROE flowing from this case will be reflected immediately in customers' rates upon the effective date of the rates?

A. Yes. But I would say that as time goes on, that ROE could be greater or less, depending on our operating results.

Q. Depending on a lot of things?

A. Certainly.

Q. Revenues, investment?

A. Yes, sir.

Q. O&M?

A. Yes, sir.

Q. However, conversely, isn't it true that increased debt rates that are incurred subsequent to the test year in this case would not adversely impact customers' until the next rate case?

A. That is true.

Q. In fact, if TECO stayed out another 15 to 16 years, it would be possible, wouldn't it, to finance your new construction at the feared higher rates, higher debt rates, and then refinance that debt at lower rates prior to the next rate case, with the result that the initially higher debt rates would never adversely affect customers' rates upward?

A. I know we're trying to be quick here. That was a long hypothetical. And I would say that the way it works, as I understand it, we're granted rates, and we make investments through time, and hopefully -- we're not sure of this now -- our revenues are going to grow through time. And if they grow together, it may be a very long time before we come in for rates again, but as soon as they get out of whack, you know, as they have now, we'll be back in. At this point in time, it's very, very hard to say what that calculus is going to be. And I think what we all need to focus on in this case is getting the rates right so we can stay out as long as possible.

Q. Well, isn't the proof in the pudding, in the sense that this company has demonstrated that you could do it 16 years, 15 years, 16, whatever; right?

A. In a constant 2.5 percent customer growth environment, without the requirements for storm hardening and without the requirements for increased transmission, without the doubling of generation costs and the tripling of transmission costs, yes, and without the impacts that we're seeing in the financial markets. All of those are new, and I would say on all of those fronts, we're going into uncharted territory.

Q. Okay. Now, going back to my last question that you said was long, which I agree that it was, notwithstanding it being long, you understood it, didn't you?

A. Yes, I did.

Q. And isn't it a fact that the outcome I've suggested hypothetically is possible?

A. Yes, it's possible. In this environment, I'm not sure it's probable.

Q. Okay. Fair enough.

Okay. If the Public Service Commission grants you a 12 percent ROE versus Public Counsel's and the rest of our adopted rate of 9.75 percent, what percentage of your equity is the 12 percent rate applied to for purposes of establishing rates and revenue requirement?

A. 100 percent.

Q. 100 percent. Now, Mr. Black acknowledged yesterday, and you may have confirmed yesterday or today, that we could use $30 million annual revenue requirement, a percentage point, which would equal $65.5 million a year in revenue requirements between the Public Counsel's suggested ROE and your requested 12 percent; right?

A. If you make an adjustment only to the equity cost. But I think my testimony is clear. There's a point where the return on equity gets low enough that debt ratings will go up, Wall Street will be concerned, and we'll have challenges accessing the capital markets, and may therefore have that rate case in the future that you've talked about much earlier.

Q. Okay. But that doesn't change the answer to -- your answer to my fundamental question?

A. It doesn't, but I think we need to be very clear here, because this is a very important point for the Commission, and that is, we're going to issue debt along the way between now and the next rate case, and we're going to issue a boatload of it, and who knows what's going to be happening in the debt markets.

And you made the kind of flip statement that, well, you might be ble to refinance it all, you know, before we get to the next rate case. We don't know that's going to be the case. We may issue a billion dollars of debt at exorbitant rates and be sitting here being chastised by the intervenors in the next rate case for our cost of long-term debt having risen from 6.8 percent to 9 percent, and I just don't think that's fair.

Q. Well, you just suggested or accused that I don't know that that's going to be the case. And conversely, you do not know that it won't be, do you?

A. Fair enough.

Q. Okay. And as Mr. Wright has pointed out, that's just using the straight after-tax dollars per percentage point. But if we use the 67.5 percent --

million dollars as being the spread and the cost to the customers in annual revenues, if the Commission were to grant 12 percent versus the Public Counsel's number, my math suggests that over the course of five years, that would equal $337.5 million. And these are all subject to check.

A. I understand, you know, your question. This Commission in the past has not been so shortsighted as to grant very low ROEs that would damage the financial integrity of utilities. And I believe that granting the return on equity that's proposed by the intervenor witnesses in this case, especially witness Herndon, would cause us to have significant financial problems, significant financing problems going forward, a degradation of debt ratings, potentially to below investment grade, and that's a result that none of us want.

Q. Yes, sir, Mr. Gillette. I wasn't talking about Mr. Herndon's number. I was using -- just for talking about numbers and how you multiply by the years, I was just using, as I think you understand, the spread between Public Counsel's number, 9.75 percent, almost 10, and your number of 12. You understand that; right?

A. Understood.

Q. And I was just going to finish saying that if my math is correct, it's 67.5 million for one year different revenue requirement for customers, it's 337.5 million for five years, 675.5 for 10 years, and if you stay out another 16 years, the impact to customers' annual revenue requirement of the difference between the Commission voting for Public Counsel's number versus the company's would be $1.08 billion.

A. So what's your question of me? Can I add and subtract?

Q. I haven't finished. I haven't finished the question yet.

MR. MOYLE: We would stipulate with the CFO of TECO that he can.

MR. WILLIS: We would just ask that you ask a question.

MR. TWOMEY: I am.

BY MR. TWOMEY:

Q. So any increase, any increment that the PSC approves just for seeking lower debt rates -- do you follow? Any element or increment of the ROE that the Public Service Commission votes solely for the purpose of seeking lower debt rates has an immediate -- isn't it true that it has an immediate and adverse impact on customer rates which persists until a new base rate case?

A. I apologize. Your line of questioning was on equity costs, and now you've shifted to debt, and I'm not sure I understood the question.

Q. Well, what I was trying to get at -- and I'm sorry that I got confused there momentarily. I was trying to, through my demonstration of my incredible math skills, show that the distinction, the spread between Public Counsel's number and your number has a large dollar amount for -- we would say it's a large dollar amount for one year, and it's progressively larger, of course, over the course of 5, 10, 16 years. And my intent of the question was to say that if the Commission approves even a part of those increases solely for the ability to give you a lower -- I mean a better rating, single-A, so you could have a lower debt rate, that those dollar amounts will stay in effect year after year until you have a new case. Isn't that true?

A. Yes.

Q. Now, I asked myself, if those are some of the costs associated with trying to -- some of the costs associated with a higher ROE, how would you calculate the benefits that are perceived to flow, to some, from getting a lower debt cost as a result of a single-A rating.

And I wanted to ask you this. You had told

Mr. Wright, I think a couple of hours ago, and you talked about it again a few minutes ago, that you proposed to have a debt issuance of $125 million in November of this year, followed by another 125 million in 2010; correct?

A. Yes.

Q. Okay. Let's use -- for purposes of a little math in a hypothetical here, let's use that $250 million of debt issuance into this year and 2010. And what I wanted to ask you, Mr. Gillette, is, to determine the benefit of this company achieving a single-A bond rating, wouldn't it be appropriate to look at what the delta would be, the difference, the delta between a single-A cost rate and a triple-B rate for about the same time period? Would that be a fair way to analyze this?

A. No, in that when debt is issued, it's issued for the long term. You know, we've had a lot of discussion about costs, and I think it's important for the Commission to be reminded, as we've gone through all of this math here, that it's the company's position that first and foremost, we're seeking the single-A debt rating and the equity ratio and the return on equity that we are in order to have financial integrity, have a safety net for hurricanes in this very tenuous financial market. It's first and foremost a question of access. And the J.P. Morgan report says that on the increment it's also cheaper to be single-A.

Mr. Twomey, I think you're pointing out that given our embedded rate base, the cost of that debt until it's refinanced won't change. And you're right. In the short term, it will cost more to have more equity or have a higher cost of equity in the rate base. But I would suggest that it is the financially prudent thing to do in light of the access issue.

Q. Okay. What is your total debt now? 1.8 billion, something like that?

A. Yes, about 1.8 billion.

Q. And we already discussed what the current debt rate is, average debt rate for that amount of debt; correct?

A. Yes. I'm sorry. I'm looking at MFR D-1a, and the total jurisdictional long-term debt is about 1.4 billion.

Q. 1.4 billion. Okay. And the current average cost rate is --

A. 6.8 percent.

Q. 6.8 percent. Now, when you go out in November of this year, if you do in fact, for $125 million of debt issuance, you're going to pay whatever the current rate is then, assuming you have access, and that will be a fair rate; correct?

A. Well, it will be a market-determined rate, whatever it is, and we're hoping that when we're out in the market, we're out in the market as a single-A credit.

Q. And if it's a fair market rate, we consumers should view that as reasonable, shouldn't we?

A. Sure.

Q. And what I'm trying to get to, Mr. Gillette, is, in addition to all the other reasons you've told us and told the Commission of why you want to pursue a single-A rating, one of them still is cost. You have said repeatedly that you expect to get a lower debt cost rate as a result of obtaining a single-A rating than you would otherwise expect to pay for a triple-B. And I thought I heard you earlier say that you would expect the delta between those two would be 150 basis points to 200 basis points, did you not?

A. Yes.

Q. So what I wanted to ask you is, for what it's worth, if we took the 2 percent or the 200 basis points on a $250 million issuance, counting what you now think you're going to spend or issue in the latter part of this year and the following year, $250 million, and you take 200 basis points, my math says that the dollar difference in straight interest is $5 million. Would you check that for me?

A. Okay. So you're saying 250 worth of issuance?

Q. Yes, sir, and 200 basis points delta.

A. Okay.

Q. I get $5 million.

A. I do too.

Q. Okay. Now, I said to myself -- next I said, is $5 million a big deal of achieved savings for those two issuances? And I said to myself, okay, let's compare that to what you all are asking the customers to bear for a percentage point of the after-tax equity. And I recall that Mr. Black said $3 million was okay, so I compared those two. I did some division, and I came up with a number that I would like you to check that showed that the $5 million delta for achieving a 200 basis point savings on debt rate would equal 16.6 basis points. Will you see if that's right?

A. I'm not sure I'm following. Let me tell you, just in general, when the J.P. Morgan report came out, I did some of the same kinds of back-of-the-envelopes, you know, looking at, say, 9 percent debt for triple-B and 7 percent debt for single-A, and you've got to multiply times where we'll be equity ratio-wise at single-A and triple-B. And you're right. There's a higher cost of equity. And I'm not following all your math, but when I did the calculations with the weighted average cost of capital, looking at weighted average after-tax cost of capital, I came up with single-A on the increment being cheaper.

And I want to be real clear, because I want to make sure that the record is clear. Every time I've said that it would be cheaper, you know, for us to be single-A, I've been speaking on the increment, you know, new debt issuance for the company.

Q. Yes, sir. And I apologize for my confusing math, but let me go back and recap a little bit, because I want to try and finish the point. We were looking at -- I asked to you look at two years, your next two years of issuance, which is $250 million.

A. Okay.

Q. And I asked you to assume the maximum of the spread that you gave Mr. Wright of 200 basis points versus the smaller of 150 basis point. Okay?

A. Okay.

Q. And I think you agreed with me that 200 basis points on $250 million is $5 million.

A. Yes. I got you that far.

Q. So what I'm trying to get you to help me figure out is how much in increased revenues as a result of an equity increase that you want these Commissioners to grant you, how much should consumers be willing to pay in order to achieve a $5 million savings on a debt issuance, even if it applies to them in terms of the savings? And it occurred to me that the most they should want to save -- to pay to save $5 million is $5 million. Do you agree with me?

A. Fair enough.

Q. And so I said to myself, okay, if this company requires $30 million, a percentage point, either way, on its ROE award, I said, $5 million is one-sixth of 30, I think, and one-sixth equates to 16.6 percent, which means 16.6 basis points is the most, if my theory is correct, that your company's customers should want to pay in increased equity costs to achieve $5 million of debt issuance interest in my hypothetical. Now, where am I wrong?

A. Your concept is not completely wrong, but it's different than what J.P. Morgan did when they looked at the incremental cost. What J.P. Morgan said was -- I don't know if you've read the paper that J.P. Morgan put together, but the paper that J.P. Morgan put together had a graph that showed at various ratings levels what the cost of capital would be on the increment. And what they did is different than what you're doing, because what they did was, they said if you're going to be at a single-A rating, then you're going to have to have a certain cap structure to get to that single-A rating, and as a result of that cap structure, you're going to have presumably higher equity. And so you're right. There's a cost associated with that, but you're going to get a lower cost of debt.

And then they said, on the other hand, at a lower capital structure, a lower percent equity, you're going to be triple-B rated, and as a result of that, have a higher cost of debt. And when they did their weighted average cost of capital calculations, they came to single-A being more capital efficient on the increment.

And if you would like -- at one point, like I said, I did some math and constructed an example of their calculation, and I would be happy to do it. I'm not sure it's the most efficient thing to try to do it on the stand here.

Q. No, we don't need to do that, but I gave you -- didn't I give you the highest spread of 200 basis points that you said --

A. You did.

Q. -- was the benefit? And none of my math was incorrect, was it?

A. I'm sorry. I'm still not understanding how you're doing the calculation. The only way I can think to do it is the way J.P. Morgan did it.

Q. Let me ask you something first. Is J.P. Morgan still in business?

A. Yes. They're probably the strongest bank out there.

Q. Okay. I thought you agreed with me, Mr. Gillette, that if you -- if you achieved a 200 basis point savings on your debt cost --

A. Right. It would be $5 million a year.

Q. It would be $5 million. And I thought you agreed with me that if $30 million is 100 basis points, that $5 million is 16.6 basis points. Isn't it?

A. That second part I'm not getting.

Q. The part about --

A. I don't know how you're getting the basis points and --

Q. Well, you've got a savings of $5 million resulting from a 200 basis point savings.

A. Per year over the life of the bond.

Q. Yes, for the -- we're just talking about one year right now, for the $250 million of issuance that you project for the next two years.

A. Right.

Q. So I was saying to you, what does that $5 million equate to in basis points in your equity swing? And my math says it's 16.6 basis points if 30 million equals 100 basis points.

A. Okay.

Q. Is that math wrong? What percentage of 30 is 5?

A. 16 percent.

Q. Okay. So my point is that -- I'm asking you why would your customers and our clients want to pay more in increased equity every year in order to -- pay more than $5 million in order to save $5 million in debt issuance costs?

A. Because it will give us better access to capital.

Q. Okay. Excellent. And again, that delta would only apply to your incremental issuances.

Now, let me just confirm. You don't purport to know what the debt cost rates will be in 2010, 2011, or 2012?

A. No.

Q. Mr. Willis said yesterday that he considered you to be an expert in finance, and you agreed with him; correct?

A. Yes.

Q. I've heard other experts on TV shows, radio and so forth, project that our economy and the financial markets will begin to turn around the end of this year, or perhaps no later than the middle of the next year at the latest.

MR. WILLIS: Mr. Twomey, you're starting to testify, and I object to that.

COMMISSIONER EDGAR: Mr. Willis, I'm sorry. I didn't --

MR. WILLIS: I said Mr. Twomey is starting to testify himself rather than ask questions.

MR. TWOMEY: Okay. I'll ask -- thank you. Sorry, Madam Chair.

BY MR. TWOMEY:

Q. What's your basis -- what's your view as a financial expert on when our economy will begin to turn around?

A. I think it's going to take a while for us to get all the way back to anywhere near where we were. I would be hopeful that there would be some early signs of it this year.

Q. A turnaround at some point this year?

A. At least the signs of one.

Q. How about -- where do you expect -- where do you hope that it will be by the middle of next year?

A. Well, you know, my focus in my job is the financial markets. There's a lot more going on here, obviously, in the economy. But based on our overall look at the economy as a company, we're hopeful that we start to see customer growth and, you know, the more local economic indicators start to return more to normal by mid to late 2010.

Q. Okay. And your first projected debt issuance is November of this year. When is your second issuance planned for 2010 of 125 million?

A. I don't know that we have a specific time designated for that yet.

Q. Okay. If the economy and the financial markets start to turn around as you hope either the latter part of this year or, say, the middle of next year, wouldn't you, Mr. Gillette, expect to see a return of the financial markets, that is, the institutional investors seeking out higher returns than what they're achieving now as a result of their flight to security?

A. Can you repeat the question?

Q. Yes, sir. I thought it was your testimony that a lot of the capital in this country, perhaps in the world, was taking a flight, so to speak, to security or safety, or whatever your terminology was, that people wanted to have the security of not losing their principal, and therefore were investing their money in securities that provided lower, almost no returns; right?

A. That's correct.

Q. And my question to you is, as the economy begins to turn around, whether it's the latter part of 2009 or the mid of next year, at that point, wouldn't you expect to see some of those investors, particularly the institutional investors, free up some of that money, feel more secure in regulated monopoly utilities like yourself, and seek out higher returns than they're achieving today? Wouldn't you expect that would be the case?

A. Yes, I generally would expect that to be the case. There will be a lot of mechanics that will occur. You know, we talked about the flight to quality. You know, the other thing that's likely to happen is, when investors begin to demand -- you know, to get back into utility stocks and other types of investments, likely the Treasury rates will come back up as well.

Q. I'm sorry. So you're saying, yes, you think investors will turn away from the safer, lower paying securities and seek higher returns?

A. Yes.

Q. And that should be good for you. Yes?

A. Well, it depends on where you put us on the spectrum. Utilities are generally considered to be safe investments in their own right, not as safe as Treasuries.

Q. Okay.

A. So it's hard to say. I don't think anybody will deny, however, that the stock market has been depressed, and it has been depressed because people have taken money out of the market and put it into fixed income.

Q. Now -- I'm sorry. Were you finished?

A. (Nodding head.)

Q. But isn't it almost axiomatic, Mr. Gillette, that as the economy starts to turn around, whether it's the latter part of this year or the mid part of next year, as institutions and individuals seek higher returns, won't that competition for higher returns tend to drive down rates, cost rates? Isn't that the way our system works?

A. No, I don't think that will happen. And the reason -- and I don't think that's the way the system works. You've got part of it right.

You know, there's an element of supply and demand in what we're talking about here. But when we look at how all -- all of these things will move concert. You're correct to point out perhaps that utility debt spreads may go down. Right? But at the same time, Treasuries are going to go up. And remember, I testified today that the cost of utility bonds are a function of the cost of the Treasury and that spread. And so we've -- you know, we've in fact seen a rise in the cost of debt in the markets, and there is absolutely nothing to say that we may not in fact have just reached a new level and that we'll perhaps stay there.

You know, we've talked about, you know, will things turn around, will they not turn around. Even if the economy comes back, you know, with a stronger economy comes inflation, and there is a component of inflation in the cost of capital as well. And so I think it's altogether possible that we have reached a new level in the cost of capital here, and I think that the Commission should recognize that in setting rates in this case.

Q. Okay. But I guess in the end, as I understand your testimony, you don't purport to know what debt rates or cost rates are going to be at the end of this year or next year?

A. No. They could be higher or could be lower.

Q. Okay. Thank you. Now, I want to ask you very briefly about rate case expense. Some quarters apparently believe that by giving a utility a higher ROE that there's an advantage to the customers because the company can stay out longer and that customers will benefit from not having to incur rate case expense, which they pay for if it's reasonable, right? I mean, customers --

A. That's part --

Q. -- pay for reasonable rate case expense; right?

A. That's part of regulation in Florida.

Q. So the theory apparently is that by giving TECO or other utilities a higher ROE, you'll be able to stay out, and customers will benefit, if for no other reason, by not having to incur rate case expense with the same frequency. Are you familiar with that theory?

A. I really haven't heard that theory before, and I don't subscribe to it. In our case, we're proposing what we believe to be fair returns on equity and capital structure to accomplish the overall goals of the company on behalf of serving its customers at reasonable rates.

Q. Okay. I want to ask you a couple more questions anyway. Is your projected rate case expense in the neighborhood of $3.1 million, or what is it?

A. Witness Chronister would be better to speak to that, but it sounds in the ballpark.

Q. Okay. It's my understanding that TECO is requesting that the rate case expense be amortized over three years. Do you know whether that's true or not?

A. It's in other witnesses' testimony, but that again sounds like our proposal.

Q. Well, hypothetically, Mr. Gillette, for purposes of my question, let's just say if rate case expense was $3 million and it was amortized over three years, isn't it true that customers -- that would affect your revenue requirement by a million dollars a year; correct?

MR. WILLIS: Madam Chairman, I object to this line of questioning, because it's not in Mr. Gillette's direct testimony. These questions are appropriately addressed to witness Chronister.

COMMISSIONER EDGAR: Mr. Twomey, I think he has a point.

MR. TWOMEY: I'll wait for that witness, Madam Chair.

BY MR. TWOMEY:

Q. And then lastly, and I'm just about finished, my understanding -- and I'm not going to beat this one too hard. Your purchased power equity adjustment would impute $77 million of equity to your capital structure;

right?

A. That's correct.

Q. And I think I've heard that the revenue impact on your customers is $5 million a year, thereabouts. Is that about right?

A. Yes, that's correct.

Q. Okay. And we're concerned about this because -- is it because one of the -- is it just Standard & Poor's, or is it all three of the rating agencies that have problems with this?

A. I'm sorry. I lost the train. Can you ask the prior question and the current one?

Q. My understanding, and correct me if I'm wrong, is that the company is concerned and you're testifying that the company is concerned about the necessity for this adjustment because one or more of the rating agencies believe it's required; correct?

A. This adjustment in rates or --

Q. The purchased power --

A. The purchased power adjustment. Okay.

Q. Equity infusion or imputation.

A. That's right.

Q. Was it just Standard & Poor's?

MR. WILLIS: Madam Chairman, I object. These questions have been asked by both Mr. Moyle and

Mr. Wright, and we're plowing the same ground, the exact same questions over again.

MR. TWOMEY: Madam Chair, we're not, because if he answers my question, it's the foundation for probably one, maybe two more questions at most.

COMMISSIONER EDGAR: Mr. Twomey, please recognize that much of this ground has been well tread. I say the same to you as I did to one or two of the other parties earlier. It has been a long day for all of us.

MR. TWOMEY: I appreciate that.

COMMISSIONER EDGAR: So a little --

MR. TWOMEY: And as I just said, Madam Chair --

COMMISSIONER EDGAR: Excuse me. Let me finish, please. So a little latitude, but let's stay on point and see if we can wrap it up.

MR. TWOMEY: Yes, ma'am. It's the foundation for the next question.

BY MR. TWOMEY:

Q. Was it Standard & Poor's alone or all three of the rating agencies?

A. My testimony was that Standard & Poor's does the analytical calculation and has published their methodology for imputing debt associated with purchased power commitments, but that the other rating agencies also take purchased power into consideration in making their determinations of ratings.

Q. Now, you've been qualified as a financial opinion expert. My question is this: I'm of the understanding that all three of these rating agencies gave triple-A investment grade ratings to trillions of dollars of mortgage-backed securities. Isn't that true?

A. Yes.

Q. And it's my further understanding that those ratings, one, played a significant role in the collapse of our financial system and our economy to some degree. Isn't that true?

A. Yes.

Q. It's further my understanding that all three of these agencies are defendants in various lawsuits by institutional investors and others. Isn't that true?

A. Yes.

Q. How much credence should this Commission and your customers give to the fact that Standard & Poor's or the other two attach importance to an equity imputation adjustment?

A. It makes a difference in our ratings, and as a result of making a difference in our ratings, that, combined with the other decisions of the Commission on return on equity and capital structure in this case could have a significant impact on our ability to access capital, and therefore could severely impact the company, especially in the event of some of the things that we've talked about, hurricanes and the like.

Q. Yes. And lastly, but isn't it true that aside from the mention in a settled case, a globally settled case involving Progress Energy that resulted in no base rate increases, you are not aware of any jurisdiction, including this one, that has imposed the equity imputation adjustment in a litigated rate case? Isn't that correct?

A. That's correct, but we talked a little bit earlier today that I believe that Florida Power & Light does kind of the reverse. Instead of imputing equity, they impute debt when they calculate their financial jurisdictional equity ratio.

MR. TWOMEY: Thank you. It has been a long day, and I appreciate your time.

THE WITNESS: Thank you.

COMMISSIONER EDGAR: Thank you, Mr. Twomey.

Mr. Gillette, our staff had said that they had some questions, I don't think lengthy. But I do recognize it's been a long day. Can you hang in a little while longer, with --

THE WITNESS: Absolutely.

COMMISSIONER EDGAR: -- the carrot that maybe you wouldn't have to come back next week? Okay. Then we'll look to our staff for questions.

MR. YOUNG: Thank you.

CROSS-EXAMINATION

BY MR. YOUNG:

Q. Mr. Gillette, very quickly, can you please turn to tab 62 of the staff composite exhibit right next to you? Do you have it in front of you? We're going to reference the J.P. Morgan article you talked about. Okay?

A. Okay. What I have is -- I've got our Late-filed Exhibit Number 1. Is that right?

Q. Yes.

A. Okay.

MR. YOUNG: And just for point of information, Madam Chairman, this is from his deposition exhibit. It's Bates stamped page 2438, if you want to look for it, under tab 62.

COMMISSIONER EDGAR: Are you there?

THE WITNESS: Yes. I'm sorry. I didn't realize there was a question.

COMMISSIONER EDGAR: That's okay. Go ahead.

BY MR. YOUNG:

Q. Looking at the J.P. Morgan article, and that's Bates stamped page -- we're going to turn to Bates stamped page 2441. The chart on the bottom of the page purports to show a weighted average cost of capital over a range of credit ratings; is this correct?

A. Yes. I happen to be looking at one that's not Bates stamped that way. It's got the stamps from the late-filed deposition exhibit. But would I be correct in referencing this also as Late-filed Deposition Exhibit Number 1, page 5 of 23?

Q. Yes. That's fine.

A. Okay. Yes, I see the chart.

Q. And I realize you -- J.P. Morgan has indicated that a single-A rating results in a minimum cost of capital. When looking at the top of the line, can you distinguish the difference in the weighted average cost of capital over the range from a triple-B to a single-A?

A. It's pretty flat. It's difficult to differentiate. I assume that J.P. Morgan has a spreadsheet that backs up the line that shows that it is lowest at the A rating.

Q. Okay. Would you agree there is a cost associated with improving the company's financial matrix from a triple-B rating to a single-A rating?

A. Yes.

Q. Okay. The company has not -- and would you agree that the company has not done a specific analysis of the difference in cost to maintain a single-A rating compared to a triple-B rating?

A. That's correct.

Q. Okay. And finally, at the bottom of the page, looking at the article, this analysis by J.P. Morgan is for a typical industrial firm, not a utility; correct?

A. That's correct.

MR. YOUNG: All right. No further questions, Madam Chairman.

COMMISSIONER EDGAR: Hold on. You're not done.

Commissioners, any questions? No.

All right. Mr. Willis, redirect?

MR. WILLIS: I just have a couple of areas.

REDIRECT EXAMINATION

BY MR. WILLIS:

Q. Mr. Gillette, in response to a question that I believe Mr. Wright asked you, you testified that the PPA adjustment added 100 basis point to ROE. Did you misspeak when you stated that? Did you mean to say 100 basis points of equity ratio?

A. Yes, I misspoke, and I meant to say 100 basis points to equity ratio.

Q. In looking at the handout that Mr. Twomey gave you that is an excerpt of Kevin O'Donnell's testimony -- do you have it there in front of you?

A. Yes.

Q. I wanted to be sure I understood what you said there. Do I understand it that you agree with the portions of the statement that's on line 14 through 16 with respect -- which states, "Ms. Abbott states that a 12 percent return on equity is needed in order for the utility to achieve a set credit rating in the marketplace"? I believe that you said that you disagreed with the statement on line 18 supporting an excessive return on equity.

A. Yes.

Q. But you do not disagree with the statement that I read to you, do you?

A. That's correct.

MR. WILLIS: No further questions. We would move that Exhibits 18 and 80, as well as Exhibit 94, be moved into the record.

COMMISSIONER EDGAR: Okay. Let me get there just a moment on my sheets. Here we go.

Okay. Exhibit 18, GLG-1. Mr. Moyle?

MR. MOYLE: Just for the record, I think I know how the ruling is going to go, but I just for the record want to preserve --

COMMISSIONER EDGAR: Sometimes I might surprise you.

MR. MOYLE: Okay. I want to preserve an objection to 94.

COMMISSIONER EDGAR: Okay. Let me get there. Can I get there? Hold, please.

MR. MOYLE: Okay. Sure.

COMMISSIONER EDGAR: Let me get there, because I'm tired too, so I would like to go in order. So let me start with the exhibit that is marked 18, GLG-1, which was attached to the prefiled direct testimony. Seeing no objections, we will enter 18 into the record.

(Exhibit 18 was admitted into the record.)

COMMISSIONER EDGAR: Which then will bring me to -- okay. Help me, Mr. Willis. Did we have additional prefiled exhibits?

MR. WILLIS: Exhibit 80 is GLG-2.

COMMISSIONER EDGAR: Thank you. I see it now. Thank you. The exhibit marked 80, GLG-2, any objections?

Commissioner Skop, a question? Okay. A question from Commissioner Skop.

COMMISSIONER SKOP: I'll reserve it until we enter the exhibits, but I just have one brief question for the witness.

COMMISSIONER EDGAR: Oh, okay. Hold on. We're almost there. Okay. Seeing no objection, we will enter the exhibit marked 80 into the record.

(Exhibit 80 was admitted into the record.)

COMMISSIONER EDGAR: Which then brings me to Exhibit -- that brings us to 93. Have I missed anything, Mr. Willis?

MR. WILLIS: I believe it's 94, isn't it, which is the --

COMMISSIONER EDGAR: I think not. I think that that brings us to 93, which is the exhibit that we had tentatively labeled at this time ROE of Regulated Utilities Comparison and the RRA document or report, which we requested to be filed sometime next week or brought to us sometime next week.

MR. WILLIS: Okay. I'm not asking that be moved into evidence. I'm asking for the document that Mr. Moyle got Mr. Gillette to copy for him and that we talked about for hours.

COMMISSIONER EDGAR: You're talking about 94?

MR. WILLIS: Yes.

COMMISSIONER EDGAR: Okay. Hold on. Let me come back. Mr. Moyle, were your comments on 93?

MR. MOYLE: I think on 93, it's a document that hasn't even been created yet, so we have to wait until it's created to review it, and then we can register objections, I would think, when it's offered next week.

COMMISSIONER EDGAR: That is my preference.

MR. MOYLE: But with respect to 94, I would have an objection, in that it was a document that was never produced or provided to the parties. And I know that a lot of things come in, but just again for the record, I would object, in that 94 hasn't been properly authenticated, it's hearsay, and was not timely provided.

COMMISSIONER EDGAR: Okay. My -- and I will look to you here a moment, Mr. Willis. My understanding is that much of the information that is perhaps contained on what we have marked as 94 will be contained in 93 and 96, although perhaps with additional information expanded and/or otherwise sorted.

MR. WILLIS: That is true. However, we have been talking about this exhibit in great detail for hours today, and it has been fully --

COMMISSIONER EDGAR: Along with other things.

MR. WILLIS: It has been fully vetted. It is among numerous exhibits that Mr. Wright has handed out and Mr. Moyle has handed out, newspaper articles, all variety of things which have been presented to you. And I certainly think that this qualifies as an exhibit that should be received in evidence.

COMMISSIONER EDGAR: Mr. Moyle.

MR. MOYLE: The chief difference being that the documents Mr. Wright has been handing out have been cross documents that, you know, he has prepared for cross-examination. This is a document that was prepared by Mr. Gillette under his direction for the direct case.

But I'll tell you what. I think I may withdraw the objection, provided, you know, we have sort of a understanding on the rules. I mean, this is a document that we've never seen. A guy gets up on the stand and starts referring to it, and now all of a sudden it's coming in. Now, if that's how we were going to handle it, then -- you know, what's good for the goose is good for the gander I guess would be my point there.

MR. WILLIS: Well, we --

COMMISSIONER EDGAR: Hold, please, if you may. Ms. Helton, do you have comments?

MS. HELTON: My mind is a little bit fuzzy right now, but my recollection is -- I can't remember if it was one of you all who asked for Exhibit Number 94 to be --

COMMISSIONER EDGAR: It was actually Mr. Moyle who asked that we mark it for purposes of reference at that time, with his statement that he was not going to ask that it be entered.

MS. HELTON: Okay. And my recollection is that at that time, Mr. Moyle did not raise any objections with respect to hearsay or any of the other objections that he's raising now. And if that's not correct, someone please let me know now.

MR. MOYLE: Well, it wasn't moved for admission. I would have objected if it was moved.

MS. HELTON: You know, my understanding of the rules of evidence and the way that Professor Ehrhart would deal with this situation is that if there are questions raised concerning -- or if you conduct cross-examination on an exhibit, at that time, there must be an objection raised. It must be contemporaneous. And my recollection is that that is not the case today.

I believe that -- my suggestion to you, Madam Chairman, is that Exhibit Number 94 be admitted, if for no other reason, for clarity of the record. There was quite a bit of cross-examination conducted on it. And at the appropriate time, you can give it the weight that it deserves.

COMMISSIONER EDGAR: Mr. Willis, anything -- I'm sorry. Excuse me. Mr. Moyle, anything additional?

MR. MOYLE: No. We'll go ahead and maintain the objection, but understand where things may go.

COMMISSIONER EDGAR: Okay. Then let me -- I will approach it this way. When we labeled it, it was at that point described as not being offered for admittance into the record. So I guess my preference would have been, Mr. Willis, if you would have made the statement at that time that you would have wanted to.

But I fully recognize that there was discussion after that and questions were asked, and more questions, and I allowed them, and the witness responded, and there was the opportunity for redirect and all of that. So with that in mind, I am going at this point in time enter Exhibit 94 into the record, noting the objection that Mr. Moyle has raised, and we will all proceed tomorrow to continue to work for the best results.

MR. MOYLE: Thanks. And just so the record is clear, you've overruled the objection?

COMMISSIONER EDGAR: I have overruled the objection by admitting it into the record.

MR. MOYLE: Okay. Thank you.

(Exhibit 94 was admitted into the record.)

COMMISSIONER EDGAR: Okay. That brings us to Mr. Moyle, Exhibit 95.

MR. MOYLE: Given the trend, I'll go ahead and move 95 in.

COMMISSIONER EDGAR: Any objections? Okay. Seeing none, we will enter -- hang on. I've got to look at my notes here. Ninety-four and 95. Ninety-six we are also going to be receiving at a later date in the proceeding.

(Exhibit 95 was admitted into the record.)

COMMISSIONER EDGAR: That brings me, Mr. Wright, to your list of exhibits, which go from 97 to 104.

MR. WRIGHT: And I move that those be admitted into the record, Madam Chairman.

COMMISSIONER EDGAR: Mr. Willis or others, any objection?

MR. WILLIS: While I'm not --

COMMISSIONER EDGAR: And we can take them one by one if you want to.

MR. WILLIS: All I can say, as a group, I'm not going to object to the exhibits. They are hearsay, they're newspaper articles, they're all manner of kind of things, but I believe that this Commission can sort out the weight that it deserves to be treated, and with that understanding, I do not have any objection.

COMMISSIONER EDGAR: Okay. And with that discussion, we will enter Exhibits 96 through 104.

MR. WRIGHT: Madam Chair?

COMMISSIONER EDGAR: Yes, sir.

MR. WRIGHT: You did just say 96 through 104. I just want to be clear as to how 96 is coming in.

COMMISSIONER EDGAR: I'm sorry. I'm sorry.

MR. WRIGHT: I mean, I asked for --

COMMISSIONER EDGAR: No. I'm sorry. Yes, thank you. I did say 96, which is not what I meant, because I had just a moment ago -- and I thank you for catching it. It was a test. Not really. I'm just tired. I did a moment ago say that we would be receiving 96, so let me correct myself. And I appreciate that.

We will now enter 97 through 104, with again the understanding that we will be looking for 93 and 96 next week.

(Exhibits 97 through 104 were admitted into the record.)

MR. WRIGHT: And just so I understand, how will 93 and 96 be handled? I just don't want to get caught with the fact that they were introduced during the cross-examination of Mr. Gillette and the fact that he has left the stand. As far as I'm concerned, they are what they are.

COMMISSIONER EDGAR: He may have to come back next week.

MR. WRIGHT: Well, I'm not suggesting that. I think they are what they are, and absent something that appears really grotesquely false or something with the exhibits, you know, I'm going to want them to come in for what they are.

I just want to make sure there's not going to be any problem with them coming in after we have a chance to look at them based on the fact that the witness has been excused or anything like that.

COMMISSIONER EDGAR: I do not expect there to be any problems along those lines.

MR. WRIGHT: Thank you.

COMMISSIONER EDGAR: If there were to be, we will deal with it collectively. And again, there will certainty be an opportunity to review the documents before they are entered in.

MR. WRIGHT: Thank you.

COMMISSIONER EDGAR: Thank you.

MS. CHRISTENSEN: Commissioner, can I ask one follow-up question on 93 and 96?

COMMISSIONER EDGAR: Yes, ma'am.

MS. CHRISTENSEN: Since they are supposed to be being produced at some point next week, if we could get a time or a date by which they will be produced by Tampa Electric, because we, of course, have several witnesses going next week, and it might be apropos to be able to utilize the document further, especially since it was just produced at today's hearing.

COMMISSIONER EDGAR: Or requested. Okay. I see company representatives conferring, so let's see. Mr. Willis, can you give us a date?

MR. WILLIS: We will try to bring them back by next Tuesday for the parties.

COMMISSIONER EDGAR: Ms. Christensen, is that satisfactory?

MS. CHRISTENSEN: Well, it will give us an opportunity -- hopefully we'll get it in sufficient time to look at it before we start talking to other ROE witnesses. I'm hopeful.

COMMISSIONER EDGAR: Okay. Thank you. Just a moment more, Mr. Gillette, before we lose you. I want to make sure there's nothing out.

Okay. Just a reminder to everybody. We have a hearing on a different matter tomorrow in this room, so everybody does need to take any of your documents, materials, anything, because they could very well disappear.

And I think -- Commissioner Skop, did you have -- before we finish for the day.

COMMISSIONER SKOP: Thank you, Madam Chair. Very briefly, because again, Mr. Gillette I'm sure doesn't want to come back, so I would rather just briefly get this out of the way.

Just in relation -- on page 36 of your prefiled testimony, you discuss the parent company debt adjustment and why such debt adjustment would be inappropriate. I think I've gained a little bit of understanding from reading that, but if such an adjustment were not to be made, would that increase the pro forma adjustment or pro forma provision for taxes, thereby overstating the taxes without that adjustment?

THE WITNESS: If such an adjustment were to be made or were not to be made?

COMMISSIONER SKOP: If the adjustment were not to be made, would the provision for taxes be effectively overstated?

THE WITNESS: No. I believe the provision for taxes is correct as we filed it in this case.

COMMISSIONER SKOP: Okay. Thank you.

COMMISSIONER EDGAR: Okay. Seeing nothing further from the bench, anything from staff before we wrap?

MR. YOUNG: Yes. Just a reminder that the transcripts are available daily. Yesterday's transcripts should have been e-mailed, but they are available today.

COMMISSIONER EDGAR: Okay. Thank you. Mr. Gillette, you are excused. Thank you for your stamina.

Mr. Moyle?

MR. MOYLE: You're ordering us to get back together at 9:30 on Tuesday; is that right?

COMMISSIONER EDGAR: And I was just about to cover that. Thank you. Yes, we will be back here, same time, same room, same seats, Tuesday, the -- I believe that's the 27th, at 9:30.

And let me just ask TECO. My understanding is that if she is able, we will begin with witness Abbott.

MR. WILLIS: That's correct. But we do not know what her status is at the moment.

COMMISSIONER EDGAR: I understand. If Ms. Abbott is -- as we discussed earlier today, if Ms. Abbott is well enough, we will begin with her. If she is not, we will begin with witness Murry.

Okay. Anything else? All right. Thank you, everyone, for your cooperation and patience, and we will see you next week. We are adjourned for the evening.

(Proceedings recessed at 6:28 p.m.)

(Transcript continues in sequence in Volume 5.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA:

COUNTY OF LEON:

I, MARY ALLEN NEEL, Registered Professional Reporter, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages numbered 403 through 540 are a true and correct record of the aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 22nd day of January, 2008.

Mary Allen Neel

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